2016 IL App (2d) 150968-U
No. 2-15-0968
Order filed June 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DOMENICA AVELLUTO Di PRIZIO, Petitioner-Appellee, and VITO MARIO Di PRIZIO, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 14-D-790 Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion where it accepted a stipulation by the parties concerning the value of a retirement account.

¶ 2 Respondent, Vito Mario Di Prizio, and petitioner, Domenica Avelluto Di Prizio, divorced on August 20, 2014. The case was bifurcated, with property division to be determined at a later hearing. On August 6, 2015, the circuit court divided respondent's 401(k) retirement account equally between the parties. After entry of judgment, respondent moved to modify the judgment, arguing that the division improperly awarded petitioner a windfall because the value exceeded the account's value on the date of dissolution. The court denied respondent's motion on the

basis that he had stipulated to that amount. Respondent appeals, asking us to reverse and remand the cause with directions to enter judgment equally dividing the value of his 401(k) account as of August 20, 2014. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 20, 2014, the court entered the dissolution judgment and bifurcated the issue of property division, which was later scheduled for trial to commence on July 15, 2015.

¶ 5 On July 15, 2015, the parties appeared for trial. After conferencing, counsel for the parties represented to the court that they had reached an agreement for entry of an order of final judgment and that they wished to "make a few stipulations that underpin or underlie the judgment." The stipulations, as presented by the parties in open court, included:

(1) the issue of dissipation would be considered moot;

(2) "the assets of the parties consist primarily of one asset, which is the 401(k) retirement account of [respondent] which will be - - which is in the amount of approximately $51,000, which will be divided by a QDRO [Qualified Domestic Relations Order], to be entered, hopefully in conjunction with the judgment to be presented, and it will be divided on a 50/50 basis between the parties";

(3) a child support and maintenance arrearage totaled $43,222.31, and a deficiency judgment would be made part of the judgment that would be presented to the court for entry; and

(4) petitioner agreed that she would not initiate or allow the institution of proceedings in her name for enforcement of the child support and maintenance orders that were entered in Italy, and, further, if the Italian courts pursued any enforcement and petitioner received any funds, they would be credited against any amounts owed by virtue

of orders entered in Du Page County and she would indemnify respondent for those amounts.[1]

¶ 6 The court accepted the trial stipulations and agreed to continue trial to July 29, 2015, while the parties prepared the judgment as described.

¶ 7 On July 29, 2015, the parties returned to court and respondent's attorney represented that the case was "up for judgment," but that he had just received the judgment document and he requested time to review it with his client in the hallway. The court attended to other matters on its call while respondent met with counsel. When the case was re-called, petitioner's attorney presented two orders to the court. Respondent's counsel stated "they've got problems," prompting a discussion about a support order and, as to the property judgment order, a modification to the distributor share. Further, respondent objected to the recitation of case history in the judgment order. However, respondent said nothing concerning the amount of the 401(k) account that was to be divided. The trial court requested an electronic version of the judgment document so that it could make revisions as it deemed fit. Petitioner's counsel requested a hearing date for entry of a QDRO, and an August 27, 2015, date was set.

¶ 8 Before the next hearing, the court entered the property judgment. On August 6, 2015, but dated "*nunc pro tunc* July 29, 2015," the trial court entered the judgment, noting that the parties had "stipulated to the facts upon which this Judgment is entered." Specifically, the order provided that the parties had stipulated that the claim for dissipation was moot, that a child support and maintenance arrearage existed in a specified amount, and that "[t]he only marital asset to be considered and distributed consists of the Truegreen 401(k) retirement account of

[1] Petitioner resides in Italy with the parties' children.

[r]espondent held by the Wells Fargo Bank as manager of the Truegreen Retirement and Profit Sharing Plan. The value of the account on June 10, 2015, is stipulated to be $51,485.14."

¶ 9 Respondent moved, on August 18, 2015, to amend the judgment and order. He argued that the judgment erroneously assigned to petitioner one-half of the balance of the 401(k) retirement account as of July 29, 2015, when petitioner was actually entitled to only one-half the value as of August 20, 2014 (the date of dissolution), plus increases in value credited to her share. Further, respondent asserted that, since the date of dissolution, the value of his 401(k) account had increased due to his contributions and those of his employer and that petitioner was not entitled to any increases, additions, or other accruals to the account after the date of dissolution. Respondent requested that the order be amended to state that "[t]he [QDRO] shall assign to the alternate payee [*i.e.*, petitioner] the sum of one-half (1/2) of the vested account balance as of the date of the Judgment Order for Dissolution of Marriage, August 20, 2014, and any increase in value of her share thereafter."

¶ 10 On August 27, 2015, the court reconvened on the issues of the QDRO order and respondent's motion to amend the judgment. Respondent argued that petitioner had no legal right to anything he or his employer added to the 401(k) account after the marriage ended. The court asked why, then, the parties had stipulated to a $51,000 value, an amount reflected in the account after the divorce. Respondent first responded that the parties had made a mutual mistake, one which was not noticed until one week after the judgment was entered. Petitioner disagreed that the mistake was mutual. The court reiterated that the value the parties presented to the court–the *only* value presented–was $51,000. Respondent asserted that the court could simply change the order to state that the value to be divided is the balance as of the date of dissolution, or, alternatively, he could request a hearing to establish the value of the account on

the date of dissolution. Respondent continued that petitioner had no valid claim to anything after the marriage was over. The court interrupted, stating that it did not disagree, "but these are stipulations." Although respondent represented that it was a stipulation based on a mutual mistake and error, petitioner disagreed with the characterization, stating that the court could only enter judgments based on the facts presented and, when present in court, respondent had agreed to that figure. Respondent then conceded that *he* had made an error, but he asserted that the court should correct it.

¶ 11 The court stated that it continued to be troubled by the fact that, if the intent was not to accept the $51,000 figure, why then would the parties have stipulated to a June 2015 value. Respondent responded, again, that it was an error. The court, however, said "What's the error?" The court noted that, based on the *only* information it was given, it could have presumed that $51,000 simply represented the account's increase in value over time, w*ithout* any contributions having been made post-divorce. "That's why people would stipulate to it because it doesn't matter." Respondent objected, noting that the motion to amend the judgment asserted that post-dissolution contributions *had* been made. The court noted "that's new evidence then, isn't it?" Petitioner's counsel agreed, further stating:

> "[Respondent] wants to rewrite the stipulations of the parties. You can't do that simply because he thinks he made a mistake. That's not *the deal*. *The deal* was this is what we stipulate, and that was what was presented to the Court, those were the facts on which you entered your judgment. That was appropriate under the circumstances.
>
> You can't take a unilateral mistake and try to make it into a mutual mistake or a mistake on the part of the Court, when in fact they stipulated to it, they agreed to it, they

presented it to you, and now he's coming in and trying to change *a deal*. That doesn't work." (Emphasis added.)

¶ 12 Respondent argued again that petitioner simply had no right to the money and that the QDRO could be amended to award petitioner any accruals to her share, divided as of August 2014:

"COURT: All right. So if [petitioner] amended it like you asked, then what happens to the stipulation?

RESPONDENT: The stipulation gets nullified.

COURT: That the value was [$]51,000 –

RESPONDENT: The stipulation gets nullified. The stipulation was not necessary for division anyway.

PETITIONER: *Yes, it was*." (Emphasis added.)

¶ 13 The court denied respondent's motion. The court found that there was no mutual mistake of fact, that the parties stipulated to the 401(k) value as of June 2015, and that the court had then ordered the stipulated amount divided. Respondent appeals.

¶ 14 II. ANALYSIS

¶ 15 Respondent argues on appeal that the court committed error where it awarded petitioner one-half the balance of the 401(k) account 11 months after the dissolution date and after the account had increased due to the contributions of respondent and his employer. Respondent relies on *In re Marriage of Mathis*, 2012 IL 113496, ¶ 30, to argue that the date for valuation of marital property must be the date on which the court enters the dissolution judgment. Accordingly, respondent argues that petitioner had no legal right to any value in the account that accrued after the dissolution, that the trial court had "no basis" for selecting a date 11 months

after the dissolution, or for awarding "the post-judgment contributions" of respondent and his employer to petitioner. Respondent argues that he never agreed or stipulated to division of post-dissolution increases in his 401(k) and that he never agreed to the figure $51,485.14, as provided in the judgment.

¶ 16 We first establish the appropriate standard of review. Respondent asserts that *de novo* review is appropriate where the issue on appeal is limited to the application of law to undisputed facts. See, *e.g., Mid America Bank, FSB v. Charter One Bank, FSB,* 232 Ill. 2d 560 (2009). While this is an accurate legal proposition, it does not accurately address the issue before us. Here, the court made and accepted factual findings that formed the basis of its property division. Factual findings concerning the value of marital assets are reviewed under the manifest-weight-of-the-evidence standard. See *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). The court accepted the parties' stipulation, a decision reviewed for an abuse of discretion. *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1163 (2007). Further, the court's property division is also reviewed for an abuse of discretion (*In re Marriage of Shafer*, 122 Ill. App. 3d 991, 994 (1984)), as is the court's ruling on a section 2-1203 (735 ILCS 5/2-1203 (West 2014)) motion to amend the judgment (*In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414 (1993)).

¶ 17 Given the applicable standards of review, we reject respondent's arguments. Without question, generally speaking, "in a bifurcated dissolution proceeding, the date of valuation for marital property is the date the court enters judgment for dissolution following a trial on grounds for dissolution (see 750 ILCS 5/401(b) (West 2010)) or another date near it." *Mathis*, 2012 IL 113496, ¶ 30. However, contrary to the facts in *Mathis*, the parties here, rather than the trial court, determined the value of the marital property as part of a series of stipulations. As such, the court here did not simply use the wrong date for valuation; rather, it accepted the *stipulation*

of the parties that the only marital asset, the 401(k), had a certain value and that the value would be divided equally. That stipulation was one of multiple stipulations presented to the court instead of proceeding with a trial. For example, the parties also informed the court that they agreed that any dissipation claims would be considered moot. They agreed to a specified child support and maintenance arrearage amount. They agreed that petitioner would not initiate or allow the institution of proceedings in her name for enforcement of the child support and maintenance orders that were entered in Italy and, further, if the Italian courts pursued any enforcement and petitioner received any funds, they would be given as a credit against any amounts owed by virtue of orders entered in Du Page County and she would indemnify respondent for those amounts. The stipulation concerning the 401(k) was part and parcel of the overall agreements that formed the underlying judgment, which petitioner referred to as "the deal." Therefore, when the parties appeared for trial and recounted a series of stipulations that, together, supported entry of a judgment, the court's finding that the amount of the asset to be divided was that to which the parties stipulated simply cannot be found to be an abuse of discretion or contrary to the manifest weight of the evidence.

¶ 18 We note that parties are free to stipulate and waive rights; such agreements are encouraged by our legislature and are binding on the court. See 750 ILCS 5/502(a) (West 2014)); see also *Tantiwongse*, 371 Ill. App. 3d at 1163 ("Illinois courts favor stipulations that are designed to simplify, shorten, or settle litigation and save costs for the parties"). Further, "[a] court may reject an otherwise valid stipulation only if it is fraudulent, unreasonable, or in violation of public policy," and parties will not be relieved from a stipulation absent a "clear showing that the matter stipulated to is untrue, and then only when an objection is seasonably made." *Id.*

¶ 19 Here, respondent asserts that he did not stipulate to the amount entered by the order. This assertion is belied by the record or, at the very least, there is no clear showing that the amount stipulated to was untrue. The record reflects that respondent stipulated to the $51,000 figure on July 15, 2015. On July 29, 2015, he appeared in court to review the proposed judgment, and he was provided time to consult with counsel before proceedings continued. After consultation, respondent's counsel proclaimed that there were issues with the judgment, but the 401(k) account's value was not one of the issues raised. Later, in fact, respondent acknowledged that a stipulation to that amount was made, but he asserted it was a mistake. The court, however, simply did not accept this unsupported representation, noting that it had not been provided with any evidence that contributions were made to the account after the dissolution. Respondent asserts that documents in the record contain a statement showing the ending balance of the account on June 30, 2014, was $41,552.61. The statement he references was purportedly admitted into the record in November 2014. However, it was not presented or referenced by respondent during any of the 2015 proceedings at issue, nor does its existence necessarily alter the parties' subsequent decision to stipulate to a higher balance as part of "the deal." Accordingly, the court did not receive evidence that the stipulation was the result of fraud, that it was unreasonable (in fact, the court was not even informed in the motion to amend the judgment or in argument as to the *amount* by which the account allegedly grew due to post-dissolution contributions), or that it violated public policy, such that rejecting the stipulation would be warranted. In short, the trial court did not err, and we reject respondent's arguments.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 22 Affirmed.