

NOTICE

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2020 IL App (4th) 190170-U

NO. 4-19-0170

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 18, 2020
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> MARRIAGE OF)	Appeal from
SHANNON A. PORTER,)	Circuit Court of
Petitioner-Appellee,)	Jersey County
and)	No. 17D49
WAKEMAN G. PORTER,)	
Respondent-Appellant.)	Honorable
)	Eric S. Pistorius,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion where (1) the settlement award constituted marital property under Illinois law and (2) the division of the settlement award was proper.

¶ 2 In June 2005, petitioner, Shannon A. Porter, and respondent, Wakeman G. Porter were married. In April 2015, the parties filed a lawsuit against petitioner’s physician and the medical provider. (Sangamon County case No. 15-L-81). In September 2017, the trial court entered an order dissolving the marriage.

¶ 3 In May 2018, the parties’ lawsuit settled for \$1,500,000. (Sangamon County case No. 15-L-81). After deducting attorney fees and costs, the total net amount awarded was \$924,579.70.

¶ 4 In July 2018, respondent filed a motion for disposition of marital property asking the trial court to equitably divide the settlement. Petitioner filed a motion to dismiss, which the

court denied and set the matter for a hearing. In November 2018, the court heard testimony and considered the arguments of the parties. In a February 2019 order, the court found the settlement award was a marital asset and divided the settlement, awarding petitioner 95% of the proceeds and respondent 5% of the proceeds.

¶ 5 Respondent appeals, arguing the trial court abused its discretion in its division of the settlement award. For the following reasons, we affirm.

¶ 6 I. BACKGROUND

¶ 7 In June 2005, the parties married. In April 2015, the parties filed a lawsuit against petitioner's physician and the medical provider in Sangamon County case No. 15-L-81. In the lawsuit, the parties alleged (1) petitioner's physician failed to refer petitioner to an oncologist and monitor her for the return of her cancer, (2) the physician failed to treat the cancer appropriately by making the appropriate recommendations for additional care, (3) the physician caused respondent to suffer loss of consortium due to petitioner's injuries, and (4) the medical provider caused respondent to suffer loss of consortium due to petitioner's injuries.

¶ 8 In July 2017, petitioner filed a petition for dissolution of marriage. Respondent filed an answer where he addressed the pending lawsuit. In September 2017, the trial court issued an order dissolving the marriage. The court ordered respondent pay petitioner maintenance for a year and assigned debts of the parties. The court did not address the pending lawsuit. The court reserved jurisdiction over the parties and the subject matter.

¶ 9 In May 2018, the parties' lawsuit settled for \$1,500,000. (Sangamon County case No. 15-L-81). After deducting attorney fees and costs, the total net amount awarded was \$924,579.70.

¶ 10 In July 2018, respondent filed a motion for disposition of marital property asking the trial court to equitably divide the settlement. Petitioner filed a motion to dismiss, which the court denied. During a November 2018 hearing, the court heard testimony from both petitioner and respondent.

¶ 11 Petitioner testified that around 2001 she rescued a cat that bit her on the lip causing a wound that never healed. Respondent testified that when he met petitioner in 2004, she had a scratch on her lip from a cat bite that never healed. In 2008, petitioner went to see a plastic surgeon to treat the wound on her lip, which ultimately resulted in a finding of cancer.

¶ 12 Petitioner testified that during the parties' marriage her cancer came back twice and from 2008 to 2015 she had a total of 16 surgeries related to the cancer. "The surgeries involved multiple skin and bone grafts taken from the left inside forearm and left upper leg to reconstruct both her cheek and nose. The nose came from cartilage from her ear." At one point during treatment, petitioner's mouth was sewn shut for three months and she was only able to eat through a straw.

¶ 13 Petitioner testified respondent took her to her first surgery in 2008 but after that her mother drove her to the other surgeries and treatments. Respondent testified throughout petitioner's treatments he tried to care for petitioner but admitted he was not a perfect husband and there were periods where he drank too much. Respondent testified petitioner's surgeries emotionally impacted him.

¶ 14 During the marriage, respondent worked as a carpenter and petitioner worked as his helper during some years. Respondent estimated they made between \$16,000 and \$23,000 a year and testified they received various forms of assistance including food stamps and Medicaid. Petitioner worked in the restaurant industry and technology industry until around 2005 when she

started assisting respondent. Petitioner testified from 2011 to 2017, she rarely worked due to a shoulder injury and her cancer treatments. During that time, respondent was the sole income provider.

¶ 15 Petitioner testified she experienced pain as result of her cancer and surgeries. The procedures altered her appearance and made her self-conscious. Petitioner further testified she is looking at additional surgeries with three potential dental surgeries and three potential facial reconstruction surgeries. Petitioner stated her appearance coupled with the future surgeries prevented her from returning to the workforce. Since the divorce, petitioner has lived with her mother.

¶ 16 After the court heard testimony and considered the arguments of the parties it took the matter under advisement. In a February 2019 order, the court found the settlement award was a marital asset and stated, “given the nature of the injury in question, the incredible pain and suffering and disfigurement that the petitioner has suffered and the additional surgeries as well as the additional expense necessitates a division awarding to the petitioner 95% of the settlement and 5% to the respondent.”

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent argues the trial court abused its discretion in awarding petitioner 95% of the settlement proceeds and respondent 5% of the settlement proceeds.

¶ 20 A. Standard of Review

¶ 21 A reviewing court will not reverse the trial court’s distribution of marital assets absent an abuse of discretion. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422, 671 N.E.2d 654, 657 (1996). “In determining whether the trial court abused its discretion in dividing marital

property, this court will not substitute its judgment for that of the trial court unless no reasonable person would adopt the position of the trial court.” *In re Marriage of Oden*, 394 Ill. App. 3d 392, 397, 917 N.E.2d 13, 17-18 (2009) (citing *In re Marriage of Murphy*, 259 Ill. App. 3d 336, 342, 631 N.E.2d 893, 897 (1994)).

¶ 22 B. Settlement Award Distribution

¶ 23 Under the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(a), (b)(1) (West 2016)), all assets produced during a marriage are presumed to be part of the marital estate unless an enumerated exception applies. Pursuant to section 503(d) of the Act (750 ILCS 5/503(d) (West 2016)), a court shall divide the marital property in just proportions considering all relevant factors. However, the court need not make specific findings as to the reasons for its award. 750 ILCS 5/503(d) (West 2016).

¶ 24 Respondent argues while the trial court found the settlement award constituted a marital asset to be divided, the way the court divided the settlement proceeds indicated the court carved out part of the settlement award as outside the marital estate. Specifically, respondent argues the court failed to consider all relevant factors under section 503(d) of the Act in dividing the settlement. Rather, the court divided the settlement on the basis that petitioner had incredible pain and suffering and will have additional expenses in the future.

¶ 25 Respondent asserts the court applied the analytical approach laid out in *In re Marriage of Waggoner*, 261 Ill. App. 3d 787, 634 N.E.2d 1198 (1994) and in the special concurrence in *In re Marriage of Pace*, 278 Ill. App. 3d 932, 664 N.E.2d 320 (1996) (Wolfson, J., specially concurring) to divide the settlement award when it should have applied the mechanical approach laid out in *DeRossett*. The Illinois Supreme Court has rejected the analytical approach finding that “it completely ignores section 503 of the Act, which mandates

what constitutes marital and nonmarital property for purposes of disposition on dissolution of marriage.” *DeRossett*, 173 Ill. 2d at 419.

¶ 26 Under the analytical approach, whether a personal injury award is marital property depends on the purpose of the award. *Waggoner*, 261 Ill. App. 3d at 792; *Pace*, 278 Ill. App. 3d at 938. Awards for wage loss and medical payments incurred during the marriage are classified as marital property. *Id.* Awards replacing wages lost after dissolution and personal losses are considered nonmarital property. *Id.*; *Waggoner*, 261 Ill. App. 3d at 792. Under the mechanical approach, a claim that accrued during the marriage must be marital property. *DeRossett*, 173 Ill. 2d at 421.

¶ 27 We disagree with respondent and find the trial court applied the mechanical approach to find the settlement award constituted marital property where the award accrued during the marriage and the award fell under no exception in section 503(a) of the Act. See *id.*; see also *In re Marriage of Burt*, 144 Ill. App. 3d 177, 181-82, 494 N.E.2d 868, 870-71 (1986). Because the settlement award constituted marital property, the court looked to the factors laid out in section 503(d) of the Act to divide the award. 750 ILCS 5/503(d) (West 2016).

¶ 28 The trial court in its February 2019 written order stated, “[G]iven the nature of the injury in question, the incredible pain and suffering and disfigurement that the petitioner has suffered and the additional surgeries as well as the additional expense necessitates a division awarding to the petitioner 95% of the settlement and 5% to the respondent.”

¶ 29 Respondent argues the trial court failed to consider its September 2017 order dissolving the marriage where it ordered respondent pay maintenance to petitioner for a year and assigned debts of the parties. Furthermore, respondent argues the court failed to consider the impact to his future earnings of no longer having a partner to help him with his employment or

the emotional toll the surgeries took on either party. Respondent also argues the court failed to consider the value his loss of consortium claims added to the settlement.

¶ 30 Before dividing the settlement award, the trial court heard testimony from both parties and looked to the relevant factors under section 503(d) of the Act. Respondent never asked the court for a specific amount of the settlement proceeds. Rather, respondent claimed the court erred in considering only petitioner's pain and suffering and future medical costs in dividing the net sum of the settlement award.

¶ 31 We find it was within the trial court's discretion to consider petitioner's pain and suffering and future medical costs in dividing the settlement proceeds. We rely on *Burt* in support of our argument. In *Burt*, 144 Ill. App. 3d at 182, this court, in dividing marital property, determined other factors besides those expressly enumerated in section 503(d) of the Act could be considered; pain and suffering and disability of an injured spouse were some of those factors. Specifically, this court in *Burt* stated and the Illinois Supreme Court in *DeRossett* reaffirmed as follows:

“ ‘By the terms of section 503(d), in dividing marital property, the court is expressly directed to consider the age, health, *** employability, *** and needs of each of the parties [(Internal quotation marks omitted.)] (Ill. Rev. Stat. 1983, ch. 40, par. 503(d)(7)) together with the opportunity of a spouse to secure future income (Ill. Rev. Stat. 1983, ch. 40, par. 503(d)(10)). This, of itself, authorizes the court to consider the disability of an injured spouse and award a larger portion of marital property, including proceeds of a cause of action to that spouse. Moreover, the factors

expressed in section 503(d) are not the only factors that can be considered. Other factors may be considered if relevant.

[Citations.] The pain and suffering and disability of an injured spouse would be relevant considerations.’ ” *DeRossett*, 173 Ill. 2d at 421-22 (quoting *Burt*, 144 Ill. App. 3d at 182).

¶ 32 Here, the record shows the trial court considered the relevant factors and divided the marital property in what it believed to be “just proportions.” Petitioner suffered significant pain and suffering and testified to multiple procedures and medical expenses in the future to fix her facial disfigurement. Therefore, it was well within the court’s discretion to consider the disability of the injured spouse and award petitioner a larger portion of the settlement award. Because we cannot say that no reasonable person would take the view adopted by the trial court, we find respondent failed to show the court abused its discretion in the distribution of the settlement award.

¶ 33 III. CONCLUSION

¶ 34 For the foregoing reasons, we affirm the trial court’s judgment.

¶ 35 Affirmed.