EXHIBIT 12

FOURTH DIVISION
June 15, 2000

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-98-3465 & 1-98-3667, consol.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARTIN RYAN, et al, Intervening Plaintiffs-Appellants, v. THE CITY OF CHICAGO, Plaintiff-Counter defendant-Appellee, and MARSHALL KORSHAK, ET AL., Defendants-Counter plaintiffs-Appellees.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY No. 87 CH 10134 Honorable Albert E. Green, Judge Presiding.

ORDER

The intervening plaintiffs, class representatives of the participants in the City of Chicago's annuitant health care program (plaintiffs), appeal from the circuit court's September 1, 1998, order denying their motion to restore this case to the active calendar, add intervenors, file an amended complaint, and schedule this case for a

decision on the merits and dismissing this case. The proposed intervenors, Olsen, Walsh, and Sweeney, appeal from the trial court's September 1, 1998, order denying their petition to intervene as class members. These actions arose from a prior settlement in this case which guaranteed the participants a right to have the case restored and their claims decided if they had not reached a "permanent solution" to their healthcare coverage dispute with the City by December 1, 1997. The trial court found that because a "permanent solution" was reached, it lacked subject matter jurisdiction to consider plaintiffs' claims. Plaintiffs filed a timely notice of appeal on September 15, 1998. The proposed intervenors, also filed a timely notice of appeal on September 25, 1998. For the following reasons we affirm in part and reverse in part.

BACKGROUND:

The City's retired employees are covered by four annuity and benefit funds, the Policemen's Annuity and Benefit Fund, the Firemen's Annuity and Benefit Fund, the Municipal Employees' Officers' and Officials' Annuity Fund, and the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (collectively the Funds), which are governed by the Illinois Pension Code. In October 1987, the City provided health care coverage for annuitants in the Funds at a fixed monthly rate of $12 for Medicare qualified participants and $55 for non-medicare qualified participants.

On October 19, 1987, the City sued the trustees of the Funds for mandamus and restitution. The City sought to compel the Funds to pay for annuitants' health care benefits and to recover $58 million it had previously spent for health insurance for the

Funds' annuitants. The City also informed the Funds that it intended to cease payment of the annuitants' health care benefit costs as of December 31, 1987. The City's basis for these actions was that it had provided retiree healthcare coverage under an appropriation that, for most years, did not explicitly mention annuitants. The Funds counterclaimed on behalf of their annuitants to prevent the City from terminating the annuitants coverage under the City's plan and to compel the City to continue paying for a portion of the coverage. Certain individual annuitants, who are the plaintiffs in this matter, were granted leave to intervene in the trial court proceedings.

On May 16, 1988, the trial court dismissed the City's complaint with prejudice, finding that the Funds had no obligation to reimburse the City for the health care benefits received by the annuitants since 1980. In June 1988 a bench trial was held on the Funds' counterclaims. Before the trial court issued its decision, however, the City and the Funds agreed to support legislation amending the Pension Code and to enter into a settlement agreement consistent with the legislation. Following a fairness hearing on December 12, 1989, the trial court approved the settlement, over the objection of the intervenors. According to the terms of the settlement, the City paid at least 50% of the cost of the claims of annuitants and dependants participating in the City's plan..

On December 15, 1989, the trial court entered an agreed order memorializing the settlement agreement. The Order stated in relevant part:

> "The City and the Funds have agreed that at the conclusion of the 10 years covered by the settlement the parties will return to the same

> positions they were in before the proposed settlement was negotiated. In the words of the stipulation between the City and the Funds, which was read into the record before this Court on November 27, 1989:
>
> On January 1, 1998, the parties will be in the same legal positions they were in as of June of 1988. To the extent the City had any obligation in June of 1988, they will have that same obligation or obligations on January 1, 1998.
>
> Consequently, the annuitants have not "given up" anything through this settlement. (Other than the claimed right to have the City pay more than 50% of the costs between March of 1990 and December of 1997.) On January 1, 1998, if some "permanent solution" has not been achieved, the annuitants will be permitted to reargue the claims which were asserted in the Funds' Counterclaim as well as the Intervenors' initial pleading."

On November 28, 1990, this court affirmed the settlement agreement. City of Chicago v. Korshak, 206 Ill. App. 3d 968, 565 N.E.2d 68 (1990).

On June 27, 1997, the General Assembly enacted P.A. 90-32, extending the City's obligation to pay some of the costs of the annuitants' health benefits through June 30, 2002.

In June 1998, arguing that no "permanent solution" had been reached, plaintiffs filed a motion seeking to return the case to the active calendar, add or substitute additional intervenors, file an amended complaint, and set a schedule for a resolution of their claims on the merits. Additional annuitants, Olsen, Walsh, and Sweeney, moved for leave to intervene as class members on July 24, 1998. On September 1, 1998, the trial court denied the plaintiffs' motion, denied the proposed intervenors petition to intervene, and dismissed this case. The trial court held that with the legislature's adoption of a "permanent solution" for annuitant health care coverage, the

1989 consent decree had expired and the court lacked subject matter jurisdiction.

On appeal, the intervening plaintiffs and the proposed intervenors contend: (1) that the circuit court erred in finding that it lacked subject matter jurisdiction to consider plaintiff's claims; (2) that the 1997 amendments to the Pension Code unconstitutionally impair vested contractual rights; (3) that the 1997 amendments to the Pension Code were unconstitutional special legislation; and (4) that the circuit court abused its discretion in denying the proposed intervenors leave to intervene in this case.

Discussion:

At issue in this case is whether the circuit court had subject matter jurisdiction to address the plaintiffs' claims. Under the express terms of the consent decree, the circuit court's jurisdiction lasted until December 31, 1997. The agreement further provided that the circuit court's jurisdiction could continue after January 1, 1998, if no "permanent solution" to the annuitant health care problem had been reached. In dismissing plaintiffs' claims, the circuit court held that it had no jurisdiction over those claims because the General Assembly had achieved such a "permanent solution" through P.A. 90-32. The parties disagree as to whether P.A. 90-32 amounted to a "permanent solution" under the terms of the 1989 settlement agreement.

The Funds and the City argue that the intervening plaintiffs are bound by the 1997 settlement and the Funds' decision to treat the 1997 Amendments to the Pension Code as a "permanent solution." However, the intervening plaintiffs were made full parties to this action when they were allowed to intervene. See Redmond v. Devine,

152 Ill. App. 3d 68, 504 N.E.2d 138 (1987)(holding that Intervenor is entitled to all the rights of an original party). The settlement agreement reaffirmed the intervening plaintiffs' position in the case by expressly providing that if a "permanent solution" is not achieved by January 1, 1998, "the annuitants will be permitted to reargue the claims which were asserted in the Funds' counterclaim as well as the intervenors' initial pleading."

The sole issue before this court then, is whether the 1997 amendment to the Pension Code was a "permanent solution" within the meaning of the settlement agreement. We find that it was not.

The 1997 amendment by its very terms states that the City's responsibility to pay for annuitant health benefits ends on June 30, 2002. Anything bounded in time cannot possibly be considered permanent. Webster's defines permanent as "lasting indefinitely." Webster's II New Riverside Dictionary 509 (1996). The Supreme Court has defined "permanent" as "a relationship of continuing or lasting nature, as distinguished from temporary." Castillo v. Jackson, 149 Ill. 2d 165, 180, 594 N.E.2d 323 (1992), quoting, Holley v. Lavine, 553 F.2d 845, 850 (2nd Cir. 1977). A 5 year plan clearly does not last indefinitely.

In Castillo, the Supreme Court also recognized that "permanent" does not equal "perpetual", stating "a relationship may be permanent even though it is one that may be dissolved eventually at the insistence either of the [State] or of the individual, in accordance with law." Castillo, 149 Ill. 2d at 180. The Funds argue that the 1997

Amendments fall within this definition because pursuant to the Amendments, the City can discontinue or amend annuitants' health care benefits at any time, as long as they act subject to and in accordance with the law. However, this ability to discontinue or amend annuitant's health care benefits does not change the fact that the legislation expires after 5 years. It simply does not create the continuing or lasting relationship necessary to make it permanent.

We find that the 1997 Amendments to the Pension Code do not constitute a "permanent solution" within the meaning of the settlement agreement. Therefore, under the express terms of the settlement agreement, the intervening plaintiffs are entitled to reargue the claims originally asserted in the Funds' counterclaims as well as the Intervenors' initial pleading.

II Proposed - Intervenors

The proposed intervenors contend that the circuit court abused its discretion in denying their petition for leave to intervene in this case. The proposed intervenors sought to intervene as of right pursuant to section 5/2-408(a) of the Code of Civil Procedure (735 ILCS 5/2-408(a) (West 1996)) because "representation by the existing parties may be inadequate and the applicants may be bound by an Order and Judgement in this action." The decision whether to grant a petition to intervene as of right lies within the trial court's discretion, however, that discretion is limited to determining timeliness of the petition, the inadequacy of the representation by existing parties, and the sufficiency of interest of the potential intervenors. Joyce v. Explosives

Technologies Int'l, 253 Ill. App. 3d 613, 625 N.E.2d 446 (1993). Once these requirements are met, the party must be allowed to intervene.

A petitioner seeking to intervene may establish inadequate representation by the existing parties by demonstrating that his interests are different from those of the existing parties. Redmond v. Devine, 152 Ill. App. 3d 68, 504 N.E.2d 138 (1987). The proposed intervenors have failed to demonstrate how their interests are any different from the annuitants who have already intervened in this matter.

In Warbucks Inv. Ltd. Partnership v. Rosewell, 241 Ill. App. 3d 814, 609 N.E.2d 832 (1993), the court noted "[a]lthough it is well settled that the intervention statute is remedial and should be liberally construed (citation omitted), the petitioner is nevertheless required to allege specific facts that demonstrate that he has a right to intervene. Allegations that are conclusory in nature and merely recite statutory language are insufficient to meet the requirements of section 2-408." 241 Ill. App. 3d at 817. In the present case, the prospective intervenors allege no specific facts to demonstrate their right to intervene. Their petition to intervene merely recites the statutory language in a conclusory fashion.

The proposed intervenors also make an argument based on section 2-804(a) of the Code of Civil Procedure (735 ILCS 5/2-804(a) (West 1996). This argument, however, has been waived. The proposed intervenors admit that they never raised this argument below in their petition for leave to intervene. Arguments not raised in the trial court are waived and may not be raised for the first time on appeal. E&E Hauling, Inc.

v. Ryan, 306 Ill. App. 3d 131, 713 N.E.2d 178 (1999).

We find that the proposed intervenors petition to intervene was properly denied.

Accordingly, for the reasons set forth above the judgment of the Circuit Court of Cook County is affirmed in part and reversed in part, and the cause is remanded to the Circuit Court.

Affirmed in part and Reversed in part, Cause Remanded.

HALL, J,, with HOFFMAN, P.J. and BARTH, J., concurring.