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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> the MARRIAGE OF	)	Appeal from the Circuit Court
HUGH JOHNSON,	)	of Du Page County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 12-D-2046
	)	
KAREN JOHNSON,	)	Honorable
	)	Brian R. McKillip,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Hudson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* Petitioner's appeal was timely; however, the trial court erred when it determined that no portion of petitioner's retirement accounts was nonmarital property based on the court's mistaken belief that it had already resolved that issue. We reverse and remand for a proper determination.

¶ 2 Hugh Johnson, appeals the trial court's order finding that no portion of his retirement account was his nonmarital property. He contends that undisputed evidence showed that he earned at least some portion of the funds before the parties married, and that the court's finding is inconsistent with the judgment, which ordered that the parties would divide only the marital portion of the funds. We reverse and remand.

¶ 3 Hugh sought to dissolve his marriage to his former wife, Karen. The parties resolved most of the issues between them, including child custody, visitation, and child support. However, they disagreed about the classification and distribution of several items of property including petitioner's retirement benefits. The trial court conducted a hearing on these unresolved property issues.

¶ 4 At the hearing, Hugh testified that he began working for Merrill Lynch in 1988. During his time with the company, petitioner had a 401(k) plan. The parties were married on July 1, 1995. At that time, Hugh's 401(k) account was worth approximately \$50,000. Hugh continued to work for Merrill Lynch until December 2005, when he was laid off. He subsequently rolled the 401(k) over into five IRAs solely in his name. Between the time of the parties' marriage and the filing of the dissolution petition, the 401(k) and IRAs had increased in value. During the marriage, the parties also opened a Merrill Lynch investment account.

¶ 5 On August 14, 2014, the trial court issued a memorandum opinion. Relevant here, the court found that Hugh was employed with Merrill Lynch at the time of the parties' marriage and was so employed until approximately 2005. The court further ruled that "the retirement accounts will be divided equally by the parties." On September 22, 2014, the court issued a dissolution judgment which provided that "[Hugh] shall be entitled to receive 50% of the marital portion of all retirement accounts held in [Karen's] name and [Karen] shall be entitled to receive 50% of the marital portion of all retirement accounts held in [Hugh's] name."

¶ 6 Both parties filed posttrial motions, which the court denied on December 2, 2014. On January 14, 2015, Hugh filed a motion for clarification on several issues. Hugh's motion asked the court, *inter alia*, to fix the percentage of his IRAs constituting marital property. On March 9, 2015, the court disposed of Hugh's clarification motion, stating, in relevant part, that it had

“summarily rejected” [note: past tense] Hugh’s argument that “these accounts are non-marital in nature. As such, pursuant to the original Memorandum Opinion and judgment entered in this case, the Merrill Lynch IRAs will be divided 50/50.” (Emphasis added.) Hugh timely appealed.

¶ 7 Hugh contends that the trial court erred when it “summarily rejected” his request to find that at least some portion of the IRAs held in his name was his nonmarital property. He cites his testimony that he began working for Merrill Lynch before the parties married and that his retirement account had a value of about \$50,000 at the time of the marriage. He contends that the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) provides that property acquired before marriage is nonmarital (750 ILCS 5/503(a)(6) (West 2014)) and, specifically, that the portion of funds in a retirement account at the time of the marriage is nonmarital. See, e.g., *In re Marriage of Raad*, 301 Ill. App. 3d 683, 687 (1998). Thus, Hugh contends, the trial court should have found that at least some specific portion of the IRAs was his nonmarital property.

¶ 8 Karen contends that we lack jurisdiction over this appeal. She argues that the trial court entered a final dissolution judgment on September 22, 2014, and denied the parties’ timely posttrial motions on December 2, 2014. Karen reasons that petitioner’s time to appeal began then and that his motion for clarification was, in essence, a successive posttrial motion that did not extend the time to appeal. See *Sears v. Sears*, 85 Ill. 2d 253, 259-60 (1981). We disagree.

¶ 9 Although the trial court’s September 2014 order purported to be a final dissolution judgment, in reality the order was not final because it never resolved the question of what percentage of petitioner’s accounts was nonmarital. The language referring to the marital portion of the parties’ retirement accounts implied that at least some percentage of each account was

found to be that party's nonmarital property, but the order never determined a percentage or dollar amount of each party's nonmarital share.

¶ 10 A dissolution petition has not been adjudicated unless it fully resolves all of the issues between the parties including grounds, child custody, child support, maintenance, and property distribution. *In re Marriage of Thomas*, 213 Ill. App. 3d 1073, 1074 (1991) (citing *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983)). In *Thomas*, for example, the dissolution judgment failed to distribute two marital assets and the appellate court held that the judgment was in fact not final and dismissed the appeal. *Id.* at 1074-75. Similarly, here, the trial court's September 2014 order never resolved the question of what percentage of the retirement accounts was nonmarital property. See, e.g., *Marriage of Raad*, 301 Ill. App. 3d at 687 (property, such as retirement accounts, must be first classified and then allocated before it can be disposed of). Accordingly, the September 2014 order was not final. Then, the court's March 2015 order effectively found that no portion of the funds was nonmarital property, thus resolving the parties' only outstanding issue. That order, therefore, was final, and since petitioner timely appealed from that order we have jurisdiction.

¶ 11 Karen alternatively argues that petitioner forfeited his claim concerning the accounts' allocation by failing to raise it in the trial court. We disagree with her on this point as well. Hugh testified that he began working for Merrill Lynch before the parties married and that his retirement account was worth \$50,000 at the time of the parties' marriage. The judgment, drafted by Hugh's counsel, provides that the "marital portion" of the accounts be divided. Thus, Hugh not only raised the issue at trial, but also obtained a ruling on it, at least in part. We turn then to the merits of Hugh's claim.

¶ 12 Section 503 of the Marriage Act provides that property acquired before the marriage is nonmarital. 750 ILCS 5/503(a)(6) (West 2014). Accordingly, funds in a party's retirement account at the time of his or her marriage are the party's nonmarital property. *Raad*, 301 Ill. App. 3d at 687. The subsequent increase in value of those funds, *i.e.*, on the initial nonmarital portion, is also nonmarital property. *Id.*

¶ 13 Here, Hugh testified that he worked for Merrill Lynch for approximately seven years before the parties were married and that his 401(k) plan at that time had accumulated a value of approximately \$50,000. After he was laid off from Merrill Lynch, he rolled the 401(k) into five IRAs solely in his name. Karen cites no contrary evidence. Thus, it appears that at least *some* portion of petitioner's IRAs should have been considered his nonmarital property. The court's ruling that no portion of the IRAs' value was nonmarital appears to have been based on a mistaken recollection that the court had already decided the issue; in fact, it had not.

¶ 14 Moreover, such a finding would have been inconsistent with the September 2014 judgment which provides that only the "marital portion" is to be divided between the parties. There would have been no need to include a reference to the "marital portion" of the accounts if the court had already found that none of the funds was nonmarital. Accordingly, we reverse the order of the circuit court of Du Page County denying Hugh's motion to clarify and we remand the matter to the trial court with directions to decide, based on a proper consideration of the evidence, the amount of Hugh's IRAs that represents his nonmarital property. This in no way precludes the trial court from finding that no part of the IRAs is nonmarital property, but we emphasize that such a finding must be based on a reasonable inference from the evidence.

¶ 15 Reversed and remanded.