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2018 IL App (3d) 170758-U

Order filed December 21, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
JOSEPH COKINIS,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0758
	)	Circuit No. 10-D-2346
and	)	
	)	
NANCY COKINIS (n/k/a NANCY SCOLA),	)	Honorable
	)	Robert P. Brumund,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices O'Brien and Schmidt concurred in the judgment.

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**ORDER**

¶ 1       *Held:* Trial court did not err in determining that ex-husband's disability benefits were replacement income, not retirement benefits, and that ex-wife was not entitled to a portion of them under the terms of the marital settlement agreement.

¶ 2       Respondent Nancy Cokinis appeals the circuit court's determination that she was not entitled to a portion of petitioner Joseph Cokinis' disability benefits under the terms of the parties' marital settlement agreement. We affirm.

¶ 3 BACKGROUND

¶ 4 Nancy and Joseph Cokinis were married on September 29, 1990. On December 15, 2011, the trial court entered a judgment for dissolution of marriage incorporating the parties' marital settlement agreement and parenting agreement.

¶ 5 Under the terms of the marital settlement agreement, the parties agreed to equally divide Joseph's pension as well as his deferred compensation plan. Paragraph G of the agreement states as follows:

“G. Retirement

It is acknowledged by the parties that the Wife does not have any retirement accounts, however, the Husband has a pension and 457 account from his employment with the City of Berwyn Police Department. The marital portion of the pension and the remaining balance of the 457 account shall be equally (50/50) divided between the parties. The Wife shall be responsible for preparing, entering, and transmitting any documents to effectuate the division of the pension and 457 account and the Husband shall fully cooperate with the Wife to effectuate the documentation.”

The parties entered a Qualified Illinois Domestic Relationship Order (QILDRO) to apportion Joseph's pension in accordance with the agreement.

¶ 6 On November 9, 2016, Joseph was injured in the line of duty and found to be disabled by the pension board. He began receiving disability pension benefits at a rate of 65% of his 2016 salary. At that time, Joseph was 49 years old and had been a police officer for 23 years. Given his years of service, Joseph was eligible to retire on September 27, 2017, at the age of 50 and receive 50% of his salary in retirement benefits.

¶ 7 On April 25, 2017, Nancy filed a “Motion to Enforce Judgment for Dissolution of Marriage in Order to Divide Disability Pension Benefits,” claiming that she was entitled to a portion of Joseph’s disability benefit as of the date he was eligible to retire. Joseph filed a written response, claiming that Nancy was not entitled to his disability pension benefits. In his response, he stated that had he not been injured, he would have continued to work as a police officer until he reached the maximum amount of pension benefits under the Police Pension Fund (40 ILCS 5/3-111(a) (West 2016)), or 30 years on the job. Joseph asserted that he planned to continue working as a police officer until shortly after he turned 57, at which time Nancy would be entitled to one-half of his pension benefits calculated at 75% of his salary.

¶ 8 Following an evidentiary hearing, the trial court entered an order denying Nancy’s motion. The court found that the disability benefits Joseph received from his pension were meant to replace his regular income and that Nancy would only be entitled to them when Joseph retired and elected to receive retirement benefits pursuant to the Police Pension Fund.

¶ 9 ANALYSIS

¶ 10 On appeal, Nancy claims that she is entitled to a portion of Joseph’s disability benefits under terms of the parties’ marital settlement agreement. She argues that once Joseph was eligible to retire as a police officer, his disability benefits became retirement benefits, not income replacement, and she is entitled to her marital share of those benefits *instanter*.

¶ 11 The main objective in construing a marital settlement agreement is to give effect to the purpose and intent of the parties at the time they entered into the agreement. *In re Marriage of Davis*, 286 Ill. App. 3d 1065, 1066 (1997). Where the language of the agreement is clear and its meaning is unambiguous, courts must give effect to that language. *Id.* Where the language of

the agreement is ambiguous, the court must ascertain the intent of the parties by examining the facts and circumstances surrounding the formation of the agreement. *Id.* at 1067.

¶ 12 When a pension plan provides disability benefits as well as retirement benefits and the marital settlement agreement refers only to “retirement” benefits, a court may reasonably interpret the agreement in one of two ways: (1) as a grant to the ex-spouse of a portion of *any* benefits received under the pension plan; or (2) as limiting the ex-spouse's interest in the pension plan to normal, age-related retirement benefits. See *id.* Our interpretation of the agreement depends on the facts and circumstances of the case. *Camp v. Hollis*, 332 Ill. App. 60 (1947) (when an agreement is susceptible to two constructions, the interpretation that makes a rational and probable agreement under the circumstances is favored).

¶ 13 When a disabled ex-husband is not yet eligible for retirement pay, a marital settlement agreement entitling the ex-wife to “retirement” benefits should not be interpreted to grant her a share of her ex-husband's disability income. See *Davis*, 286 Ill. App. 3d at 1067 (ex-husband became disabled before the normal retirement age and would begin receiving retirement benefits, which ex-wife would share, when he turned 60); *In re Marriage of Belk*, 239 Ill. App. 3d 806, 812 (1992) (ex-husband began receiving disability pension at age 41, before he was eligible for regular retirement pay). This interpretation is reasonable because the disability pay is meant to replace the disabled spouse's income, not act as retirement pay. See *Davis*, 286 Ill. App. 3d at 1067. However, when an ex-husband is entitled to receive retirement pay and is receiving disability income instead, a settlement agreement providing the ex-wife a portion of retirement benefits may be reasonably interpreted as requiring that the ex-wife be paid the percentage of what would be the normal retirement benefits, whether respondent is paid normal retirement benefits or disability benefits. See *In re Marriage of Schurtz*, 382 Ill. App. 3d 1123, 1126

(2008). Where the terms of the agreement are ambiguous, a reasonable interpretation relies primarily on the intent of the parties. See *id.*; *In re Marriage of Marshall*, 166 Ill. App. 3d 954, 961-62 (1988).

¶ 14 In *Davis*, the ex-husband's pension plan provided disability benefits as well as retirement benefits. *Davis*, 286 Ill. App. 3d at 1066. Pursuant to the parties' settlement agreement which was incorporated into the dissolution judgment, the ex-wife had a right to receive a fraction of the ex-husband's retirement benefits, but the agreement did not distinguish between disability and age-related retirement benefits. The appellate court determined that the judgment was ambiguous and examined the facts and circumstances surrounding the formation of the parties' marital settlement agreement to determine the parties' intent. *Id.* at 1067. The court noted that if the ex-husband had not become disabled, he would have continued to receive his earned income until his retirement at age 60. The ex-wife would not receive any benefits under the pension plan until he retired with full retirement benefits. However, when the ex-husband became disabled, he was entitled to receive 75% of his salary as disability benefits until age 60. The court stated:

“To accept Peggy's interpretation of the agreement, we must find that the parties intended that if William suffered a disabling injury or illness and had to take a devastating reduction in his means of support then Peggy would enjoy a concomitant windfall. If we accept William's proposed interpretation, Peggy will receive the same benefits she would have received if William had continued working until age 60, while William will receive disability benefits as a substitute for his earned income.” *Id.* at 1067-68.

The court determined that the latter interpretation was a more reasonable one and concluded that the parties did not intend for the ex-wife to receive a portion of the ex-husband's disability benefits because they were replacement income, not retirement benefits. *Id.* at 1068.

¶ 15 Here, Joseph suffered a line-of-duty injury at the age of 49 and began receiving disability payments at a rate of 65% of his salary. At the age of 50, Joseph was eligible for early retirement and, if he chose to do so, would have received 50% of his salary. He chose to continue taking disability payments instead of applying for early retirement status.

¶ 16 Accepting Nancy's argument, that the parties intended that she receive 50% of Joseph's disability benefits once he turned 50, leads to the same unreasonable result that the court in *Davis* rejected. Accepting Joseph's interpretation, that he intended to work until his full retirement benefits vested, leads to a more reasonable conclusion. In 2024, Joseph, at the age of 57, will retire with full pension benefits, receiving 75% of his salary instead of 50% of his salary. Thus, it is reasonable to conclude that when the parties entered into the agreement in 2011, Joseph, at the age of 44, intended to work until 2024. Moreover, it is unreasonable to interpret the agreement in such a way as to grant Nancy a portion of Joseph's reduced income after he became disabled, when Nancy would not have received any benefits until Joseph retired at the age of 57 if he had continued working. See *Davis*, 286 Ill. App. 3d at 1068.

¶ 17 In arguing that she is entitled to the disability benefits *instanter*, Nancy relies on *Schurtz*, 382 Ill. App. 3d at 1125-26. In *Schurtz*, the ex-husband was an active firefighter who began receiving disability payments at the age of 62. *Id.* at 1124. He opted to receive disability benefits instead taking retirement benefits and admitted during his testimony that he could stay on disability payments forever under the firefighter pension statute. The trial court found that the ex-husband's disability pension was equivalent to a retirement pension and that the ex-wife was

entitled to 50% of the benefits under the marital agreement. The appellate court affirmed, noting that it was evident from the ex-husband's testimony that he did not intend to cease drawing disability benefits in favor of receiving his retirement benefits and the statute allowed him to receive disability benefits indefinitely. The court found that, under the circumstances, the ex-husband's disability benefits did not serve as income replacement but as a substitute for his retirement pension. *Id.* at 1126.

¶ 18 In this case, Joseph was not eligible for early retirement when he was injured and he is not eligible for full retirement until he is 57. He is currently receiving substantially less in disability benefits than the full retirement benefits he will receive upon normal, age-related retirement. He also indicated in his response to Nancy's motion that he always intended to retire shortly after his 57th birthday, when his retirement pension had reached the maximum percentage allowed. Moreover, the Berwyn Police Department mandates that all police officers retire, regardless of duty status, at age 65. See Berwyn Code of Ordinances, §242.11. Therefore, even if Joseph remained on disability until he turned 65 years old, he could not permanently frustrate the parties' agreement by never taking retirement pension, unlike the ex-husband in *Schurtz*. Under the circumstances presented in this case, we conclude that Joseph's disability benefits are replacement income, not substitute retirement benefits. Thus, the trial court did not err in denying Nancy's motion to enforce the dissolution judgment.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.