

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> THE MARRIAGE OF)	Appeal from the Circuit Court
ROBERT H. HARPER,)	of Kane County.
)	
Petitioner-Appellant,)	
)	
and)	No. 09-D-316
)	
DEBRA O. HARPER,)	Honorable
)	Kathryn D. Karayannis,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted respondent's motion to clarify the dissolution judgment: the court had jurisdiction, though the motion was filed more than 30 days after the judgment, as the court had reserved jurisdiction to enter orders necessary to the division of petitioner's pension, to which the motion pertained; because the court merely clarified, and did not modify, the parties' settlement agreement, the court did not improperly modify it in light of extrinsic evidence or without considering associated costs.

¶ 2 Petitioner, Robert H. Harper, appeals the trial court's order purportedly clarifying a marital settlement agreement. Petitioner contends that the order in fact modified the agreement and that the court erred by considering extrinsic evidence to do so. He further contends that the

court lacked jurisdiction because the motion for clarification was filed more than 30 days after the entry of the final judgment and that the court erred by failing to consider the costs involved in its award of survivor benefits. We affirm.

¶ 3 In 2009, petitioner filed a petition to dissolve his marriage to respondent, Debra O. Harper. Petitioner worked for the Lisle police department and was also employed with the United States army. A dissolution judgment entered December 18, 2012, incorporated a marital settlement agreement that, as relevant here, provided in paragraph 10.2 that respondent would receive 50% of the marital portion of petitioner's United States government pension. The agreement further provided, "A Court Order Acceptable for Processing (COAP) or such other necessary Order shall be entered in order to effectuate the division of ROBERT'S interest in this Pension Plan. DEBRA shall be entitled to receive all benefits available to her in connection with her one-half (1/2) marital portion." Paragraph 10.4 provided that the parties would use WFA Econometrics (WFA) to prepare the necessary orders.

¶ 4 On February 6, 2013, respondent moved to clarify the judgment. Her motion alleged that WFA had notified both parties' attorneys that, to secure respondent's entitlement to petitioner's military pension, it was necessary to assign her the survivor benefits payable under the plan, and "[t]his assignment must be referenced in both the Judgment and the Military Order." Petitioner filed a response, contending that the parties had specifically negotiated to exclude the survivor benefits.

¶ 5 The trial court directed the parties to file briefs on the issue of whether the settlement was ambiguous. After considering the parties' arguments, the court found that the agreement was unambiguous. Its written order provided that respondent was entitled to one-half of petitioner's pension and any survivor benefits associated with it if the survivor benefits were necessary to

implement her entitlement to half of the pension. The court denied petitioner's motion to reconsider, and he timely appeals.

¶ 6 Petitioner contends that (1) the trial court erred by considering extrinsic evidence to alter the marital settlement agreement despite finding it to be unambiguous; (2) the court lost jurisdiction because respondent's motion to clarify was filed more than 30 days after entry of the dissolution judgment; and (3) the court erred in failing to consider the costs involved in awarding respondent the survivor benefits of petitioner's military pension.

¶ 7 We note that respondent has not filed a brief. However, the issues are straightforward, and thus we will consider the merits of the appeal pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 8 Because it potentially affects our jurisdiction, we consider petitioner's second argument first. He contends that the trial court lacked jurisdiction to consider petitioner's motion to clarify because it was filed more than 30 days after the entry of the final judgment. Generally, a trial court loses jurisdiction 30 days after it enters a final judgment, unless a timely postjudgment motion is filed. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 35. However, where the judgment expressly contemplates some further action, such as the entry of a Qualified Domestic Relations Order, the court retains jurisdiction for that purpose. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1038 (1993). Here, the judgment expressly provided for the entry of a COAP, and the motion directly related to the entry of the COAP and thus was within the trial court's reserved jurisdiction.

¶ 9 We note that "[a] court order acceptable for processing (COAP) is required by federal regulations in order for OPM to distribute, as provided for in a state court decree of divorce, a marital share of a party's [Civil Service Retirement System] pension to a person other than the

federal employee. 5 U.S.C. § 8345(j)(1); 5 C.F.R. §§ 838.101, 838.303-838.306.” *Plachy v. Plachy*, 652 S.E.2d 555, 556 n.1 (Ga. 2007).

¶ 10 Petitioner’s principal contention is that the trial court erred when it found the settlement unambiguous but then considered extrinsic evidence to alter its meaning. He notes that the trial court stated that it had looked at the WFA letter in ruling on the motion to clarify, and he concludes that the court thus considered extrinsic evidence. Regardless of whether the court considered extrinsic evidence, we disagree with petitioner’s underlying premise that the court altered the agreement.

¶ 11 A marital settlement agreement incorporated into a dissolution judgment is interpreted in the same way as other contracts. *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 758 (2000). We construe the settlement to give effect to the parties’ intent. *Id.* at 759. When a settlement is unambiguous, we ascertain the parties’ intent solely from the settlement’s plain language. *Id.* The construction of a contract is a question of law that we review *de novo*. *Id.* at 758.

¶ 12 The agreement here provides that respondent is to receive “all benefits available to her” pursuant to her share of respondent’s pension. “All” means “the whole amount or quantity of.” Merriam-Webster’s Collegiate Dictionary 29 (10th ed. 2001). We presume that survivor benefits are among “all benefits” available to respondent. Thus, survivor benefits are included in the general class of “all benefits.” See *Zito v. Zito*, 969 P.2d 1144, 1147 (Alaska 1998) (quoting *Wahl v. Wahl*, 945 P.2d 1229, 1231 (Alaska 1997)) (“survivor benefits are an intrinsic part of ‘the retirement benefits earned during the marriage’ ”); *Harvey v. Harvey*, 905 S.W.2d 760, 764 (Tex. App. 1995) (in absence of evidence that pension plan treated survivor benefits differently from “retirement benefits,” marital settlement agreement’s reference to “ ‘accrued benefits’ ” and “ ‘available benefits’ ” included survivor benefits). Merely stating explicitly that the award of

benefits to respondent includes the survivor benefits does not alter the agreement's plain language.

¶ 13 Petitioner apparently believes that the parties' intent was not to give respondent the survivor benefits, but he does not explain how "all benefits" unambiguously excludes the survivor benefits. His support for this proposition is only his assertion that the parties negotiated to exclude the survivor benefits. This, of course, is extrinsic evidence and, as petitioner himself argues, the court could not consider extrinsic evidence to alter the agreement's plain language. See *K's Merchandise Mart, Inc. v. Northgate Ltd. Partnership*, 359 Ill. App. 3d 1137, 1143 (2005) (written contract is presumed to include all material terms agreed upon by the parties, and any prior negotiations or representations are merged into that agreement; extrinsic evidence is generally inadmissible to alter, vary, or contradict the written instrument).

¶ 14 As the court merely clarified the agreement's original intent, we need not decide whether it improperly considered extrinsic evidence. We note that the only such evidence to which petitioner refers is the letter from WFA. The letter itself is not in the record, and the portion quoted in the parties' filings refers only to certain language that WFA contended had to be in the order; it does not purport to give an opinion about what the settlement agreement means.

¶ 15 Because of our disposition of this issue, we need not consider petitioner's third contention, that the trial court failed to consider the costs associated with giving respondent the survivor benefits. Given that the court merely followed the parties' expressed intent, it was not required to consider independently the secondary effects of their decision.

¶ 16 We affirm the judgment of the circuit court of Kane County.

¶ 17 Affirmed.