

NOTICE
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2015 IL App (4th) 150223-U
NO. 4-15-0223
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
December 8, 2015
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)
ANNE M. PORTZ,) Appeal from
Petitioner-Appellant,) Circuit Court of
and) McLean County
DAVID A. LUDINGTON,) No. 13D281
Respondent-Appellee.)
Honorable
Charles G. Reynard,
Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's maintenance award was an abuse of discretion.

¶ 2 Petitioner, Anne M. Portz, and respondent, David A. Ludington, were married in April 1995. In May 2013, Anne filed a petition for dissolution of marriage. In October 2014, the trial court dissolved the marriage and ordered the parties' pensions to be split equally, each pursuant to a qualified Illinois domestic relations order (QILDRO). At the time of dissolution, David had retired but Anne remained employed. As a result, the court ordered that Anne pay David maintenance in the amount of 75% of the monthly amount she received from David's pension. Anne appeals, arguing that the court's maintenance award was an abuse of discretion. We agree and vacate the maintenance award.

¶ 3 I. BACKGROUND

¶ 4 Anne and David were married in 1995. The marriage produced a son, Hunter

Ludington (born October 23, 1995). In May 2013, Anne petitioned for dissolution of marriage.

¶ 5 In June 2014, Anne filed a "trial proposal" requesting, among other things, that the trial court not award maintenance to either party and that each party's pension be distributed evenly between the parties pursuant to a QILDRO. Later that month, David filed a revised proposal for resolution of all pending issues, requesting that the court order Anne to pay David "the sum of \$879.10 each month for a period of sixty months as and for rehabilitative maintenance."

¶ 6 That same month, the trial court held a hearing on all ancillary issues. The following facts were gleaned from the testimony and the parties' exhibits. At the time of the hearing, Anne was 51 years of age, and David was 52. During the marriage, Anne worked as a special education teacher and contributed to a pension through the Teacher's Retirement System (TRS). Anne had not yet retired at the time of trial. The earliest she could retire was at age 60, when her expected monthly pension benefit would be \$3,107.10. Her salary from teaching at the time of the hearing was \$67,980.

¶ 7 During the marriage, David had worked as a Normal police officer and contributed to the Town of Normal Police Pension. David retired in August 2011, and his pension entered pay status. At the time of trial, David's pension paid \$3,430.93 per month. The pension payments would escalate as David got older.

¶ 8 Since retiring, David had worked for five months at 10-8 Outfitters—a retail shop that sold firearms—where he worked 44 hours per week and was paid \$400-\$500 per week in gross income. He resigned because he had a "moral issue" with how little of the fair-market-value the company paid for used firearms. He also did some freelance videography, for which he had not received a salary. Since leaving 10-8 Outfitters in January or February 2012, David had applied for employment at State Farm Insurance and Smiley's Sport Shop but was not hired. Da-

vid stated that he was not qualified for any of the open positions at State Farm. At the time of the hearing, David's only income was the payment from his pension. David testified that he was able to work but could not do heavy lifting. While retired, David spent his time cleaning the house, doing yard work, maintaining the pool, hunting, and shooting. Nothing in the provisions of David's pension prevented him from working. David was formerly certified as an arson investigator, but the certification lapsed because he did not meet the continuing education requirements.

¶ 9 After the close of evidence and argument, the trial court asked the parties whether the QILDRO for David's pension could be delayed until Anne retired and her pension entered pay status. Anne replied that such an arrangement would be difficult and might not be allowed by statute. David suggested that the court allow David's QILDRO payment to begin immediately but order Anne to pay back the amount until Anne's pension entered pay status. The court took the case under advisement and invited the parties to make submissions to aid the court in reaching its decision.

¶ 10 Later in June 2014, David filed a letter detailing what he considered to be the trial court's options. In the letter, David cited *In re Marriage of Manker*, 375 Ill. App. 3d 465, 874 N.E.2d 880 (2007), which David posited stood for the proposition that "it is not appropriate to reserve division of the marital portion of a pension that has vested and is in pay out status." As a result, David proposed, as an equitable solution, that Anne would immediately begin receiving half of his pension benefits, pursuant to the QILDRO, but that Anne would make an equalization payment of the same amount back to David until Anne's pension entered pay status. As an alternative, David suggested that the pay could take the form of a maintenance payment from Anne to David until Anne's pension entered pay status.

¶ 11 In October 2014, the trial court entered a judgment of dissolution, which incorporated an August 2014 order resolving the ancillary issues. In pertinent part, the August 2014 order stated that Anne's and David's pensions would be split equally between the parties, each subject to a separate QILDRO. In addition, the court ordered that Anne pay David maintenance, as follows:

"The additional expenses imposed on [David] from this judgment, as well as the division of his pension in payout status pursuant to the QILDRO herein ordered, will likely make his current income insufficient to afford his basic living expenses. Therefore, [Anne] shall pay maintenance to [David] in a fixed amount equal to 90% of the amount she receives from [David's] pension pursuant to the QILDRO herein ordered, until such time as [Anne's] retirement and the payout of her pension pursuant to the terms of the QILDRO herein ordered with respect to her pension. Otherwise, David acknowledges that he is willing and able to obtain employment in order to offset the diminution of his disposable income. Accordingly, the Court is persuaded that David will not be in need of maintenance after he begins to receive his share of [Anne's] pension."

¶ 12 That same day, Anne filed a motion to reconsider, arguing that (1) the court failed to specify which factors it relied on under section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/504(a) (West 2012)); (2) David failed to properly ask for maintenance in his pleadings; (3) the court failed to consider the tax implications of the

maintenance award; and (4) the maintenance award allowed for periodic increases without meeting the standards of section 510 of the Marriage Act (750 ILCS 5/510 (West 2012)). David argued that without maintenance from Anne, he would be unable to support himself and meet his needs.

¶ 13 In March 2015, the trial court entered a modified order with a new maintenance award. The court found that "[t]he QILDRO approach appeared the fairest way to evenly divide the pensions, but was imperfect by reference to the detriment it caused [David]." The new order stated that Anne would pay David 75% of the initial amount she received from respondent's pension pursuant to the QILDRO. The court's order specifically addressed each of the factors under 504(a) of the Marriage Act. As to the final factor—"any other factor that the court expressly finds to be just and applicable"—the court stated, as follows:

"[T]he court observes that while this case is not a typical cases [sic] of egregious need for maintenance, it is the Court's finding that the division of property, most particularly though not exclusively the division of [David's] pension, creates a near term need of [David] for support in order to sustain the standard of living maintained during the marriage. The equal division of the marital portion of [David's] pension not only serves the surface equity observed with other kinds of property division, but it serves to assure [Anne] of an optimized long-term income stream from both her and [David's] pensions."

¶ 14 The modified order established further that the "maintenance obligation will continue for a period of ten (10) years or until such time as [Anne's] retirement and the payout of her

pension pursuant to the terms of the QILDRO herein ordered with respect to her pension, whichever event occurs first." The order stated that other than the modification of maintenance, the October 2014 judgment of dissolution remained in full effect.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Anne claims that the trial court abused its discretion by imposing the maintenance award. We agree.

¶ 18 A. Statutory Language and Standard of Review

¶ 19 1. *Pension Benefits*

¶ 20 Pension benefits accrued during the marriage are marital property subject to division upon dissolution of marriage. 750 ILCS 5/503(b)(2) (West 2012). As such, they must be divided in "just proportions" in light of the relevant circumstances of the parties. 750 ILCS 5/503(d) (West 2012). "Just proportions does not necessarily mean mathematical equality; rather, the distribution must be equitable under the circumstances." *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 338, 722 N.E.2d 287, 295 (1999).

¶ 21 Courts generally utilize two methods for distributing pension benefits: (1) the immediate-offset approach and (2) the reserved-jurisdiction approach. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 546-47, 936 N.E.2d 1040, 1045 (2010). In the immediate-offset approach, the court determines the present value of the employee-spouse's pension and then awards the other party enough marital property to offset the pension's value, while allowing the employee-spouse to retain the entirety of the pension. *Id.* at 547, 936 N.E.2d at 1045.

¶ 22 Under the reserved-jurisdiction approach, the trial court retains jurisdiction over the pension until the pension enters pay status. *Id.* At that time, the court determines the value

of the pension accumulated during the marriage and grants the non-employee-spouse a share of that value. The immediate-offset and reserved-jurisdiction approaches are useful methods of dividing pension that have not yet entered pay status.

¶ 23 In *Manker*, we expressed disfavor for applying the reserved-jurisdiction approach to a pension already in pay status. 375 Ill. App. 3d at 474-75, 874 N.E.2d at 888-89. In that case, both parties had accumulated TRS pensions during the marriage—the husband's had entered pay status, while the wife's had not. The trial court wanted to divide the pensions equally between the parties but was unable to calculate the value of the wife's pension at the time of dissolution. As a result, the court reserved jurisdiction over both pensions until the wife retired and her pension matured. In the interim, the husband would receive the full payment from his pension.

¶ 24 On appeal, we held that the reserved-jurisdiction approach was an abuse of discretion because "[b]y reserving jurisdiction over both parties' pensions, the trial court created an undesirable situation in which this dissolution proceeding would linger for years before apportionment applied." *Id.* at 473, 874 N.E. 2d at 887. In addition, we stated that "[t]he reserved-jurisdiction approach was not appropriate in this case when [husband's] pension had matured and was in pay status." *Id.* Because the husband's pension was already in pay status, there was no question as to its value, and the reserved jurisdiction approach was inappropriate. *Id.* While the trial court retained jurisdiction, an inequitable situation resulted: "[The wife] receives nothing from her pension now, nor does [the husband]. Contrarily, [the husband] is receiving a benefit from his pension now and [the wife] is receiving nothing." *Id.* at 474, 874 N.E.2d at 888. As a result, we reversed the trial court's reservation of jurisdiction and remanded for apportionment of the husband's pension. *Id.* at 480, 874 N.E.2d at 892.

¶ 25

2. *Maintenance and Standard of Review*

¶ 26

When determining the amount and duration of a maintenance award, the trial court must consider the following 12 factors listed in section 504(a) of the Marriage Act (750 ILCS 5/504(a) (West 2012)):

" (1) the income and property of each party, including marital property apportioned and non[]marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the

respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.”

¶ 27 "No single statutory factor is determinative and the trial court is not limited to a review of the section 504(a) factors when setting a maintenance award." *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 29, 986 N.E.2d 236. The court is not required to give the factors equal weight " 'so long as the balance struck by the court is reasonable under the circumstances.' " *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543, 548 (2010) (quoting *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485, 595 N.E.2d 1349, 1353 (1992)). The court must consider all relevant statutory factors, but " 'it need not make specific findings as to the reasons for its decisions.' " *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 36, 961 N.E.2d 980 (quoting *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1004, 883 N.E.2d 535, 541 (2008)). " 'The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of the standard of living established during the marriage.' " *Nord*, 402 Ill. App. 3d at 293, 932 N.E.2d at 548 (quoting *Culp*, 341 Ill. App. 3d at 398, 792 N.E.2d at 459).

¶ 28 A trial court's maintenance determination will not be reversed absent an abuse of discretion. *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 30, 986 N.E.2d 236. An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.* A court's factual findings regarding its maintenance determination will not be re-

versed unless the findings are against the manifest weight of the evidence. *Nord*, 402 Ill. App. 3d at 294, 932 N.E.2d at 548-49. Findings are against the manifest weight of the evidence when the opposite conclusion is clearly evident or when the court's findings are unreasonable, arbitrary, and not based on any of the evidence. *Id.*

¶ 29 B. The Maintenance Award in this Case

¶ 30 1. *Whether David Properly Requested Maintenance in the Trial Court*

¶ 31 Anne contends that David did not properly request maintenance in his pleadings before the trial court and that the court therefore lacked authority to enter an award of maintenance. We disagree.

¶ 32 Anne's petition for dissolution of marriage did not explicitly request maintenance but requested "such other and further relief as in equity deems to be just." Later, David explicitly requested rehabilitative maintenance in his June 2014 revised proposal for resolution of all pending issues. David's request for maintenance—although not raised in his answer to Anne's petition for dissolution—was sufficient to raise the issue before the trial court. In addition, "a trial court may exceed the relief requested by a party as an exercise of its discretion in determining the appropriate duration of a maintenance award." *In re Marriage of Culp*, 341 Ill. App. 3d 390, 397, 792 N.W.2d 452, 458 (2003).

¶ 33 2. *Whether the Trial Court's Maintenance Award Was an Abuse of Discretion*

¶ 34 Anne claims that the trial court abused its discretion by imposing the maintenance award. We agree.

¶ 35 In its written order awarding maintenance, the court explicitly addressed each of the 12 factors under section 504(a) of the Marriage Act. The court explained that it divided the pensions evenly between the parties to avoid any detriment that Anne might suffer if David's

pension were more valuable than Anne's. The court concluded that it was bound by *Manker*, 375 Ill. App. 3d 465, 874 N.E.2d 880, to divide the pensions immediately. The court then determined that evenly dividing the pensions resulted in a detriment to David because he would essentially lose half his income and not receive any of Anne's pension until she later retired. After considering the remaining maintenance factors, the court determined that an award of maintenance to David was necessary to alleviate the perceived detriment to David. Although David's ability to work weighed against an award of maintenance, the trial court determined that the division of property, along with David's needs, supported a temporary maintenance award until Anne retired.

¶ 36 David's pension was a marital asset to which Anne was entitled a just proportion. 750 ILCS 5/503(d) (West 2012). The trial court therefore appropriately divided David's pension evenly between David and Anne. In keeping with that allocation of property, the court also agreed to divide Anne's pension evenly once she retired. We conclude that the court's division of the pensions evenly between the parties was a just and reasonable division of marital property.

¶ 37 We disagree, however, with the trial court's determination that its division of the pensions entitled David to maintenance. Although David testified that the division of the pensions left him unable to meet his needs, the evidence also established that David had the present and future earning capacity to meet those needs. David had over 20 years experience as a police officer and testified that other than a lifting restriction, he was able to work. He testified that he spent his time working around the house, maintaining his pool, hunting, and shooting. David had applied for employment with only two employers. Under those circumstances, we conclude that the court's decision awarding David maintenance instead of requiring him to find suitable employment was an abuse of discretion. We therefore vacate the court's award of maintenance

and otherwise affirm the judgment.

¶ 38

III. CONCLUSION

¶ 39 For the foregoing reasons we affirm the trial court's judgment in part and vacate in part.

¶ 40 Affirmed in part, and vacated in part.