

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Judith R. Schrader

Court of Appeals No. L-03-1172

Appellee

Trial Court No. DR-1982-0556

v.

Roy A. Schrader

DECISION AND JUDGMENT ENTRY

Appellant

Decided: January 28, 2005

* * * * *

James S. Adray, for appellee.

Peter L. Moran, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, in a post-divorce proceeding regarding the pension benefits of defendant-appellant, Roy A. Schrader, and the modification of spousal support payments.

{¶ 2} The parties, Roy A. Schrader, and plaintiff-appellee, Judith R. Schrader, were divorced through a final judgment entry of divorce entered on January 1, 1984. At that time, the parties had been married for approximately 30 years, appellant was 53 years old and appellee was 50 years old. Appellant was employed by Jeep, a division of

American Motors Corporation (“AMC”), through which he was entitled to pension benefits. In addressing those pension benefits, the court in its January 1984 entry first stated that the benefits were of an undetermined value. The court then made the following findings which are relevant to the issues now before us:

{¶ 3} “The court further finds that the plaintiff has no retirement benefits through employment and that plaintiff will be entitled to social security benefits through defendant’s employment. Plaintiff would have been entitled as a spouse to defendant’s retirement benefits if the marriage had continued.

{¶ 4} “The court further finds that the defendant has retirement benefits through his employment with Jeep Corporation. Defendant’s pension plan is presently vested. The present value of defendant’s pension is \$1,020.00 per month at age 65, or \$840.00 per month, upon immediate retirement on the ‘30 Year And Out’ retirement benefits. Defendant will be entitled to social security benefits.

{¶ 5} “* * *

{¶ 6} “The court specifically finds that when spouses have spent the vast majority of their lives together in a lengthy marriage, and are close to the retirement of one or both parties (due to age or conditions of a pension) that both should share equally in the division of marital assets, and income.

{¶ 7} “* * *

{¶ 8} “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff is awarded alimony for sustenance and maintenance in the amount of \$1,000.00 per month, plus one and one-half per cent (1 ½%) poundage, until death, remarriage or

further order of court. This award is specifically reviewable on defendant's retirement from Jeep Corporation based on need and the applicable factors set forth in O.R.C.

3105.18

{¶ 9} *** **

{¶ 10} "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon defendant's retirement from Jeep Corporation, plaintiff is awarded one-half of defendant's retirement benefits as a division of property, and, each party being entitled to social security benefits (depending on their ages, entitlement and on social security regulations), the determination for receiving alimony shall be calculated by considering plaintiff's income from earnings, if any, and from defendant's pension, income from social security, if then entitled, and any other source of income, and plaintiff's reasonable needs.

{¶ 11} *** **

{¶ 12} "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it is this court's intention that when both parties receive defendant's pension and/or social security benefits, that their income be equalized to provide a similar standard of living to each only to the extent that plaintiff's needs require the court to equalize their income from all sources.

{¶ 13} *** **

{¶ 14} "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided for hereinabove, each party is awarded one-half of defendant's pension benefits through employment at Jeep Corporation."

{¶ 15} In September 1987, Jeep Corporation was sold to Chrysler Corporation, which subsequently merged with Daimler Benz to become the Daimler-Chrysler Corporation. As a Jeep employee, appellant was a press superintendent. When Chrysler bought Jeep, it offered appellant a comparable position as a press area manager. On September 22, 1987, appellant signed a letter of intent that was presented to him by Chrysler, accepting the new employment. That letter reads in pertinent part:

{¶ 16} “The duties and responsibilities of this position have been explained to me. I understand that I will be retained on AMC’s salary and benefit schedule for a transition period that will end no later than December 31, 1988 and that after the transition period (whether it ends on December 31, 1988 or sooner), I will be placed on a Chrysler salary and benefit schedule. I further understand that my compensation, after transfer to the Chrysler rolls, will be within the salary range indicated above, and will include the benefits normally associated with the Chrysler position being offered to me.”

{¶ 17} In January 1989, appellant began to participate in the Chrysler Salaried Employees Retirement Plan (“SERP”). At some time, although it is not clear when, he also began to participate in the Daimler Chrysler Corporate Pension Plan. In June 2000, appellant retired and, thereafter, filed a motion for the court to establish appellee’s pension entitlement and to terminate spousal support. In response, appellee filed a motion to modify (increase) spousal support. Due to previous modifications, appellee had been receiving, since February 12, 1993, \$340 per week in spousal support. The motions were heard before a domestic relations court magistrate who, on October 9,

2002, filed a magistrate's decision with findings of fact and conclusions of law. The findings of fact included the following:

{¶ 18} "6. The Defendant retired from Daimler Chrysler on June 30, 2000.

{¶ 19} "7. Janet Mowry-Wilson record custodian at the Lucas County Child Support Enforcement Agency, testified that as of May 15, 2001, the Defendant was in arrears of spousal support payments in the amount of \$3,454.69 including processing fees. This sum does reflect the \$3,000.00 in direct payments made by the Defendant.

{¶ 20} "8. William Kimmelman, JD, CPA has extensive experience in the preparation of Qualified Domestic Relations Orders (QDRO). He stated that QDRO's [sic] can be utilized for spousal support, child support or property division. In Ohio QDRO's [sic] are generally utilized for property divisions.

{¶ 21} "9. Mr. Kimmelman believes that a QDRO was not ordered at the time of the final hearing for divorce because the law authorizing same was not in existence. If a QDRO was prepared, and Defendant died, Plaintiff's benefits would continue. The Defendant is now in pay status so if he dies there will be no continuation of benefits for the Plaintiff.

{¶ 22} "10. Plaintiff is sixty-eight (68) years old and has never had a drivers license. She was not employed outside of the home at the time of the divorce and she is not currently employed. Her current income consists of \$1,473.33 per month in spousal support and \$509.00 per month in social security benefits. Plaintiff states that she also receives a small pension (\$123.00-\$126.00 per month) but the Court is not clear on what

the exact source of that income is but the Court believes it is the Defendant's military service. Plaintiff currently has Medicare health insurance coverage.

{¶ 23} "11. Plaintiff lives alone and continues to be in poor health. She has had back surgery and suffers from chronic back pain. Her kidneys do not function at full capacity and she has the stints replaced every three (3) months which causes chronic kidney infections. She also suffers from heart problems and is in need of dental work. She takes a myriad of prescription drugs.

{¶ 24} "12. Plaintiff has substantial medical expenses and living expenses * * *.

{¶ 25} "13. At the time of the final divorce hearing, Defendant was employed by the American Motors Corporation (AMC). In 1987, Chrysler Corporation bought American Motors. The Defendant took a comparable position with Chrysler at that time. * * * Daimler Benz later merged with Chrysler forming Daimler Chrysler. Defendant continued his employment through these corporate changes.

{¶ 26} "14. Defendant currently receives the following monthly benefits from Daimler Chrysler:

{¶ 27} "a. Daimler Chrysler Corporate Pension Plan \$1,409.24

{¶ 28} "b. Jeep Salaried Pension Plan \$ 853.00

{¶ 29} "c. Salaried Employees Retirement Plan \$ 696.49

(Participation Date January 1, 1989) \$2,958.73

{¶ 30} "15. Defendant also receives \$1,785.00 in monthly social security benefits and a military pension of an unspecified amount.

{¶ 31} “16. Defendant’s total monthly retirement benefits income is \$4,743.73 plus the unknown amount of the military pension.

{¶ 32} “* * *

{¶ 33} “18. Defendant’s 2001 adjusted gross income was \$73,000.00 per the testimony of the Defendant.

{¶ 34} “19. Defendant has numerous financial accounts with Merrill-Lynch including a 401(K) account with a value of \$120,000.00. He also has accounts with Munder, H & R Block, Fifth Third Bank and Jeep Federal Credit Union.

{¶ 35} “20. Defendant and his female friend purchased a home in Oregon, Ohio together in 1989. She is employed at Daimler Chrysler but Defendant does not know her income. They share expenses at their residence with the Defendant paying the greater portion.”

{¶ 36} Based on these findings of fact, the magistrate made the following relevant conclusions of law:

{¶ 37} “3. The prior Court order states that it is the intention of the Court to equalize the incomes of Plaintiff and Defendant to provide a similar standard of living to the extent that the needs of the Plaintiff require the equalization. The Court further stated that the income from all sources should be utilized.

{¶ 38} “4. The prior Court order also provides that Plaintiff and Defendant are awarded one-half (1/2) of the Defendant’s pension benefits through Defendant’s employment at Jeep Corporation as a division of property.

{¶ 39} “5. The Court is unaware of a Qualified Domestic Relations Order having been prepared, submitted and approved. The Court will therefore divide Defendant’s retirement benefits as a division of property in accord with the divorce decree.

{¶ 40} “6. The Court concludes that the Defendant’s retirement benefits consist of the following:

{¶ 41} “a. Daimler Chrysler Corporate Pension Plan \$1,409.24

{¶ 42} “b. Jeep Salaried Pension Plan \$ 853.00

{¶ 43} “c. Salaried Employees Retirement Plan \$ 696.49

(Participation Date January 1, 1989) \$2,958.73

{¶ 44} “7. Defendant argues that only the ‘Jeep’ portion should be divisible as that was where he was employed at the time of the divorce. The Court disagrees. The Defendant has maintained the same basic employment even though the corporate structure of his employer as changed. Further, the Defendant was employed by American Motors while working at ‘Jeep.’ The prior Court order made no distinction as to the source of the pension or retirements [sic] but rather designated the Defendant’s retirement from ‘Jeep’ as the triggering factor for division of the benefits.

{¶ 45} “8. It is the Court’s position that the Plaintiff is entitled to \$1,492.86 per month as and for division of property as a result of her one-half (1/2) portion of Defendant’s retirement benefits.”

{¶ 46} In addition to the conclusion regarding the property division, the magistrate evaluated the factors set forth in R.C. 3105.18 and concluded that appellee should be awarded spousal support of \$1,000 per month.

{¶ 47} Appellant filed objections to the magistrate's decision in which he challenged both the court's jurisdiction to make an award of pension benefits that he acquired after the granting of the divorce and the court's spousal support award.

{¶ 48} On May 21, 2003, the lower court issued a judgment entry on appellant's objections. Addressing the issue of appellant's pension benefits, the court concluded that the intent of the original divorce decree was to award appellee one-half of appellant's retirement benefits upon appellant's retirement from Jeep and that those retirement benefits included all three pension plans. The court based this finding on the following:

{¶ 49} "There is no evidence that Defendant experienced any period of interrupted employment with the acquisition of Jeep by Chrysler or in its merger with Daimler. In fact, Defendant did retire from Jeep, now a subsidiary of Daimler-Chrysler. Defendant's job title progressed from foreman to "SUPT PRESS" to "PRESS AREA MGR" to that of a salaried employee, earning a higher plateau of retirement benefits upon retirement. * * * The Court finds that Defendant was almost seventy (70) years old when he retired on June 30, 2000. * * * However, the Court previously determined that 'Defendant's pension plan is currently vested. *The present value of Defendant's pension is \$1,020.00 per month at age 65, or \$840.00 per month, upon immediate retirement on the '30 Year And Out' retirement benefits.*' Judgment Entry, filed Jan. 4, 1984 (emphasis added).

{¶ 50} "The Court finds that with the acquisition of AMC by Chrysler and Chrysler's merger with Daimler, Defendant's 'Jeep Salaried' monthly benefits of Eight Hundred Fifty-Three Dollars (\$853.00) is less than the previously determined present value of Defendant's pension of '\$1,020.00 per month at age 65.' * * * This discrepancy

in the ‘Jeep Salaried’ monthly benefits comports with Mr. Kimmelman’s voiced and written concerns that a portion of Defendant’s retirement benefits from the original plan may have rolled into new plans with the corporate acquisition and subsequent merger.

{¶ 51} “Mr. Kimmelman testified, ‘because of the takeover, there might be marital property contained in the new plans even though they weren't in existence at the time of the divorce.’ * * * ‘My only concern and the reason for the inclusion is in some instances, companies roll benefits from old plans into new plans and I want to insure that Mrs. Schrader is protected if that was to happen.’

{¶ 52} “Indeed, Judge Galvin anticipated that Defendant, then a thirty-one (31) year employee of Jeep, a subsidiary of AMC, would retire as a Jeep employee. The language of the Judgment Entry speaks repeatedly of the intention to equalize incomes of the parties from all sources upon Defendant’s retirement. The ordinary and plain meaning of paragraph 7 on page 5 and paragraph 2 and paragraph 8 on page 6, read *in pari material*, mandates that ‘upon defendant’s retirement from Jeep Corporation, plaintiff is awarded one-half of defendant’s retirement benefits as a division of property,’ and ‘when both parties receive defendant’s pension and/or social security benefits, that their income be equalized to provide a similar standard of living to each only to the extent that plaintiff’s needs require the court to equalize their income from all sources’ and that ‘each party is awarded one-half of defendant’s pension benefits through employment at Jeep Corporation.’”

{¶ 53} Accordingly, the court rejected appellant’s objections regarding its disposition of pension benefits. The court also rejected appellant’s objections regarding

the award of spousal support. The court, therefore, awarded appellee as and for a division of property, \$1,492.86 per month and as and for spousal support, \$1,000 per month. It is from this judgment that appellant now appeals, raising the following assignments of error:

{¶ 54} “First Assignment of Error

{¶ 55} “The trial court erred as a matter of law to the prejudice of the appellant in exercising jurisdiction over pension benefits of the appellant that accrued after the January 1984 judgment entry and in modifying the property division and awarding the appellee fifty percent (50%) of appellant’s combined monthly retirement benefits from his employment.

{¶ 56} “Second Assignment of Error

{¶ 57} “The trial court abused its discretion and erred as a matter of law to the prejudice of the appellant in awarding an amount of spousal support to the appellee which was inconsistent with Ohio law and the intent of the January 4, 1984 judgment entry of divorce and amounts to a reward to the appellee and a penalty to the appellant.”

{¶ 58} Under his first assignment of error, appellant asserts that the trial court was without jurisdiction to modify the original property division and award appellee a portion of appellant’s pension benefits that he acquired after the parties’ January 4, 1984 divorce.

{¶ 59} It is well-settled that pension and retirement benefits earned during the course of the marriage are marital assets subject to division upon a divorce. *Hoyt v. Hoyt* (1990), 53 Ohio St.3d 177, 178. Because it is a division of marital property, a domestic relations court lacks continuing jurisdiction to modify a division of pension or retirement

benefits. *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399. Nevertheless, while a trial court does not have continuing jurisdiction to modify or amend a marital property division incident to a divorce decree, “[i]f there is good faith confusion over the interpretation to be given to a particular clause of a divorce decree, the trial court in enforcing that decree has the power to hear the matter, clarify the confusion, and resolve the dispute.”

Quisenberry v. Quisenberry (1993), 91 Ohio App.3d 341, 348. “An interpretive decision by the trial court cannot be disturbed upon appeal absent a showing of an abuse of discretion.” *In re Dissolution of Marriage of Seders* (1987), 42 Ohio App.3d 155, 156.

{¶ 60} Upon a review of the record herein, we must conclude that the trial court abused its discretion in determining that the intent of the original divorce decree was to award appellee pension benefits from the subsequent pension plans. The court based its holding primarily on the testimony of William Kimmelman, appellant’s expert in pension plans and QDROs. Kimmelman testified on direct examination as follows:

{¶ 61} “Q. Does the alternate payee have the right to participate in a pension plan that was not in existence at the time of the divorce?

{¶ 62} “A. She does if benefits which were previously accrued prior to the marriage were rolled into that other plan or somehow the plan benefits in the new plan is [sic] based on service that accrued under the prior plan.

{¶ 63} “Q. We don’t have that here, do we?

{¶ 64} “A. I don’t know that we do have that here.

{¶ 65} “Q. We have three separate retirements here, don’t we?

{¶ 66} “A. We have a Jeep Corporation Plan, we have a Chrysler Pension Plan and we have a SERP Plan.

{¶ 67} “Q. Right. And the Jeep Pension Plan was the only one that was in existence at the time of the divorce in 1984?

{¶ 68} “A. That’s correct.

{¶ 69} “Q. So the other two were not in existence?

{¶ 70} “A. No.

{¶ 71} “Q. All right. So the benefits of the ’87 and ’89 programs would not endure to Mrs. Schrader?

{¶ 72} “A. I don’t know that I can necessarily say that because as I said before, if any benefit entitlement from the original Jeep plan flows into the new plans because of the takeover, there might be marital property contained in the new plans even though they weren’t in existence at the time of the divorce.

{¶ 73} “Q. You agree with the statement that the terms of the order would exclude any service subsequent to January 4th of 1984, wouldn’t you?

{¶ 74} “A. Given the state of this order, I am not so sure I could state that?

{¶ 75} “Q. But you did state that?

{¶ 76} “A. I did state that in a letter to you, I did.”

{¶ 77} The letter referenced by Kimmelman and admitted into evidence below reads in relevant part: “I agree that the benefits that accrued after the divorce are not subject to division. However, I think that the terms of the Order would exclude any service subsequent to January 4, 1984. My only concern and the reason for the inclusion

is in some instances, companies roll benefits from old plans into new plans and I want to insure that Mrs. Schrader is protected if that was to happen.”

{¶ 78} After determining that the original divorce decree specifically limited appellee’s portion to one-half of appellant’s retirement benefits through Jeep, the court essentially found that because appellant was receiving a monthly benefit of \$853 under the Jeep pension and that the original decree had valued that pension at \$1,020 per month upon appellant’s reaching age 65, a portion of the Jeep pension must have been rolled into the new plan with the corporate acquisition and subsequent merger. This finding, however, is simply not supported by the record. Kimmelman only expressed concerns that such a rollover sometimes happens upon corporate mergers. There was no evidence that such occurred in this case. Moreover, there was testimony that upon Chrysler’s acquisition of Jeep in 1987, the Jeep plan was “frozen.” That was approximately three years after the parties’ divorce. Accordingly, it is equally possible that at the time of the acquisition, the value of the Jeep plan was \$853 per month in that appellant was at that time only 57 years old. The point is, there was no *evidence* before the trial court to establish what, if any, portion of the subsequent pension plans was marital property. The issue is a critical one in that the trial court only had jurisdiction to divide that portion that was marital property.

{¶ 79} In *Hoyt*, supra at 180-181, the Supreme Court of Ohio discussed the trial court’s discretion in considering pension and retirement benefits:

{¶ 80} “The trial court must have the flexibility to make an equitable decision based upon the circumstances of the case, the status of the parties, the nature, terms and

conditions of the pension plan, and the reasonableness of the result. Thus, any given pension or retirement fund is not necessarily subject to direct division but is subject to evaluation and consideration in making an equitable distribution of both parties' marital assets.

{¶ 81} “The rights and obligations associated with pension and retirement funds are contractual in nature. Pension and retirement plans are diverse since they may (1) be derived from public or private employment; (2) be vested or nonvested; (3) consist of contributions from employee only, employer only, both or neither; (4) include contingencies for payment; (5) and be subject to garnishment and execution. In some instances, the parties' pension and retirement funds may be the most significant marital asset of one or both spouses. Thus the trial court must understand the intricacies and terms of any given plan *and, if necessary, require both of the parties to submit evidence on the matter in order to make an informed decision.*” (Emphasis added.)

{¶ 82} Appellee asserts that because appellant did not present evidence in the proceedings below that the subsequent pension plans were his separate property, he cannot now assert that there was insufficient evidence to support the trial court's holding. As we have stated above, however, this is not simply a factual issue but a jurisdictional one. The issue of a court's lack of subject-matter jurisdiction may be raised at any point in the proceeding, including on appeal. *Fox v. Eaton Corp.* (1976), 48 Ohio St.2d 236, 238.

{¶ 83} Accordingly, the trial court erred in awarding appellee a portion of appellant's Daimler Chrysler and SERP pension plans which appellant acquired after the divorce and the first assignment of error is well-taken.

{¶ 84} In his second assignment of error, appellant challenges the trial court's spousal support award to appellee.

{¶ 85} Given our ruling under the first assignment of error, the trial court will need to redetermine appellee's spousal support award after determining the amount of pension benefits to which she is entitled. Accordingly, we need not address this issue at this time.

{¶ 86} On consideration whereof, the court finds that substantial justice has not been done the party complaining and the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is reversed. This case is remanded to the trial court for further proceedings consistent with this decision. Pursuant to App.R. 24, appellee is ordered to pay the court costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Richard W. Knepper, J.

JUDGE

JUDGE

CONCUR.

JUDGE