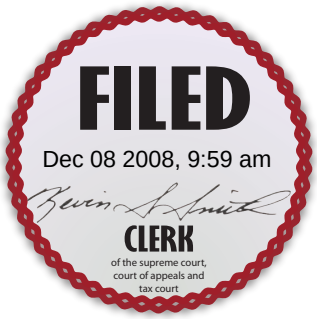

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IN THE
COURT OF APPEALS OF INDIANA

PHYLLIS COPPOCK,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 52A04-0805-CV-308
	)	
TRUMAN COPPOCK, JR.,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Robert A. Spahr, Judge
Cause No. 52C01-9412-DR-384

December 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Former wife, Phyllis Coppock ("Phyllis"), appeals the trial court's order that granted a motion to correct error filed by former husband, Truman Coppock, Jr. ("Truman"). Phyllis raises the following restated issue: whether the trial court erred when it reversed its prior order allowing Phyllis to begin receiving her interest in Truman's pension benefits, despite the fact that Truman had not yet retired.

We affirm.

FACTS AND PROCEDURAL HISTORY

Phyllis and Truman wed in October 1977; they separated in December 1994, and the trial court, Judge Bruce Embrey presiding, dissolved their marriage in June 1997. Truman worked for Chrysler Corporation both before and during the marriage, and he continues to work there to this date. The decree of dissolution provided that Phyllis would receive an interest in Truman's Chrysler pension benefits. The trial court awarded Phyllis, under a coverture fraction formula, a portion of the benefits accrued between the date of marriage and the date of separation. The exact language of the order read:

> The court hereby awards to Petitioner a share of Respondent's Chrysler Corporation pension which shall be determined by the following formula: 219 divided by the total number of months of employment *at the time Respondent retires* and the result shall be divided by two.

Appellant's App. at 9 (emphasis added). At the time of the dissolution, Truman's pension benefits were vested, but he had not yet met the qualifications to retire. Pursuant to the terms of the decree, the parties were required to, and timely did, provide the court with a qualified domestic relations order ("QDRO") allowing for the division and allocation of such benefits.

On July 18, 1997, Phyllis filed a petition for payment of benefits or, alternatively, a motion to correct error. She argued that Truman was eligible for retirement and that she should not have to wait to receive her share of the pension benefits until Truman retires. Her position was that it was error for the trial court to fail to award her a portion of the pension benefits effective on the date of dissolution, and she requested that the trial court amend its order accordingly. *Appellee's App*. at 4. Following a hearing, Judge Embrey issued an order on December 30, 1997, stating that, according to the terms of the divorce decree, the benefits were payable on Truman's retirement. The court's order was specific and clear:

> [The] question is whether or not the Court intended that [Phyllis] receive payments from [Truman's] retirement account before [Truman] retires. The Court has reviewed cases cited by both parties and its notes of the cause and determines that it was the intent of the Court that [Phyllis] only receive retirement benefits upon the retirement of [Truman].

Id. at 19. Phyllis did not appeal this decision.

On March 5, 2001, Phyllis filed a motion for implementation of pension benefits, again seeking to begin receiving her share of Truman's benefits prior to Truman's retirement. By order of July 9, 2001, Judge Embrey stated, as he had once already, that Phyllis would begin receiving the benefits "when the Respondent retires." *Id.* at 30. Phyllis did not appeal this order.

On July 27, 2007, Phyllis filed yet another request for implementation of a separate QDRO, arguing that Truman had met all requirements to retire, but did not do so, and that a separate QDRO was available through Chrysler that would not reduce or adversely affect

Truman's benefits. Following a hearing, Judge Rosemary Higgins Burke[1] issued an order on November 20, 2007, granting Phyllis's request, finding that it was "unfair for Mr. Coppock to have total control of whether, if ever, Mrs. Coppock will enjoy any of [the pension benefits]." *Appellant's App*. at 82. Judge Higgins Burke ordered the parties to submit a QDRO that would effectuate her order. On December 17, 2007, Truman filed a motion to correct error, which Judge Higgins Burke denied the same date. Later, on March 12, 2008, Truman filed a request for a hearing "to determine the correct Qualified Domestic Relations Order." The following day, Judge Robert Spahr[2] set a hearing date. *Appellee's Br*. at 4.

On April 22, 2008, Judge Spahr heard Truman's motion and received argument from both parties "in connection with a Motion to Correct Errors heretofore filed . . . by Respondent, Truman Coppock, Jr., which challenged an Order entered by the Honorable Rosemary Higgins Burke, Judge, on November 20, 2007[.]" *Appellant's App*. at 108. Subsequently, Judge Spahr issued an order on April 30, 2008, vacating Judge Higgins Burke's prior decision, which had permitted Phyllis to begin receiving benefits prior to

[1] Phyllis's brief characterizes Judge Rosemary Higgins Burke as a "Special Judge," *Appellant's Br*. at 2; however, the chronological case summary does not indicate any appointment of a special judge. Truman's brief states Judge Higgins Burke "had replaced the retired Judge Embrey on the bench." *Appellee's Br*. at 4. Thus, it is not clear from the record before us through what avenue Judge Higgins Burke assumed responsibility for the Coppocks' case.

[2] According to Truman, *Appellee's Br*. at 4, Judge Spahr "replaced the retired Judge Higgins-Burke on the bench."

Truman's retirement from Chrysler.[3] Judge Spahr's order granted Truman's motion to correct error and explained that, without agreement from both parties, the trial court had no jurisdiction to revise the dissolution decree. Phyllis now appeals.

DISCUSSION AND DECISION

Phyllis claims the trial court erred when it granted Truman's motion to correct error and thereby denied her request to implement a separate QDRO that would allow her to begin receiving a portion of Truman's pension benefits.

> We review the trial court's decision to grant or deny a motion to correct error for abuse of discretion. An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations.

Gard v. Gard, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005) (quoting *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002)); *see also French v. French*, 821 N.E.2d 891, 895 (Ind. Ct. App. 2005).

The parties' dissolution decree awarded Phyllis a share of Truman's retirement benefits from Chrysler, but the exact dollar amount that Phyllis would receive was not specified. Rather, under the terms of the decree, her interest would be determined based on a formula that required Truman's "total months of employment at the time [he] retires[.]"

[3] We note that Judge Higgins Burke's November 20, 2007 order was not a final appealable order. In addition to the fact that Judge Higgins Burke did not characterize her order as such, the order left things yet to be done, namely submission of a QDRO, and, accordingly, it was *in fieri*, or pending resolution. Consequently, the trial court (later changing from Judge Higgins Burke to Judge Spahr presiding) retained the inherent authority to reconsider any of the court's previous rulings. *Yeager v. McManama*, 874 N.E.2d 629, 639 (Ind. Ct. App. 2007) (trial court has inherent power to reconsider any of its previous rulings so long as action remains *in fieri*). Additionally, because it was not a final order, Truman was not required to appeal it in

Appellee's App. at 2. Although Truman subsequently became eligible to retire, he did not do so, and consequently, Phyllis could not receive her share of the benefits. Therefore, on two occasions, in July 1997 and March 2001, Phyllis filed an action with the trial court seeking an order that would allow her to begin receiving her share of the benefits. Each time, Judge Embrey concluded that Phyllis would begin to receive her share upon Truman's retirement. Phyllis did not appeal either ruling. Six years later, in July 2007, Phyllis attempted to litigate the issue again. This time, Phyllis was initially successful, when Judge Higgins Burke determined it was "unfair" that Truman had total control of when and if Phyllis would begin receiving benefits awarded to her in the dissolution, and the court ordered the parties to provide an appropriate QDRO to the trial court to effectuate her decision. *Appellant's App*. at 82. Truman urged then, and now, that it was improper for Judge Higgins Burke to order the distribution of benefits prior to Truman's retirement because the decree provided otherwise and that the matter had been decided against Phyllis twice already. Truman is correct.

The principle of res judicata operates to prevent the repetitious litigation of disputes that are essentially the same. *Scott v. Scott*, 668 N.E.2d 691, 699 (Ind. Ct. App. 1996). The doctrine of res judicata is divided into two distinct branches, claim preclusion and issue preclusion. *Id*. at 699. Issue preclusion, which is also referred to as collateral estoppel, precludes relitigation of issues actually and necessarily decided in an earlier litigation between the same parties or those in privity with the parties. *Id*.; *Eichenberger v.*

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order to avoid waiver. *See Trinity Baptist Church v. Howard*, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), *trans. denied* (claimed error in interlocutory order is not waived for failure to take an interlocutory appeal).

Eichenberger, 743 N.E.2d 370, 374 (Ind. Ct. App. 2001) (issue preclusion bars subsequent relitigation of same fact or issue where that fact or issue was necessarily adjudicated in a former suit). Where issue preclusion applies, the previous judgment is conclusive only regarding those issues actually litigated and determined therein. *Eichenberger*, 743 N.E.2d at 374.

Here, Judge Embrey expressly addressed and ruled on the issue of whether Phyllis could begin receiving her share of Truman's retirement benefits prior to Truman's retirement twice and determined on both occasions that, according to the terms of the divorce decree, Phyllis would not begin receiving her share of Truman's benefits until Truman retired. Phyllis did not appeal these two previous decisions. Because the issue at hand has been decided, more than once, in earlier proceedings between the same parties, res judicata precludes Phyllis from relitigating it.

In closing, we acknowledge that equities may support Phyllis's request. As Judge Spahr remarked, "Ma'am, you have to wait until he dies or retires. It's not fair, is it? It's not fair. And you [Truman] can continue to work and I'm proud of you for working but if all it takes is a signature on a, on a QDRO that will allow her to have access to a cash flow, . . . then I wonder about why you would remain so adamant. But I can't change it." *Tr*. at 22. "I can't change anything without an agreement signed by both parties." *Id*. at 21.

Phyllis's remedy was to appeal Judge Embrey's earlier rulings. Accordingly, the trial court's decision to grant Truman's motion to correct error was not an abuse of discretion.

Affirmed.

VAIDIK, J., and CRONE, J., concur.