2026 IL App (3d) 250663

Opinion filed November 5, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
NELLIE LUCKETT,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-25-0663
and	)	Circuit No. 23-DN-285
	)	
CALVIN LUCKETT,	)	The Honorable
	)	Victoria M. Kennison,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court, with opinion.
Justices Holdridge and Bertani concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, Nellie Luckett, filed a petition for dissolution of her marriage to respondent, Calvin Luckett. After a bench trial on contested issues, the trial court entered a judgment dissolving the parties' marriage and dividing the parties' property. Calvin appeals, arguing that the trial court erred in (1) finding that the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage were marital property, notwithstanding the provisions of the parties' premarital agreement, and were subject to division between the parties as such, and

(2) awarding Nellie retroactive temporary maintenance, even though the parties had each waived an award of maintenance in their premarital agreement. We affirm the trial court's judgment.

¶ 2 I. BACKGROUND

¶ 3 The parties were married in September 1994 and had no children. In April 2023, Nellie filed a petition for dissolution of marriage in Will County, Illinois, where the parties resided. Calvin subsequently filed a counterpetition for dissolution of marriage and alleged that the parties had a premarital agreement that pertained to some of the issues that were before the trial court. In May 2023, Nellie filed a petition for temporary maintenance and certain other relief, which Calvin opposed. The trial court subsequently ordered the parties to maintain the status quo, while the petition for temporary maintenance remained pending.

¶ 4 In August 2023, Calvin filed a petition for a declaratory judgment, asking the trial court to determine the scope, validity, and application of the parties' premarital agreement. A copy of the premarital agreement was attached to the petition as an exhibit. The agreement had been entered into by the parties a few days before their marriage, had been drafted by Calvin's attorney at the time, and had indicated that each of the parties had consulted with an attorney prior to entering into the agreement. In the recitals portion of the agreement, both parties acknowledged that:

> "each of them ha[d] been fully informed of the wealth, property, estate, and income of the other, both directly and through furnishing of financial data to counsel, and of his or her respective rights in the premises, and that each [was] conversant with all the property and income possessed by the other and with the value thereof which [was] evidenced by Exhibits 'A' and 'B' prepared by the parties, attached to and made part of this Agreement[.]"

¶ 5 In the more substantive provisions, the agreement provided, in pertinent part, that

"4. The parties hereto agree that in the event that a Judgment of Divorce, Dissolution of Marriage, or Legal Separation shall be entered in a proceeding between them, the following shall control and be incorporated in any such judgment as part of the agreement of the parties.

(a) Each party waives his or her right to maintenance and alimony and shall be barred forever from seeking maintenance or alimony from the other.

***

(c) All debt incurred by the parties jointly shall be considered a marital liability and shall be paid prior to any distribution of any marital assets. Upon payment of all marital debt from marital assets and within ninety (90) days of filing a complaint for Dissolution of Marriage or Separation, all marital assets shall be distributed *equally* to each party except as provided in Paragraph 7 [not relevant here]. The tax consequences relating to the assets distributed of such sale shall be borne equally by the parties (*i.e.* capital gains/losses shall be taken into account). (Emphasis in original.)

***

5. The husband and wife now own property in their own name acquired prior to the contemplated marriage, and it is agreed that such property shall remain their separate property subsequent to the date of marriage and in the event of a termination of the marriage by death, divorce, or dissolution of marriage, that such property and the appreciation in said property or property acquired in exchange for

said property shall remain the property of the respective parties free of any claim of either, except as otherwise provided herein."

¶ 6 Two statements were attached to the agreement, one for each party, showing each party's separate premarital assets. Neither party signed or initialed the other party's statement. In Calvin's statement (titled as "Exhibit A" in the agreement), his premarital assets were divided into five different categories: real estate, vehicles, bank accounts, clothing/jewelry/personal items, and employee related benefits. Below some of the categories, Calvin listed specific items and the approximate value of those items. Under the employee related benefits category, Calvin listed both his pension and his work retirement savings plan.[1] Both items were listed as having a value of "0.00." Next to the "0.00" for the retirement savings plan, however, the number "18,000" had been handwritten in with Calvin's initials next to that number but not with Nellie's initials.

¶ 7 Nellie divided her premarital assets into four different categories in her statement (titled as "Exhibit B" in the agreement): bank accounts, vehicles, clothing/jewelry/personal items, and work related benefits. Only one specific item was listed under those categories, a vehicle. Some of the values were provided for the item/categories listed. Nellie did not identify any specific work related benefits in her statement and did not list a value for that category.

¶ 8 In April 2025, the trial court entered an agreed order that resolved Calvin's petition for a declaratory judgment. In the agreed order, the trial court found that the premarital agreement was valid and enforceable, subject to the court's construction and interpretation of the agreement at trial. A few months later, the parties entered into a written trial stipulation whereby they resolved by agreement many of the issues that were before the trial court in the dissolution proceeding. The remaining issues were left to be resolved by the trial court after a bench trial. Those issues included

[1]Calvin also listed a credit union account under his employee related benefits.

the allocation of Calvin's pension and work retirement savings plan and whether Nellie would receive temporary maintenance.

¶ 9 In September 2025, the court held a bench trial on the contested issues. The parties proceeded by way of representation, which was combined with their closing arguments, and several documentary exhibits were admitted into evidence. At the conclusion of the proceeding, the trial court took the case under advisement.

¶ 10 The following month, the trial court announced its ruling. The trial court found that the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage were marital property, notwithstanding the provisions of the parties' premarital agreement; awarded a percentage of those assets to Nellie; found that Calvin was not entitled to a credit for the premarital portion of his retirement savings plan because he had failed to establish the value of that plan at the time of the premarital agreement/the parties' marriage; and awarded Nellie retroactive temporary maintenance, even though the parties had each waived an award of maintenance in the premarital agreement. A written judgment of dissolution of marriage was entered in November 2025. Calvin subsequently filed a late notice of appeal, which this court allowed.

¶ 11 II. ANALYSIS

¶ 12 A. Calvin's Pension and Work Retirement Savings Plan

¶ 13 On appeal, Calvin argues first that the trial court erred in finding that the portions of his pension and work retirement savings plan that he had earned or acquired during the marriage were marital property and were subject to division between the parties as such. Calvin asserts that the trial court's ruling in that regard was erroneous because (1) it was contrary to the clear and unambiguous language of the parties' premarital agreement, which provided that the property

acquired by either party prior to the marriage, including any appreciation, would remain that party's separate property; (2) it was based upon the trial court's incorrect, unsupported, and unilateral determination that Calvin had failed to make a "full and proper" disclosure of the benefits and value of those two assets in the premarital agreement, even though both of those assets were clearly disclosed in Calvin's statement of assets; (3) it resulted, in part, from the trial court's incorrect statements of the law on this issue—that the disclosure had to be "full and proper" and "crystal clear," rather than fair and reasonable; (4) it was contrary to the facts that were before the trial court at the bench trial, which showed that both parties had consulted with an attorney before entering into the agreement, that each party understood the terms of the agreement, and that each party voluntarily signed the agreement; and (5) it failed to place the burden on Nellie, as required under the law, to show that Calvin's disclosure of his premarital assets was not fair and reasonable. For all of those reasons, Calvin asks that we reverse the trial court's ruling on his pension and work retirement savings plan and that we order that the two assets are nonmarital property that belong to Calvin.

¶ 14 Nellie argues that the trial court's ruling was proper and should be upheld. Nellie asserts that the trial court correctly determined that the premarital agreement did not include a waiver of the marital portion of retirement benefits under section 503(b)(2) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/503(b)(2) (West 2022)) and correctly found, therefore, that the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage were marital property and were subject to division between the parties. According to Nellie, the trial court reached that conclusion because it found that the plain language of the agreement contained no provision specifically setting forth a waiver by both parties of the statutory right of each party to receive a share of the retirement benefits that were

earned or acquired during the marriage and not because it found that Calvin had failed to make a fair and proper disclosure of his work related retirement benefits, as Calvin contends. Nellie maintains that the trial court's finding in that regard was correct because (1) the premarital agreement stated that the marital assets were to be divided equally between the parties; (2) at the time that the agreement was entered into, retirement benefits that were earned or acquired during a marriage were marital assets under Illinois law; (3) the waiver of an important statutory right, such as the one at issue here, must be explicit to be effective; and (4) had the parties intended to waive their future interest in the retirement benefits that were earned or acquired during the marriage, they could have easily put language in the agreement to that effect but did not do so. For all of the reasons set forth, Nellie asks that we affirm the trial court's ruling that the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage were marital property and were subject to division between the parties.

¶ 15 In a dissolution of marriage proceeding, a trial court's determination as to whether property is marital or nonmarital property is generally a factual finding that will not be reversed on appeal unless it is against the manifest weight of the evidence. See *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 351 (2000). However, in this particular case, the trial court's determination was based upon its interpretation of a contract between the parties—the parties' premarital agreement (see *In re Marriage of Best*, 387 Ill. App. 3d 948, 949 (2009) (indicating that a premarital agreement is a contract)). Absent an ambiguity, the interpretation of a contract, is a question of law that is subject to a *de novo* standard of review on appeal. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007); *William Blair & Co. v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334-35, 338 (2005) (indicating that the existence of an ambiguity in the language of a contract may give rise to a disputed question of fact).

¶ 16 The primary goal of contract interpretation is to ascertain and give effect to the intent of the parties. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007); *In re Marriage of Chez*, 2013 IL App (1st) 120550, ¶ 16. In determining the intent of the parties, a court must consider the contract document as a whole and not focus on isolated portions of the document. *Gallagher*, 226 Ill. 2d at 233; *Premier Title Co. v. Donahue*, 328 Ill. App. 3d 161, 164 (2002). If the language of a contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract document itself, which should be given its plain and ordinary meaning, and the contract should be enforced as written. *Virginia Surety Co.*, 224 Ill. 2d at 556; *J.M. Beals Enterprises, Inc. v. Industrial Hard Chrome, Ltd.*, 194 Ill. App. 3d 744, 748 (1990); *Reaver v. Rubloff-Sterling, L.P.*, 303 Ill. App. 3d 578, 581 (1999). However, if the contract language is ambiguous in that it is susceptible to more than one reasonable interpretation, the meaning of the contract language may be ascertained through a consideration of extrinsic evidence. See *Gallagher*, 226 Ill. 2d at 233; *Reaver*, 303 Ill. App. 3d at 581 (defining what constitutes ambiguous contract language).

¶ 17 In the instant case, both parties assert that the language of the premarital agreement is clear and unambiguous. This court must determine, as a matter of contract interpretation, whether Nellie intended in the premarital agreement to waive her interest in the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage. The legal principles pertaining to waiver are well established. Under the law, a waiver is a voluntary and intentional relinquishment of a known right that arises from a consensual, affirmative act of the waiving party. See *Gallagher*, 226 Ill. 2d at 229. A waiver may be made by an express agreement or may be implied from the acts, words, or conduct of the party alleged to have waived the right. *Ryder v. Bank of Hickory Hills*, 146 Ill. 2d 98, 105 (1991). However, when an important statutory right is

involved, a waiver of that right must be explicitly made to be valid and enforceable. See *Gallagher*, 226 Ill. 2d at 239; *In re Marriage of Cullman*, 185 Ill. App. 3d 1029, 1037 (1989).

¶ 18 The legal rules that apply to pension and retirement benefits in a dissolution of marriage proceeding are also well established. All pension and retirement benefits earned or acquired during a marriage are generally deemed to be marital property. See 750 ILCS 5/503(a) (West 2022) (providing a general definition of marital property as all property acquired during the marriage); *id.* § 503(b)(1) (establishing a presumption of marital property for all property acquired during the marriage in general); *id.* § 503(b)(2) (establishing a presumption of marital property for pension and retirement benefits acquired or participated in during the marriage). Because pension and retirement benefits are marital property, they are subject to division between the parties if a dissolution of marriage occurs. *Id.* § 503(d) (requiring the trial court in a dissolution of marriage proceeding to divide the marital property between the parties in just proportions considering all relevant factors). To rebut the presumption of marital property for pension and retirement benefits, the spouse challenging the presumption must present clear and convincing evidence to the contrary. *Id.* § 503(b)(2). The same or similar rules on pension and retirement benefits existed more than 30 years ago when the parties entered into their premarital agreement in the instant case. See 750 ILCS 5/503(a) (West 1994) (defining marital property in general); *id.* § 503(b) (establishing a presumption of marital property for all property acquired during the marriage in general); *id.* § 503(d) (requiring the trial court in a dissolution proceeding to divide the marital property between the parties in just proportions considering all relevant factors); *In re Marriage of Davis*, 215 Ill. App. 3d 763, 771, 773 (1991) (stating in a 1991 decision that a spouse's pension and retirement benefits that were earned or acquired during the marriage were marital property that should be divided between the spouses upon a dissolution of marriage and recognizing that a

presumption of marital property could be overcome only by clear, convincing, and unmistakable evidence to the contrary).

¶ 19 Based upon the longstanding nature of those rules, we find that a spouse's right to receive a share of the pension and retirement benefits that his or her partner earned or acquired during the marriage is an important statutory right. At the time that the parties entered into their premarital agreement in the instant case, that right was encompassed in the Marriage Act's definition of marital property, in its general presumption of marital property for property acquired during the marriage, and in its requirement that marital property be divided between the parties in just proportions. See 750 ILCS 5/503(a), (b), (d) (West 1994). It was also expressed in the case law for that time period (see, *e.g.*, *Davis*, 215 Ill. App. 3d at 771, 773) and was later added (after the premarital agreement was entered into in this case) as a separate subsection in the Marriage Act (see 750 ILCS 5/503(b)(2) (West 2000)). Therefore, any waiver of that right in the parties' premarital agreement had to be explicitly made. See *Gallagher*, 226 Ill. 2d at 239; *Cullman*, 185 Ill. App. 3d at 1037.

¶ 20 In the present case, after reviewing the parties' premarital agreement, we conclude that the clear and unambiguous language of the agreement was not sufficient to waive Nellie's statutory right to receive a share of the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage. See *Gallagher*, 226 Ill. 2d at 239; *Cullman*, 185 Ill. App. 3d at 1037. Although paragraph five of the agreement stated that the parties had agreed that the property that each spouse had acquired prior to the marriage would remain the separate property of that particular spouse, including any appreciation of that property, that paragraph made no mention of pension and retirement benefits in general or of the portions of the parties' pension and retirement benefits that were earned or acquired during the marriage. In addition, while

paragraph five referred to "appreciation," that mere reference was not sufficient to establish that each spouse was waiving his or her statutory right to receive a share of the portion of the pension and retirement benefits that would be earned or acquired later during the course of the marriage and that would normally constitute marital property under the law.

¶ 21 The fact that Calvin disclosed both his pension and his retirement savings plan in his list of assets attached to the premarital agreement does not in any way change our analysis on this issue because paragraph five, the pertinent paragraph of the parties' agreement, made no reference to the marital portion of the parties' pension and retirement benefits and because nothing in paragraph five or the attached list of assets constituted an explicit waiver of Nellie's statutory right to receive a share of the portions of Calvin's pension and retirement benefits that were earned or acquired during the marriage. The list of Calvin's assets that was attached to the premarital agreement merely stated "Pension Plan" and "Savings *** Plan" with a zero value (initially) under the category of "Employee Related Benefits" and made no reference whatsoever to the portions of those assets that would later be earned or acquired during the course of the marriage. The list was clearly intended to establish that only those portions of Calvin's pension and retirement benefits that were earned or acquired prior to the marriage were Calvin's separate nonmarital property. The trial court correctly determined, therefore, that section 503(b)(2) of the Marriage Act controlled and that the portions of Calvin's pension and work retirement savings plan that were earned or acquired during the marriage were marital property and were to be divided between the parties as such. Accordingly, we affirm the trial court's ruling on that issue.

¶ 22 As a final matter on this issue, we note that in the trial court, Calvin argued that he was entitled, at the very least, to a credit or an offset for the portion of his work retirement savings account that he owned prior to the marriage. On appeal, although Calvin referenced that argument

in his late notice of appeal and in one of his statements of the issues presented, he did not make that argument in the body of his appellate briefs. Nellie makes various statements about the matter in her appellate brief, apparently assuming that Calvin had argued the issue on appeal. At any rate, to the extent that Calvin argues that the trial court erred in refusing to award him the premarital portion of his work retirement savings plan, we conclude that his argument in that regard is not well taken. Calvin presented no evidence to support the premarital value of his retirement savings plan, other than the amount that had been written in on Calvin's statement of assets that was attached to the premarital agreement and initialed by Calvin, but not by Nellie. No additional evidence was presented to establish, or even suggest, when that amount had been added to Calvin's statement of assets. The trial court determined that the handwritten amount on Calvin's statement of assets was not sufficient to establish the premarital value of the retirement savings plan, and we find no error in that ruling. See *Gattone,* 317 Ill. App. 3d at 351 (indicating that a trial court's determination in a dissolution of marriage proceeding as to whether property is marital or nonmarital property is generally a factual finding that will not be reversed on appeal unless it is against the manifest weight of the evidence).

¶ 23 B. The Award of Temporary Maintenance

¶ 24 As his second point of contention on appeal, Calvin argues that the trial court erred in awarding temporary maintenance to Nellie. Calvin does not challenge the amount of the award but, rather, asserts that the award should not have been made because it was contrary to the clear and unambiguous language of the parties' premarital agreement, which stated that each party waived his or her right to maintenance and alimony and was barred from seeking maintenance or alimony from the other. Calvin asks, therefore, that we reverse the trial court's award of temporary maintenance to Nellie.

¶ 25 Nellie argues that the trial court's ruling was proper and should be upheld. Nellie asserts that the award of temporary maintenance was not barred by the parties' premarital agreement because the clear and unambiguous language of the premarital agreement did not contain a waiver of temporary maintenance by either party. Rather, Nellie contends, the parties in the agreement only waived an award of maintenance that was meant to cover a time period following the entry of a judgment of dissolution of marriage and not an award of temporary maintenance that was meant to cover a period prior to the judgment of dissolution being entered. Nellie asks, therefore, that we affirm the trial court's ruling awarding Nellie temporary maintenance.

¶ 26 A trial court has broad discretion in ruling upon a request for temporary maintenance, and its decision in that regard will generally not be reversed on appeal absent an abuse of that discretion. See *In re Marriage of Burdess*, 2020 IL App (3d) 190342, ¶ 31. In the present case, however, as with the prior issue, the trial court's ruling on temporary maintenance was based upon an interpretation of the parties' premarital agreement. Absent an ambiguity, the interpretation of a contract, such as a premarital agreement, is a question of law that is subject to a *de novo* standard of review on appeal. *Gallagher*, 226 Ill. 2d at 219; *William Blair & Co.*, 358 Ill. App. 3d at 334-35, 338.

¶ 27 Upon reviewing the premarital agreement in the present case and after considering the rules of statutory construction that were set forth in our analysis of the first issue, we conclude that the clear and unambiguous language of the agreement did not contain a waiver of temporary maintenance and did not bar Nellie from receiving an award of temporary maintenance from Calvin. As Nellie argued and the trial court noted, Illinois law makes a clear distinction between temporary maintenance and maintenance (see 750 ILCS 5/501(a)(1), 504 (West 2022)) and did so at the time that the parties had entered into the premarital agreement (see 750 ILCS 5/501(a)(1),

504 (West 1994)). Despite that clear distinction, the parties made no reference to a waiver of temporary maintenance in the language of their agreement and, instead, only referred to a waiver of maintenance. In addition, the language of the agreement made it clear that the maintenance waiver provision and the other provisions contained in paragraph four of the agreement were to apply "in the event that a Judgment of Divorce, Dissolution of Marriage, or Legal Separation shall be entered in a proceeding between [the parties]." Thus, the clear intent of the parties was to have the maintenance waiver provision and the other provisions of paragraph four apply postjudgment. We must conclude, therefore, that the parties, by choosing to incorporate that particular clear and unambiguous language into their agreement, only intended to waive their right to maintenance and did not intend to waive their right to temporary maintenance. Accordingly, we affirm the trial court's award of temporary maintenance to Nellie.

¶ 28 In reaching that conclusion, we are guided by our prior decision in *In re Marriage of Woodrum*, 2018 IL App (3d) 170369, ¶¶ 107-11, a case involving the same issue presented here and similar factual circumstances. In *Woodrum*, the husband in a dissolution of marriage case argued on appeal that the trial court had erred in granting the wife's request for temporary maintenance and asserted that such an award was barred by the parties' premarital agreement. *Id.* ¶ 107. The agreement in *Woodrum* provided that the husband and wife "waive[d] *** all right to maintenance for themselves from the other *** upon divorce or dissolution of marriage contemplated by this Agreement." (Emphasis and internal quotation marks omitted.) *Id.* ¶ 110. On appeal, this court upheld the trial court's award of temporary maintenance to the wife, concluding, based upon the language of the maintenance waiver provision and the agreement as a whole, that the parties had intended the maintenance waiver provision to take effect only after a dissolution of the parties' marriage or a legal separation had occurred and that the provision did not bar an award

of temporary maintenance to the wife. *Id.* ¶ 111. We reach the same conclusion for the same reason in the present case.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 31 Affirmed.

In re Marriage of Luckett, **2026 IL App (3d) 250663**

Decision Under Review:	Appeal from the Circuit Court of Will County, No. 23-DN-285; the Hon. Victoria M. Kennison, Judge, presiding.
Attorneys for Appellant:	David Feldman and Sara Imam, of Aronberg Goldgehn Davis & Garmisa, of Wheaton, for appellant.
Attorneys for Appellee:	Chris D. Rouskey, of Joliet, for appellee.