2025 IL App (2d) 240571-U
No. 2-24-0571
Order filed June 12, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MOIRA L. WHEELOCK, Petitioner-Appellee, and DAVID P. WHEELOCK, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 98-D-2208 Honorable Patricia L. Cornell and Ari P. Fisz, Judges, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ *1* *Held*: The trial court properly allocated respondent's pension among the parties where the dissolution judgment was silent regarding a specific allocation method.

¶ 2 Respondent, David P. Wheelock, appeals the judgment of the circuit court of Lake County denying his motion for entry of a corrected qualified Illinois domestic relations order (QILDRO) and granting a motion to enforce the judgment in favor of petitioner, Moira L. Wheelock. For the reasons below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 26, 1999, the circuit court entered an order dissolving the marriage of petitioner and respondent and incorporating their marital settlement agreement (agreement) therein. Pursuant to Article VIII of the agreement, respondent was required to "execute a [QILDRO] transferring the 50% of the balance as of April 26, 1999, from his share of the LAKE ZURICH FIRE PENSION, to [petitioner] as and for her share of the marital property accumulated during the marriage. This takes into account that[,] during the marriage, [petitioner] accumulated no pension or 401(k) plan." During the parties' prove-up of the agreement, which also took place on April 26, 1999, petitioner acknowledged that, pursuant to the agreement, she would be "receiving 50 percent of [respondent's] current pension proceeds." By the end of that year, respondent's pension contributions totaled approximately $45,463.

¶ 5 On September 8, 2000, petitioner moved for the entry of a QILDRO to "ensure that [she] receive[d] the correct amount of [respondent's] pension benefits to which she is entitled pursuant to the terms of the [agreement.]" Eventually, on December 7, 2001, the trial court entered an order directing respondent—through his expert—to prepare the QILDRO. However, through mistake or otherwise, petitioner—through a retained expert—instead entered the QILDRO. Pursuant to the QILDRO, respondent's pension fund would be required to pay to petitioner "$444.79 per month, beginning on the date the retirement benefit commences to [respondent], and ending upon the termination of the retirement benefit in paragraph (ii)[,] or the death of [petitioner], whichever occurs first." Paragraph (ii) of the QILDRO specified that, "[o]f [respondent's] refund that becomes payable, the [pension fund] shall pay to [petitioner] $20,990.59 when [respondent's] refund becomes payable."

¶ 6 Respondent retired on May 8, 2015, and, on June 1, 2015, his pension entered payment status. From thereon, petitioner began receiving payments pursuant to the QILDRO, totaling

$5,337.48 per year. On September 21, 2022, respondent moved the court for the entry of a corrected QILDRO. Specifically, respondent requested that the parties' QILDRO be corrected to make clear that, once petitioner dies or receives the $20,990.59 specified in paragraph (ii) of the existing order, the pension payments would cease. As of the date of respondent's motion, petitioner had "already received far in excess of $20,990.59."

¶ 7 On January 18, 2023, petitioner filed her response to respondent's motion for a corrected QILDRO. In her response, she disputed petitioner's interpretation of the parties' 2001 QILDRO. Moreover, while she acknowledged her ongoing receipt of respondent's pension benefits, she argued that she was actually receiving *less* money than she was entitled to, "given the caselaw interpreting pensions," as well as the fact that the parties' agreement did not contemplate "that [petitioner's] benefit w[ould] cap out at $20,990.59." "Rather," according to petitioner, "the plain language of the [agreement] provides that if there is a refund of contributions from the pension, [petitioner] is to receive the sum of $20,990.59. Otherwise, [petitioner] is to receive her monthly benefit."

¶ 8 Also on January 18, 2023, petitioner filed what she styled as a "Motion to Enforce the Judgment: To Enter a Corrected QILDRO." In the motion, petitioner argued that, pursuant to the reserved jurisdiction approach promulgated by the court in *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979) (the *Hunt* formula), the 2001 QILDRO erroneously deprived her of a higher share of respondent's pension benefits that she was entitled to.

¶ 9 On July 6, 2023, the court entered an order denying respondent's motion for entry of a corrected QILDRO and granting petitioner's motion to enforce. According to a bystander's report, the court had determined that the parties' 2001 QILDRO included a provision allowing for future modifications, and that petitioner had been chronically "underpaid for her portion of [respondent's]

pension." Thus, the court ordered that "[a]n amended QILDRO utilizing the *Hunt* formula both retroactively and prospectively must be entered." On July 25, 2023, respondent moved to reconsider the portion of the court's July 6, 2023, order granting petitioner's motion to enforce. In his motion, respondent asserted that the matter was barred by *res judicata*, as the parties had already litigated the issue of any apportionment of respondent's pension in 2001. After arguments on October 12, 2023, the court denied respondent's motion. Respondent appealed, and, on June 25, 2024, we dismissed the matter for a lack of jurisdiction, as no final QILDRO had been entered. *In re Marriage of Wheelock*, 2024 IL App (2d) 230459-U. On August 28, 2024, the court entered a QILDRO that was prepared by petitioner's expert, utilizing the *Hunt* formula, specifying that the pension shall pay to her $1,909.25 each month.

¶ 10 Respondent appeals.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent argues that the trial court erred in two respects when it decided to grant petitioner's motion to enforce. First, respondent contends that the trial court erred in concluding that the parties' agreement was "not silent" as to how respondent's pension should be divided. Second, respondent argues that the doctrine of *res judicata* barred any relitigation concerning respondent's pension following the entry of the 2001 QILDRO. We address both of these contentions in turn.

¶ 13 A. The Judgment's Silence

¶ 14 Turning to respondent's first argument, we hold that the judgment *was* silent as to the precise apportionment of respondent's pension benefits. The terms of a marital settlement agreement are binding on both the parties as well as the court. *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18. The principles of contract interpretation also apply to the terms

of a marital settlement agreement. *Id.* Consequently, when analyzing the terms of a marital settlement agreement, the court's primary objective is to give effect to the purpose and intent of the parties at the time they entered into the agreement. *Id.* In situations such as this, where the trial court's ruling amounted to an interpretation of the parties' agreement, we review the trial court's order *de novo*. *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412-13 (2003).

¶ 15 Generally, marital assets should be divided at the time of dissolution. *In re Marriage of Ramsey*, 339 Ill. App. 3d 752, 758 (2003). The division of a pension's benefits poses some difficulty, however, "because the amount of benefits that will actually be received depends on future contingencies." *Id.* "The length of time the employee-spouse actually works, the salary he earns at the end of his career, and any changes to the terms of the pension plan necessarily impact the amount actually received." *Id.* Given this issue's thorns, Illinois courts have utilized two different methods for dividing pensions. *Id.*

¶ 16 The first, the present-value method, requires the trial court to set a present value of a pension plan, to be awarded to the employed party. *Id.* Afterwards, the other party is given other marital property to offset the pension award. *Id.* This method is often impractical, given the difficulties in valuing a pension benefit. *Id.* The second method, the *Hunt* formula, requires a trial court to reserve jurisdiction to divide the pension once it becomes payable. *Hunt*, 78 Ill. App. 3d at 663. At that time, the court uses a formula to determine the marital interest of each payment, which is subsequently divided according to the property division determined at the time of dissolution. *Id.*

¶ 17 A court retains jurisdiction to amend any order allocating a pension, where doing so is necessary to enforce a dissolution judgment as written. *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412 (2003). Additionally, "[i]f the method of pension apportionment has not been determined

earlier," courts have discretion to consider any applicable evidence in determining their own allocation method. *In re Marriage of Richardson*, 381 Ill. App. 3d 47, 53 (2008) (citing *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 243 (1997)). A judgment may properly be considered silent as to a pension's allocation where it contains no description "as to what portion of the pension benefit is marital." *In re Marriage of Richardson*, 381 Ill. App. 3d at 53; *Kehoe*, 2012 IL App (1st) 110644, ¶ 20. In determining whether a settlement agreement is silent as to the apportionment of a pension, courts may also consider "additional documents" included within a judgment. *Kehoe*, 2012 IL App (1st) 110644, ¶ 22. Thus, the inclusion of a completed qualified domestic relations order (QDRO) within a judgment shows that the judgment is not silent "as to how a pension should be divided and what portion of the pension benefit is marital." *Id.*

¶ 18 Pertinently, for example, in *Richardson*, the parties' marriage was dissolved in March 1995, with their marital settlement agreement specifying that:

> "[The respondent] is hereby awarded one-half (1/2) of [the petitioner's] pension as it has accrued [from] the date of the marriage to the date of the entry of this Judgment of Dissolution of Marriage. This court shall retain jurisdiction of this cause for the purpose of entering a Qualified Domestic Relations Order." 381 Ill. App. 3d 47, 48 (2008).

In December 2002, the petitioner retired and started collecting benefits. *Id.* at 48-49. In September 2003, the petitioner sought to begin making payments to the respondent pursuant to their settlement agreement. *Id.* at 49. He was confused, however, as to the specific amount to remit from each payment, and his pension fund informed him that he should be paying the respondent $625.40 per month. *Id.*

¶ 19 Eventually, the respondent filed a petition for modification or clarification of the judgment of dissolution so that the court could "determine the exact amount she should be receiving as her

half share of the marital portion of the pension." *Id.* The trial court determined that, while the parties had intended for the respondent to receive half of the marital portion of the pension, no agreement had been reached concerning the calculation of the marital portion. Given the nature of the petitioner's pension, which was a defined benefit plan, both parties agreed that the value of the plan was indiscernible at the time the parties' marriage was dissolved, as its amount could only be determined after factoring in the petitioner's years of service and final salary, as determined *after* the parties had become divorced. *Id.* However, the parties disagreed as to the exact formula that should be utilized in determining the respondent's proper payments. *Id.* at 49-51. The court ultimately agreed with the respondent's recommendation to utilize the *Hunt* formula "to compute [the] respondent's share of the pension," *Id.* at 51. The petitioner was ordered to pay the respondent accordingly. *Id.*

¶ 20 The petitioner appealed, arguing that the trial court erred when utilizing the *Hunt* formula, as, according to him, "this approach violate[d] the plain language of the parties' settlement agreement incorporated in the judgment for dissolution of marriage." *Id.* at 52. The First District disagreed, finding that the parties' judgment failed to set out any "exact allocation of the marital portion of the pension." *Id.* at 53. Instead, "[a]ll the judgment provided was that [the] respondent was awarded one-half of [the] petitioner's pension as it had accrued from the date of the marriage to the date of the entry of the dissolution judgment." *Id.* The judgment did "not set forth how that marital portion [would] be calculated, nor the value of the portion of the pension in which [the] respondent was awarded a 50% share." *Id.* Because the judgment did not include such a calculation while including language reserving jurisdiction as to the issue, the appellate court found that the court had discretion to consider its own method of allocation. *Id.*

¶ 21 Here, respondent argues that, because the parties' agreement was not silent as to the apportionment of his pension, the trial court erred in reapportioning the asset when it granted petitioner's motion to enforce. Specifically, respondent argues that the entry of the 2001 QILDRO, along with the parties' original judgment, constitute "an integrated expression of the court's decision as to the allocation of [respondent's] pension." According to respondent, the facts here are reminiscent of those in *Kehoe*, where "the [c]ourt rejected the [petitioner's] argument that the *Hunt* formula should be later applied to [recalculate] her share of her ex-husband's pension benefits when a QDRO had already been entered years earlier." Respondent also differentiates this matter from *Richardson*, as there, the judgment "expressly indicated that the court shall retain jurisdiction for the purpose of later entering a QDRO" (citing *Kehoe*, 2012 IL App (1st) 110644, ¶ 32). While respondent acknowledges that the 2001 QILDRO also contained such a savings clause, he argues that this clause "does not somehow permit the circuit court to completely reapportion [respondent's] pension more than two decades after its disposition," because a court cannot enter a QILDRO that is not in accordance with a dissolution judgment's original pension allocation.

¶ 22 We disagree. Respondent's argument fails to consider an important distinction between the instant matter and *Kehoe*. In *Kehoe*, unlike here, an actual order—a QDRO—was incorporated into the parties' dissolution judgment that set forth the "amount of [the respondent's] pension that [was] payable to [the petitioner] and specifie[d] the manner in which the amount [was] to be determined." *Kehoe*, 2012 IL App (1st) 110644, ¶ 8. The *Kehoe* court found this to be determinative, finding that, "[i]f the parties' judgment included *** no other language or additional documents such as a QDRO, the judgment may have been viewed as 'silent as to what portion of the pension benefit [was] marital.' " *Id.*, ¶ 20 (citing *Richardson*, 381 Ill. App. 3d at 53). Here, on the other hand, no QDRO or QILDRO was entered until *over two years* after the parties'

dissolution judgement was entered in April 1999. Indeed, in respondent's reply brief, he points out that sixteen months after the parties' dissolution judgment was entered, petitioner "initiated proceedings to enter a QILDRO effectuating that [j]udgment." Then, "[o]ver the next 14 months, the parties litigated the terms of that QILDRO, including by preparing competing drafts of that document." Given these facts, there is no plausible way to conclude that the judgment was meant to integrate the QILDRO, which did not exist at the time the judgment was filed and was the result of months of separate litigation.

¶ 23 Instead, we find that this scenario more closely resembles *Richardson*. Both here and in *Richardson,* the parties' dissolution judgments did not specify the precise manner in which the pension benefits were to be divided. *Richardson*, 381 Ill. App. 3d at 53. Specifically, both judgments only directed that each non-pensioner spouse would receive a 50% interest in their spouse's marital portions of the pensions, without specifying the amounts of those marital portions. *Id.* at 52. Neither judgment included an integrated QDRO or QILDRO setting forth a specific allocation method. *Id.* Accordingly, given the logic employed in *Richardson*, both judgments are properly considered silent as to their respective pensions' allocations. *Id.*; *Kehoe*, 2012 IL App (1st) 110644, ¶ 20. Accordingly, as in *Richardson,* the court here was entitled to find its own suitable apportionment method. 381 Ill. App. 3d at 53.

¶ 24 Indeed, the court did so when it ordered respondent to enter the 2001 QILDRO, which, for whatever reason, was actually filed by petitioner. Years later, however, the court agreed with petitioner that the 2001 QILDRO did not conform with the judgment's explicit terms that she should receive one half of respondent's share of the pension's marital portion, and, therefore, *Allen* established that the court could modify the 2001 QILDRO to conform with the parties' original, written intentions, regardless of how much time had passed since the entry of the 2001 QILDRO.

In re Marriage of Allen, 343 Ill. App. 3d 410, 412 (2003) (court retained "indefinite jurisdiction" to enter amended QDRO to conform with, but not modify, the parties' original judgment).

¶ 25 Certain of respondent's arguments otherwise can also be rejected as self-contradictory. Again, respondent argues that the 2001 QILDRO was iintegrated into the parties' dissolution judgment so as to fully address the apportionment of his pension benefits, thus precluding any future revisions. However, in arguing that we should disregard the same QILDRO's savings clause, respondent switches stances, now arguing that the clause should not be followed because it contradicts the parties' original judgment. Plainly, these positions are inconsistent. Either the 2001 QILDRO was meant to be integrated into the judgment, or it was not. If it was not, the terms of the judgment were silent as to the pension's allocation, allowing the court to devise a proper method of apportionment, as laid out above. If the judgment and the 2001 QILDRO *were* integrated, however, the savings clause—which makes up part of the 2001 QILDRO—also would necessarily be incorporated into the judgment. Thus, the savings clause would be consistent with the parties' judgment, as the clause would make up a part of the judgment itself and would allow for further modifications of the QILDRO to align with the parties' dissolution judgment. In either event, the court was entitled to amend any QILDRO setting forth the proper allocation of the pension, meaning defendant's arguments necessarily fail.

¶ 26 *Res Judicata*

¶ 27 Next, we reject respondent's arguments that the doctrine of *res judicata* barred any further modification of the 2001 QILDRO. "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996). "The doctrine extends not only to what was actually decided in the

original action, but also to matters which could have been decided in that suit." *Id.* Three requirements must be met in order for the doctrine of *res judicata* to apply: (1) a final judgment on the merits rendered by a court of competition jurisdiction; (2) a common identity of cause of action; and (3) a common identity of the parties or their privies. *Id.* at 335.

¶ 28 Here, respondent argues that, following the issuance of the 2001 QILDRO, the doctrine of *res judicata* barred petitioner from relitigating his pension's allocation. Respondent further argues that all of the requisite elements of *res judicata* were met here, where: (1) the 2001 QILDRO represented a final judgment on the merits as to the pension's allocation; (2) petitioner's January 2023 motion for a corrected QILDRO also sought another apportionment of that same pension; and (3) the parties have remained the same throughout both matters.

¶ 29 We disagree. Respondent's arguments overlook the fact that, in granting petitioner's motion for a corrected QILDRO, the court was not attempting to reallocate all of the parties' marital property, as it had done decades earlier, but instead, it was attempting to conform the 2001 QILDRO to the parties' dissolution judgment. Again, the dissolution judgment provided petitioner with one half of respondent's marital portion of the relevant pension. Under the terms of the 2001 QILDRO, however, the court found that petitioner "ha[d] been underpaid for her portion of [respondent's] pension." Consequently, in order to effectuate the parties' original intentions as expressed in their judgment, the court granted petitioner's motion to enforce so that she could receive the funds that she had always been entitled to.

¶ 30 Under our reading of the record, it becomes clear that the second element of *res judicata*—an identity of actions—has therefore not been met. Simply put, respondent erroneously equates petitioner's motion to enforce with the parties' initial dissolution judgment. However, the two are not one in the same. While the initial dissolution judgment was designed to consider and allocate

the parties' marital property, the purpose of the motion to enforce was solely to correct the existing QILDRO in service of the original dissolution judgment—not to obtain a completely new apportionment of the pension. Accordingly, there is no common issue between the two, and *res judicata* is inapplicable.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's order granting petitioner's motion to enforce.

¶ 33 Affirmed.