

circuit court's award to the petitioner should have been calculated based on his pay grade at the time of the parties' divorce, as opposed to the time of his retirement. For the reasons discussed herein, we affirm the ruling of the circuit court.

¶ 3

BACKGROUND

¶ 4 The petitioner and the respondent were married on April 20, 1985. On or about March 8, 1987, the respondent enlisted for active duty with the United States Air Force (USAF). 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. After the parties divorced, the respondent later remarried and continued to serve in the USAF until he retired sometime in the spring of 2011. As such, he obtained a vested interest in military retirement benefits, entitling him to collect a military pension after his retirement.

¶ 5 This matter was previously on appeal in order to determine whether a provision in the parties' marital settlement agreement, entitling the petitioner to half of the respondent's military retirement pension, was valid and if so, whether it entitled the petitioner to half of the respondent's entire pension or a portion thereof to account for time they were married during his military career. *In re Marriage of McHargue*, 2012 IL App (5th) 110332-U. Agreeing with the circuit court, we determined that the provision was indeed valid. *Id.* ¶¶ 16-19. However, we reversed in part the circuit court's holding that the petitioner was entitled to half of the respondent's military pension in its entirety, finding instead that the petitioner was entitled to half of the marital portion. *Id.* ¶¶ 23-25. We therefore affirmed in part, reversed in part, and remanded this matter to the circuit court so that it could determine the exact amount of the respondent's military pension that should be awarded to the petitioner.

¶ 6 The provision upon which both appeals have centered on is paragraph 24 of the marital settlement agreement (Agreement), incorporated into the final judgment of

dissolution between the parties. 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."

¶ 7 On remand, the circuit court, after hearing arguments made by counsel and having considered the relevant evidence, issued an order, dated February 13, 2013, which awarded the petitioner a marital portion of the respondent's gross military pension retirement pay. Specifically, the circuit court ruled that the respondent was entitled to a marital portion of 17.5% of the \$2,154 representing the respondent's monthly gross military retirement pay, which amounted to a sum of \$376.95 per month to the petitioner, to commence monthly starting on May 2, 2011. The circuit court also awarded the petitioner back pay for 22 unpaid monthly distributions, totaling \$8,292.90, plus interest at the Illinois statutory rate. Lastly, the circuit court ordered the respondent to keep the petitioner informed of any changes or increases in his gross monthly military pension retirement pay, as well as ordered the respondent to recalculate, not less than once each calendar year, the monthly payment he makes to the petitioner, beginning in 2014.

¶ 8 The respondent filed a motion to reconsider, arguing that if the circuit court is to award the petitioner 17.5% of his military pension retirement pay, it should be calculated from his monthly net pay of \$997.16 and not his monthly gross pay of \$2,154. The circuit court denied the motion and the respondent timely appealed.

¶ 9 ANALYSIS

¶ 10 On appeal, the respondent does not dispute the 17.5% marital interest percentage used by the circuit court to calculate the petitioner's share of the respondent's military pension

retirement pay, but he does argue that the circuit court should have calculated her share based on his monthly net income rather than his monthly gross income. The respondent also argues on appeal that the circuit court should have calculated the petitioner's current monthly payments as well as her 22 months of back payments based on his E4 pay grade in the USAF at the time of the parties' divorce in 1995, as opposed to his E7 pay grade at the time of his retirement in 2011.

¶ 11 With regard to the issue of whether the circuit court should have calculated the petitioner's share based on the respondent's monthly net military pension retirement pay versus his monthly gross retirement pay, we note that although the respondent raises this issue on appeal, he has failed to elaborate on this issue with any discernable argument or reasoning and fails to cite any persuasive authority. It is thus a violation of Supreme Court Rule 341(h)(7) and is hereby considered waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) ("Ill-defined and insufficiently presented issues that do not satisfy the rule are considered waived."); *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research."). Even if we were to reach the merits, we find no authority supporting the respondent's position and therefore see no reason why the petitioner's share should be calculated based on the respondent's monthly net retirement pay as opposed to his monthly gross retirement pay.

¶ 12 Next, we address the issue of whether the circuit court improperly calculated the petitioner's share of current monthly payments as well as back payments, based on the respondent's retired pay grade as an E7 in the USAF as opposed to his pay grade at the time of the parties' divorce in 1995, which was as an E4.

¶ 13 In support of his argument, the respondent relies heavily on a portion of our order

from the first appeal in this matter, wherein we stated:

"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." (Emphasis in original; underlined text denotes emphasis added by the respondent in his appellate brief.) *In re Marriage of McHargue*, 2012 IL App (5th) 110332, ¶ 24-U.

¶ 14 The respondent asserts that the above-cited passage indicates that the petitioner should not be entitled to any portion of his benefits representing an increase in pay due to promotion in rank and pay grade accrued subsequent to the parties' divorce in 1995 because we stated that it would not be properly considered marital property. However, the respondent misinterprets our words. We did not state that the petitioner was not entitled to increased value in earnings over the lifetime of the pension, but instead, that her share should be based on the marital portion representing the duration of the parties' eight years of marriage. Our view aligns with what is known as the "reserved jurisdiction approach," which is a widely accepted formula used by Illinois courts to allocate the division of unmatured pension interests. See *In re Marriage of Richardson*, 381 Ill. App. 3d 47, 52 (2008) (citing *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979)).

¶ 15 The reserved jurisdiction approach determines the marital interest in pension benefits between the parties to a dissolution action by "dividing the number of years or months of marriage during which pension benefits accumulated by the total number of years or months benefits accumulated prior to retirement." *Id.* This determines the "marital interest percentage," which is then multiplied by the amount of each pension distribution received

to calculate the marital interest. *Id.* The reserved jurisdiction approach is often used by courts when the nonemployee (or nonmilitary) spouse cannot be immediately compensated at the time of the dissolution of the parties' marriage. *Id.* at 54. Thus, it is appropriately used in cases "where an interest has not vested at the time of dissolution, because it divides the risk that a pension will fail to vest." *Id.*; see also *In re Marriage of Whiting*, 179 Ill. App. 3d 187, 191 (1989) ("The 'reserved jurisdiction approach' is useful in those situations where the amount of the [military] retirement benefits which will actually be paid out cannot be calculated with any certainty at the time of dissolution of the marriage.").

¶ 16 The parties in *Richardson* were bound by their judgment of dissolution, which incorporated the terms of their oral settlement agreement, the pertinent provision as follows:

" 'Wife is hereby awarded one-half (1/2) of Husband's pension as it has accrued from [sic] the date of the marriage to the date of the entry of this Judgment of Dissolution of Marriage. This court shall retain jurisdiction of this cause for the purpose of entering a Qualified Domestic Relations Order.' " *Id.* at 48.

¶ 17 Though it did not specifically involve a military pension, the case of *In re Marriage of Richardson* involved an argument similar to what the respondent herein makes, in that the pension-holder did not believe that his ex-spouse should be entitled to receive a portion of the pension benefits attributable to any increased earnings accrued after their dissolution. *Id.* at 56-57. The *Richardson* court rejected such argument, finding that the parties did not specify that the nonemployee's marital share would be valued differently than the pension-holder's marital share, otherwise, "the [nonemployee's] share of the pension would have been ascertainable on the date of dissolution." *Id.* at 57 ("Nowhere in the dissolution judgment does it provide how the marital portion of the pension, that portion accrued between the date of marriage and the date of dissolution, will be calculated, let alone that [the nonemployee's] share of the marital portion will be calculated differently than [the pension-holder's] share"

or that "the value of [the nonemployee's] identical marital share will be frozen as of the date of dissolution and will not include credit for the years [the pension-holder] accrued benefits before or after the marriage or for the higher salary he held at retirement.").

¶ 18 In the instant matter, paragraph 24 of the Agreement is also silent on the method of calculating the marital portion, stating only 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."

¶ 19 As in *Richardson*, it is evident that paragraph 24 of the parties' settlement agreement does not establish how the petitioner's share will be calculated, nor does it explicitly state that the petitioner's share is to be calculated based on the respondent's E4 pay grade existing at the time of the 1995 dissolution. Therefore, the judgment is considered to be "silent" in this regard. See *In re Marriage of Kehoe*, 2012 IL App (1st) 110644, ¶ 29. In Illinois, a circuit court has "discretion to 'devise a method' of apportionment because the parties' judgment for dissolution [is] 'silent' on how the marital portion would be calculated." (Internal quotation marks omitted.) *In re Marriage of Kehoe*, 2012 IL App (1st) 110644, ¶ 29 (citing *Richardson*, 381 Ill. App. 3d at 53). Further, the decision of the circuit court will not be disturbed absent a finding that it abused its discretion. *In re Marriage of Korper*, 131 Ill. App. 3d 753, 757 (1985). An abuse of discretion will only be found "where no reasonable person would take the view adopted by the [circuit] court." *Id.*

¶ 20 Here, it appears that the circuit court applied the reserved jurisdictional approach as discussed herein. In determining the marital interest percentage to account for the parties' eight years of marriage, the circuit court arrived at 17.5%, a percentage which is not disputed

by the parties. As previously stated, the reserved jurisdiction approach is most commonly used when the amount of the pension retirement pay cannot be easily determined at the time of dissolution. At the time of the parties' dissolution in 1995, the respondent had not yet vested in his right to receive a military pension, nor was he close to retirement. However, a marital property interest may be found in retirement benefits of a spouse acquired during the marriage, whether the pension is vested or nonvested during the marriage. *In re Marriage of Dooley*, 137 Ill. App. 3d 401, 403 (1985). In fact, the respondent previously admitted that at the time of drafting the Agreement and unbeknownst to the petitioner, he did not actually intend on continuing his career in the USAF long enough to vest in a pension. Therefore, given the uncertainty of the pension retirement pay amount and the risk that the respondent's military pension may not even come to fruition, this was the best formula for the circuit court to use.

¶ 21 Moreover, we find that the language of paragraph 24 of the Agreement specifically states, "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." (Emphasis added.) Certainly, this sentence strongly disfavors the respondent's view that the petitioner should be limited to either his net pay or his E4 pay grade earnings at the time of dissolution, as it clearly contemplates "any" pay the respondent may "receive in the future." It is neither uncommon nor unreasonable to believe that had the respondent continued his military career in order to vest in a military retirement pension, he would most likely be promoted in rank and retire with a higher pay grade than his pay grade at the time of the parties' dissolution. Additionally, because paragraph 24 of the Agreement did not specify otherwise, calculating the petitioner's share based on the respondent's retirement pay grade of E7 as opposed to his pay grade of E4 at the time of dissolution was also in accordance with the reserved jurisdiction approach and awarded proper value to the

"[r]espondent's efforts during the marriage [which] contributed to that cumulative total [of the pension], not only to the benefits accrued during the marriage years." *In re Marriage of Richardson*, 381 Ill. App. 3d at 58; see also, e.g., *Bullock v. Bullock*, 354 N.W.2d 904, 910 (N.D. 1984) ("Contribution made by a spouse during the early years of a marriage is an important factor to be considered by the [circuit] judge in a division of the [military pension]." (citing *Keig v. Keig*, 270 N.W.2d 558, 560 (N.D. 1978))).

¶ 22 Accordingly, we find that the circuit court did not abuse its discretion in the method used to calculate the petitioner's marital share of the respondent's military retirement pension, and we thereby affirm its ruling.

¶ 23 **CONCLUSION**

¶ 24 For the reasons discussed herein, we affirm the ruling of the circuit court of Williamson County.

¶ 25 Affirmed.