NO. 4-10-0412 Order Filed 2/28/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	) Appeal from
ALAN L. KREMITZKI,	) Circuit Court of
Petitioner-Appellant,	) Sangamon County
and	) No. 03D62
MARY LYNN KREMITZKI,	)
Respondent-Appellee.	) Honorable
	) Steven H. Nardulli,
	) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Steigmann and McCullough concurred in the judgment.

ORDER

Held: The trial court properly found untimely the petitioner's February 2009 request to modify the June 2003 judgment of dissolution of marriage and a related order. Petitioner's authority does not support his claim the trial court maintained jurisdiction to modify the orders, and the revestment-of-jurisdiction doctrine does not apply.

Petitioner, Alan L. Kremitzki, appeals the order denying his February 2009 petition to modify the June 2003 dissolution-of-marriage judgment and a related order. Alan argues the trial court improperly found his petition was time barred and it lacked authority to order a federal agency to modify its provision of funds to respondent, Mary Lynn Kremitzki. We affirm.

I. BACKGROUND

In 2003, Alan, age 51, and Mary Lynn divorced after

approximately 30 years of marriage. During the marriage, Alan worked for the Illinois Army and Air National Guard (Illinois National Guard), earning benefits through the Federal Employees Retirement System (FERS). As part of the property disposition, Mary Lynn was awarded "50% of all benefits" Alan accrued through FERS "payable at age 55 or retirement." According to the June 30, 2003, dissolution judgment, these benefits "shall NOT be considered as maintenance, as it is the division of the property rights (pensions) as described herein." To effectuate this distribution, the trial court entered an order directing FERS accordingly (FERS order).

In the FERS order, also dated June 30, 2003, the trial court ordered the Office of Personnel Management (OPM), a federal agency, to distribute to Mary Lynn her share of Alan's FERS benefits. The court also reserved jurisdiction "to amend or modify the provisions of this order:"

> "A. This court reserves jurisdiction to amend or modify the provisions of this order in light of comments received from (I) OPM, [or] (ii) a court of competent jurisdiction ***.
>
> B. This court also reserves jurisdiction to amend or modify the provisions of this order *** to terminate or suspend the

> payment of benefits to the Former Spouse as a result of attainment of a certain age, emancipation, change of custody, or other events justifying a change in payments, or to modify this order to deal with any unforeseen tax consequences or other effects of this order."

In August 2006, Alan was diagnosed with obstructive sleep apnea. As a result, Alan was honorably discharged from the Illinois National Guard and, in February 2007, his employment as senior master sergeant was terminated.

In April 2007, Alan began receiving "disability retirement" benefits through FERS. His gross annuity benefit was $2,975. According to a FERS pamphlet, entitled "Information for Disability Annuitants," Alan was to receive disability retirement until age 62, when he would receive his full retirement benefits.

In April 2008, OPM granted Mary Lynn's application for a court-awarded portion of Alan's FERS benefits. Because Alan continued working for the federal government after his divorce and the property disposition, OPM calculated Mary Lynn's share to be approximately 42%. To compensate Mary Lynn for the payments she should have been receiving since April 2007, OPM determined it would collect the overpayment from Alan in 60 monthly installments. At this time, Alan's gross annuity benefit was reduced to $1,983 per month.

Alan, in February 2009, filed a petition to modify the dissolution judgment and find Mary Lynn was not entitled to share in his disability benefits. Alan argued neither the dissolution judgment nor the FERS order contemplated Alan's "receipt of special disability benefits." Alan also emphasized the dissolution judgment also awarded Mary Lynn $400 per month in maintenance and such award was based on his working income, which was nearly twice his disability income. We note maintenance is not at issue on this appeal, as the record establishes Mary Lynn returned the maintenance she received backdated to the time the FERS annuity payments to Alan began.

In April 2010, the trial court dismissed Alan's petition to modify. The court held the following, in part:

> "Neither the original judgment nor the June 6, 2007 Order is ambiguous in any respect. This court is not in a position to interpret or override [OPM's] interpretation of their rules as applied to an Order which is intended to distribute retirement benefits which they administer.
>
> Finally, the Motion to Modify is time barred. This court's 'continuing jurisdiction' over the enforcement of the June 6, 2007 Order does not extend to the authority

to modify the Order."

This appeal followed.

II. ANALYSIS

Alan first argues the trial court erred in ruling his motion to modify is time barred. Alan maintains the court had jurisdiction under two theories. First, Alan contends the court reserved jurisdiction within the FERS order to modify the award under a change in circumstances. Second, Alan maintains the revestment-of-jurisdiction doctrine applies as Mary Lynn participated for months without objecting on jurisdictional grounds.

Section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(b) (West 2008)) sets forth the jurisdictional prerequisites for the modification of property dispositions. According to section 510(b), property-disposition provisions "may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State." 750 ILCS 5/510(b) (West 2008).

Nearly six years separate the judgment sought to be modified and the petition to modify. Alan concedes section 2-1203(a), which allows a party 30 days after a judgment's entry to seek modification of that judgment (735 ILCS 5/2-1203(a) (West 2008)), and section 2-1401 of the Civil Practice Act (735 ILCS 5/2-1401 (West 2008)), which allows a party to seek relief from a

judgment within 2 years, do not apply.

Alan argues, however, the trial court reserved jurisdiction in its FERS order. In the FERS order, the court stated it "reserves jurisdiction to amend or modify" the order given OPM's or another court's comments and "to deal with any unforeseen tax consequences or other effects of this order." Alan maintains his situation falls within this reservation of jurisdiction. In making this argument, Alan cites three cases: *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 925 N.E.2d 253 (2010); *Director of Insurance v. A&A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 891 N.E.2d 500 (2008); and *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 536 N.E.2d 778 (1989).

Mary Lynn contends the trial court lacks jurisdiction and the FERS order's reservation of jurisdiction does not apply. Mary Lynn emphasizes the absence of such language from the dissolution judgment as well as the language in section 510(b).

Alan's argument fails. None of Alan's cited cases establishes a trial court may negate the finality granted by section 510(b) by simply stating it may do so. None are marriage-dissolution cases and thus none involve the application of section 510(b). At best, Alan's cases establish trial courts' jurisdiction may extend to *enforce* their judgments--something Alan did not ask the trial court to do. See *Block 418*, 398 Ill.

App. 3d at 589, 925 N.E.2d at 256; *A&A Midwest Rebuilders*, 383 Ill. App. 3d at 723, 891 N.E.2d at 502-03; *Brigando*, 180 Ill. App. 3d at 1020, 536 N.E.2d at 781-82. Alan has not established section 510(b) grants the trial court jurisdiction on this ground.

Next, Alan maintains the trial court has jurisdiction under the revestment-of-jurisdiction doctrine. Alan emphasizes the fact the petition to modify was filed in February 2009 and Mary Lynn actively participated without objection for approximately 10 months. Alan highlights Mary Lynn attended multiple case-management conferences and even filed a response to the petition without raising an objection. Alan, relying on *In re Marriage of Wharrie*, 182 Ill. App. 3d 434, 538 N.E.2d 183 (1983), argues, under these circumstances, jurisdiction had revested in the trial court.

Under the doctrine, a court is revested with jurisdiction when the parties participate actively in proceedings that are inconsistent with the prior judgment's merits. *In re Marriage of Miller*, 363 Ill. App. 3d 906, 914, 845 N.E.2d 105, 112 (2006). In describing the second element, our supreme court stated "all further proceedings upon the merits of a previously dismissed action are inconsistent with a prior order dismissing the action, it follows that any further proceeding upon the merits of a cause operates to nullify the order of dismissal."

Ridgely v. Central Pipe Line Co., 409 Ill. 46, 50, 97 N.E.2d 817, 821 (1951).

The record establishes Alan cannot establish the second element: the proceedings are inconsistent with the merits of the prior judgment. From her initial response, Mary Lynn maintained the original judgment should not be modified. Her participation did not concern the merits or amount to ignoring the judgment to retry the case. In fact, Mary Lynn's conduct is consistent with the merits of the final judgment, by opposing Alan's attempt to modify it.

Our decision is consistent with our supreme court's decision in *Sears v. Sears*, 85 Ill. 2d 253, 422 N.E.2d 610 (1981). In *Sears*, the husband moved to reopen a judgment based on the argument he was not aware of a proceeding. See *Sears*, 85 Ill. 2d at 256, 422 N.E.2d at 611. The wife opposed the motion at a hearing, and the husband maintained her opposition amounted to a revestment of jurisdiction. See *Sears*, 85 Ill. 2d at 260, 422 N.E.2d at 613. Focusing on the second element, the *Sears* court found the doctrine did not apply:

> "The hearing on [the ex-husband's] motion did not concern the merits of the judgment; the participants did not ignore the judgment and start to retry the case, thereby implying by their conduct their consent to having the

> judgment set aside. On the contrary, the hearing was about whether the judgment should be set aside; and [the ex-wife] insisted it should not. Nothing in the proceeding was inconsistent with the judgment. Nothing in [the ex-wife's] conduct voluntarily waived her judgment or estopped her to assert it. The old judgment was never touched, and no new one was entered." *Sears*, 85 Ill. 2d at 260, 422 N.E.2d at 613.

Wharrie, Alan's case, is distinguishable. In *Wharrie*, 182 Ill. App. 3d at 435, 538 N.E.2d at 183, the Third District heard a dispute over which party should receive the tax deduction for the children when the dissolution-of-marriage judgment did not mention it. The husband petitioned to be awarded the deduction, and the wife opposed it without objection. *Wharrie*, 182 Ill. App. 3d at 435, 538 N.E.2d at 183-84. The *Wharrie* court concluded such action amounted to proceedings inconsistent with the merits of the judgment. *Wharrie*, 182 Ill. App. 3d at 436, 538 N.E.2d at 184. Here, in contrast, Mary Lynn's participation is not interpreted as an attempt to rewrite or add to the terms of the dissolution judgment. From the start, she asked that the original judgment stand.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.