

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Deborah L. Cameron,	:	
	:	No. 12AP-349
Plaintiff-Appellant,	:	(C.P.C. No. 04DR-616)
v.	:	
	:	(REGULAR CALENDAR)
Gary B. Cameron,	:	
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on December 31, 2012

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*Einstein & Poling, LLC, and Karen L. Poling, for appellant.*

*Jon M. Cope, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations

BRYANT, J.

{¶ 1} Plaintiff-appellant, Deborah L. Cameron, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, adopting a division of property order ("DOPO") to effectuate the allocation of retirement benefits ordered under the parties' original divorce decree. Deborah assigns a single error:

The Trial Court erred when it divided Appellee's Ohio Police  
and Fire Pension using the frozen coverture approach.

Because the trial court did not abuse its discretion in adopting the DOPO that defendant-appellee, Gary B. Cameron, proposed for effectuating division of the retirement benefits under the terms of the original decree, we affirm.

## **I. Facts and Procedural History**

{¶ 2} Deborah and Gary were married on August 24, 1985. In October 1987, Gary joined the Columbus Police Department; by 2004, he attained the rank of lieutenant. Deborah spent the majority of the marriage as a homemaker and primary caretaker for the parties' three children, but in August 2002 Deborah began working outside the home as a senior medical records associate with OhioHealth Corporation.

{¶ 3} Deborah filed a complaint for divorce in February 2004, and Gary responded with an answer and counterclaim. The trial court conducted a trial, where the primary asset subject to allocation was Gary's Ohio Police and Fire Pension Fund. Although Deborah presented evidence of accumulated contributions to the fund, neither party provided expert testimony on the appropriate division and disbursement of the fund's benefits.

{¶ 4} On July 5, 2005, the trial court issued a final judgment and divorce decree. The court found "the total amount of [Gary]'s Ohio Police and Fire Pension Fund, from the date of marriage to the last date of trial, is considered marital property." (R. 221, Divorce Decree, at 10.) It ordered "each party shall be awarded a one-half interest in the \* \* \* retirement account for the amount in the account earned between August 25, 1985, and December 2, 2004. [Gary] shall hold any interest in this account earned outside of the duration of the marriage (i.e., from December 3, 2004 forward) free and clear of any claim by [Deborah]." (Divorce Decree, at 10-11.) The court ordered Gary to "prepare and/or cooperate with the preparation of any required documents to effectuate this Order." (Divorce Decree, at 11.)

{¶ 5} On August 16, 2011, Deborah filed a motion for a finding of contempt against Gary, claiming he "completely disregarded the terms" of the divorce decree by failing to respond to her attempts to create an order effectuating the decree's pension fund division. (R. 3, at 1.) Deborah's motion was set before a magistrate for an April 12, 2012 hearing.

{¶ 6} According to the parties, the trial judge conducted a "lunch time telephone conference call" in chambers on February 7, 2012 to address division of Gary's pension fund under the terms of the divorce decree. (Appellant Deborah Cameron's brief, at 5.) Deborah notes that, in addition to the judge and both parties' counsel, two pension

experts participated in the conference, Deborah's expert, Brian Hogan, and Gary's expert, William Napoli, Jr. The record contains no transcript of the conference.

{¶ 7} Gary followed the conference with a memorandum filed March 21, 2012, stating he was submitting a new DOPO "prepared by American Benefit Evaluators, LLC ("ABE") per the discussions of [February 7] with Judge Brown [sic]." (R. 422, at 1.) With his memorandum, Gary submitted a letter from ABE explaining the calculations used to value and divide the pension. The court signed and adopted Gary's proposed DOPO on March 28, 2012, granting Deborah a monthly annuity of \$964.05 once Gary begins receiving his retirement benefits. Deborah simultaneously filed a timely appeal and voluntarily dismissed her contempt motion pending the outcome of her appeal.

## **II. Assignment of Error - Division of the Pension Fund**

{¶ 8} Deborah's sole assignment of error asserts the trial court erred in dividing Gary's pension using the "frozen coverture" method, as opposed to the "traditional coverture" method, to effectuate the division of Gary's retirement fund per the parties' original divorce decree.

### *A. Applicable Law*

{¶ 9} Pension and retirement benefits earned during the course of a marriage are marital assets. R.C. 3105.171; *Hoyt v. Hoyt*, 53 Ohio St.3d 177, 178 (1990). A pension that the participant spouse holds will not necessarily be subject to direct division between the participant spouse and the non-participant spouse, but it will be "subject to evaluation and consideration in making an equitable distribution of both parties' marital assets." *Hoyt* at 180.

{¶ 10} After a trial court issues a divorce decree, it lacks jurisdiction to modify or amend the marital property division, including the division of a pension fund, unless the decree expressly reserves jurisdiction or the parties expressly consent in writing to the modification. R.C. 3105.171(I); *see also* 2010 H.B. 238, effective September 8, 2010 (amending R.C. 3105.171(I) to provide that a court may modify a prior property division "upon the express written consent or agreement to the modification by both spouses"); *McKinney v. McKinney*, 142 Ohio App.3d 604, 608 (2d Dist.2001). "In other words, a court has control over the division of property at the time of the divorce decree, but not thereafter." *Thomas v. Thomas*, 10th Dist. No. 00AP-541 (Apr. 26, 2001). "The reason for

this principle is that persons must be able to rely on court rulings. If courts had continuing jurisdiction to modify decrees, there would be uncertainty and confusion." *Id.*, citing *Popovic v. Popovic*, 45 Ohio App.2d 57, 64 (8th Dist.1975). A trial court nevertheless retains "full power" to enforce the provisions incorporated into a divorce decree. *Cherry v. Figart*, 86 Ohio App.3d 123, 126 (12th Dist.1993), citing *In re Dissolution of Marriage of Seders*, 42 Ohio App.3d 155, 156-57 (9th Dist.1987).

{¶ 11} When the parties "dispute, in good faith, the meaning of a provision in a decree, or if the provision is ambiguous, the trial court has the power to hear the matter, to resolve the dispute, and to enforce the decree." *Robins v. Robins*, 10th Dist. No. 04AP-1152, 2005-Ohio-4969, ¶ 13. If it determines an ambiguity exists, a court "has the power to clarify and construe its original property division so as to effectuate its judgment." *Borzy v. Borzy*, 9th Dist. No. 3185-M (Dec. 5, 2001). Should the trial court determine no ambiguity exists, the court must enforce the decree as written. *Pierron v. Pierron*, 4th Dist. No. 07CA3153, 2008-Ohio-1286, ¶ 8. "When a decree contains terms ordered by the trial court and not reached by agreement of the parties, a determination that such a decree is or is not ambiguous will be overturned on appeal only if the trial court abused its discretion." *Robins* at ¶ 14; *Bond v. Bond*, 69 Ohio App.3d 225, 228 (9th Dist.1990). This court may not substitute its own judgment for that of the trial court in reviewing for an abuse of discretion. *Bowen v. Bowen*, 132 Ohio App.3d 616, 626 (9th Dist.1999), citing *In re Jane Doe 1*, 57 Ohio St.3d 135, 137 (1991).

{¶ 12} To effectuate and enforce the divorce decree's division of pension benefits, a domestic relations court enters an order such as a qualified domestic relations order ("QDRO"), a DOPO, or similar device. *See Thomas* (discussing the need for a QDRO in pension matters because of the anti-assignment or alienation provisions in retirement plans); *Wilson v. Wilson*, 116 Ohio St.3d 268, 2007-Ohio-6056, ¶ 15, 19 (holding the divorce decree is a final, appealable order and actually divides the property, while the QDRO "is merely a tool used to execute the divorce decree"). Ordinarily, the court issues a QDRO or DOPO subsequent to, and separate from, the divorce decree. Since, however, the device is " 'merely an order in aid of execution on the property division ordered in the divorce or dissolution decree,' " as long as it " 'is consistent with the decree, it does not constitute a modification, \* \* \* and the court does not lack jurisdiction to issue it.' " *State*

*ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 2010-Ohio-252, ¶ 19, quoting *Bagley v. Bagley*, 181 Ohio App.3d 141, 2009-Ohio-688, ¶ 26 (2d Dist.), *overruled on other grounds*, *Pearl v. Pearl*, 2d Dist. No. 2012-CA-6, 2012-Ohio-4752, ¶ 11, 17; *see also Brownlee v. Brownlee*, 8th Dist. No. 94494, 2010-Ohio-5602, ¶ 6 (holding a DOPO "does not in any way constitute a further adjudication on the merits of the pension division, as its sole purpose is to implement the terms of the divorce decree"), quoting *Wilson* at ¶ 16.

{¶ 13} Accordingly, a trial court possesses jurisdiction to adopt a DOPO consistent with its divorce decree, but, absent express reservation of jurisdiction or express consent of the parties, it may not adopt a DOPO that changes the award the decree granted. A DOPO is inconsistent with a decree when it modifies the division of retirement benefits ordered in the decree, and a DOPO modifies a division of retirement benefits when the DOPO varies from, enlarges, or diminishes the awards the court ordered in the decree. *See Knapp v. Knapp*, 4th Dist. No. 05CA2, 2005-Ohio-7105, ¶ 40 (holding the trial court, in clarifying its decision, "may not vary from, enlarge, or diminish the relief embodied in the final decree").

{¶ 14} Here, the first question is whether the 2005 decree was ambiguous regarding the allocation of post-divorce interest in the pension fund. If not, the trial court must enforce the decree as written, and we must determine whether the 2012 DOPO calculating Deborah's portion of Gary's pension by "freezing" the account at its 2004 value enforced the 2005 decree. *See Butcher v. Butcher*, 8th Dist. No. 95758, 2011-Ohio-2550, ¶ 12. If the 2005 decree is ambiguous on the matter in dispute, the issue becomes whether the 2012 DOPO, and its "frozen" method of valuation and division, is an improper modification or a mere clarification of the decree. *Id.*

#### *B. Frozen Coverture v. Traditional Coverture*

{¶ 15} Closely aligned to the issue of ambiguity in this case is the use of frozen coverture or traditional coverture in the DOPO. To divide the pension in 2012, the trial court used a statutorily created division of property form that requires the drafter to select from set options as to "Type of Payment" and "Method of Payment." (R. 430, at 2.) Under "Type of Payment," the adopted DOPO grants Deborah "applicable benefit(s) or lump sum payment(s)" from Gary's "[a]ge and service retirement benefit," but excludes from

the "applicable benefit(s)" any "Partial Lump Sum Payments" from several sources, including a Deferred Retirement Option Plan ("DROP"). (R. 430, at 2.)

{¶ 16} Under "Method of Payment," which requires either a "Dollar Amount" or "Percentage," the adopted DOPO grants Deborah a fixed dollar amount of "\$964.05 per benefit from the Participant's periodic benefit upon the Participant's receipt of the aggregate periodic benefit." (R. 430, at 2-3.)

{¶ 17} The choices a drafter makes on the DOPO form, particularly whether a drafter selects "Dollar Amount" or "Percentage" and the values then used, determine not only the appropriate division and disbursement of pension fund benefits as they exist as of the divorce date, but also the allocation of future interest accrued on the amount in the pension fund as of the divorce date. Under the frozen coverture method, or dollar amount, the trial court "freezes" the pension benefits at the amount in the account as of the divorce date. Sometimes called the "hypothetical" approach, it calculates the value of the participant spouse's retirement account had he or she retired on the same day the parties divorced, using the then-present base pay and years of service. *Reising v. Reising*, 2d Dist. No. 2010-CA 92, 2012-Ohio-1097, ¶ 24. Where the participant spouse started working before the marriage, the court can apply a coverture fraction to determine the marital portion of the "frozen" amount. It does so by dividing the number of years in the plan while the parties were married by the total number of years in the plan at the time of the divorce. (See R. 422, exhibit - ABE letter, line six of calculations.) Under this approach, the non-participant spouse receives no interest the account accrues after that date.

{¶ 18} By contrast, under the method Deborah terms the "traditional coverture" method, or percentage method, a court determines the amount of money due the non-participant spouse by using the value of the pension at retirement to determine the "monthly accrued benefit." The court then multiplies this monthly accrued benefit by the traditional coverture fraction, which employs a "ratio of the number of years of employment of the employed spouse during the marriage to the total years of his or her employment" to arrive at the marital portion of the pension benefit. *Hoyt* at 182. The non-participant spouse then receives his or her percentage share of that marital portion. *Id.* By waiting and using the value of the pension at retirement, this method awards the non-participant spouse any post-divorce increase in the value that is attributable to the

non-participant's share. *Thompson v. Thompson*, 196 Ohio App.3d 764, 2011-Ohio-6286, ¶ 39 (10th Dist.). Accordingly, where the eventual, matured monthly payments are greater, due to the participant spouse's working after the divorce, than if he or she had retired the day of the divorce, then the non-participant's monthly benefit would be greater as well. See *Thompson* at ¶ 34, citing 2 Sowald & Morganstern, *Domestic Relations Law*, Section 30:29, at 657 (4th Ed.Rev.2009).

{¶ 19} The relevant difference between the two methods, for present purposes, is their treatment of interest the pension fund earns after the divorce date. The dollar amount, or frozen coverture, method the trial court adopted awards all post-divorce interest to the participant spouse. The payment, or traditional coverture, method allows the non-participant spouse to share in the benefit of any post-divorce increase in the value of his or her unmatured proportionate share attributable to the participant's continued participation in the retirement fund.

*C. The Decree is not Ambiguous*

{¶ 20} Deborah claims the trial court erred in adopting Gary's proposed DOPO; she asserts the court instead should have interpreted the decree's granting her half of Gary's pension between the specified dates to mandate she receive the post-divorce interest her share accumulated. She argues the court's decision to use the "frozen coverture" method of valuing the pension benefits, instead of the "traditional coverture" method, impacted the percentage of the pension she would receive, thereby improperly modifying the 2005 marital property division.

{¶ 21} Gary responds that the DOPO did not improperly modify the 2005 decree, that the decree's language was "unambiguous," and that the DOPO's "following a 'frozen coverture' method reflects the un-ambiguity of the court's order." (Appellee Gary Cameron's brief, at 6.) Gary asserts Deborah should have appealed the decree in 2005 if she wanted to challenge the court's decision to grant him all post-divorce interest.

{¶ 22} The Supreme Court of Ohio concluded that " 'no clear standard has evolved to determine the level of lucidity necessary for a writing to be unambiguous.' " *Green v. Green*, 10th Dist. No. 05AP-484, 2006-Ohio-2534, ¶ 26, quoting *State v. Porterfield*, 106 Ohio St.3d 5, 2005-Ohio-3095, ¶ 11. " 'Some courts have reasoned that when multiple readings are possible, the provision is ambiguous. \* \* \* The problem with

this approach is that it results in courts' reading ambiguities into provisions, which creates confusion and uncertainty. When confronted with allegations of ambiguity, a court is to objectively and thoroughly examine the writing to attempt to ascertain its meaning.' " *Green* at ¶ 26, quoting *Porterfield* at ¶ 11. Consequently, " '[o]nly when a definitive meaning proves elusive should rules for construing ambiguous language be employed. Otherwise, allegations of ambiguity become self-fulfilling.' " *Green* at ¶ 26, quoting *Porterfield* at ¶ 11. If an ambiguity does not exist, the trial court " 'may not construe, clarify or interpret the parties' agreement to mean anything outside of that which it specifically states.' " *Jackson v. Henrickson*, 2d Dist. No. 20866, 2005-Ohio-5231, ¶ 7, quoting *Pavlich v. Pavlich*, 9th Dist. No. 22357, 2005-Ohio-3305, ¶ 7.

{¶ 23} The trial court's original decree ordered, in pertinent part, that "each party shall be awarded a one-half interest in the \* \* \* retirement account for the amount in the account earned between August 25, 1985, and December 2, 2004. [Gary] shall hold any interest in this account earned outside of the duration of the marriage (i.e., from December 3, 2004 forward) free and clear of any claim by [Deborah]." (Divorce Decree, at 10-11.) The court also noted the value of the account as of December 31, 2003 and, in an attached spreadsheet listing and allocating the marital assets, provided that Deborah's award was half of that amount.

{¶ 24} A definitive meaning of the language on the disputed issue is not elusive. The decree expressly grants "any" benefits earned after December 2, 2004 to Gary and evinces the court's intention was to grant Deborah half of the account's value as of that date. (Divorce Decree, at 11, exhibit A.) *See State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, ¶ 33 ("citing cases defining 'any' as meaning 'every' and 'all' "). The adopted DOPO reflects the language specifically stated in the decree.

{¶ 25} In such circumstances, "courts have held that if there is a date certain or language suggesting that the [traditional] coverture method is not appropriate, then benefits should be calculated according to the benefits as they existed at the time of the divorce because to do otherwise constitutes a modification of the divorce decree itself." *Doerfler v. Doerfler*, 10th Dist. No. 04AP-1337, 2005-Ohio-4066, ¶ 12; *Cox v. Cox*, 12th Dist. No. CA98-04-045 (Feb. 1, 1999). *See also Thomas* (noting that the Ninth and Twelfth District appellate courts both have found, where there is an unambiguous



direction to award half the value of the pension as of the date of the divorce, later use of a traditional coverture fraction, not mentioned in the original decree of QDRO, was a modification and not an interpretation), citing *George v. George*, 9th Dist. No. 18866 (Sept. 23, 1998), and *Cox; Schetter v. Schetter*, 2d Dist. No. 2010 CA 35, 2011-Ohio-246, ¶ 4, 18 (determining language in separation agreement and dissolution decree giving wife 50 percent of military pension " 'earned by [husband] during the marriage of the parties' \* \* \* unambiguously evidences the intent of the parties to limit [wife's] interest to the value of the pension funds as they existed on the date of the termination of the marriage," especially where parties' COAP orders "expressly state that [wife] 'shall have no interest \* \* \* nor credible service' in [husband]'s retirement pensions 'after the date of dissolution of marriage' ").

{¶ 26} Thus, in *Jackson*, the court held language in the divorce decree, incorporating a settlement agreement, unambiguously limited the non-participant wife's interest to half the accrued value of the participant former husband's pension on the date of the divorce where the decree stated, "Wife hereby is awarded one-half of any monthly benefit accrued to Husband in said Retirement Plan through September 16, 1992 [the date of the parties' divorce]" and further stated "Husband shall be entitled to all benefit in the Retirement Plan that accrues after September 16, 1992, free of any claim of Wife." *Id.* at ¶ 9. The court determined the language "reinforce[d] the intent to restrict [the wife's] interest to the value of the retirement fund as it existed on September 16, 1992." *Id.* at ¶ 21.

{¶ 27} Although Deborah claims "the trial court did not indicate that it [was] deviating from the traditional coverture approach and using frozen coverture," she does not cite to any case law requiring the decree to so indicate. (Appellant's brief, at 10.) The trial court's language plainly awarded Gary all benefits earned post-divorce. Deborah is correct that the decree did not explicitly name its chosen method, but "mere silence on an issue or a failure to address it does not create an ambiguity where none otherwise exists." *Pierron* at ¶ 10, citing *Thomas*. Further, the "divorce decree is not ambiguous because the trial court failed to award the defendant interest on her pension distribution when it could have done so." *Thomas*.

{¶ 28} Deborah's suggestion that a traditional coverture approach should be "read" into the decree apparently stems from her contention that *Hoyt* so dictates. In *Hoyt*, the Supreme Court of Ohio established guidelines for courts to consider in dividing retirement and pension benefits in a divorce action. *Hoyt* at 179. The court noted that "flat rules have no place in determining a property division," but it concluded the coverture method generally is preferable in dividing unmatured pension benefits because it allows the non-participant spouse to share in the benefit of any increase in the value of his or her proportionate share after divorce that is attributable to the continued participation of the other spouse in the retirement plan past the time of divorce. *Hoyt* at 180.

{¶ 29} The particular division the trial court ordered in the 2005 decree is contrary to the general recommendation in *Hoyt*. The issue here, however, is not whether the trial court should have used the frozen method in the 2005 decree. The question is whether the trial court's 2012 DOPO merely enforced the decree or instead impermissibly modified it.

{¶ 30} On the distinction between the two questions, *Thomas* is instructive. In *Thomas*, the original decree ordered payment to the non-participant spouse of a lump sum from the participant spouse's pension. *Id.* The trial court subsequently adopted a DOPO that included a provision awarding the non-participant spouse interest accumulated on the lump sum. This court reversed, concluding the addition of an interest provision was a modification of the terms, not an interpretation. *Id.* Notably, although the trial court actually found that its previous decree would grant the participant spouse a "'windfall' given the circumstances four years after the decree," this court held on appeal that the concern was "irrelevant to the issue of whether the terms of the decree are ambiguous." *Id.* See also *Pierron* at ¶ 13 (holding "the question of perceived inequity is not relevant to the issue of whether the language of the decree is ambiguous on its face"); *Robins* at ¶ 19 (reversing trial court and holding a divorce decree is not ambiguous simply because, as the trial court concluded, "[t]o read the language otherwise would be inequitable" to a party), citing *Thomas*.

{¶ 31} Where no ambiguity exists, any further inquiry into Deborah's more fundamental contention that the trial court's division was not "fair and equitable" is curtailed. (Appellant's brief, at 6.) *Jackson* at ¶ 27. See also *McGeorge v. McGeorge*, 10th Dist. No. 00AP-1151 (May 22, 2001) (holding "inequity perceived in hindsight does not

constitute an ambiguity and is irrelevant when interpreting the meaning of the terms of a decree"), citing *Thomas*. Because the DOPO's calculation using the "frozen coverture" method to calculate Deborah's share of the pension simply enforced the divorce decree's unambiguous language per defendant's expert, Deborah's challenge to the discretion or propriety of the trial court's reasoning in omitting from her benefit award any interest accrued after the divorce should have been raised in an appeal following the original decree. *See Reisling* at ¶ 30; *Cisco v. Cisco*, 4th Dist. No. 08CA8, 2009-Ohio-884, ¶ 19, fn. 2 (holding that if non-participant spouse wanted to dispute "the amount of [participant spouse's] retirement plan the trial court awarded her in the decree, she should have filed a direct appeal or a Civ.R. 60(B) motion for relief from judgment").

{¶ 32} Deborah also claims her due process rights "were violated when the Court executed an order that substantially reduced her interest" in the pension without a hearing. (Appellant's brief, at 10.) Due process requires that persons whose property interests are jeopardized by the filing of legal proceedings be given reasonable notice of the pendency of the action and an opportunity to present their objections. *McGeorge*, citing *Galt Alloys, Inc. v. KeyBank Natl. Assn.*, 85 Ohio St.3d 353 (1999), paragraph one of the syllabus. "A two-step analysis is used when considering a claim that due process rights were violated. First, a court must determine whether the claimant has a right or interest that is entitled to due process protection. Second, if the claimant was deprived of such a right or interest, the court must determine what process is due." *McDonald v. Dayton*, 146 Ohio App.3d 598, 605 (2d Dist.2001).

{¶ 33} Here, Deborah participated, through counsel, in a conference call before the trial judge. Nothing suggests she or counsel objected to the procedure the trial court employed in considering the DOPO or to the information Gary's expert submitted to effectuate the provision in the court's divorce decree addressing Gary's pension fund. "Appellate courts generally consider waived an evidentiary objection not brought to the trial court's attention at a time it could be remedied." *Wolf-Sabatino v. Sabatino*, 10th Dist. No. 12AP-307, 2012-Ohio-\_\_\_\_\_, ¶ 17, citing *Robinson v. Springfield Local School Dist. Bd. of Edn.*, 9th Dist. No. 20606 (Mar. 27, 2002).

{¶ 34} Moreover, "[e]ven if waiver were not applicable in these circumstances, the invited-error doctrine applies. Under the doctrine of invited error, an appellant cannot

attack a judgment based on error the appellant induced the court to commit or for which the appellant is actively responsible." *Wolf-Sabatino* t ¶ 18, citing *In re J.B.*, 10th Dist. No. 11AP-63, 2011-Ohio-3658, ¶ 10, citing *Daimler/Chrysler Truck Fin. v. Kimball*, 2d Dist No. 2007-CA-07, 2007-Ohio-6678, ¶ 40, citing 5 Ohio Jurisprudence 3d, Appellate Review, Section 448, at 170-71 (1999, Supp.2007). To the extent the parties invited the trial court to rely on the information the parties' experts submitted, Deborah cannot now claim she was denied due process.

{¶ 35} In the end, Deborah received notice of the conference, she and her counsel were afforded the opportunity to be heard, albeit not in the traditional sense of a hearing, and nothing in the record suggests counsel had no opportunity to argue their respective positions. Under the circumstances, Deborah was not deprived of due process. *Sabatino*.

{¶ 36} Finally, in an argument only tangentially related to her assignment of error, Deborah claims Gary is "using [her] portion of the pension to fund the DROP program, further reducing her benefits." (Appellant's brief, at 9.) Gary only became eligible for the DROP in October 2012 and, though Deborah's May 2012 brief on appeal assumed Gary's participation in the program, no evidence on the record verifies he has chosen, or will choose, to exercise his option to participate in this voluntary program. Nevertheless, we consider Deborah's argument in the interest of justice.

{¶ 37} The DROP "provides an incentive for certain long-term OP & F members to remain in their positions for another three to eight years after they become eligible to retire." *Meeker v. Skeels*, 6th Dist. No. L-09-1190, 2010-Ohio-3525, ¶ 3. Should Gary choose to participate in DROP, his DROP account will be funded, in part, by monthly deposits of pension benefits, including benefits already accrued before the parties' divorce. *Meeker* at 16, citing 4 (Ala.App.2005). Here, however, the court-adopted DOPO calculated Deborah's share of the pension benefits using figures from 1987 to 2004; as Deborah recognized, this approach had the effect of awarding her "only what she would have received if [Gary] had retired in 2004." (Appellant's brief, at 9.) Therefore, any subsequent decision Gary may make to enter the DROP program will not impact the factors already used to calculate Deborah's share of the pension or, in turn, her benefits as the court chose to divide them.

{¶ 38} The cases Deborah cites are distinguishable because both cases involve pensions divided and disbursed pursuant to the traditional coverture method. *See Meeker* at ¶ 14; *Kehoe v. Kehoe*, Cuyahoga C.P. No. DR94 232973 (Nov. 14, 2005). Since the trial court in each of these cases allocated the non-participant spouse post-divorce interest, changes in benefit accrual that took place subsequent to the divorce could impact that spouse's total benefits. *Id.* Accordingly, both cases held the non-participant spouse was entitled to a percentage of the future DROP benefits to the extent they derived from retirement benefits earned during the course of the marriage. *Meeker* at ¶ 20; *Kehoe*. By contrast, under the approach the trial court adopted, Gary's participation in the DROP program would not reduce Deborah's share of pension benefits.

{¶ 39} Deborah's assignment of error is overruled.

### **III. Disposition**

{¶ 40} Having overruled Deborah's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

*Judgment affirmed.*

KLATT and FRENCH, JJ., concur.

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