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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
KITTY L. HOLLAND,	)	of De Kalb County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 06-D-7
	)	
HAMID BELLOUT,	)	Honorable
	)	William P. Brady,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

**ORDER**

*Held:* The trial court's distribution of marital assets was not an abuse of discretion.

¶ 1 The respondent, Hamid Bellout, appeals from the November 9, 2010, order of the circuit court of De Kalb County dissolving his marriage to the petitioner, Kitty L. Holland. Both parties were math professors at Northern Illinois University (NIU). On appeal, Hamid argues that the trial court abused its discretion in dividing the marital assets because it allegedly failed to place specific values on Kitty's non-marital assets and on the parties' State Universities Retirement System (SURS) pensions. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 The parties were married on December 23, 1986. Two twin children were born to the marriage: Adam and Sarah Bellout, born January 27, 1995. Kitty filed a petition for dissolution of marriage on January 10, 2006. A hearing was held on May 18 and 19, and August 10 and 11, 2010.

¶ 4 Kitty testified that she graduated from the University of Kansas in 1981. She went to graduate school there for a year and then transferred to Purdue University. She met Hamid at Purdue. She graduated from Purdue in 1986 with a masters degree in mathematics. After that, she started working on her doctorate in mathematics at the University of Illinois at Chicago (UIC). While she was working on her doctorate, Hamid was working in a tenure track position at NIU. She received her doctorate in 1991. Thereafter, she worked for one year at NIU, one year at Simon Fraser University in British Columbia, and one year at Carnegie Mellon University in Pittsburgh. Thereafter, she received a tenure track position at NIU. She received tenure in 2001.

¶ 5 Kitty further testified that she was 51 years old and was employed as an associate professor of mathematics at NIU. Her annual income was \$56,998. She had a 403(b) retirement account in her own name from Carnegie Mellon with a value of \$31,144 as of April 21, 2010. She and Hamid had a joint Vanguard account with a balance of \$92,680 on April 21, 2010. They also had a joint Fidelity account valued on April 22, 2010 in the amount of \$60,380. Kitty also testified as to the following assets: a Roth IRA in her name worth \$20,987; a 403(b) plan in her name at NIU worth \$204,568; and a joint account at American National Bank with a balance of \$9,342.56.

¶ 6 She and Hamid owned a family home in DeKalb that was appraised on August 10, 2007 for \$238,000 and on January 1, 2009 in the amount of \$210,000. As of December 3, 2009, the outstanding mortgage balance was \$82,217. She moved out of the family home on August 30, 2006,

and had not contributed to the mortgage payments since that time. She currently rented a home from her father for \$1,100 per month. She drove a 1997 Dodge Grand Caravan with a blue book value of \$1,250. Hamid drove a 2006 Dodge Grand Caravan with a blue book value of \$7,300.

¶ 7 Kitty further testified that she had a partnership interest in the Wilsher Partnership, established by her father and mother, Willis and Shirley. Her mother, father, and three sisters also had interests in the partnership. Kitty testified that she did not have any control over the partnership. The 2008 value of her share of the partnership, as a limited partner, was \$329,091 and, as general partner, was \$332.94. She did not have access to those funds. Her father's accountant estimated the tax burden each year on each of the limited partners and sent them each a check, from the partnership, to cover the taxes.

¶ 8 On cross-examination, Kitty testified that she believed she was both a general and limited partner of the Wilsher partnership. She generally was unaware of how the partnership was managed. She acknowledged that her father's interest in the partnership had grown between 2006 and 2008 from 8% to 33%, but she could not explain why. She had never been interested in the details of the Wilsher partnership because it involved the subject of her parents' deaths, which she found to be a painful topic. Her understanding was that it was her father's manner of estate planning so that when he died, his money would be passed to his children and grandchildren rather than to "Uncle Sam." She acknowledged that the estimated fair market value of the partnership in October 2007 was \$2,219,000 and in October 2008 was \$2,449,659.

¶ 9 Kitty testified that her parents' home in Colorado was owned by an irrevocable trust. She and her three sisters owned 50% of the beneficial interest of the trust. She presumed her parents owned the other 50%. Her parents had a life estate in the home. Her understanding was that,

because her parents had a life estate, she could not sell her interest in the home. Based on a telephone conversation with her mother, she believed that when her parents died, her parents' 50% interest would be granted to the four children.

¶ 10 Kitty acknowledged that she was also a beneficiary of an irrevocable life insurance trust. However, if her parents stopped paying the premiums on the life insurance policy then the policy would default. As such, the life insurance trust was, in a way, revocable. Kitty acknowledged that, in an interrogatory, she had indicated that the policy was intended to pay the state inheritance taxes upon her parents' deaths. Kitty also acknowledged that the third page of Hamid's Exhibit No. 38 was a memo written by one of her parents. The memo indicated that "[t]he money from this policy will be used to pay estate taxes."

¶ 11 Wendy Drefahl testified that she was president of WFA Econometrics Corp., a corporation that assisted family law attorneys with the valuation and division of retirement assets in divorce cases. She had a bachelor's degree in business administration. She had worked for WFA since 1991 and had been conducting valuations of retirement assets since 1994. She determined values of SURS pensions about twice a week and was therefore familiar with such valuations. She determined the values of Kitty's and Hamid's SURS pensions. The first step was to determine what each had earned in terms of an individual pension. She gathered this information directly from SURS. Pursuant to SURS, Hamid had a monthly pension benefit of \$4,250 and Kitty had a monthly benefit of \$2,020. These values were as of March 15, 2010, and assumed no further contributions or service credits.

¶ 12 Drefahl further testified that the next step was to determine the present value of each benefit. This was done by taking the accrued monthly benefit and the age at which it was payable and determine the stream of income until an anticipated date of death, based on vital statistics of the

United States. The result was the future value necessary to theoretically fund the benefit. That was then reduced based on the probability that the individual would live until retirement age. That value was further reduced to “present-day terms” by applying the U.S. 20-year constant maturity rate (4.47%). Thereafter, she added in the refund of survivor’s contributions which are refundable if the individual retired as a single individual. The result was an aggregate pre-tax value. She then reduced the figure by 20% for taxes. Based on these calculations, she opined that Kitty’s after tax present value of her pension was \$385,100 and that Hamid’s was \$824,051. The \$824,051 was the amount of money Hamid would need in his pocket so that, if he invested it at current interest rates, he could earn a monthly benefit of \$4,250 starting at age 55 with an annual 3% cost of living adjustment for the rest of his life.

¶ 13 Drefahl testified that Hamid’s value determinations of the pensions were essentially the contributions necessary to reach the monthly benefit amount. She believed that the contributions were not indicative of the present value. The trial court explained that its understanding of her testimony was that if a person purchased an annuity from an insurance company for \$500,000, he might receive a benefit of \$3,000 per month. However, if he walked into SURS with the same amount, he would receive a \$4,250 monthly benefit. Drefahl agreed but added that there is no SURS bank and that her valuations reflected the reality of the business world.

¶ 14 Hamid testified that he was a mathematics professor at NIU since 1986. He became a full professor in 1995. His wages for 2009 were \$100,328. He had earned an extra \$3,000 in January 2010 from a consulting job. However, he did not regularly do such consulting. Hamid testified as to his following accounts: a 403(b) with a balance of \$337,393.91; a Roth IRA with a balance of \$32,386; and a Vanguard money market account with a balance of \$16,548.

¶ 15 Hamid testified that he had a SURS pension. SURS pensions were calculated by one of two formulas: the general formula and the money purchase formula. The general formula was calculated by taking the number of years of service times 2.2% times the average of the four highest yearly salaries. The purchase money formula was calculated by adding the contributions over time, a calculated amount for interest (a standard set interest rate), and a contribution from the State. The result was the pension which was then amortized based on a survival table and actuarial data. Using the purchase money formula, the value on his pension was \$539,571.50, which would yield a monthly payment of \$4,250. Using the same formula indicated that Kitty's pension had a value of \$256,455, resulting in a monthly payment of \$2,020.

¶ 16 Hamid further explained that there are three basic numbers at issue regarding his SURS pension: the present value, the monthly payment, and a conversion factor. SURS provided the present value of his pension and the monthly payment of \$4,250. To arrive at the monthly payment, a conversion factor was used that was contained in an actuarial table used by SURS. Hamid testified that Drefahl used her own conversion factor to reach a value for Hamid's pension. One of the major things affecting the conversion factor was interest rates. Hamid acknowledged that there could be differences of opinion between actuarial people as to proper conversion factors. He was not saying that Drefahl's numbers were erroneous, only that SURS was using a specific conversion factor on which his pension would be based and SURS was the entity providing the pension. SURS changed its table every two to three years. Thus, the \$4,250 could change but the present value of \$539,000 would not change.

¶ 17 On October 7, 2010, the trial court issued an oral ruling. The trial court noted that it considered the arguments of the parties, the relevant statutes, and the relevant case law. The trial

court first addressed issues related to the parties' children. The trial court granted the parties joint custody of the children. The trial court did not designate a residential custodian and found that the parenting schedule that had evolved while the divorce was pending was working, and ordered that it continue. The trial court did not order child support because the parties were spending equal time with the children. The trial court ordered that Hamid pay for medical insurance, uncovered health care expenses, counseling bills, car insurance, cell phone charges, registration fees, school supplies, and extracurricular activities for the children.

¶ 18 The trial court then addressed the distribution of assets. The trial court noted that it considered Kitty's non-marital assets "including the value of trusts, interests in the trusts she has which again does have significant value." The trial court explained that while it considered that Kitty had a present interest in certain trusts, it did not consider potential future inheritances. The trial court also considered that Hamid made approximately 62% of the total family income and would likely continue to earn significantly more than Kitty.

¶ 19 Hamid was awarded the marital home, but was required to pay Kitty for half the equity in the home. Each party was awarded his or her own vehicle. The trial court split the marital accounts 50/50 between the parties. It was undisputed that all the accounts testified to by the parties were marital. With respect to the parties' pensions, the trial court noted that it was difficult to place an actual present value on the parties' pensions. The trial court determined that the fairest way to divide the pensions would be to give each party a portion of the other's pension. Accordingly, the trial court awarded Hamid 70% of his own pension and 30% of Kitty's pension. The trial court awarded Kitty 70% of her own pension and 30% of Hamid's pension. The trial court acknowledged that Hamid was getting a greater portion of the overall SURS pension benefits (57%) and noted that this

was done for two reasons. The first was that Hamid's contributions were greater and the second was that Kitty had significant non-marital assets that would come in to play at her retirement. On November 9, 2010, a written judgment order was entered in conformity with the trial court's oral ruling.

¶ 20 Thereafter, the parties filed posttrial motions. On January 11, 2011, the trial court denied the motions. In her posttrial motion, Kitty had argued that the trial court should have used the offset method of allocating the pensions, rather than the reserved method. The trial court noted that the offset method would have left Hamid with unreasonably few liquid assets while the reserved method left both parties with some liquid assets. In his posttrial motion, Hamid argued that the trial court failed to value Kitty's non-marital assets. The trial court, relying on *In re Marriage of Eddy*, 210 Ill. App. 3d 450 (1991), found that Kitty's present interest in the Wilsher partnership was minimal. The trial court noted that, pursuant to the partnership agreement, Kitty's parents were the controlling partners of the Wilsher partnership and that she would not have any real interest until the death of her parents. Accordingly, the trial court noted that although Kitty's interest in the partnership had some value, it was not necessary to place a specific dollar value to it because it was not a value that would change the court's determination as to the distribution of marital assets. Hamid also argued that the trial court failed to consider that he made a greater contribution to the marital estate. The trial court stated that it did consider Hamid's greater contribution, but it also considered that Hamid had a greater future earning potential. The trial court noted that in awarding Hamid a greater portion of the pensions, it had considered Hamid's greater contributions and Kitty's non-marital assets. Thereafter, Hamid filed a timely notice of appeal.

¶ 21

## II. ANALYSIS



¶ 22 On appeal, Hamid argues that the trial court abused its discretion in failing to place a value on Kitty's non-marital assets and the SURS pensions. Kitty's non-marital assets included the Wilsher partnership and an interest in two irrevocable trusts: an irrevocable life insurance trust and a trust that holds the title to Kitty's parents' home in Colorado. Hamid argues that because the trial court failed to place a specific value on these assets, despite ample evidence of their value, the division of marital assets was not equitable.

¶ 23 A trial court has broad discretion in the division of marital assets, and we will reverse its determination only if it is clear that the trial court has abused its discretion. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 161 (2005). A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court. *In re Marriage of Shafer*, 122 Ill. App. 3d 991, 994 (1984). The Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d) (West 2008)) (Act) requires the trial court to divide marital property in "just proportions considering all relevant factors." In order to apportion marital assets in "just proportions," the proper value of such assets must be established. *Shafer*, 122 Ill. App. 3d at 996. "The trial court need not make specific findings of fact as to the value of the marital assets, so long as the evidence of value in the record is sufficient to enable a court of review to analyze the propriety of the trial court's disposition." *Id.*

¶ 24 Applying these principles in the present case, we cannot say the trial court abused its discretion in dividing the parties' marital assets. The trial court stated that it considered all relevant factors, including Kitty's non-marital assets. The trial court awarded Hamid 57% of the overall value of the parties' pensions and divided the rest of the marital property equally between the parties. The trial court stated that it awarded Hamid a greater portion of the pensions because he made a

greater contribution and because Kitty had non-marital assets. The trial court's division of marital assets was not an abuse of discretion considering the contribution of the parties, the duration of the marriage, the disparity in income, the custodial provisions, and the future earning potential of each party. See 750 ILCS 5/503(d) (West 2008).

¶ 25 In so ruling, we note that the trial court did not err in failing to place a value on the Wilsher Partnership, the irrevocable life insurance trust, or on Kitty's interest in her parent's home in Colorado. In making this determination, we hold that the trial court properly relied on *Eddy*, 210 Ill. App. 3d 450. In *Eddy*, the trial court, in dividing the marital assets, considered that the wife had a non-marital one-half interest in two trusts, which was worth \$1.9 million. *Id.* at 454. The reviewing court held that the trial court erred in concluding that the wife had a current one-half interest in the trusts. *Id.* at 460. The evidence indicated that the wife's father controlled the trust and the wife was only eligible to receive a portion of the trust if her father so directed or if he died intestate. *Id.* The reviewing court concluded:

“Although the circuit court could consider her present interest in the trust, it could not consider her eligibility to receive a portion of the trust because that is an expectancy and not a realization. [Citations.] Potential inheritances, just as expected degrees or licenses, are not property which can be valued and awarded to a spouse, although they can be a given some consideration in determining property distribution. [Citations.] The circuit court therefore erred when it apportioned an eligible interest to [wife] as a current asset.” *Id.*

¶ 26 In the present case, the trial court stated that although it considered Kitty's present interest in her non-marital assets, it did not find that those assets would have a significant affect on the distribution of the marital assets. Under the circumstances in this case, we cannot say that this was

an abuse of discretion. With respect to the Wilsher Partnership, Kitty testified that her parents controlled the partnership. Her father's interest in the partnership had grown between 2006 and 2008 from 8% to 33%. This showed that Kitty's ownership interest, as well as her father's, were subject to change. Although Kitty testified that the 2008 value of her share of the partnership, as a limited partner, was \$329,091, she did not have access to those funds. The only funds she received each year was the amount she needed to pay the taxes on her share of the partnership. The partnership agreement that was admitted into evidence showed that Kitty's parents were the general partners, with a majority in interest, and the managers of the partnership. Pursuant to the section 6.3 of the agreement, the managers had "full, exclusive and complete authority and discretion in the management of the Partnership's business."

¶ 27 With respect to the irrevocable life insurance trust, the evidence indicated that the only asset in the trust was a \$1 million dollar life insurance policy. Kitty and her three sisters were the beneficiaries of the trust. The evidence indicated that if Kitty eventually received any proceeds from the policy through the trust due to her parents' deaths, the proceeds were to be used to pay inheritance taxes. Moreover, pursuant to Kitty's testimony, if her parents stopped paying the premiums on the life insurance policy the policy would "default" and the irrevocable trust would be empty. Accordingly, although the life insurance trust was irrevocable as to its disposition, it was not irrevocable as to whether the life insurance policy would exist, and whether Kitty would actually receive any funds, upon the death of her parents.

¶ 28 The same principle applies to Kitty's interest in the irrevocable trust that owns her parents' home in Colorado. Although the powers of the trustee are not clear from the record, it is possible that the trustee could sell the home before the death of both Kitty's parents. Accordingly, the trust

could be emptied before Kitty realizes any actual interest in her parents' home. Even if the trustee could not sell the home, Kitty testified that her parents had a life estate in the home. Although there was evidence of the present value of the home, the value that the home will have at the time of Kitty's parents' deaths is speculative. Based on the foregoing, the trial court did not err in finding that although Kitty had significant potential future inheritances, the present interest in these non-marital assets was not significant. *See id.* (although a trial court can consider potential inheritances when dividing marital assets, they cannot be valued and awarded to a spouse because they are an expectancy and not a realization).

¶ 29 Hamid argues that *Eddy* is not applicable to this case. First, Hamid argues that *Eddy* is inapplicable because there was conflicting evidence as to Kitty's role in the partnership. We disagree. As stated above, the evidence presented clearly showed that Kitty's parents were the general partners with a majority in capital interest and that they were the managers of the partnership with full control of its business. However, even if the evidence was conflicting, as proposed by Hamid, the trial court is in the best position to resolve conflicts in the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The trial court found that Kitty's parents were the controlling partners of the Wilsher partnership and that she would not have any real interest until the death of her parents.

¶ 30 Hamid also questions the continued vitality of the *Eddy* decision. Hamid argues that Kitty's non-marital assets should be treated like non-vested stock options. Hamid notes that non-vested stock options acquired during a marriage are presumed to be marital property subject to division. 750 ILCS 5/503(b)(3) (West 2008). However, Hamid fails to note that non-vested stock options acquired by gift, legacy or descent are still considered non-marital property. *Id.*; 750 ILCS 5/503(a) (West 2008). Moreover, if a spouse acquires a non-vested stock option through his or her employer,

the spouse has the discretion whether to exercise the option. See *In re Marriage of Peters*, 326 Ill. App. 3d 364, 368 (2001). In the present case, Kitty has no present control over her non-marital assets. Accordingly, we find Hamid's argument unpersuasive.

¶ 31 Hamid's final contention on appeal is that the trial court erred in not determining a specific value for the SURS pensions. There are generally two ways that courts deal with pension benefits in dissolution proceedings: the "total offset" approach or the "reserved-jurisdiction" approach. *Id.* at 370. Under the total-offset approach, the trial court determines the actual value of the pension and then discounts it for the risk that the pension will not vest and then discounts it again to present value. *Id.* The trial court then awards the pension to the employee spouse and gives the non-employee spouse enough other marital assets to offset the marital share of the pension. *Id.* "This approach is best used when there is sufficient actuarial evidence to determine the present value of the pension, when the employee spouse is close to retirement age, and when there is sufficient marital property to allow an offset." *Robinson v. Robinson*, 146 Ill. App. 3d 474, 476 (1986). However, this method may be impractical because of valuation difficulties or because the couple lacks sufficient liquid assets to provide the offsetting property award. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547 (2010).

¶ 32 Under the reserved-jurisdiction approach, the court orders the employee spouse to pay a certain portion of the pension benefits to the former spouse when the pension is disbursed. *Robinson*, 146 Ill. App. 3d at 476. This approach "alleviates the inequities inherent in being unable to determine the present value of the plan benefits." *Id.* This method of distributing pension benefits is more feasible due to the impracticalities of the total-offset approach. *Culp*, 399 Ill. App. 3d at 547.

¶ 33 In the present case, the trial court used the reserved-jurisdiction approach to distribute the parties' pensions. Accordingly, the trial court was not required to determine a specific value for each of the parties' pensions. *Peters*, 326 Ill. App. 3d at 371. The trial court stated that it used the reserved-jurisdiction approach because this method was most fair in light of the difficulty in valuing the parties' pensions. We cannot say that the trial court abused its discretion in using this method. There was a significant difference of opinion as to the present value of the pensions between the parties and the trial court noted that using the total offset approach would have left Hamid with unreasonably few liquid assets. As a result, the reserved-jurisdiction approach was more practical in this case. *Culp*, 399 Ill. App. 3d at 547.

¶ 34 In so ruling, we note that Hamid argues that section 503(b)(2) of the Act requires that "the value of pension benefits in a retirement system subject to the Illinois Pension Code shall be determined in accordance with the valuation procedures established by the retirement system." 750 ILCS 5/503(b)(2) (West 2008). Hamid argues that because the trial court did not determine a present value for the pensions, that it could not divide the pension in "just proportions." We disagree. The trial court's failure to determine a present value for the pensions did not prevent it from dividing the asset in just proportions. Testimony of both parties showed that the present value of Hamid's pension was essentially twice the present value of Kitty's pension. Furthermore, the information provided to the parties by SURS indicated that Hamid's and Kitty's monthly pensions would be \$4,250 and \$2,020, respectively. The trial court awarded Hamid 57% of the overall pension value and awarded Kitty 43% of the overall pension value. The trial court stated that it gave a disproportionately larger share to Hamid because he had contributed more to the overall pension value and because Kitty had non-marital assets. All other marital assets were split 50/50. We cannot

say that this was an abuse of discretion or failed to meet the standard of equitable apportionment as required by the Act (750 ILCS 5/503(d) (West 2008)).

¶ 35

### III. CONCLUSION

¶ 36 For the reasons stated, we affirm the judgment of circuit court of De Kalb County.

¶ 37 Affirmed.