

BACKGROUND

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¶ 4 The petitioner and the respondent were married on April 20, 1985, in their hometown of Herrin, Illinois. Their first son was born in November 1985. In 1987, the respondent enlisted for active duty with the United States Air Force. The couple's second son was born in July 1991.

¶ 5 While the family was stationed at Hurlburt Air Force Base in Florida, the respondent informed the petitioner that he wanted a divorce. The respondent filed the divorce paperwork and the parties entered into a marital settlement agreement in May 1995. On June 2, 1995, a final judgment dissolving the parties' marriage and incorporating the marital settlement agreement was entered by the circuit court of Okaloosa County, Florida.

¶ 6 Among other things, the marital settlement agreement gave the petitioner full custody of the parties' two minor sons. After the divorce, the petitioner and the boys moved back to Williamson County, Illinois. The petitioner then sought to register the final judgment of dissolution of marriage in Illinois, in order to move for a modification of the respondent's child support obligation. On January 7, 1999, the petitioner filed a petition to register foreign judgment in the circuit court of Williamson County. On March 4, 1999, an order was entered registering the foreign judgment between the parties in Illinois.

¶ 7 On April 6, 2011, the petitioner filed a petition to enforce final judgment. Specifically, the petitioner sought to enforce paragraph 24 of the marital settlement agreement, incorporated into the final judgment, which, she argued, entitled her to receive half of the respondent's entire military retirement pension. Paragraph 24 states as follows:

"MILITARY RETIREMENT. The Husband has been on active duty in the United States Air Force for 8 years. At this time he does not have any vested retirement benefits. The Husband agrees that the Wife is entitled to 50% of any military retirement benefits he should receive in the future pursuant to his service in

the United States Air Force."

¶ 8 After the parties divorced, the respondent later remarried and continued to serve in the Air Force until he retired in 2011. As such, he obtained a vested interest in military retirement benefits, entitling him to collect a military pension after his retirement.

¶ 9 The petitioner believes that by the language of paragraph 24, she is entitled to half of the respondent's entire military pension, whereas he believes that paragraph 24 should be unenforceable. Therefore, in response to the petition to enforce final judgment, the respondent filed a motion to dismiss and/or, in the alternative, vacate the petition to enforce final judgment, to which the petitioner responded in opposition. The respondent also pled affirmative defenses within his motion to dismiss and/or vacate the petition to enforce final judgment. On May 26, 2011, after a hearing on the pleadings, the trial court denied the respondent's motion to dismiss and granted the petitioner's petition to enforce final judgment. The respondent filed a motion to reconsider ruling on June 23, 2011, in which he noted the trial court's failure to rule on his affirmative defenses pled in his motion to dismiss. The trial court denied the motion to reconsider in an order dated July 11, 2011. Because the trial court agreed with the petitioner, the respondent now appeals. For the reasons discussed herein, we affirm in part, reverse in part, and remand.

¶ 10

ANALYSIS

¶ 11 The respondent appeals both the trial court's denial of his motion to dismiss and the granting of the petitioner's petition to enforce final judgment. Specifically, the respondent attacks the validity of paragraph 24 of the marital settlement agreement, arguing that it is unconscionable, ambiguous, and against public policy. In addition, he asserts the affirmative defenses of equitable estoppel and invalidity of contract due to lack of consideration, as grounds for reversal.

¶ 12 Military pensions are regarded as marital property, to be treated "in accordance with

the law of the jurisdiction of the court." *In re Marriage of Dooley*, 137 Ill. App. 3d 401, 404 (1985); see also *In re Marriage of Brown*, 225 Ill. App. 3d 733, 738 (1992); *In re Marriage of Kennedy*, 170 Ill. App. 3d 726, 735 (1988). Thus, in Illinois, marital property is subject to the division provisions of section 503 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/503 (West 2010). "Property rights created by a judgment of dissolution become vested when the judgment is final, and a trial court lacks general jurisdiction to modify an order affecting these rights." *In re Marriage of Hubbard*, 215 Ill. App. 3d 113, 116 (1991). As such, a court will lose jurisdiction over a matter 30 days after entry of a final and appealable order. *Id.*; see also *Brickey v. Brickey*, 44 Ill. App. 3d 563, 564 (1976). However, a court always maintains jurisdiction to enforce its judgments. *Id.*

¶ 13 The respondent argues that the marital settlement agreement should not be enforced because it is unconscionable and/or that paragraph 24 of the agreement should be vacated. The terms of a marital property agreement incorporated into a final judgment of dissolution will generally be presumed valid, unless the movant shows that the agreement was procured by either fraud, coercion, or duress. *In re Marriage of Morris*, 147 Ill. App. 3d 380, 389-90 (1986); *In re Marriage of Riedy*, 130 Ill. App. 3d 311, 313-14 (1985). A marital settlement agreement incorporated into a final judgment of dissolution can also be deemed invalid if its terms are unconscionable or "contrary to any rule of law, public policy or morals." *In re Marriage of Riedy*, 130 Ill. App. 3d at 313. To find that an agreement is unconscionable, it must be shown that the terms are "improvident, totally one-sided or oppressive." *In re Marriage of Morris*, 147 Ill. App. 3d at 390. Courts may look at the "conditions under which the agreement was made," and also "the economic circumstances of the parties resulting from the agreement." *In re Marriage of Riedy*, 130 Ill. App. 3d at 313. The decision of the trial court to modify or, in turn, deny modification of the terms of a marital settlement agreement incorporated into a final judgment of dissolution is discretionary and will not be disturbed

on appeal absent an abuse of such discretion. *Id.* In other words, the trial court's decision will not be reversed "merely because different conclusions could be drawn." *Id.*

¶ 14 Specifically, the respondent asserts that the marital settlement agreement is unconscionable because, at the time the parties entered into the agreement, the petitioner indicated she would never attempt to enforce paragraph 24. In fact, the respondent points out that he was not even vested with any military retirement benefits at the time the agreement was signed. The respondent additionally offers an excerpt from the United States Department of Defense Finance and Accounting Service - Cleveland (DFAS-CL) handbook he received upon retirement from the military, which reads, in pertinent part:

"Payments to a former spouse. Your retired pay is subject to court-ordered distribution to a spouse or former spouse where the parties were married to each other for at least 10 years during which you performed at least 10 years of creditable military service." DFAS-CL1352.2-PH, section C3.2.5.

Although the parties were married for just over 10 years at the time that their marriage was dissolved, the respondent had not yet served in the military for at least 10 years. As such, the respondent believes that under this DFAS-CL provision, the petitioner is not legally entitled to any portion of his military pension and, therefore, an agreement providing otherwise is unconscionable.

¶ 15 The respondent further argues that the agreement is "extremely one-sided," in that the petitioner received full custody of their two minor children and the right to claim them both as her dependants for income tax purposes, as well as child support. She also received exclusive use, possession, and ownership of the parties' 1991 Chevrolet Corsica, whereas the respondent retained the responsibility of paying off their entire indebtedness. In addition, the respondent asserts that the enforcement of paragraph 24 produces an unconscionable result in that his current wife, to whom he has been married for longer than marriage to the

petitioner, will receive nothing of his military pension.

¶ 16 In its order, the trial court found that the agreement and paragraph 24, specifically, were not unconscionable. The trial court based its finding, in part, on the respondent's testimony that, at the time he signed the agreement, he did not intend to stay in the military long enough to obtain a vested interest in military retirement benefits, but instead, intended to leave the military and enter civilian life. In other words, the respondent "believed the promise of shared retirement benefits [with the petitioner] to be worthless." Therefore, the trial court concluded that the respondent's subsequent decision to reenlist in the Air Force, which ultimately led to his accrual of military retirement benefits, and hence, the petitioner's ability to enforce paragraph 24, "d[id] not render the agreement unconscionable." We agree, finding no abuse of the trial court's discretion. See *In re Marriage of Morris*, 147 Ill. App. 3d at 395-96 ("[A] settlement agreement incorporated into a judgment for dissolution will not be vacated based on a mere change of heart of one of the parties.").

¶ 17 Moreover, the other terms of the agreement offered by the respondent to support his argument of unconscionability do not evince that the agreement was "improvident, totally one-sided or oppressive" (*In re Marriage of Morris*, 147 Ill. App. 3d at 390) to justify vacating either the entire agreement or paragraph 24 by itself. Although the record *does* indicate that the petitioner wanted paragraph 24 to be included in the agreement, there is no evidence supporting the notion that the respondent was under duress to agree to its terms in order to attain the dissolution. Evidence of duress must be "clear and convincing" and must show that the respondent was "deprived of the exercise of his free will" due to the petitioner's actions. *In re Marriage of Riedy*, 130 Ill. App. 3d at 314. The record reflects that it was the respondent who was represented by an attorney during the time the parties were negotiating the marital settlement agreement. The petitioner, on the other hand, was not represented by an attorney. Further, the record reveals that it was the respondent's attorney who drafted the

marital settlement agreement. We are hard-pressed to find any evidence of either unconscionability or duress in this regard. In addition, the respondent's affirmative defense that the agreement should be declared invalid for lack of consideration has little merit. The respondent was represented by his attorney and had ample opportunity to negotiate the marital settlement agreement. Ultimately, he received the dissolution of marriage that he sought.

¶ 18 The respondent also argues that the agreement was very one-sided and completely favored the petitioner. However, the fact that the petitioner got full custody of the parties' two minor children and the right to claim them both as her dependants for income tax purposes and was awarded child support, plus exclusive use, possession, and ownership of the parties' 1991 Chevrolet Corsica, while the respondent was ordered to pay off their debt, does not describe an arrangement that is outside of the scope of normalcy as far as marital settlement agreements go. Accordingly, we find that the specific terms of the agreement do not favor the petitioner in such an extreme way that it rises to the level of unconscionability. Thus, we further find the respondent's affirmative defense of equitable estoppel to be unavailing.

¶ 19 Turning to the DFAS-CL provision, which the respondent argues renders paragraph 24 legally defunct, we find this argument to be ineffective as well. Applying it to the case at hand, we construe the DFAS-CL provision to mean that DFAS will not accept a court order requiring it to pay a portion of the respondent's military pension directly to the petitioner. However, this does not mean that the petitioner cannot employ other means to receive her portion of the respondent's military pension to which she is found entitled. In addition, enforcing paragraph 24 does not mean that the respondent's current wife will be left with "nothing" of his military pension. The respondent's share remains available to her.

¶ 20 In the alternative, the respondent proposes that if we find that the petitioner is entitled

to his military pension by the language of paragraph 24, then, legally, the most she should be awarded is half of the value accrued during his first eight years of military service, representing the time they were married while he was enlisted in the U.S. Air Force.

¶21 When interpreting the language of a marital settlement agreement, we use the ordinary rules of contract construction. *In re Marriage of Frain*, 258 Ill. App. 3d 475, 478 (1994). First and foremost, we attempt to "give effect to the intent of the parties" by looking at the plain language of the agreement. *Id.* If the language is "clear and unambiguous," then we apply its "ordinary and natural meaning." *Id.* However, if the language is "susceptible to more than one [reasonable] meaning or interpretation," then an ambiguity exists in the agreement. *Id.* Whether the marital settlement agreement is ambiguous is a question of law, which we review *de novo*. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547-48 (2010).

¶22 As previously stated, the language of paragraph 24 of the parties' marital settlement agreement reads as follows:

"MILITARY RETIREMENT. The Husband has been on active duty in the United States Air Force for 8 years. At this time he does not have any vested retirement benefits. The Husband agrees that the Wife is entitled to 50% of any military retirement benefits he should receive in the future pursuant to his service in the United States Air Force."

¶23 When determining the intent of the parties, we consider the marital settlement agreement as a whole, rather than merely the isolated language of paragraph 24. *Salce v. Saracco*, 409 Ill. App. 3d 977, 981 (2011). Quite obviously, one of the main purposes of the marital settlement agreement is to distribute the marital property between the respondent and the petitioner. Construing the plain language of paragraph 24 in context with the purpose of the entire marital settlement agreement, we agree with the respondent's interpretation. The first sentence of paragraph 24, "[t]he Husband has been on active duty in the United States

Air Force for 8 years," could be interpreted as merely showing that, at the time of signing the agreement, the respondent had not yet become vested with retirement benefits. Yet, such meaning would be superfluous considering that the following sentence of paragraph 24 states, "At this time [the respondent] does not have any vested retirement benefits." The first sentence could also be interpreted as simply providing information about the respondent's tenure of military service at the time the agreement was signed. But such language would not have any real impact or meaning as far as the agreement is concerned. We believe the best interpretation of the first sentence of paragraph 24 is that it states the years of military service the respondent accrued during the parties' marriage to thereby serve as a measure of the portion of his future military pension to which the petitioner would be entitled. *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 277 (2009) ("[An interpretation should give] meaning and effect *** to every term and provision, if possible, since it is presumed that every clause in the contract was inserted deliberately and for a purpose, and that the language was not employed idly.").

¶ 24 It would make the most sense to interpret the language of paragraph 24 as entitling the petitioner to 50% of the value of the respondent's military pension, which represents the amount accrued from his eight years of service during the parties' marriage. This represents marital property, whereas 50% of his entire pension would encompass benefits accrued *after* the dissolution, which is not considered marital property. See *In re Marriage of Kennedy*, 170 Ill. App. 3d at 735 ("Retirement benefits from military pensions acquired during a marriage are marital property and subject to division between the parties."); *In re Marriage of Dooley*, 137 Ill. App. 3d at 403 ("a marital property interest may be found in the retirement benefits of a spouse, where such benefits were earned or acquired during the marriage" (emphasis added)). Such meaning aligns with one of the main purposes of the agreement—to distribute marital property between the parties. We find other interpretations, such as the one

employed by the trial court, render the first sentence in paragraph 24 superfluous and entitle the petitioner to a share of the respondent's property that cannot be considered marital. While we recognize that the law allows parties to agree to most anything legal in a valid contract, an interpretation as such appears incongruous in light of the entire agreement.

¶ 25 We therefore reject the respondent's arguments supporting his requests to reverse the trial court's granting of the petition to enforce the judgment and the trial court's denial of his motion to dismiss and his affirmative defenses. As such, we agree with the trial court that paragraph 24 is valid and should be enforced via the final judgment of dissolution and hereby affirm this portion of the trial court's ruling. However, we disagree with the trial court's interpretation that the language of paragraph 24 entitles the petitioner to half of the respondent's entire military pension. Instead, we agree with his request in the alternative, which is to allow the petitioner to receive half of the respondent's military pension attributable to his eight years of service in the U.S. Air Force during the parties' marriage. Accordingly, we reverse in part the trial court's judgment in this regard and remand this cause to the trial court so that it may determine the exact amount of the respondent's military pension that should be awarded to the petitioner, based on our findings.

¶ 26 **CONCLUSION**

¶ 27 For the reasons discussed herein, we affirm in part and reverse in part, remanding this cause to the trial court in order to proceed consistent with our findings.

¶ 28 Affirmed in part and reversed in part; cause remanded.

JUSTICE SPOMER, concurring in part and dissenting in part:

¶ 29 I agree with my colleagues that the trial judge did not abuse his discretion in finding paragraph 24 valid. I also agree that when the plain language of a marital settlement

agreement is clear and unambiguous, it must be given its ordinary and natural meaning. In this case, I believe paragraph 24 of the agreement is clear and unambiguous, and is not susceptible to more than one reasonable meaning or interpretation, the questionable wisdom of the respondent including the paragraph in the agreement notwithstanding. Therefore, I would apply the ordinary and natural meaning of the agreement's language that "[t]he Husband agrees that the Wife is entitled to 50% of *any* military retirement benefits he should receive in the future pursuant to his service in the United States Air Force" (emphasis added) and would affirm the trial court's decision in its entirety.