2012 IL App (4th) 120348-U

NO. 4-12-0348

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 30, 2012
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of	)	Appeal from
TIMOTHY GRUBBS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
and	)	No. 03D916
SHERYL GRUBBS, n/k/a SHERYL BERENDES,	)	
Respondent-Appellant.	)	Honorable
	)	Steven H. Nardulli,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court was correct to deny respondent's motion to amend a qualified Illinois domestic-relations order (QILDRO), and to decline to hear any testimony in support of the proposed amendment, because (1) the parol evidence rule barred the testimony and (2) section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(b) (West 2010)) forbade any modification of the QILDRO absent compliance with the requirements in section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)) for reopening a judgment.

¶ 2 Respondent, Sheryl Grubbs now known as Sheryl Berendes, appeals from the trial court's denial of her motion to amend a qualified Illinois domestic-relations order (QILDRO). She contends that not only did the court err by declining to amend the QILDRO, but it violated her right to due process by declining to hear any testimony in support of the proposed amendment.

¶ 3 The petitioner is Timothy Grubbs, and the appellee's brief informs us that petitioner died during the pendency of this appeal. The appeal does not abate, since the cause of action is

considered to have merged in the judgment. See *Tunnell v. Edwardsville Intelligencer, Inc.*, 43 Ill. 2d 239, 242 (1969).

¶ 4 We agree with the trial court. Because the judgment of dissolution and the QILDRO are fully integrated and devoid of ambiguity, the parol evidence rule barred any extrinsic evidence of their meaning. Also, the allocation of petitioner's pension was a disposition of marital property, and section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(b) (West 2010)) provides: "The provisions as to property disposition 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." The court found no such conditions and was not asked to find them. Therefore, we affirm the trial court's judgment.

¶ 5 I. BACKGROUND

¶ 6 The parties married on May 10, 1986, and on January 21, 2004, the trial court entered a judgment dissolving their marriage. Both parties signed the judgment of dissolution, signifying that they "approved" it not only as to "form" but also as to "content." (Capitalization omitted.)

¶ 7 Paragraph J of the judgment of dissolution provided as follows:

> "J. Respondent is granted one-half of the Petitioner's retirement benefits accumulated during the marriage pursuant to a QILDRO order [(qualified Illinois domestic-relations order)], her share being $708.39 per month. That other than as provided above, each party is granted their own accounts in their own names including any checking, savings, or any other accounts each may have."

Contemporaneously with the judgment of dissolution, the court entered a QILDRO, which, in

paragraphs 3(i) and 6, provided as follows:

> "(3) The Retirement System [(the State Employees' Retirement System of Illinois (SERS))] shall pay the indicated amounts of the following specified benefits to the alternate payee [(respondent)] under the following terms and conditions:
>
> (i) Of the member's [(petitioner's)] retirement benefit, $708.39 per month, beginning upon retirement ***; otherwise on the date the retirement benefit commences; and ending upon the termination of the retirement benefit or the death of the alternate payee, whichever occurs first.
>
> * * *
>
> (6) The Court retains jurisdiction to modify this Order."

¶ 8 Before going further, we should be clear what a QILDRO is and distinguish it from a similar abbreviation, QDRO. A "qualified domestic-relations order," abbreviated as "QDRO," is "[a] state-court order or judgment that relates to alimony, child support, or some other state domestic relation matter and that (1) recognizes or provides for an alternate payee's right to receive all or part of any benefits due to a participant under a pension, profit-sharing, or other retirement benefit plan, (2) otherwise satisfies the provisions of section 414 of the Internal Revenue Code [(26 U.S.C. § 414)], and (3) is exempt from the ERISA rule prohibiting the assignment of plan benefits." Black's Law Dictionary 1254 (7th ed. 1999). Whereas a QDRO is designed to satisfy federal law, a QILDRO, a qualified *Illinois* domestic-relations order, is designed to satisfy Illinois law. A

QILDRO is "an Illinois court order that creates or recognizes the existence of an alternate payee's right to receive all or a portion of a member's accrued benefits in a retirement system, is issued pursuant to [section 1-119 of the Illinois Pension Code (40 ILCS 5/1-119 (West 2010))] and Section 503(b)(2) of the Illinois Marriage and Dissolution of Marriage Act [(750 ILCS 5/503(b)(2) (West 2010))], and meets the requirements of [section 1-119 of the Illinois Pension Code]. 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 [(26 U.S.C. § 414(p))]." 40 ILCS 5/1-119(a)(6) (West 2010).

¶ 9 When the trial court in this case entered the judgment of dissolution and the QILDRO, petitioner was employed by the state of Illinois, and, as the QILDRO says, he had a pension account at SERS. While the QILDRO dictated that respondent would receive $708.39 of petitioner's monthly pension benefits from SERS when petitioner retired or when the benefits otherwise began to be paid out, it said nothing about any lump-sum death benefit from SERS. Indeed, under statutory law at the time, it was forbidden for a QILDRO to allocate a death benefit: when the parties and the court signed the judgment of dissolution in January 2004, section 1-119(b)(4) of the Illinois Pension Code (40 ILCS 5/1-119(b)(4) (West 2004)) said: "A QILDRO shall not apply to or affect the payment of any survivor's benefit, death benefit, disability benefit, life insurance benefit, or health insurance benefit."

¶ 10 Later, the legislature amended section 1-119 so as to allow a QILDRO to allocate a death benefit. Public Act 94-657 (Pub. Act 94-657 § 5 (eff. July 1, 2006) (2005 Ill. Laws 4848, 4850) (amending 40 ILCS 5/1-119(b)(4) (West 2008))) deleted the term "death benefit" from subsection (b)(4). Also, Public Act 94-657 amended the fill-in-the-blank QILDRO form in section 1-119 by adding language whereby a portion of the death benefit could be allocated to an alternate

payee. Pub. Act 94-657 § 5 (eff. July 2, 2006) (2005 Ill. Laws 4848, 4860) (amending 40 ILCS 5/1-119(n) (West 2008)).

¶ 11 On November 10, 2011, in view of Public Act 94-657, respondent moved to amend the QILDRO, entered on January 21, 2004, so as to allocate to herself one-half of the death benefit provided by petitioner's state retirement plan. She included, with her motion, a proposed amended QILDRO. She argued that this amended QILDRO was necessary to effectuate the parties' intention, expressed in paragraph J of the judgment of dissolution, that she be "granted one-half of the Petitioner's retirement benefits accumulated during the marriage." The death benefit, she reasoned, was one of petitioner's retirement benefits, and unless she received one-half of the death benefit (as well as $708.39 per month of the periodic benefits, as provided in the original QILDRO), she would not actually receive one-half of his retirement benefits.

¶ 12 On December 19, 2011, the trial court held a hearing on respondent's motion to modify the QILDRO. According to a stipulated bystander's report, respondent's attorney requested to present evidence at that time, but the court denied the request. Instead, the court heard arguments, after which the court denied respondent's motion to modify the QILDRO.

¶ 13 On January 20, 2012, respondent filed a motion for reconsideration, again asking the trial court to enter an amended QILDRO allocating to her one-half of the death benefit from petitioner's state retirement plan. She argued that, in the original QILDRO, the court expressly retained jurisdiction to modify the QILDRO and that, according to paragraph (5)(C) of the model QILDRO in section 1-119(n-5) (40 ILCS 5/1-119(n-5) (West 2010)) and according to *In re Marriage of Culp*, 399 Ill. App. 3d 542 (2010), the court had authority to enter an amended QILDRO clarifying the parties' intent. This clarification purportedly would be accomplished by granting respondent one-

half of the death benefit from SERS.

¶ 14 On February 20, 2012, petitioner filed a response to the motion for reconsideration. He observed that, in 2004, when the trial court entered the QILDRO, statutory law specifically excluded death benefits from a QILDRO; that the QILDRO was in the standard form acceptable in the state; and that respondent had alleged no fraud in the entry of the QILDRO. He argued that *Culp* was inapposite because the trial court in that case had reserved jurisdiction to enter a QILDRO for the first time, not to amend a preexisting QILDRO, as in the present case.

¶ 15 On March 12, 2012, in response to the motion for reconsideration, the trial court entered an order again declining to amend the QILDRO. The trial court observed that, in *Culp*, the appellate court held merely that "the trial court retained jurisdiction over a QIlDRO [*sic*] in order to effectuate the stated intention of the original judgment." Likewise, paragraph 5(C) of the model QILDRO in section 1-119(n-5) provided merely that the court "[r]etained jurisdiction *** [t]o enter supplemental orders to clarify the intent of the parties or the Court regarding the benefits allocated herein in accordance with the parties' Agreement or Judgment." In the present case, the court reasoned, the parties could not have intended respondent to receive a "surviving spouse death benefit," because "one did not exist to grant." The court regarded the original QILDRO as clear and in no need of clarification: respondent was "to receive exactly what she bargained for, the sum of $708.39 per month." Changing the QILDRO so as to additionally grant respondent one-half of the death benefit would have deprived petitioner of part of the benefit of his bargain. The court explained:

> "[T]o change the survivor death benefits provision of the QilDRO [*sic*] at that time may have significant impact on Mr.

> Grubbs['s] estate planning for others, including the children of this marriage. The subject of survivor benefits is a significant one, and may have generated separate negotiations and compromises if it had been available to negotiate at the time of dissolution."

¶ 16 As for the provision in the QILDRO that "[t]he Court retain[ed] jurisdiction to modify this Order," the trial court interpreted that provision to contemplate modifications only for the purpose of clarifying the intentions of the parties or the court. The court disagreed that this provision "creat[ed] a form of continuing jurisdiction to change the clear terms of an existing order." The court remarked: "This court may not negate the finality of a judgment granted by Section 510(b) [of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(b) (West 2010))] simply by stating that it may do so." Hence, the court adhered to its original decision, denying the relief that respondent requested in her motion for reconsideration.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Respondent's Contention That the Trial Court Violated Her Right to Procedural Due Process

¶ 20 Respondent points out that because pension interests a spouse earned during the marriage are marital property (*In re Marriage of Norfleet*, 243 Ill. App. 3d 925, 931 (1993)), the due process clause (Ill. Const. 1970, art. I, § 2) forbade the trial court to deprive her of her full one-half share of this marital property without first according her the due process of law. A fundamental requirement of due process is the opportunity to be heard. *In re Marriage of Houston*, 150 Ill. App. 3d 608, 611-12 (1986). Respondent complains that, instead of hearing evidence, as she requested

the court to do, the court assumed, without any evidentiary basis, that a "surviving spouse death benefit" "did not exist to grant." Respondent argues that "[h]ad the Trial Court allowed [her] due-process rights to a full evidentiary hearing," "the parties could have offered testimony as to their understanding of the Judgment for Dissolution and rights to the marital pension."

¶ 21 To be clear, though, the trial court did *hear* respondent on her proposed amendment of the QILDRO; the court heard her twice. The first hearing was on December 19, 2011, when, after arguments by the parties, the court denied respondent's motion to amend the QILDRO. The second hearing was on March 7, 2012, on respondent's motion for reconsideration. After hearing arguments again, the court reaffirmed its decision that the requested amendment of the QILDRO was legally impermissible. A "hearing" is "a judicial examination of the issues between the parties, *whether of law or of fact*." (Emphasis added.) *Anthony v. Gilbrath*, 396 Ill. 125, 128 (1947). "A 'hearing' does not necessarily imply that evidence must be heard." *People v. Cesarz*, 44 Ill. 2d 180, 185 (1969). If the issue is one of law and if, under the controlling law, new evidence would be superfluous or inadmissible, a constitutionally adequate hearing can occur without the presentation of new evidence.

¶ 22 Extrinsic evidence—that is, evidence extrinsic to the judgment—is admissible to supplement or explain the judgment only in the circumstances in which extrinsic evidence would be admissible to supplement or explain a written contract. *Zimmerman v. Illinois Farmers Insurance Co.*, 317 Ill. App. 3d 360, 369 (2000); *In re Marriage of Druss*, 226 Ill. App. 3d 470, 475-76 (1992). According to the parol evidence rule, there are only two such circumstances: when the instrument is incomplete or ambiguous. *Zimmerman*, 317 Ill. App. 3d at 369; *Druss*, 226 Ill. App. 3d at 476. We decide *de novo* whether the judgment or contract is incomplete or ambiguous. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 661 (2007); *In re Marriage of Gowdy*,

352 Ill. App. 3d 301, 304 (2004); *Geoquest Productions, Ltd. v. Embassy Home Entertainment*, 229 Ill. App. 3d 41, 45 (1992).

¶ 23 The threshold question, for purposes of the parol evidence rule, is whether the judgment of dissolution is "integrated": does it appear to be a final and complete expression of the trial court's judgment as to the petitioner's pension benefits? See *J & B Steel Contractors, Inc. v. C. Iber & Sons, Inc.*, 246 Ill. App. 3d 523, 528 (1993). (We will refer to the judgment of dissolution as simply a judgment, although it is more than that: it also is a settlement agreement and, as such, a contract. As we have explained, the parol evidence rule does not differentiate between a judgment order and a written contract.) Again, paragraph J of the judgment of dissolution reads as follows:

> "J. That the Respondent is granted one-half of the Petitioner's retirement benefits accumulated during the marriage pursuant to an [*sic*] QILDRO order, her share being $708.39 per month. That other than as provided above, each party is granted their own accounts in their own names including any checking, savings, or any other accounts each may have."

With the addition of the QILDRO, which the court executed at the same time it executed the judgment of dissolution, the judgment appears to be integrated. See Restatement (Second) of Contracts § 209(1), at 115 (1981) ("An integrated agreement is a writing *or writings* constituting a final expression of one or more terms of an agreement." (Emphasis added.)). Paragraph J says that, "other than provided above, each party is granted their own accounts in their own names." The term "account" includes petitioner's account with SERS. See *Board of Trustees of Teachers' Retirement System of Illinois v. West*, 395 Ill. App. 3d 1028, 1029 (2009) ("SERS informed defendant it received

his payment and credited his SERS account with the appropriate eight months' service credit."); *Griffin v. Dillinger*, 117 Ill. App. 3d 213, 214 (1983) ("This is an appeal by intervenor, the State Employees' Retirement System (Retirement System) from an order of the circuit court denying it a lien for retirement account contributions and disability payments made on behalf of [the] plaintiff ***."). Other than the payment of $708.39 per month to respondent, commencing at petitioner's retirement, petitioner is granted his account at SERS—meaning that the court did not intend any further, unexpressed allocation to respondent out of petitioner's retirement account. The judgment of dissolution and the original QILDRO appear to be an integrated expression of the court's decision as to the allocation of petitioner's retirement benefits. See Restatement (Second) of Contracts § 209(1), at 115 (1981).

¶ 24 The next question is whether the judgment of dissolution is ambiguous. An instrument is ambiguous if it could reasonably be understood in more than one sense. *Druss*, 226 Ill. App. 3d at 476. The judgment of dissolution and the QILDRO can reasonably be understood in only one sense. Together, they mean: (1) respondent is granted one-half of petitioner's retirement benefits; (2) respondent's one-half share is $708.39 per month, beginning at petitioner's retirement and ending upon the termination of the retirement benefit or respondent's death, whichever occurs first; and (3) the account at SERS otherwise belongs exclusively to petitioner.

¶ 25 Respondent might argue, however, that the judgment of dissolution is indeed ambiguous in that, on the one hand, it "grant[s] [her] one-half of the Petitioner's retirement benefits accumulated during the marriage" but, on the other hand, it grants her only $708.39 per month out of petitioner's periodic retirement benefits, saying nothing about the nonperiodic lump-sum death benefit—which *is* one of petitioner's "retirement benefits." See 40 ILCS 5/1-119(a)(8) (West 2004)

(defining " '[r]etirement benefit' " as "any periodic or nonperiodic benefit payable to a retired member based on age or service, or on the amounts accumulated to the credit of the member for retirement purposes").

¶ 26 Nevertheless, in the stipulated judgment of dissolution, the parties agreed, and the trial court accordingly found, that respondent's one-half share of petitioner's retirement benefits was $708.30 per month. Paragraph J of the judgment of dissolution states "[t]hat the Respondent is granted one-half of the Petitioner's retirement benefits accumulated during the marriage pursuant to an [*sic*] QILDRO order, *her share*"—that is, her one-half share—"*being* $708.39 per month," with the rest of the "account" belonging exclusively to petitioner. (Emphasis added.) That $708.39 per month is actually less than a one-half share is, at this point, irrelevant. The factual inaccuracy of a judgment does not make the judgment ambiguous. A judgment can be crystal clear in its factual incorrectness.

¶ 27 In summary, then, we disagree with respondent that, by declining to hear any evidence extrinsic to the stipulated judgment, the trial court denied her due process. The court heard her arguments, and we are aware of no case holding that the parol evidence rule violates due process. See *Federal Deposit Insurance Corp. v. State Bank of Virden*, 893 F.2d 139, 144 (7th Cir. 1990) ("The Due Process Clause is not an exception to the parol evidence rule."). Because the judgment of dissolution and QILDRO were neither incomplete nor ambiguous, the parol evidence rule barred the extrinsic evidence that respondent sought to present, and the hearing that the court provided, which excluded this inadmissible evidence, was "an orderly proceeding" that was "fundamentally fair to respondent." *In re Marriage of Korte*, 193 Ill. App. 3d 243, 247 (1990).

¶ 28 B. The Inconsequence of the Amendment to Section 1-119 of the Illinois Pension Code

¶ 29 Respondent argues: "The Trial Court erred in denying [her] Petition to Modify QILDRO by failing to follow the continuing jurisdiction provisions of the Illinois Pension Code, as well as the amendments to the Illinois Pension Code that allow for allocation of death benefits between the parties." It is true that, when the trial court executed the judgment of dissolution and the QILDRO in 2004, section 1-119(b)(4) of the Illinois Pension Code (40 ILCS 5/1-119(b)(4) (West 2004)) said that a QILDRO should not apply to or affect the payment of a death benefit, whereas a statutory amendment in 2006 (40 ILCS 5/1-119(b)(4) (West 2008)) deleted that prohibition. This statutory amendment arguably was a substantial change in circumstances.

¶ 30 Nevertheless, section 510(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(b) (West 2010)) plainly says that "[t]he provisions as to property disposition 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." The allocation of petitioner's retirement benefits was a "property disposition." See *In re Marriage of Lipkin*, 163 Ill. App. 3d 1033, 1038 (1987). "Whether a substantial change in circumstances occurred is irrelevant when the property being modified is in the nature of a property disposition." *In re Marriage of Pitts*, 169 Ill. App. 3d 200, 209 (1988). Section 510(b) makes the property disposition final when the time for appeal has passed, only to be overturned in a collateral proceeding pursuant to section 2-1401 of the Code of Civil Procedure (Ill. Rev. Stat. 1985, ch. 110, ¶ 2-1401 now 735 ILCS 5/2-1401 (West 2010)). *Lipkin*, 163 Ill. App. 3d at 1039.

¶ 31 Granted, the amendment of section 1-119 of the Illinois Pension Code contemplates

the possible entry of "supplemental orders to clarify the intent of the parties or the Court regarding the benefits allocated herein[.]" 40 ILCS 5/1-119(n-5) (West 2010). But a clarification of a judgment is not a modification of the judgment; rather, a clarification makes clearer what has already been ordered. Respondent's proposed amended QILDRO is a modification, not a clarification.

¶ 32 Two cases that respondent cites, *Culp*, 399 Ill. App. 3d 542 and *In re Marriage of Kehoe*, 2012 IL App (1st) 110664, illustrate the distinction between the clarification of a judgment of dissolution and a modification of the judgment.

¶ 33 1. *Culp*

¶ 34 In *Culp*, 399 Ill. App. 3d at 543, the parties stipulated, in their marital settlement agreement, that the petitioner's retirement benefits would be divided equally pursuant to a QILDRO. Because the petitioner was near retirement at the time the trial court dissolved the marriage, the court "reserved jurisdiction for the entry of a QILDRO at a later date." *Id.* About 10 years after the dissolution of the marriage, the respondent filed a motion for entry of a QILDRO, along with a proposed order directing the petitioner to sign a consent to the QILDRO. *Id.*

¶ 35 We observed that, in their marital settlement agreement, the parties "agreed to postpone the division of the pension." *Id.* at 549. The provision for the entry, later on, of a separate QILDRO showed the parties' intent to ascertain the value of, and equally divide, the marital portion of the petitioner's pension on some unspecified future date, after the dissolution of the marriage. *Id.* at 548. The "reserved-jurisdiction approach" allowed the parties to put off the entry of a QILDRO. "Pursuant to the reserved-jurisdiction approach, the trial court reserves jurisdiction to divide the pension ' "if, as[,] and when" the pension becomes payable' " (*id*. at 547 (quoting *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 663 (1979))), thereby enabling the parties to share the marital portion's

entire growth in value between the date of dissolution and the date of retirement (*id.* at 548).

¶ 36 Under the reserved-jurisdiction approach, the later entry of the QILDRO would be a clarification of the judgment of dissolution, not a modification of the judgment. The judgment said that the marital portion of the pension would be divided equally, but the judgment was silent as to the specific dollar amounts that would accomplish that equal division, instead reserving that question for a future QILDRO. *Id.* at 543. Years later, the court clarified that question by entering a QILDRO. *Id.* at 544.

¶ 37 In the present case, by contrast, there was nothing to clarify. The trial court did not use the reserved-jurisdiction approach. Instead, the court entered a QILDRO at the same time it entered the judgment of dissolution. Thus, *Culp* is distinguishable.

¶ 38 2. *Kehoe*

¶ 39 In *Kehoe*, 2012 IL App (1st) 110644, ¶ 1, the trial court entered not only a judgment of dissolution but also a QDRO. About a year after the entry of the judgment of dissolution, the legislature amended certain sections of the Illinois Pension Code (40 ILCS 5/1-101 to 24-109 (West 2010)) and the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 to 802 (West 2010)) so as to give Illinois domestic-relations courts the authority to direct the payment of governmental pension benefits to a person other than the regular payee. *Kehoe*, 2012 IL App (1st) 110664, ¶ 34. If a domestic-relations order directing the division and payment of pension benefits was issued by a court but not implemented by a retirement system prior to these statutory amendments, that order was to be considered void. *Id.* (citing 40 ILCS 5/1-119(*l*)(2) (West 2000)). However, the alternate payee of a voided domestic-relations order had the right to petition the trial court for a QILDRO. *Kehoe*, 2012 IL App (1st) 110664, ¶ 34 (citing 40 ILCS 5/1-119(*l*)(2) (West

2000)).

¶ 40 When the respondent in *Kehoe* retired, the administrators of his pension fund told the petitioner that they would not honor her QDRO but that they would honor only a QILDRO. *Kehoe*, 2012 IL App (1st) 110664, ¶ 2. Therefore, the petitioner filed a motion for entry of a QILDRO, along with a proposed order directing the respondent to sign a consent to the QILDRO. *Id.*, ¶ 3. The QILDRO set forth a method for calculating the value of the marital portion of the respondent's pension (*id.*), but this method was different from the method set forth in the original QDRO (*id.*, ¶ 25). The trial court rejected the petitioner's proposed QILDRO (*id.*, ¶ 3), and the appellate court agreed with the trial court in that respect (*id.*, ¶ 36). "The terms of the marital settlement agreement and QDRO [were] binding upon the [trial] court, and the trial court [could not] enter a QILDRO if it [was] not in accordance with the provisions of the original." *Id.* So, while affirming the trial court's judgment, the appellate court remanded the case with directions: "The trial court's findings that [the petitioner] should not receive more benefits than she agreed to in the original settlement agreement is affirmed. However, the case is remanded for the entry of an appropriate [QILDRO] spelling out the terms of the original settlement agreement and initial QDRO." *Id.*, ¶ 38.

¶ 41 Just as, in *Kehoe*, the trial court lacked discretion to modify the terms of the original QDRO (*id.*, ¶ 31), the trial court in this case lacked discretion to modify the terms of the QILDRO, which calculated respondent's one-half share of the pension benefits to be $708.39 per month. And *Culp* is distinguishable from the present case for the same reason that the appellate court found *Culp* to be distinguishable in *Kehoe*: whereas the judgment in *Culp* was " 'silent' in regard to the method of pension apportionment," the judgment of dissolution and QILDRO is not silent in the present case. *Id.* The method of pension apportionment is to pay respondent $708.39 per month from the date of

petitioner's retirement until the termination of the retirement benefit or the death of respondent, whichever occurs first. The SERS account otherwise belongs exclusively to petitioner.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the trial court's judgment.

¶ 44 Affirmed.