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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
BARBARA RIFKEN,	)	of Kane County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 11-D-1574
	)	
JOEL RIFKEN,	)	Honorable
	)	Joseph M. Grady,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court acted within its discretion in granting respondent's petition for a preliminary injunction and entering a QDRO to effectuate the provisions of the preliminary injunction, which allowed respondent to receive most of the funds in petitioner's deferred compensation plan. Therefore, we affirmed.

¶ 2 In this *pro se* interlocutory appeal, petitioner, Barbara Rifken, appeals the trial court's preliminary injunction order and qualified domestic relations order (QDRO). The orders provided that respondent, Joel Rifken, was to receive most of the money remaining in petitioner's deferred compensation plan as a maintenance arrearage and as an equitable disbursement of marital property/source of funds for ongoing maintenance. Petitioner largely

argues that the trial court erred in setting the amount of temporary maintenance. We agree with respondent that the orders relating to the amount of temporary maintenance are not properly before this court, and that the trial court did not abuse its discretion in granting the preliminary injunction and entering the QDRO. Therefore, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 Petitioner and respondent were married on August 30, 2001, and their daughter, S.R.,<sup>1</sup> was born on November 20, 2003. Petitioner filed a petition for dissolution of marriage on November 15, 2011. She alleged that she had always been S.R.'s primary care provider; it was in S.R.'s best interest that she be awarded sole custody; that respondent was retired and receiving disability payments; and that respondent should have to pay child support. In a separate petition filed the same day seeking temporary custody of S.R. and exclusive possession of the marital residence, petitioner alleged that respondent was diagnosed with Gaucher's disease, which was a chronic, progressive, inherited genetic disorder, as well as Parkinson's disease and dementia.

¶ 5 In March 2012, the Kane County public guardian, representing respondent, sought to prevent petitioner from making any money transfers other than for monthly household expenses and sought to have petitioner pay respondent's nursing home expenses.

¶ 6 In May 2012, the dissolution case was consolidated with an action for the appointment of a guardian for respondent's estate. Also that month, Michelle Rifken, respondent's adult daughter from a previous marriage, was appointed the temporary guardian of respondent and his estate. She was reappointed guardian in October 2012.

¶ 7 On May 22, 2012, the trial court gave Michelle permission to move respondent to

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<sup>1</sup> We typically do not use children's initials in dissolution proceedings, but we do so here because the parties use the child's initials in their briefs.

Pennsylvania, where Michelle lived.

¶ 8 The following day, on May 23, 2012, respondent<sup>2</sup> filed a counter-petition for dissolution of marriage. He sought permanent maintenance from petitioner, alleging that he received \$2,063 per month from social security and was unemployable. Respondent alleged that petitioner had a gross annual income of almost \$100,000<sup>3</sup> and that she also received social security benefits of \$1,020 per month on behalf of S.R.

¶ 9 On November 28, 2012, the trial court ordered petitioner to pay respondent \$2,000 per month in temporary support.<sup>4</sup>

¶ 10 Respondent filed various petitions for rule to show cause throughout the proceedings. In January 2013, the trial court found that petitioner owed a maintenance arrearage of \$5,000. It ordered that petitioner's wages be garnished to pay ongoing maintenance and the arrearage.

¶ 11 On March 8, 2013, petitioner filed a motion seeking to, among other things, modify or terminate support. She alleged that respondent's living arrangements and expenses had been misrepresented; that the support order did not leave sufficient funds for her own living expenses; that she was in Chapter 13 bankruptcy; and that the garnishment may be excessive under statute. She sought similar relief in a petition filed on April 8, 2013. At an April 24, 2013, hearing, the

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<sup>2</sup> Respondent's pleadings were filed on his behalf by Michelle, who had an attorney representing her in her capacity as respondent's guardian. However, for simplicity we refer to the pleadings and attorney as belonging to respondent.

<sup>3</sup> In a financial affidavit filed September 7, 2012, petitioner listed her gross income from the previous year as \$81,077.20. She listed the market value of her "ICMA" deferred compensation plan as \$53,324.

<sup>4</sup> Other, one-time support payments had been ordered prior to November 2012.

trial court denied petitioner's request to reduce the temporary support.

¶ 12 On October 28, 2013, petitioner filed an emergency motion to terminate or modify support based on extreme hardship. She attached a financial affidavit showing a gross monthly income of \$8,159.56; a net monthly income of \$3,265.12 after taxes, wage garnishment, and other deductions; and monthly expenses of \$7,057. Petitioner also listed over \$27,000 of debts (largely legal). On November 5, 2013, the trial court entered an order stating in relevant part that the motion to terminate support was continued until the trial date.

¶ 13 In a pleading filed on November 13, 2013, seeking injunctive relief and sanctions, respondent alleged that petitioner had filed for bankruptcy and received an order of discharge. He also alleged that he subsequently sought an order in the bankruptcy court that dissipation claims in the dissolution case were non-dischargeable. Petitioner admitted these allegations in her response to the pleading.

¶ 14 In April 2014, after various changes in attorneys during the course of the proceedings, petitioner entered a *pro se* appearance. On May 29, 2014, she filed a financial statement showing a shortfall of \$1,403 between her net monthly income and living expenses, excluding mortgage payments. It also listed debts totaling \$53,425.

¶ 15 On June 9, 2014, petitioner filed an emergency motion to terminate temporary support payments. She alleged that she was currently on unpaid "medical/family leave" because of a 2014 surgery necessitated by injury caused by lifting respondent between 2008 and 2011, during his illness. Petitioner alleged that her medical situation did not allow her to return to work and that her position would most likely be terminated at the expiration of her leave on June 15, 2014. She also alleged that her house was in foreclosure and that she anticipated receiving an order to vacate. Petitioner alleged that in addition to social security benefits, respondent was eligible for

Medicaid, veterans' benefits, and other benefits.

¶ 16 On June 13, 2014, the trial court granted respondent's motion to strike petitioner's motion, without prejudice, as in violation of a local court rule. The trial court's order stated that petitioner could file a new motion, but it must include all medical records showing the basis for her medical leave and all employer documentation regarding her unpaid status.

¶ 17 On June 25, 2014, respondent filed a motion seeking, *inter alia*, the entry of a QDRO directing that support payments, arrearages, and any accrued interest on delinquent payments be made from petitioner's ICMA deferred compensation plan. He alleged that she had over \$75,000 in the plan.

¶ 18 On June 26, 2014, petitioner filed a "second" emergency motion to terminate temporary support.

¶ 19 In a July 8, 2014, pleading, petitioner alleged that her employer had required her to seek medical help during a pre-termination conference on April 16, 2014.

¶ 20 A July 15, 2014, trial court order stated that petitioner had submitted documents obtained from her employer to support her motion, and the trial court had reviewed them. It denied her second motion to terminate support. It also assigned her ICMA deferred compensation plan benefits to respondent to satisfy petitioner's ongoing support obligations and support arrearages. It prohibited her from making any further withdrawals from the account for her personal benefit.

¶ 21 In an order dated August 21, 2014, the trial court found that the Village of Palatine, Teresa's employer, informed respondent's attorney that Teresa was no longer employed as of August 4, 2014. The trial court modified its prior temporary support order to additionally include monthly Medicare and dental premiums totaling \$395.65. It also granted respondent's petition for cost reimbursement in the amount of \$3,592.07, and it stated that this amount could

be included in the QDRO that was being prepared per its prior order.

¶ 22 On September 16, 2014, respondent filed an emergency motion for a preliminary injunction, which is at issue in the instant appeal. He alleged as follows. The parties were married in 2001 after cohabiting since about 1994. Not long before marriage, petitioner became employed as a licensed architect and was earning more than \$80,000 annually. Respondent was employed as an investment broker until he became disabled in 2007 and was no longer able to work. Prior to his disability, the parties had purchased a residence and had other assets including an IRA account, a 401(k), an IMRF account, an ICMA account, savings accounts, and cars. From the time of respondent's disability, petitioner assumed complete control of the parties' assets. In October 2009, she took out a home equity line of credit of \$116,473 and had spent the entire amount by October 2011. In early 2010, the full amount in respondent's IRA (\$46,115) was transferred to a joint marital bank account. In March 2011, petitioner made a cash withdrawal of \$28,000 for which she had never accounted. Petitioner filed for bankruptcy on December 3, 2012, and her dischargeable debts were eliminated on July 22, 2013. While still employed, respondent stopped making mortgage payments on the marital residence around March 2013, and a summons for foreclosure was filed on September 11, 2013. The trial court had assigned the ICMA benefits to respondent for retroactive and ongoing support payments, and in the process of preparing the QDRO, respondent subpoenaed records from ICMA. As of March 31, 2013, the account's balance was \$70,186, so assuming a consistent rate of increase, it should have had an approximate balance of \$107,000 as of July 31, 2014. However, the August 13, 2014, statement showed a balance of \$50,766. Documents showed that petitioner withdrew \$9,809.22 on September 25, 2013, and \$25,106 on October 24, 2013, and that she had sought to withdraw even more funds. After the withdrawals from the ICMA account, petitioner wrote

several large checks to “cash.”

¶ 23 Count I of the petition sought a preliminary injunction ordering that respondent receive a disbursement from the ICMA account equaling petitioner’s disbursement of \$35,914. He alleged that he had a clearly ascertainable right to the marital estate assets that were in need of protection and had no adequate remedy at law.

¶ 24 Count II sought a preliminary injunction preventing petitioner from disposing of any other assets and requiring petitioner to provide a monthly account of her living expenses and the origin of the money used. Respondent alleged that he had a clearly ascertainable right to preserve marital estate assets and a right to an equitable distribution of the same, and that petitioner had clearly removed assets from marital accounts to unknown locations. Respondent alleged that he would suffer irreparable harm without the injunction, and that there was no adequate remedy at law, because petitioner would otherwise deplete the marital estate. He alleged that given petitioner’s current unemployment and the “disappearance” of most of the marital estate, a monthly accounting was required.

¶ 25 Count III sought a preliminary injunction ordering that respondent’s ongoing support be paid by petitioner either through employment or any other undisclosed asset. Respondent alleged that the ICMA account would be depleted once attorney costs, retroactive support, and a disbursement equal to the one petitioner gave herself were applied. He alleged that his ongoing support must therefore be paid by petitioner from employment income, disability income, or her income from any other source.

¶ 26 Count IV sought a preliminary injunction restraining petitioner from removing S.R. from Illinois without court order and requiring petitioner to disclose information about the child related to relocation. Respondent alleged that due to the bank foreclosure, petitioner would

likely need to leave the marital residence in the near future, and her current boyfriend lived in Wisconsin.

¶ 27 On September 17, 2014, the trial court entered an order prohibiting petitioner from transferring, selling, or otherwise disposing of any assets before the hearing on the preliminary injunction, other than from petitioner's checking account for ordinary living expenses. It also prohibited petitioner from taking S.R. out-of-state without the court's permission, though it later amended this provision, allowing for certain travel.

¶ 28 In her response to the motion for a preliminary injunction, petitioner alleged, among other things, as follows. She was employed as a part-time teacher at a community college in 1994 and as an intern architect beginning in 1995. She obtained a professional license and a job with the Village of Palatine in 2000, with a starting salary of \$46,000, which gradually grew over the years. Respondent drove his business to bankruptcy after spending over \$700,000 between 1992 to 1998. He began employment with Morgan Stanley as a trainee in 1999 and was fired in 2005 for not meeting the job's basic requirements. Petitioner purchased the residence prior to marriage with pre-marital funds. The loan on the residence was taken for respondent's expensive medical treatment. Part of the cash advances was deposited in the bank to pay bills, and part was used to cover debt. Respondent transferred the funds from his IRA to his bank savings account. After required deductions, taxes, and garnished support, petitioner's \$86,000 income resulted in \$26,000 net pay. The payment of child care and commuting costs did not leave enough money for mortgage payments. She was able to pay for food and utilities only because of S.R.'s social security income. Petitioner used the money she withdrew from the ICMA account for living expenses, and all expenditures from the cash withdrawals were outlined in her financial statements. She provided information from a doctor stating that she was unable

to perform her work duties. Petitioner did not terminate her employment but rather was fired while on medical leave. She had no current plans for relocation.

¶ 29 The trial court issued a preliminary injunction on October 9, 2014, finding as follows. Respondent had shown that he had a clearly ascertainable right in need of protection, namely the preservation of marital assets and the receipt of past, present, and future support. He had shown that he would suffer irreparable harm if the injunction did not issue, namely the further dissipation of marital assets, such as the ICMA account. Respondent had shown that he had no adequate remedy at law or in equity other than an injunction, and the balance of hardships favored him on these issues.

¶ 30 Regarding count I, the trial court ordered that respondent receive \$35,914 from the ICMA account, or a lesser amount depending on the balance, after payments were made for (1) a support arrearage owed by petitioner of \$10,255.31 through October; (2) the previously-approved cost reimbursement for respondent's attorney of \$3,592.07; and (3) a guardian *ad litem* fee of \$7,249.50.

¶ 31 As to count II, the trial court enjoined petitioner from disposing of any existing marital property except for her ordinary living expenses, which she was required to document.

¶ 32 For count III, the trial court stated that petitioner presented to the court a note from Dr. Kaplan regarding petitioner's inability to work.<sup>5</sup> The trial court ordered petitioner to pay her

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<sup>5</sup> The letter, dated September 29, 2014, contained three sentences. It stated that petitioner was evaluated on August 8 and 15 "and found to be unfit to work at that time." It further stated that there appeared to be "significant anomalies in her employer's treatment and reports and what was documented by the patient and multiple other health care professionals." The letter concluded, "It is therefore against medical advice that the patient return to work for the Village

support obligation to respondent from employment or other sources of income, excluding S.R.'s income from social security.

¶ 33 For count IV, the trial court ordered petitioner not to remove S.R. from Illinois without respondent's consent or the court's permission, other than previously-approved trips. The trial court reserved the request for attorney fees and costs relating to the motion for the preliminary injunction.

¶ 34 On October 24, 2014, the trial court entered a QDRO to effectuate the provisions of the October 9, 2014, order, regarding the ICMA plan. The trial court found as follows. It had ordered petitioner to pay temporary support of \$2,000 per month. Since that time, arrearages accrued due to petitioner's failure to pay. In addition, beginning in August 2014, petitioner lost or quit her job, after having been placed on unpaid leave in June 2014. As a result, respondent, a disabled adult, had been without support from her. Petitioner had been presented with a copy of the proposed QDRO order and had refused to sign it, but ICMA rules indicated that such a party signature was not required. Respondent had informed petitioner of the instant emergency presentation of the QDRO order, but she did not appear. The situation qualified as an emergency because of respondent's many months without support payments, and the trial court therefore was entering the QDRO.

¶ 35 On October 31, 2014, petitioner moved to reconsider or vacate the orders of October 9

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of Palatine at this time and for the foreseeable future." Petitioner filed a motion in this court to supplement the record with a mental health report that she states she gave to the trial court on November 5, 2014, but was not included in the record on appeal. We denied the motion. We note that petitioner's alleged submission of the mental health report took place after the trial court had already ruled on the petition for a preliminary injunction in October 2014.

and 28, 2014. She alleged in part as follows. Respondent was eligible for Medicare, Medicaid, and veteran's benefits but did not wish to use them. S.R. had special medical needs and received social security income. Petitioner did not qualify for unemployment due to her medical condition, and she had applied for temporary disability insurance. She and S.R. were presently on Medicaid and receiving food stamps. The trial court's order ignored that she had no income and was presently considered disabled. The orders of temporary spousal support were made in disregard of statutory factors, namely respondent's assets, his choice not to take advantage of Medicaid and other benefits, S.R.'s financial needs, respondent's unsubstantiated expenses and dissipation, and petitioner's current inability to work and medical condition.

¶ 36 On November 5, 2014, the trial court set a hearing on the motion to reconsider for December 9, 2014. Petitioner filed her notice of appeal from the October 9 and 24, 2014, orders on November 6, 2014.

¶ 37 Respondent subsequently moved to dismiss petitioner's motion to reconsider due to the pending appeal, and the trial court granted the motion on December 5, 2014.

¶ 38 II. ANALYSIS

¶ 39 We begin our analysis by noting that petitioner's statement of facts contains a great deal of argument/commentary, in contravention of Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) (the statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment"). We recognize that petitioner is not represented by an attorney, but courts do not apply more lenient standards to *pro se* litigants. *In the Interest of A.H.*, 215 Ill. App. 3d 522, 529-30 (1991). Therefore, we confine our review to arguments presented in the appropriate section of the brief.

¶ 40 We next address the standard of review. Respondent cites the standard of review for summary judgments. However, respondent is appealing under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) from the trial court's grant of a preliminary injunction and its issuance of a QDRO to effectuate the preliminary injunction.

¶ 41 A preliminary injunction preserves the status quo until the case can be decided on the merits. *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 13. A party seeking a preliminary injunction must show: (1) the existence of a clear right or interest needing protection; (2) that there is no adequate remedy at law; (3) that irreparable harm will occur without the injunction; and (4) that there is a reasonable likelihood of success on the merits in the underlying action. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 697 (2010). The party seeking injunctive relief need establish only a *prima facie* case that there is a fair question as to the existence of the claimed rights for which it seeks protection. See *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 8. A preliminary injunction is an extraordinary remedy and should be granted only where there is an extreme emergency or serious harm would result if it were not issued. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 11. We review the trial court's grant or denial of a preliminary injunction for an abuse of discretion, which occurs only where the ruling is arbitrary, fanciful, or unreasonable. *Id.* ¶ 12. In an interlocutory appeal under Rule 307(a)(1), the only question on appeal is whether there was a sufficient showing in the trial court to affirm its order, and we do not decide controverted facts or the case's merits. *World Painting Co., LLC*, 2012 IL App (4th) 110869, ¶ 13.

¶ 42 Petitioner argues that the trial court erred in granting judgment for respondent where there were questions of fact regarding: whether the maintenance amount was proper since 2012;

whether maintenance should continue in light of petitioner's loss of employment, inability to work, and needs of herself and S.R., as well as a lack of reliable accounting of funds by Michelle; and whether the ICMA account would be distributed in the division of the marital estate. Petitioner argues that the original support orders were in violation of section 504(a) of the Marriage Act (750 ILCS 5/504(a) (West 2012)) and contributed to her bankruptcy, foreclosure, and loss of employment. Petitioner maintains that the trial court favored respondent's desired lifestyle at the cost of her and S.R.'s basic welfare, even though respondent was eligible for Medicaid and other services. Petitioner argues that the trial court went as far as to use S.R.'s social security income, received in lieu of child support, in calculating respondent's maintenance. Petitioner additionally argues that respondent's life insurance policy was allowed to lapse, thereby depriving S.R. of this future income.

¶ 43 Petitioner maintains that the only remaining marital assets are her ICMA account and her IMRF pension plan of lesser value. She argues that there are no other marital assets left because persons purporting to act on respondent's behalf have dissipated over \$420,000. Petitioner argues that, therefore, there are no funds available to later readjust her overpayment to respondent. She argues that the trial court's order is a punitive action for her cashing in some of the ICMA funds "in [an] hour of need," at a time while she was also paying respondent most of her wages. She argues that, in contrast, respondent's retirement funds were cashed in by him and Michelle without any recourse from the court. Petitioner also argues, citing cases from other states, that the ICMA account was funded from her income from which her maintenance payments to respondent were calculated, so to consider the fund as separate marital property would be "double-dipping."

¶ 44 Beginning with petitioner's contention that there were disputed questions of fact precluding judgment for respondent, such an analysis is appropriate when reviewing a grant of summary judgment (see *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49) but is inappropriate here, where there was no grant of summary judgment. Instead, to obtain a preliminary injunction, respondent only needed to establish a *prima facie* case that there is a fair question as to the existence of his right to a portion of petitioner's ICMA account. See *Scheffel Financial Services, Inc.*, 2014 IL App (5th) 130600, ¶ 8.

¶ 45 We believe that standard is satisfied here, looking at the specific factors respondent had to show. Regarding a clearly ascertainable right needing protection, the trial court found that respondent had shown a right to the preservation of marital assets and the receipt of past, present, and future support. There was sufficient evidence to sustain this finding, as all property acquired by either spouse subsequent to marriage is presumed to be marital property (750 ILCS 5/503(b)(1) (West 2012)), including pension benefits (750 ILCS 5/503(b)(2) (West 2012)). See also *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 303 (2000) ("retirement benefits have long been presumed to be marital property to the extent that the beneficial interest was acquired during the marriage"); *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 72 (funds in wife's 401(k) were earned during marriage and were therefore marital property). Further, as we discuss below, respondent was owed past and ongoing support.

¶ 46 On the factors of whether respondent would have suffered irreparable harm without relief and whether there was no adequate remedy at law, the trial court found that without the injunction, there would be further dissipation of the marital assets. The trial court's determination was supported by the evidence. As petitioner recognizes, the ICMA account was the most significant known marital asset remaining. Petitioner had withdrawn tens of thousands

of dollars from the account without directly accounting for their expenditure. Petitioner had repeatedly failed to pay the court-ordered support obligations, to the extent that the trial court granted numerous petitions for rule to show cause and ordered that the payments be made from wage garnishment. Without a distribution of an equitable share of the account to respondent, it would have been likely that petitioner would deplete the fund and respondent would not receive past maintenance already due to him or any ongoing maintenance obligations.

¶ 47 Petitioner contends that she was justified in using money from the account to meet minimum daily living expenses and that she has no other financial resources. However, the trial court did not believe petitioner's assertion that she lost her job due to circumstances beyond her control. The trial court stated that it was not unusual in divorce cases for a party to stop working and that she put herself in poverty. It further stated that it presumed that she would find other work at some point, and that it would later consider ordering her to seek employment if there was an indication that she was not looking for work. We defer to the trial court's credibility determination. See *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 35 (it is the trial court's role to judge witness credibility and resolve conflicts in the evidence); *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 636 (2005) (trial court was in the best position to judge the credibility of affidavits in support of a petition for a preliminary injunction).

¶ 48 Finally, the evidence provided sufficient support for the trial court's determination that respondent was likely to succeed on the merits. As respondent points out, the trial court may enter a QDRO to assign pension and other retirement benefits to a spouse to satisfy a judgment for past-due maintenance. *In re Marriage of Thomas*, 339 Ill. App. 3d 214, 226-27 (2003). Respondent had such an arrearage. Moreover, respondent showed that petitioner had withdrawn \$34,915.22 from the account, which was marital property, without prior disclosure. Respondent

had a claim to an equal amount, especially in light of the petitioner's ongoing obligation to pay temporary maintenance.

¶ 49 Although petitioner argues that there are no other marital funds from which any overpayment by her can be redistributed upon final judgment, there is, at a minimum, her IMRF account. Respondent could also still retain at least a portion of the funds from the ICMA account at the time of the final judgment. Further, the trial court has the inherent power to modify or vacate a preliminary injunction during the pendency of a case (*Rochester Buckhart Action Group v. Young*, 379 Ill. App. 3d 1030, 1034 (2008)), so the trial court could order that funds be returned to petitioner before final judgment.

¶ 50 Regarding petitioner's argument that her ICMA account could not be considered as a marital asset and as a source of income for maintenance, she cites only cases from other states. However, cases from foreign jurisdictions are not binding upon Illinois courts. *Condominium Ass'n of Commonwealth Plaza v. City of Chicago*, 399 Ill. App. 3d 32, 50 (2010). Under Illinois law, in determining temporary or permanent maintenance, the trial court may consider the income and property of each party, including marital property (750 ILCS 5/504(a) (West 2012)), which, as stated, includes retirement accounts (see *Smithberg*, 192 Ill. 2d at 303). Similarly, in determining whether to modify maintenance, the trial court may consider the retirement benefits awarded to each party. 750 ILCS 5/510(a-5)(6) (West 2012). It is true that money withdrawn from a retirement account should not be considered as income in the same way a salary is income, as the money already belongs to the account's owner. *In re Marriage of McGrath*, 2012 IL 112792, ¶¶ 14-15. However, here the trial court did not consider petitioner's withdrawals as additional income to her. In any event, as respondent points out, the specific issue in this case is whether the trial court could order petitioner to pay past support obligations from her retirement

account and make an equitable distribution that would also support future maintenance payments, and we have answered this question in the affirmative. See *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 72; *In re Marriage of Thomas*, 339 Ill. App. 3d at 226-27.

¶ 51 Petitioner's remaining arguments largely challenge the trial court's award of temporary maintenance for respondent. However, the October 2014 orders from which petitioner appeals do not set or adjust the amount of temporary maintenance, so we lack jurisdiction to consider that issue. See *Taliani v. Herrman*, 2011 IL App (3d) 090138, ¶ 22 ("Where a notice of appeal does not mention a specific order, the appellate court lacks jurisdiction to review that order."). Moreover, the jurisdictional deficiency is not just in petitioner's failure to list the orders awarding temporary maintenance in her notice of appeal. Such orders are temporary orders that may not be appealed on an interlocutory basis before the entry of a final order. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 827 (1994). Temporary orders are not immediately appealable because it is assumed that the trial court will adjust for any inequity in its temporary orders through its final order. *Id.* Similarly, questions regarding the lapse of respondent's insurance policy are not properly before us at this time.

¶ 52 In sum, after considering the relevant factors, we conclude that the trial court acted within its discretion in granting respondent's motion for a preliminary injunction on October 9, 2014. The October 24, 2014, QDRO order served to effectuate the provisions of the preliminary injunction. Petitioner offers no independent argument challenging the QDRO, so we affirm that order as well.

¶ 53

### III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 55 Affirmed.