FOURTH DIVISION
June 30, 2014

No. 1-13-0814

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Marriage of	)	Appeal from the
	)	Circuit Court of
IRENE WACHOWSKI,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	95 D 7023
and	)	
	)	
DANIEL WACHOWSKI,	)	The Honorable
	)	Lisa R. Murphy,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in entering a qualified Illinois domestic relations order (QILDRO) awarding a portion of a retiree's municipal pension to his former wife in accordance with the reserved jurisdiction approach and the so-called "*Hunt* formula." The judgment of the trial court is affirmed.

¶ 2 Respondent Daniel Wachowski appeals from an order of the circuit court of Cook County entering a qualified Illinois domestic relations order (QILDRO) and related relief in favor of Daniel's former spouse, petitioner Irene Wachowski. The QILDRO relates to the division of the marital portion of Daniel's pension benefits from his employment with the Chicago Fire Department. Daniel contends that an order of another panel of the Illinois

Appellate Court in an earlier appeal did not require the trial court, on remand, to utilize the "reserved jurisdiction approach" to value his pension. Irene asserts that the trial court correctly followed the mandate of the appellate court in applying the reserved jurisdiction approach to calculate the amounts for the QILDRO and related matters.

¶ 3 For the reasons stated herein, we affirm the ruling of the trial court.

¶ 4 BACKGROUND

¶ 5 I. Events Prior to the First Appeal

¶ 6 Daniel began working for the Chicago Fire Department in October, 1968, and he and Irene married on March 6, 1970. On July 15, 1996, the trial court entered a Judgment for Dissolution of Marriage (the dissolution order), which incorporated the parties' written marital settlement agreement. Article XII of the dissolution order provides the following with respect to Daniel's pension:

> "That DANIEL presently has a pension with his employer, The City of Chicago. That it is agreed that the marital portion of the pension shall be valued as of the date of the entry of the Judgment for Dissolution of Marriage and IRENE shall be entitled to one-half (1/2) of the value of what DANIEL's benefit would be on the date of the Judgment.
>
> It is further understood by the parties that at this time The City of Chicago does not honor any Qualified Domestic Relations Order[1] and therefore the

[1] A qualified domestic relations order (QDRO) is defined in the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code as a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan. 29 U.S.C. § 1056(d) (West 2012); 26 U.S.C. § 414(p)(1) (West 2012). Under Illinois law, however, pension funds governed by the Illinois Pension Code—including the fund that administered Daniel's public pension (see 40 ILCS 5/8-101 *et seq.*)—are not

division of the pension cannot be immediately effectuated. Accordingly, the parties agree that upon receipt of Daniel of his pension, at any time, he shall pay to Irene one-third (1/3) of what he receives, until such time as Irene's interest is paid off in full. For example, if Irene's interest at the time of the entry of the Judgment is $25,000.00 and at the time of receiving his pension, Daniel receives $3,000.00 per month, he shall pay to Irene the sum of $1,000.00 until such time as Irene has received $25,000.00.

The parties further agree that if at any time after the entry of this order, The City of Chicago commences the honoring of a Qualified Domestic Relations Order, same will be entered in Irene's favor for the amount due her minus any payments she received.

That Daniel shall have the right to purchase out Irene's interest in the pension or reducing her interest in the pension, without penalty, by paying to Irene, at anytime after the entry of the Judgment for Dissolution of Marriage, any additional sums in addition to his support obligations as provided herein.

However, in the event IRENE shall be deceased prior to receiving any or all of her interest in DANIEL's pension, all amounts due her at the time of her death shall be terminated and revert back to DANIEL."

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subject to QDROs. See *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 301 (2000). The Illinois legislature passed legislation, effective July 1, 1999, adding a new section to the Pension Code creating QILDROs and modifying section 503 of the Illinois Marriage and Dissolution of Marriage Act. See 40 ILCS 5/1-119 (West 2012), 750 ILCS 5/503 (West 2012). The Pension Code expressly provides that "[a] QILDRO is not the same as a qualified domestic relations order or QDRO issued pursuant to Section 414(p) of the Internal Revenue Code of 1986." 40 ILCS 5/1-119(a)(6) (West 2012). Effective July 1, 2006, the legislature amended the QILDRO statute to provide, among other things, that a QILDRO may include a formula for dividing a pension, like that used in QDROs; the original statute required the alternate payee's share to be stated as a dollar amount. 40 ILCS 5/1-119(n) (West 2012).

The dissolution order further provides that the court retained jurisdiction for purposes of enforcing the order.

¶ 7 In a letter dated August 6, 1996, the Municipal Employees' Annuity and Benefit Fund of Chicago (the Fund) provided information to Daniel regarding his pension, including a "breakdown of the employee and employer contributions" for the period from October 16, 1968, the commencement of his employment, to July 15, 1996, the date of the dissolution order. The amount contributed by Daniel during that time period, including interest, was $105,298.72.

¶ 8 Daniel retired on September 1, 2002,[2] at the age of 51. On September 27, 2002, Irene filed a "Petition for Immediate Payment of Pension Funds Pursuant to Court Order, for Entry of QILDRO and for Disbursement of Spousal Annuity Due to Petitioner." Irene asserted that, "[i]n order to provide an accurate QUILDRO [*sic*], [Irene] must make a determination of the full amount to be received by [Daniel] as and for his retirement benefit and the marital portion thereof ***." Irene asked the court, among other things, to order Daniel to begin payment of one-third of his pension check to her upon receipt of his first check.

¶ 9 Irene and Daniel each retained experts to value the marital portion of the pension. In a letter dated February 18, 2004, Irene's expert, Sandor Goldstein, calculated "the marital portion of the present value of Mr. Wachowski's accrued pension as of July 15, 1996" as $770,726. In a letter dated April 2, 2004, Daniel's expert, Steven Russ, calculated the "actuarial present value" as $267,700.

¶ 10 On July 18, 2007, the trial court entered an order providing, in part, as follows:

> "Pursuant to Article XII of the parties' Judgment for Dissolution of Marriage, the marital portion of the Respondent's pension with the City of Chicago equalled

[2] Certain documents in the record indicate Daniel's retirement date was August 31, 2002. The discrepancy does not affect our analysis.

$105,298.72. Pursuant to the parties' Marital Settlement Agreement, Article XII, the Petitioner is entitled to one-half of said amount, i.e., $52,649.36."

¶ 11 Irene filed a motion to reconsider, asserting that $105,298.72 "represents only [Daniel]'s personal monetary contributions to the Pension fund and not the value of the fund as a whole as required by the Judgment for Dissolution." She argued that "it is well settled in Illinois case law that the marital portion of a pension fund includes more than just the employee's monetary contributions to the funds," and noted that neither she nor Daniel "offered this amount as the value of the fund." The court denied the motion for reconsideration, and Irene appealed.

¶ 12 II. The Appellate Court Decision in 1-08-0933

¶ 13 On June 30, 2010, the Illinois Appellate Court reversed and remanded. *In re Marriage of Wachowski*, 1-08-0933 (unpublished Rule 23 order) (*Wachowski I*). After summarizing the pension provisions in the dissolution order and discussing in detail the valuations by the parties' actuaries, the court's analysis began with a discussion of *In re Marriage of Richardson*, 381 Ill. App. 3d 47 (2008), in which the court discussed "two primary approaches by Illinois courts to distribute pensions that are not matured at the time a marriage is dissolved: the immediate offset approach and the reserved jurisdiction approach." *Wachowski I*, at 8, citing *Richardson*, 381 Ill. App. 3d at 53.

¶ 14 Pursuant to the immediate offset approach, "a court determines the present value of the pension plan, awards the entire pension to the employee spouse, and then awards the non-employee spouse marital property with sufficient value to offset the pension award." *Wachowski I*, at 8. The *Wachowski I* court observed that courts "generally utilize this approach in situations where: there is sufficient actuarial evidence with which to determine the pension's present value; the employee is close to retirement age; and the parties have sufficient marital

property to permit an offset." *Id.* at 8, citing *Richardson*, 381 Ill. App. 3d at 54.

¶ 15 Stating that "in most situations, the reserved jurisdiction method is 'often the more feasible approach' [citation]," the *Wachowski I* court explained that, under this approach, "the trial court does not award the non-employee spouse immediate compensation at the time of dissolution; rather, the court awards the non-employee a percentage of the employee spouse's non-vested pension and retains jurisdiction over the case to ensure that the non-employee spouse is paid his or her percentage if, and when, the pension becomes payable." *Wachowski I*, at 9, citing *Richardson*, 381 Ill. App. 3d at 54. Using the reserved jurisdiction approach, "the trial court may choose to devise a formula at the time of the dissolution to determine the marital portion of the pension benefits as well as the non-employee spouse's share of that marital potion or the court may wait to ascertain the marital interest and the non-employee's share until the pension benefits vest and the employee spouse begins to collect the benefits." *Wachowski I*, at 9, citing *Richardson*, 381 Ill. App. 3d at 53-54. The court noted that, regardless of the timing of the calculation, the calculation remains the same and is determined " 'by dividing the number of months or years of marriage during which pension benefits accumulated by the total number of years or months benefits accumulated prior to retirement or being paid.' " *Wachowski I*, at 9, citing *Richardson*, 381 Ill. App. 3d at 52. The court "then multiplies each benefit that is made by the marital interest percentage." *Wachowski I*, at 9-10, citing *Richardson*, 381 Ill. App. 3d at 52.

¶ 16 The *Wachowski I* court stated that, in *Richardson*, "we upheld the trial court's use of the reserved jurisdiction approach in dividing the husband's pension, and rejected the husband's argument that the trial court's approach constituted an abuse of discretion." *Wachowski I*, at 10. After noting "several factual similarities" between *Richardson* and the Wachowskis' case—

"both husbands were employed by municipalities and participated in pension plans, both couples executed marital settlement agreements that discussed the allocation of pension benefits, and neither judgment of dissolution of marriage specified a method of pension apportionment and valuation"—the *Wachowski I* court stated: "We disagree, however, that *Richardson* mandates reversal of the circuit court order." *Wachowski I*, at 11. The court stated that, "[a]lthough [Irene] seems to argue to the contrary, *Richardson* does not mandate the use of the reserved jurisdiction approach in all cases where there is an unvested pension and the judgment fails to specify an apportion method; rather, *Richardson* preserves the trial court's discretion to choose an apportionment method that effectuates the terms of a couple's settlement agreement." *Id.*

¶ 17 The *Wachowski I* court observed that, "[m]oreover, the crux of [Irene]'s appeal pertains to the trial court's valuation rather than an apportionment method and we note that various valuation methods may be employed and then benefits apportioned pursuant to one of the aforementioned methods once valuation is determined. [Citations.]" *Id.* at 11-12. After noting that the interpretation of a marital settlement agreement is subject to *de novo* review, the court stated that "the parties agreed that [Irene] was entitled to one-half the value of [Daniel]'s benefit at the time of the judgment." *Id.* at 13. The court then stated, "[w]e agree that an employee spouse's contributions are important in assessing pension value, but such contributions are not the sole component of a pension's value; rather, other elements, including employer contributions and accrued interest are also components of a pension's value. [Citations.]" *Id.* Discussing the experts' reports, the court observed that "neither one found [Daniel]'s contributions to fully comprise the value of the pension." *Id.* at 14. Accordingly, the appellate court ruled that the trial court erred in valuing the marital portion of the pension as an amount

equal to Daniel's contributions. *Id.* The court stated that "the trial court failed to effectuate the intent of the parties to equally share the value of [Daniel]'s pension benefits at the time of judgment." *Id.*

¶ 18 The final page of the appellate court's order included the following language:

> "Because we find that the trial court erred in valuing the marital share of respondent's pension, we need not consider petitioner's final argument pertaining to the trial court's apportionment method. Rather, we remand for a rehearing and reevaluation of the value respondent's pension plan.[3] In doing so, the trial court should recalculate the pension pursuant to *Richardson*, which we find to be instructive, and not exclusively rely on respondent's contributions in making its calculation." *Id.* at 15.

The case was reversed and remanded "for proceedings consistent with this disposition." *Id.*

¶ 19 III. Proceedings on Remand

¶ 20 On remand, Irene contended that "[f]ollowing *Richardson* and the reserved jurisdiction approach, the marital portion of Daniel's monthly benefit is approximately 75% of Daniel's monthly benefit." The 75% was calculated by dividing Daniel's approximate 26 years of marriage to Irene by his 34-1/2 years of employment. Irene would thus be entitled to an amount equal to 37.5%—one-half of the 75%—of Daniel's monthly pension benefit for Daniel's life. Irene also contended that because the appellate court "determined that the Respondent Daniel's pension should be valued according to *Richardson*, and *Richardson* utilized the reserved jurisdiction approach espoused in *Hunt* [(*In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979),

[3] We assume the order should read "reevaluation of the value *of* respondent's pension plan."

discussed below], Petitioner Irene is entitled to receive back pension payment in accordance with the reserved jurisdiction approach from August 2007 until the present."[4]

¶ 21 Daniel's position on remand was that neither *Richardson* nor the appellate court's *Wachowski I* decision mandated the application of the reserved jurisdiction method. "Instead," Daniel argued, "the Appellate Court remanded the case for further proceedings solely because it concluded that [Daniel]'s contributions are not a sufficient basis to establish the value of the pension." In reply, Irene contended, among other things, that "[t]he reserved jurisdiction approach, which is the appropriate method in this case, must be used in this case if for no other reason, because the offset approach cannot be used," given that all of the marital property has already been distributed except for Daniel's pension.

¶ 22 In a cross-motion to enter a QILDRO, Daniel contended that the "value of the accrued pension" as of the date of the dissolution order was the $267,700 amount previously determined by his actuarial expert. Daniel contended that "[o]ne-half of that value is $133,850.00 and [Daniel] had previously paid to [Irene] the sum of $90,132.79, leaving a balance of $43,717.21. Daniel asserted that "[s]aid balance is due to be paid in monthly installments equal to one-third of his current monthly pension payment until the amount of $43,717.21 is paid in full" and requested entry of a QILDRO consistent with such calculation.

¶ 23 Irene responded that the "only action" required of the trial court "is to follow the mandate of the Appellate Court and to enter a judgment according to the Order. No evidentiary hearing or trial is required." During a hearing on August 23, 2011, the trial court stated, "respectfully I don't think the Appellate Court was as clear as it could have been. And I can't just pick numbers out of the sky. *** So we are going to conduct an evidentiary hearing; and I

[4] Daniel apparently ceased paying Irene one-third of his monthly pension as of August 2007, based on the trial court's order entered July 18, 2007.

told everyone I was going to afford them the opportunity to do some discovery." Daniel retained a new actuary, Mitchell Serota, and Irene's prior expert, Sandor Goldstein, provided his second opinion in the case.

¶ 24 In a letter dated October 6, 2011, Mr. Serota stated that "[t]he resources [he has] used for this letter" are "two earlier actuarial analyses and an Appellate Court ruling." He quoted language from the *Wachowski I* appellate decision, including that "*Richardson* preserves the trial court's discretion to choose an apportionment method that effectuates the terms of a couple's settlement agreement." After explaining his computation, he concluded that the "value of the marital asset" was $283,250.60, and half of that amount is $141,625.30.

¶ 25 In a letter dated November 7, 2011, Mr. Goldstein calculated that Daniel and Irene were married for 316 months out of the 406 months that Daniel "participated in the plan." He then stated that "the marital portion of Mr. Wachowski's pension pursuant to the Richardson case can be considered to be 316/406, or 77.8%." Because "Irene is to be awarded 50% of the marital portion" of the pension, Mr. Goldstein calculated the amount to be awarded as 38.9% of each monthly pension payment. In a letter dated November 14, 2011, responding to an inquiry from Irene's counsel, Mr. Goldstein clarified that "the portion of [Daniel's] pension to be awarded to Irene Wachowski is payable to her over Daniel Wachowski's lifetime."

¶ 26 During a hearing on March 26, 2012, the court offered the parties' respective counsel an "expedited route," wherein the parties agreed that the court would decide the case based on written documentation submitted to the court. In a memorandum opinion entered on August 10, 2012, the trial court stated that, in making its ruling, it had relied on: "the closing arguments submitted by counsel; the two reports of Sandor Goldstein (Petitioner's expert), dated November 7, 2011 and November 14, 2011; the deposition transcript of Mr. Goldstein; the report of

Mitchell Serota (Respondent's expert); the deposition transcript of Mr. Serota; the appellate court decision in *In re Marriage of Wachowski*, No. 1-08-0933; *In re Marriage of Richardson*, 381 Ill. App. 3d 47 (2008); and *In re Marriage of Kehoe*, 2012 IL App (1st) 110644." The order provided, in part:

> "After reviewing the above, the Court finds that the mandate of the appellate court in *In re Marriage of Wachowski* directs the Court to value the Respondent's pension pursuant to the reserved jurisdiction approach utilized by the trial court in *In re Marriage of Richardson* and accordingly the Court adopts the valuations proffered by Sandor Goldstein that are attached hereto as Exhibits A-1 and A-2. The Court finds that the proffered valuation submitted by Mr. Serota does not satisfy the mandate of the appellate court."

The court directed Irene's counsel to prepare "the appropriate QILDRO" and provided that Daniel "shall execute the necessary consent to the entry of the QILDRO."

¶ 27 On September 17, 2012, Daniel filed a motion for clarification, contending that "nowhere in the court's decision does it indicate the value of Irene Wachowski's 50% interest in the marital portion of Daniel Wachowski's retirement plan." "[A]bsent said value," Daniel contended, "there is no time limit on the termination of the monthly payments being made to Irene" and "it is unknown as to when her value will be met and the payments terminate, as provided in the Judgment for Dissolution of Marriage." On September 21, 2012, Irene filed a motion to enter a QILDRO, a QILDRO calculation order, and a consent to issuance of QILDRO. On the same date, Irene filed a motion seeking entry of an order in favor of Irene in the amount of $196,287.34, which represented $189,342.94 in back payments—based on the difference between the amounts owed under Mr. Goldstein's 38.9% calculation compared to the

amounts Daniel had actually paid to Irene—and $6,944.40 in interest.

¶ 28 On February 4, 2013, the trial court entered an order that denied the clarification motion and provided, in part, that "the QILDRO presented by Petitioner is entered" and that a "Judgment is entered in favor of Petitioner for $189,342.94."[5] The court denied Irene's request for interest. Also on February 4, the court entered a QILDRO and a QILDRO calculation order; Daniel signed a consent to issuance of QILDRO. A box is checked on the QILDRO indicating that Irene will receive a proportionate share of the cost of living increases that will occur in the future. On March 1, 2013, the court entered an order amending the February 4 order to include a finding that "there is no just reason for delaying enforcement or appeal" of the order pursuant to Illinois Supreme Court Rule 304(a). Daniel filed the instant appeal.

¶ 29 ANALYSIS

¶ 30 On appeal, Daniel contends that the "mandate of this court did not require the trial court to adopt the 'reserve jurisdiction approach' to valuation of the pension and furthermore such an approach defeated the intent of the marital settlement agreement." He contends that the "clear intent" of the marital settlement agreement was "to utilize the immediate offset approach." Irene asserts that the "trial court did not abuse its discretion in following the mandate of the Appellate Court, in applying the reserved jurisdiction approach utilized in *Richardson,* or in finding that Daniel's calculation did not satisfy the Mandate."

¶ 31 As a preliminary matter, the parties disagree regarding the applicable standard of review. Daniel asserts that interpretation of the marital settlement agreement is reviewed *de novo* as a question of law. Irene counters that the standard of review is abuse of discretion, contending

[5] In a decision filed contemporaneously herewith, we address certain issues relating to Irene's efforts to collect the $189,342.94 amount. *In re Marriage of Wachowski*, 2014 IL App (1st) 133855-U (unpublished order under Supreme Court Rule 23).

that "[i]f the issue is whether the trial court was 'required' to use the reserved jurisdiction approach, then it is within the trial court's discretion to use it or not." Citing *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 135 (2008), she further contends that "it is well established that decisions concerning the distributions of marital property lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion." Irene alternatively argues that, even if the *de novo* standard applies, she "must prevail because the reserved jurisdiction approach effectuates the parties' intent under the Dissolution Judgment."

¶ 32 As discussed below, this appeal involves two key issues; each requires a different standard of review. The first issue is the interpretation of the parties' marital settlement agreement, as incorporated in the dissolution order. "The interpretation of a marital settlement agreement is reviewed *de novo* as a question of law." *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). The second issue is whether the trial court erred in applying the reserved jurisdiction approach on remand. "We will not reverse the court's choice of an apportionment method unless the court abused its discretion in selecting that method." *Richardson*, 381 Ill. App. 3d at 53.

¶ 33 I. Reviewing the Marital Settlement Agreement

¶ 34 General rules of contract interpretation apply to marital settlement agreements. *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922 (1998). "Like a contract, the marital settlement agreement should be given a fair and reasonable interpretation based upon all its language and provisions." *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18. "The main objective of the court's analysis is to give effect to the purpose and intent of the parties at the time they entered into the agreement." *Id.*

¶ 35 For a contract to be enforceable, however, the essential terms of the contract must be certain and definite. *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 314

(1987); see also *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1992) ("A contract may be enforced even though some contract terms may be missing or left to be agreed upon, but if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract"); *Hintz v. Lazarus*, 58 Ill. App. 3d 64, 67 (1978) (stating that in order for a contract to be enforceable, it must be "so definite and certain in all of its terms that a court can require the specific thing contracted for to be done"); *Citadel Group Limited v. Washington Regional Medical Center*, 692 F.3d 580, 589 (7th Cir. 2012) (applying Illinois law; "[i]ndefiniteness of a material term renders a contract unenforceable when the court cannot reasonably supply the missing term through contract interpretation, for example, by referencing an agreed upon formula"). Furthermore, "[a]n enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract." *Cheever*, 144 Ill. 2d at 30; see also *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26 ("A meeting of the minds between the parties will occur where there has been assent to the same things in the same sense on all essential terms and conditions."). It is not necessary that the contract provide for every possible future contingency or for every collateral matter; it is sufficiently definite and certain to be enforceable if the court is enabled, from the contract's terms and provisions, to "ascertain what the parties have agreed to do." *Id.*, ¶ 28. "When any essential term of an agreement is left to future negotiation, there is no binding contract." *Hintz*, 58 Ill. App. 3d at 67; see also *Trittipo v. O'Brien*, 204 Ill. App. 3d 662, 672 (1990) (noting that "[s]ome terms may be missing or left to be agreed upon, but failure of the parties to agree upon an essential term indicates that the mutual assent required to make or modify a contract is lacking, and that there is no enforceable contract").

¶ 36 A review of the plain language of the pension provisions of the Wachowskis' marital

settlement agreement, as incorporated into the dissolution order dated July 15, 1996, shows that certain essential terms are unclear or missing. While the agreement contemplates a valuation of the pension at the time of dissolution, while Daniel was still working and the amount of his ultimate benefit could not be ascertained, it provided no guidance from the parties as to how the valuation should be accomplished. The first paragraph of Article XII of the dissolution order states that "it is agreed that the marital portion of the pension shall be valued as of the date of the entry of the Judgment for Dissolution of Marriage and IRENE shall be entitled to one-half (1/2) of the value of what DANIEL's benefit would be on the date of the Judgment."

¶ 37 Article XII, read in its entirety, is otherwise inconsistent and unclear. For example, the marital settlement agreement provides that Daniel "shall pay to Irene one third (1/3) of what he receives until such time as Irene's interest is paid off in full." While the reference to Irene being "paid off in full" could be interpreted as requiring the determination of a sum certain—as opposed to a percentage of each monthly pension payment for the remainder of Daniel's life—the parties did not actually calculate the pension value or, at a minimum, decide upon how the pension would be calculated at a future date. Information needed to calculate a sum certain for valuation purposes, *e.g.*, Daniel's retirement date and years of service, was not and could be available at the time of the dissolution.

¶ 38 We observe that the parties' arguments on appeal seemingly reflect their respective efforts to make sense of Article XII of the dissolution order. Daniel contends that "[t]he clear intent of the Martial Settlement Agreement was to utilize the immediate offset approach. While it is true that the marital settlement agreement did not call for an immediate award of property to Irene it did specify that once a present value was fixed that remedial payments would be made by Daniel to Irene until she was made whole." We do not agree with Daniel's contention

that the immediate offset approach is applicable here. Courts using the immediate offset approach determine the present value of the pension plan, award the entire pension to the employed spouse and then award the other spouse sufficient marital property to offset the pension award. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547 (2010). Daniel's statement that payments would be made "once a present value is fixed" does not clarify *how* such payments would be calculated in accordance with the marital settlement agreement.

¶ 39 Irene argues on appeal that "[n]o specific amount is indicated in the Dissolution Judgment, and none was ever intended." While we agree with her statement that no specific amount was indicated, we are not certain, based on our review of the dissolution order, that "none was ever intended." As noted above, certain language in Article XII appears to indicate that the parties may have intended for Irene's portion to be a sum certain, *e.g.*, the references to Irene's interest in the pension being "paid off in full" and the provision that allows Daniel to "purchase out" Irene's interest.

¶ 40 The initial valuations prepared by the parties' respective experts in 2004—each of which resulted in the determination of a sum certain—also reflect the lack of clarity in the pension provisions of the marital settlement agreement. For example, one of the actuarial assumptions in Irene's expert's opinion was that "[s]ince Mr. Wachowski has retired and is currently receiving his pension, I have valued his accrued pension on a payable immediately basis." Daniel's expert, on the other hand, used "Mr. Wachowski's age, service and pay as of July 15, 1996 to calculate his benefit, and use[d] that date and actuarial assumptions appropriate to that date to calculate the value of his benefit." The expert further opined that "[s]ubsequent changes in his age, service and pay, or subsequent changes in actuarial assumptions, or the use of a later date are not contemplated," based on his reading of Article XII. The experts' differing

approaches are indicative of the fundamental difficulty of Article XII: If Irene's expert's position in 2004 was correct, then she is arguably not giving effect to the language in the marital settlement agreement referring to "one-half (1/2) of the value of *what DANIEL's benefit would be on the date of the Judgment.*" (Emphasis added.) Indeed, it was not possible to know key information, *e.g.*, Daniel's future retirement date, as of July 15, 1996. If Daniel's expert is correct, then it is unclear why the pension amount could not have been calculated and included in the marital settlement agreement at the time of dissolution.

¶ 41 We also acknowledge the circuit court's persistent efforts to make sense of the ultimately deficient pension provisions of the marital settlement agreement. For example, in its order entered on July 18, 2007, the circuit court provided, in part, that "[p]ursuant to Article XII of the parties' Judgment for Dissolution of Marriage, the marital portion of the Respondent's pension with the City of Chicago equaled $105,298.72. Pursuant to the parties' Marital Settlement Agreement, Article XII, the Petitioner is entitled to one-half of said amount, i.e., $52,649.36." Although we agree with the conclusion of the earlier appellate panel that the order erred in "exclusively rely[ing] on respondent's contributions" in making such calculation, we sympathize with the trial court's attempt to interpret and reconcile the language of the marital settlement agreement during its initial consideration of this matter.

¶ 42 We conclude that certain essential terms of the parties' contract—as reflected in Article XII of the parties' marital settlement agreement incorporated in the dissolution order—lack the necessary specificity and definiteness. Simply put, key terms are left open and/or undefined, *e.g.*, how to calculate the marital portion of the pension and how to determine the value of Daniel's pension benefit as of the date of the dissolution order. We hold that the pension provisions of the dissolution order are unenforceable, and that the parties' respective shares

should be determined without further reference to it.

¶ 43 II. Application of Reserved Jurisdiction Approach on Remand

¶ 44 In its memorandum opinion entered on August 10, 2012, the trial court found that "the mandate of the appellate court in *In re Marriage of Wachowski* directs the court to value [Daniel]'s pension pursuant to the reserved jurisdiction approach utilized by the trial court in *In re Marriage of Richardson*" and "accordingly" the court adopted Sandor Goldstein's 2011 valuations and found that Mr. Serota's valuation "does not satisfy the mandate of the appellate court." By adopting Mr. Goldstein's valuation, the court applied the *Hunt* formula. See *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979). Under this formula, the "trial court in its discretion may award each spouse an appropriate percentage of the pension to be paid 'if, as and when' the pension becomes payable [Citation.]." *Id.* at 663. The marital interest in each payment will be a "fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to when paid." *Id.* "[W]hen using this method of allocation," the *Hunt* court continued, the trial court will "retain jurisdiction and award the non-employee spouse some percentage of the marital interest in each payment." *Id.* The court observed that "this second method of allocating the interest"—as opposed to the immediate offset approach—seems particularly appropriate if the interest has not vested, because it 'divides *** the risk that the pension will fail to vest. [Citation.].' " *Id.* at 664. Some Illinois courts have used the terms "reserved jurisdiction approach" and the "*Hunt* formula" interchangeably. See *e.g.*, *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 29 (referring to the "reserved jurisdiction approach, or the *Hunt* formula").

¶ 45 To the extent that there are only two approaches to the divisions of pensions in Illinois—and the immediate offset approach is inapplicable—the reserved jurisdiction approach would apply. Illinois courts frequently have described the immediate offset approach and the reserved jurisdiction approach as the two methods of dividing pensions of divorcing spouses. See, *e.g.*, *In re Marriage of Culp*, 399 Ill. App. 3d 542, 546-47 (2010) ("In the event of a dissolution, courts employ two different methods in distributing pension benefits: (1) the present-value or immediate-offset approach and (2) the reserved-jurisdiction approach"); *Richardson*, 381 Ill. App. 3d at 53 ("There are two approaches to valuing an unmatured pension upon dissolution of a marriage: the 'immediate offset' approach and the reserved jurisdiction approach"); *In re Marriage of Burkhart*, 267 Ill. App. 3d 761, 766 (1994) ("Courts have used two methods to divide these pension interests: the 'reserved jurisdiction' method and the 'total offset' method"); *Robinson v. Robinson*, 146 Ill. App. 3d 474, 476 (1986) ("The courts of this state have developed two approaches to valuing a pension": the immediate offset approach and the reserved jurisdiction approach). We speculate that Daniel's appellate arguments endorsing the ill-fitting immediate offset approach recognize the myriad cases discussing the existence of the two approaches.

¶ 46 Assuming *arguendo* that there are only two valuation methodologies, and one is plainly inapplicable, then the trial court in its memorandum opinion correctly interpreted the "mandate of the appellate court in *In re Marriage of Wachowski*" as "direct[ing] the Court to value the Respondent's pension pursuant to the reserved jurisdiction approach utilized by the trial court in *In re Marriage of Richardson*" and the trial court thus correctly adopted the *Hunt*-type valuation proffered by Irene's expert, Sandor Goldstein. Under those circumstances, the trial court did not abuse its discretion.

¶ 47 While the trial court, in its memorandum opinion, indicated that it was "directed" by the *Wachowski I* appellate court to use the reserved jurisdiction approach, a review of the record on appeal shows that the court exercised considerable thought prior to its adoption of the *Hunt* formula discussed in *Richardson*, as advocated by Irene's expert during the proceedings on remand. Irene's counsel repeatedly requested that the trial court simply apply the *Hunt* formula—a relatively simple mathematical formula—without the need for actuarial or other evidence; the court consistently disagreed. For example, during a hearing on November 22, 2011, the court stated, "I think that the mandate from the Appellate Court is such that I have to conduct an evidentiary hearing." At a hearing on March 26, 2012, the court again observed, "I do believe it's my obligation to consider evidence" and further stated: "So, the Appellate Court didn't like the way I approached this the first time. Okay. So, they want me to do it again. So, I will consider the evidence and then do it again." When Daniel's counsel argued that the testimony of Irene's expert, Sandor Goldstein, should be barred because Mr. Goldstein admitted he did not "value" the pension, the court disagreed, stating, "I may not accept Mr. Goldstein's analysis. I don't know. But I am going to read it and consider it."

¶ 48 We believe, based on our review of the appellate record, that the trial court exercised appropriate discretion—and did not abuse its discretion—in its ultimate determination. Even if pension valuation or apportionment methods exist beyond the immediate offset approach and the reserved jurisdiction approach/*Hunt* formula,[6] the court appears to have been receptive to

[6] We recognize that Illinois courts in certain cases have, directly or indirectly, referenced the possibility of other approaches. See, *e.g.*, *In re Marriage of Peters*, 326 Ill. App. 3d 364, 370 (2001) (noting that "[w]hen dealing with pension rights, courts *generally* follow either the 'total-offset' approach or the 'reserved-jurisdiction' approach") (Emphasis added); *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 863 (1994) (stating that "[t]he court cannot always dispose of pension rights under one specific approach because of the differences between the parties involved, their marital assets, pension types, duration of their marriage, and other related

the presentation of evidence regarding such methods. Particularly in light of our determination that the pension provisions of the marital settlement agreement are unenforceable, we conclude that the trial court's adoption of the *Hunt* formula endorsed by Irene's expert, does not represent an abuse of discretion.

¶ 49 CONCLUSION

¶ 50 For the reasons stated above, we affirm the judgment of the trial court.

¶ 51 Affirmed.

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circumstances"); see also *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 241 (1997) (discussing "two variants" of the reserved jurisdiction approach: "[a]t the time of dissolution, the court can devise a formula that will later determine both the marital interest and the non-pensioner's share in the benefits" (e.g., *Hunt*) or the "other reserved jurisdiction variant" where "the trial court waits until benefits are paid before it determines the formula for determining the marital interest or the nonpensioner's share").