

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

HELEN SCHNEIDER	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
PAUL SCHNEIDER	:	Case No. 2009CA00090
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Domestic Relations Division, Case No.
1995DR01425

JUDGMENT: Reversed & Remanded

DATE OF JUDGMENT ENTRY: February 16, 2010

APPEARANCES:

For Plaintiff-Appellee

TYRONE D. HAURITZ
500 Chase Tower
101 Central Plaza South
Canton, OH 44702

For Defendant-Appellant

STANLEY R. RUBIN
437 Market Avenue North
Canton, OH 44702

Farmer, J.

{¶1} By judgment entry decree of divorce filed November 7, 1996, appellant, Paul Schneider, and appellee, Helen Schneider, were divorced. The decree divided appellant's Timken Company pension equally, fifty percent to appellant and fifty percent to appellee. The parties agreed to execute a Qualified Domestic Relations Order (hereinafter "QDRO").

{¶2} A QDRO was filed and approved by the trial court on March 4, 1997. Appellant retired on December 31, 2008. Appellant discovered appellee would receive fifty percent of his pension for the entire period of his employment with the Timken Company rather than only for the years of the parties' marriage.

{¶3} On October 28, 2008, appellant filed a motion for clarification of the QDRO. A hearing was held on November 17, 2008. By judgment entry filed March 30, 2009, the trial court found no ambiguity in its order and denied appellant's motion for clarification.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN REFUSING TO CLARIFY THE TERMS OF THE QUALIFIED DOMESTIC RELATIONS ORDER IN THAT THE COURT INCORRECTLY APPLIED THE COVERTURE FORMULA TO APPELLANT'S PENSION PLAN AS OF THE DATE OF APPELLANT'S RETIREMENT RATHER THAN AS OF THE DATE OF THE PARTIES' DIVORCE."

II

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO FIND THAT THE QUALIFIED DOMESTIC RELATIONS ORDER GRANTED APPELLEE A LARGER SHARE OF APPELLANT'S PENSION THAN SHE WAS ENTITLED TO PURSUANT TO THE TERMS OF THE PARTIES' DIVORCE DECREE, DUE TO AN AMBIGUITY IN THE DIVORCE DECREE, WHICH AMBIGUITY REQUIRED CLARIFICATION."

I, II

{¶7} Appellant's two assignments of error challenge the trial court's denial to clarify its order and modify the QDRO. Appellant claims the QDRO incorrectly applied a coverture formula because of an ambiguity in the divorce decree's award of pension benefits. We agree the QDRO incorrectly applied a coverture formula.

{¶8} In *Kingery v. Kingery*, Logan App. No. 8-05-02, 2005-Ohio-3608, ¶8, citations omitted, our brethren from the Third District stated the following:

{¶9} "Retirement benefits acquired during a marriage are a marital asset that must be divided equitably between the spouses in a decree of divorce that terminates the marriage.***Once a division of property is established in the divorce decree that decision 'is not subject to future modification by the court.' R.C. 3105.171(I). Accordingly, the trial court lacks jurisdiction to *modify* the division of marital property.***'However, a trial court does have the power to *clarify* and construe its original property division in order to effectuate its judgment.' Thus, a trial court has the authority to properly clarify the meaning of a divorce decree in the event the decree is ambiguous.***"

{¶10} "The trial court has broad discretion in clarifying ambiguous language by considering not only the intent of the parties but the equities involved.***An interpretive decision by the trial court cannot be disturbed upon appeal absent a showing of an abuse of discretion.***" *Bond v. Bond* (1990), 69 Ohio App.3d 225, 227-228, citations omitted. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶11} In *Mckinney v. Mckinney* (2001), 142 Ohio App.3d 604, 608, our brethren from the Second District explained the following:

{¶12} "A QDRO is a current distribution of the rights in a retirement account that is payable in the future, when the payee retires. It is ordinarily issued subsequent to and separate from the decree of divorce itself, after the employer payor has approved its terms as conforming with the particular pension plan involved. A QDRO is, therefore, merely an order in aid of execution on the property division ordered in the divorce decree. So long as the QDRO is consistent with the decree, it does not constitute a modification, which R.C. 3109.171(I) prohibits, and the court does not lack jurisdiction to issue it. *Tarbert v. Tarbert* (Sept. 27, 1996), Clark App. No. 96-CA-0036, unreported."

{¶13} In its judgment entry decree of divorce filed November 7, 1996, the trial court awarded the following regarding appellant's Timken Company pension:

{¶14} "5. PENSION AND/OR WORK RELATED BENEFITS

{¶15} "The parties mutually agree that the Husband's pension through his employment at The Timken Company shall be divided equally, (50% to Husband and 50% to Wife). The parties agree to execute a Qualified Domestic Relations Order with

regard to the Husband's pension with rights of survivorship to the Wife. The parties agree to split the cost of the preparation of Qualified Domestic Relations Order equally."

{¶16} The QDRO filed March 4, 1997 specifically stated the following:

{¶17} **"7. Amount of Alternate Payee's Benefit:** This Order assigns to Alternate Payee an amount equal to the actuarial equivalent of **Fifty Percent (50%) of the Marital Portion of the Participant's Accrued Benefit** under the Plan as of the Participant's benefit commencement date, or the Alternate Payee's benefit commencement date, if earlier. The Marital Portion shall be determined by multiplying the Participant's Accrued Benefit by a fraction (less than or equal to 1.0), the numerator of which is the number of months of the Participant's participation in the Plan earned during the marriage (**from June 8, 1968 to November 7, 1996**), and the denominator of which is the total number of months of the Participant's participation in the Plan as of the earlier of his date of cessation of benefit accruals or the date that Alternate Payee commences her benefits hereunder."

{¶18} The QDRO language includes the fifty percent of the "Marital Portion of the Participant's Accrued Benefit," but the denominator as defined extends the benefit to the entire time appellant participated in the plan. The ultimate result is that appellee will receive a benefit for some twelve years beyond the termination of the marriage.

{¶19} As explained in *McKinney*, supra, a QDRO is basically a vehicle to effectuate the provisions of a divorce decree. It is the equivalent of a quitclaim deed. A trial court therefore has the right and privilege to amend a QDRO that does not reflect a divorce decree's intent.

{¶20} As we read the divorce decree in toto, paragraph five cited supra divided a marital asset; therefore, the retirement benefit should be determined by the amount of time the parties were married. See, R.C. 3105.171(A)(3)(a). Even the QDRO acknowledges it pertains to the marital portion.

{¶21} Upon review, we find the trial court erred in not modifying the QDRO to correct the clear error in the denominator.

{¶22} Assignments of Error I and II are granted.

{¶23} The judgment of the Court of Common Pleas of Stark County, Ohio, Domestic Relations Division is hereby reversed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/db 0208

