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2013 IL App (3d) 120436-U

Order filed April 3, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
DANIEL E. BAKER,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-12-0436
and)	Circuit No. 11-D-221
)	
PATRICIA S. BAKER,)	Honorable
)	Michael Risinger,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in applying the *Hunt* formula and awarding wife 10.5% of husband's non-qualified deferred compensation plan where the husband began participating in the plan 17 months before the marriage ended.
- ¶ 2 Respondent, Patricia Baker, appeals from the judgment of dissolution of her marriage to petitioner, Daniel Baker. On appeal, she contends that the trial court erred in applying the *Hunt* formula (see *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979)) and awarding her

10.5% of Daniel's non-qualified deferred compensation plan. We affirm.

¶ 3 Daniel and Patricia were married on November 25, 1975, and had six children together. In March 2011, Daniel petitioned for dissolution. At the time the petition was filed, both parties were approximately 55 years old and two of the six children were minors.

¶ 4 During the marriage, Daniel was employed as the chief financial officer of OSF Healthcare Systems in Peoria. He was initially hired in July of 1981 and still held that position at the time of dissolution. According to his financial affidavit, his 2011 monthly gross income was \$38,424. Daniel's affidavit also listed several retirement income plans and pensions, including a Wells Fargo IRA worth \$455,589, an OSF 401(k) worth \$711,359, an OSF 457 pension worth \$135,852, and an OSF Healthcare Systems nonqualified deferred compensation plan.

¶ 5 Based on the parties marital settlement agreement, Daniel agreed to pay Patricia permanent maintenance. Under the terms of the agreement, Patricia received \$14,272 a month in unallocated child support and maintenance. The parties agreed to divide the marital property, including the marital portion of Daniel's retirement accounts, equally, awarding 50% to each spouse. They further agreed to use the reserved jurisdiction method for division of the nonqualified deferred compensation plan when the pension became payable. The only issue for the trial court to determine was Patricia's interest in the deferred compensation plan.

¶ 6 The evidence relating to the deferred compensation plan demonstrated that Daniel received a letter from the OSF human resources committee on December 17, 2010, indicating that he had been designated as a participant in the plan, retroactive to September 30, 2010.

The letter stated that the purpose of the plan was to supplement OSF's other retirement plans and to reward employees for working through their 62nd birthday. It further explained that "the current tax law limits the amount of deferred compensation that an organization can provide through qualified retirement plans. Higher earners therefore receive proportionally less through the qualified plans than other employees. The addition of the NQDC [nonqualified deferred compensation] plan will bring your retirement income up to a competitive level." A projection sheet included with the letter indicated that Daniel's plan had an estimated lump sum value of \$1,646,820, assuming a target retirement date of September 30, 2017.

¶ 7 According to the terms of the nonqualified deferred compensation plan document, it was established by OSF in September of 2002 to provide supplemental retirement benefits to "management level employees." Article III of the plan states:

"Eligibility. The committee, in its sole discretion, shall designate the employees of the Company who shall participate under the Plan. Upon selection by the Committee, the employee shall become a participant as of the effective date set forth in writing by the Committee."

Article IV provides:

"Investment Earnings. As of each Valuation Date [accounting period], the Committee shall determine an amount to be credited to each Participant's Deferred Compensation Account for the Accounting Period ending on such Valuation Date, which amount shall be deemed Investment Earnings."

¶ 8 The trial court conducted a hearing to determine the appropriate marital division of

the plan. Both parties submitted calculations and arguments in support thereof using the *Hunt* formula. Patricia calculated the marital portion of the deferred compensation plan at 86%, 43% of which would be awarded to her under the terms of the settlement agreement. Her 86% calculation was based on Daniel's length of participation in the plan during the marriage of 367 months (July 1981 through September 2017) and assumed Daniel retired at full service in September of 2017, a total participation of 420 months in the plan. By contrast, David calculated the marital duration of accumulated benefits from September 2010 to February 2012, or 17 months, and a total length of participation in the plan of 84 months (September 2010 to February 2017), equaling a marital interest in the pension of 21%, which would result in a 10.5% award to Patricia.

¶ 9 In reaching its decision, the trial court found that Daniel did not become eligible to participate in the deferred compensation plan until he was notified of the plan by letter on December 17, 2010, retroactive to September 30, 2010. The court noted that the terms of the plan clearly state that it is Daniel's position at OSF that makes him eligible for the plan, not his length of service. It then calculated the number of months during which the benefits were being accumulated to be 17, calculating eligibility as of September 30, 2010, and the total length of the plan equal to 84 months. The court concluded that the marital portion of the plan was equal to 21% of its value and awarded Patricia 10.5% of the lump sum payment as her equal portion.

¶ 10 ANALYSIS

¶ 11 Patricia argues that the trial court erred in its apportionment of Daniel's nonqualified deferred compensation plan. Specifically, she claims the court erred in determining that

Daniel did not become eligible to participate in the plan until September 30, 2010.

¶ 12 Any interest in a pension, whether mature, vested, nonvested, qualified or nonqualified, is property within the meaning of section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2010)). Under the Act, Illinois courts have developed two different methods of dividing the marital interest of a pension. The first method is the present value method, in which the court determines the present value of the pension plan, awards the entire pension to the employed party, and awards the other party enough other marital property to offset the award. *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979). This method is often impractical because of valuation difficulties or because the parties lack sufficient readily divisible assets to provide an accurate offsetting property award. *Id.* at 662-63.

¶ 13 The second method, applied in this case, is commonly referred to as the reserved jurisdiction method. Under this method, the court reserves jurisdiction to divide the pension "if, as and when" the pension becomes payable. *Id.* at 663 (quoting *In re Marriage of Brown*, 544 P. 2d 561 (1976)). At the time of dissolution, the court determines the marital interest in the pension using a fraction calculation. The numerator in the calculation is the number of years or months that benefits were being accumulated by the employee spouse during the marriage, and the denominator is the total number of years or months that benefits were accumulated prior to payment. *Id.* Once the employee actually begins to receive benefits, presumably upon retirement, the amount received is multiplied by the calculated fraction to determine the marital interest of the payment, which is then divided according to the property division determined in the dissolution agreement. *Id.*

¶ 14 The reserved jurisdiction method is the most popular method of calculating a deferred pension payment for the purpose of apportioning marital property. *In re Marriage of Ramsey*, 339 Ill. App. 3d 752 (2003). When courts utilize the reserved jurisdiction method, the pension amount divided is the amount actually received. *Id.* at 758-59. By postponing the division of the pension until it is actually received, both parties share the risk that certain postmarital factors, i.e., change of employment or death, may reduce the pension substantially or forfeit the benefits entirely. *Id.* at 759. A trial court's division of an asset as marital or nonmarital property will not be overturned unless it is against the manifest weight of the evidence. *In re Marriage of Didier*, 318 Ill. App. 3d 253 (2000).

¶ 15 Here, the trial court's finding that Daniel did not begin accumulating benefits under the plan until September 30, 2010, is not against the manifest weight of the evidence. Daniel began his employment at OSF on July 13, 1981, but he did not begin participating in the deferred compensation plan until he was notified by the human resources committee of his eligibility. On December 17, 2010, Daniel received notification that he had been accepted into the nonqualified deferred compensation plan and that his eligibility was effective September 30, 2010. Thus, even though Daniel was employed by OSF before September 30, 2010, he was not accumulating benefits under the plan until September 2010. Accordingly, the trial court's calculations based on the September 30, 2010, date was not error.

¶ 16 Patricia argues that the court's formula should have included the entire time Daniel was employed by OSF during the parties' marriage because the nonqualified deferred compensation plan is a reward for his previous 30 years of employment. However, the plan

document does not support her argument. The plan states that it is designed to supplement the income of higher income employees and that eligibility is based on the committee's discretion. The plan also provides that the human resources committee determines the account earnings credited to each participant's account. Daniel's participation in the plan arises out of his status as chief financial officer. Nothing in the plan indicates that the accumulation of benefits is based on Daniel's length of service.

¶ 17 The reserved jurisdiction formula is based on the number of years "during which benefits were being accumulated." *In re Marriage of Hunt*, 78 Ill. App. 3d at 663. In this case, the time during which Daniel will have participated in the plan, the time during which benefits were being accumulated, is the period of time between September 30, 2010, and September 30, 2017. The trial court's calculation of the marital interest in the plan payment was not against the manifest weight of the evidence. Thus, according to the property division agreed to by the parties, Patricia is entitled to receive 10.5% of Daniel's nonqualified deferred compensation plan if, as and when the payment is actually received.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.