

[Cite as *Uecker v. Uecker*, 2024-Ohio-4566.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JULIANA UECKER

Appellant

v.

RICHARD K. UECKER

Appellee

C.A. No. 30794

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DR-2006-02-0491

DECISION AND JOURNAL ENTRY

Dated: September 18, 2024

CARR, Judge.

{¶1} Plaintiff-Appellant Juliana Uecker appeals the decision of the Summit County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} Ms. Uecker and Defendant-Appellee Richard Uecker were married in 1998 and divorced in 2007. The divorce decree included a separation agreement. Within the separation agreement, the parties agreed on the following with respect to Mr. Uecker’s retirement benefits:

PENSION PLAN

The Husband is a participant under the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the “Plan”). For the purposes of marital property division, Wife is hereby granted 100% of Husband’s retirement benefits under the Plan as designated below. Her ownership of [Husband’s] retirement benefits shall become effective on the Assignment Date, which shall be the date that the Judgment Entry/Decree of Divorce is filed with the Court.

Amount of Wife’s Benefits: Accordingly, effective as of such Assignment Date, Wife shall be assigned Husband’s retirement benefits in an amount equal to the actuarial equivalent of **One Hundred Percent (100%) of Husband’s Accrued**

Benefit under the Plan as of Husband's benefit commencement date, or Wife's benefit commencement date, if earlier.

Commencement Date and Form of Payment to Wife: Wife may elect to commence her share of the benefits under the Plan as of the earliest retirement date on which Husband is eligible to commence benefits under the Plan. Wife may elect to receive her benefits in any one of the allowable benefit distribution options permitted under the terms and provisions of the Plan.

The form of benefit elected by Wife is to be based on the **life expectancy of Wife**. Any actuarial adjustment that might be necessary to convert Wife's benefits to one based on her lifetime should be applied to her share of the benefits.

Important Note: In the event that the Plan does not permit Wife to receive her benefits in the form of an actuarially equivalent life annuity based on her life expectancy, then the form of benefits payable to Wife shall be based on the life expectancy of Husband. Additionally, Husband shall be required to elect his benefits in the form of a reduced joint and survivor annuity in order to provide Wife with postretirement survivorship protection. Further, should any **early retirement reduction** be necessary in the event that Wife commences her benefits prior to Husband's Normal Retirement Date under the Plan, then such reduction shall be applied to [Wife's] benefits in accordance with applicable Plan provisions.

Early Retirement Subsidy: Also, Wife shall be entitled to a pro rata share of any employer-provided **early retirement subsidy** provided to Husband on the date of her retirement, and in the event Wife has already commenced her share of the benefits on the date of Husband's retirement, then the amounts payable to Wife shall be increase[d] in accordance with the Plan Administrator's practices and the Plan's actuarial principles in order to provide Wife with the pro rate share of such early retirement subsidy. Such pro rate share shall be calculated in the same manner as Wife's share of Husband's retirement benefits is calculated pursuant to this section of the Separation Agreement.

Early Retirement Supplements: Further, Wife shall be entitled to a pro-rata share of any early retirement supplements, interim supplements or temporary benefits payable to Husband. The Wife's share of said benefit shall be calculated in the same manner as the Wife's share of Husband's retirement benefits is calculated pursuant to this section of the Separation Agreement.

Preretirement Survivorship Protection for Wife: In order to secure Wife's ownership right in the assigned portion of Husband's retirement benefits under the Plan, in the event that Husband predeceases Wife and neither Wife nor Husband has commenced her or his benefits under the Plan, such Wife shall be designated as the surviving spouse of Husband for purposes of establishing Wife's entitlement to receipt of this monthly preretirement surviving spouse annuity.

Tax Treatment of Distributions Made to Plaintiff under the Qualified Domestic Relations Order (“QDRO”): For purposes of Sections 401(a)(1) and 72 of the Internal Revenue Code, Wife shall be treated as distributee of any distribution or payments made to her under the terms of the QDRO, and as such, will be required to pay the appropriate federal income taxes on such distribution.

Constructive Receipt: In the event that Plan Trustee inadvertently pays to Husband any benefits that are assigned to Wife pursuant to the terms of the QDRO, Husband shall immediately reimburse Wife to the extent that he has received such benefit payments, and shall forthwith pay any such amounts so received directly to Wife within ten (10) days of receipt.

A QDRO Shall Issue: In order to effectuate the Assignment provisions of this Separation Agreement regarding the division of Husband’s retirement benefits under the Plan, a Qualified Domestic Relations Order (“QDRO”) shall be prepared in accordance with the terms of this Agreement and submitted to the Plan Administrator for processing.

Continued Jurisdiction: The court shall retain jurisdiction to establish and/or maintain the qualified status of this Order and to effectuate the original intent of the parties as stipulated herein. The court shall also retain jurisdiction to enter into such further orders as are necessary to enforce the assignment of benefits to the former spouse, including the recharacterization thereof, as a division of benefits under another plan, as applicable or to make an award of spousal support, if applicable, in the event that the employee or the plan administrator fails to comply with the provision contained herein. Furthermore, the court retains jurisdiction to enter orders, including nunc pro tunc orders, that are just and equitable so long as the orders are not inconsistent with any other provisions of the Decree.

Actions by Husband: Husband shall not take any actions, affirmative or otherwise, that can circumvent the terms and provisions of this Qualified Domestic Relations Order, or that could diminish or extinguish the rights and entitlements of [Wife] as set forth herein or under the terms of the QDRO. Should Husband take any action or inaction to the detriment of Wife, then Husband shall be required to make sufficient payments **directly** to Wife to the extent necessary to neutralize the effect of his action or inaction and to the extent of Wife’s entitlements hereunder.

Wife shall retain the services of QDRO Consultants to prepare the Qualified Domestic Relations Order and shall be responsible for the cost of preparation of that QDRO.

The Summit County Domestic Relations Court shall retain jurisdiction over this asset and over this provision for purposes of enforcement.

(Emphasis in original.) The separation agreement further states that it “shall not be altered, amended, changed, or modified except that it be done in writing and signed by both parties.” A QDRO was filed in October 2007.

{¶3} In January 2021, Mr. Uecker applied for benefits under what was known as the Legacy Credit Pension. Neither the Legacy Credit Pension nor the benefits thereunder existed before 2011. They came into being as a result of collective bargaining. He began receiving the benefits (hereinafter “Legacy Benefits”) in March 2021. The Legacy Benefits amounted to \$4,876.35 per month. At all relevant times, there was a separate Benefit Credit Pension.

{¶4} In July 2021, Ms. Uecker filed a multi-branch motion seeking to, inter alia, have Mr. Uecker held in contempt for failing to transfer and sign over all of the retirement benefits to her in accordance with the decree and for failing to inform her of Mr. Uecker’s constructive receipt of retirement benefits. Ms. Uecker sought an order awarding her all of Mr. Uecker’s retirement benefits. She later filed a supplemental motion which included a request for an amended or supplemental QDRO. A hearing was held over the course of two days and post-trial briefs were filed. Both sides presented expert testimony.

{¶5} Ultimately, in June 2023, the trial court issued a judgment entry. The trial court concluded that Mr. Uecker was not in contempt. The trial court found that the Legacy Credit Pension was a new and separate benefit from the Benefit Credit Pension. The trial court noted that the Legacy Credit Pension was not in existence at the time of the divorce, nor could it have been anticipated by the parties. The trial court went on to conclude that the Legacy Credit Pension was marital property as Mr. Uecker did not earn it after the divorce, it merely came into existence after the divorce; Mr. Uecker qualified for the Legacy Credit Pension based partially upon his efforts

during the marriage. The trial court ordered that Ms. Uecker was entitled to 20% of the Legacy Benefits and Mr. Uecker was entitled to 80%.

{¶6} Ms. Uecker has appealed, raising two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED AN ERROR AND ABUSE OF DISCRETION BY MODIFYING THE TERMS OF THEIR SEPARATION AGREEMENT AND FAILING TO FIND THAT JULIANA UECKER WAS ENTITLED TO RECEIVE 100% OF THE BENEFITS UNDER THE RETIREMENT PLAN INCLUDING THE LEGACY CREDIT PENSION.

{¶7} Ms. Uecker argues in her first assignment of error that the trial court improperly modified the separation agreement and erred in failing to award her 100% of the Legacy Benefits under the Legacy Credit Pension.

{¶8} “Retirement benefits earned during the course of a marriage constitute marital property.” *Walsh v. Walsh*, 2019-Ohio-3723, ¶ 19, citing R.C. 3105.171(A)(3)(a)(i); *Hoyt v. Hoyt*, 53 Ohio St.3d 177, 178 (1990). “With respect to a modification of a property division, R.C. 3105.171(I) provides: ‘A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses.’” (Emphasis omitted.) *Walsh* at ¶ 19.

{¶9} However, “[o]nce a divorce decree has been entered, a domestic relations court has the power to enforce that judgment and to clarify and construe its original property division so as to effectuate its judgment.” (Internal quotations and citations omitted.) *Reisinger v. Reisinger*, 2019-Ohio-2268, ¶ 16 (9th Dist.). “Where there is confusion over the interpretation to be given to a particular clause, the trial court . . . has the power to hear the matter, clarify the confusion, and resolve the dispute.” (Internal quotations and citation omitted.) *Borzy v. Borzy*, 2001 WL

1545676, *2 (9th Dist. Dec. 5, 2001). “The court has broad discretion in clarifying ambiguous language by considering not only the intent of the parties but the equities involved, and a reviewing court will not reverse its interpretive decision absent an abuse of discretion.” *Id.* An abuse of discretion implies that the judgment was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶10} We conclude that Ms. Uecker has not demonstrated that the trial court modified the separation agreement or abused its discretion in its award of the Legacy Benefits. As noted above, the separation agreement stated:

The Husband is a participant under the Bert Bell/Pete Rozelle NFL Player Retirement Plan (the “Plan”). For the purposes of marital property division, Wife is hereby granted 100% of Husband’s retirement benefits under the Plan as designated below. Her ownership of [Husband’s] retirement benefits shall become effective on the Assignment Date, which shall be the date that the Judgment Entry/Decree of Divorce is filed with the Court.

Amount of Wife’s Benefits: Accordingly, effective as of such Assignment Date, Wife shall be assigned Husband’s retirement benefits in an amount equal to the actuarial equivalent of One Hundred Percent (100%) of Husband’s Accrued Benefit under the Plan as of Husband’s benefit commencement date, or Wife’s benefit commencement date, if earlier.

(Emphasis omitted.)

{¶11} Notwithstanding the competing expert viewpoints presented at the hearing, the experts and parties agree that the Legacy Credit Pension did not exist at the time of the parties’ divorce or the issuance of the QDRO. Moreover, the record does not support that the parties anticipated the Legacy Credit Pension or any other fund would come into existence following the divorce. Thus, the Legacy Credit Pension was something not contemplated by the parties at the time of the divorce. Considering the relevant language in the separation agreement, it is clear that the parties were distributing retirement benefits in existence at the time of the divorce. For example, Ms. Uecker’s ownership of the retirement benefits was effective as of the date of the

filing of the divorce decree, which was in 2007. We conclude the fact that the separation agreement also uses the benefit commencement date to determine the amount of that award only supports an intention that the amount would be subject to any increases or decreases in what Ms. Uecker already had ownership of as of 2007. Again, the Legacy Credit Pension did not exist until 2011. Instead, it came into being as a result of the collective bargaining process – a process that did not involve either party. In sum, we cannot say that the original decree and accompanying separation agreement divided the Legacy Credit Pension. Therefore, the trial court did not modify the separation agreement by its actions.

{¶12} It is also important to note that both Mr. and Ms. Uecker acknowledged the necessity of an amended QDRO to address the Legacy Credit Pension. This offers further support that the Legacy Benefits were not contemplated at the time of the original proceedings.

{¶13} On appeal, Ms. Uecker does not develop any extensive argument explaining how the trial court abused its discretion in the distribution of the Legacy Credit Pension if the trial court was correct in its determination that the Legacy Benefits did not exist at the time of the divorce and were not contemplated by the parties in entering into the separation agreement. Instead, her argument is limited to an assertion that the separation agreement provided for the distribution of the Legacy Credit Pension thereby entitling her to the entirety of the Legacy Benefits. As discussed above, her argument is incorrect, and she has not otherwise demonstrated the trial court abused its discretion in its ultimate determination. Further, Mr. Uecker has not appealed the determination that the entirety of the Legacy Benefits was not his separate property.

{¶14} Ms. Uecker's assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED AN ERROR AND AN ABUSE OF DISCRETION BY FAILING TO REQUIRE RICHARD UECKER TO PAY 100%

OF THE FUNDS RECEIVED FROM THE LEGACY CREDIT PENSION TO
JULIANA UECKER.

{¶15} Ms. Uecker acknowledges that the success of her second assignment of error is contingent on this Court sustaining the first assignment of error. As this Court overruled the first assignment of error, it likewise overrules the second.

{¶16} Ms. Uecker's second assignment of error is overruled.

III.

{¶17} Ms. Uecker's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

HENSAL, J.
CONCURS.

STEVENSON, P. J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

RANDAL LOWRY and ADAM MORRIS, Attorneys at Law, for Appellant.

CORINNE HOOVER SIX and RACHEL L. SMICK, Attorneys at Law, for Appellee.