

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY**

RAY H. MARTINEZ,

PLAINTIFF-APPELLEE,

CASE NO. 13-14-40

v.

TRACY L. MARTINEZ,

OPINION

DEFENDANT-APPELLANT.

**Appeal from Seneca County Common Pleas Court
Domestic Relations Division
Trial Court No. 13-DR-0154**

Judgment Affirmed

Date of Decision: April 27, 2015

APPEARANCES:

***Gene P. Murray* for Appellant**

***James W. Fruth* for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant, Tracy L. Martinez (“Tracy”), brings this appeal from the judgment of the Court of Common Pleas of Seneca County, Domestic Relations Division. Tracy challenges the trial court’s award of half the marital portion of her pension to plaintiff-appellee, Ray A. Martinez, Jr. (“Ray”). For the reasons set forth below, the judgment is affirmed.

{¶2} Ray and Tracy were married on February 2, 1988, and had two children who were emancipated at the time of their divorce. Doc. 2. On July 16, 2013, Ray filed a complaint for divorce. *Id.* The final divorce hearing was held before a magistrate on November 26, 2013. Doc. 23. Prior to the hearing, the parties had reached an agreement regarding the division of all assets and debts except for Tracy’s pension. The parties were both satisfied with the division and agreed that it was equitable. Thus, the sole issue for the trial court was the division of the vested pension plan. The magistrate recommended granting the divorce and made findings of fact and conclusions of law in support of that recommendation. *Id.* One of those findings was that Tracy had been in the military at the time of the marriage and was retired at the time of the final hearing. *Id.* The magistrate then determined that the portion of the military pension acquired during the marriage was marital property and that Ray was entitled to half of that portion. *Id.* On December 9, 2013, Tracy filed her objections to the

Case No. 13-14-40

magistrate's recommendation concerning the pension. Doc. 24. Attached as an exhibit to the objection was a document which indicated that Tracy and Ray had signed a form stating that Ray would not be participating in the survivor benefit plan. *Id.* Ray filed a motion to strike the attachment on December 10, 2013, because the documents were not presented at trial. Doc. 25. On January 15, 2014, the trial court remanded the matter back to the magistrate for further hearing. Doc. 27. However, this hearing did not occur because all of the parties agreed that no additional hearing was needed. Doc. 29. On February 3, 2014, the trial court granted the motion to strike the attachments from the objections. Doc. 30. The trial court then overruled the objection as to the granting of half of the marital portion of the pension to Ray. *Id.* The trial court sustained the objection as to the waiver of the survivor benefit. *Id.* The trial court then ordered that a Qualified Domestic Relations Order be prepared to provide a half-interest in the marital portion of Tracy's pension to Ray. *Id.* The judgment entry granting the divorce was entered on February 3, 2014. Doc. 31.

{¶3} On March 5, 2014, Tracy filed her notice of appeal. Doc. 32. Tracy raises the following assignment of error on appeal.

The trial court abused its discretion by overruling [Tracy's] objection to [Ray] being entitled to one-half of the military pension of [Tracy], when [Ray], with the burden of proof, did not show or otherwise offer substantive proof that [Ray] was entitled to the maximum amount of one-half of [Tracy's] military pension.

{¶4} The sole question raised by the assignment of error is whether Ray is entitled to one-half of the marital portion of Tracy's pension. The division of marital property is governed by R.C. 3105.171. "Marital property" by definition includes "[a]ll real and personal property that currently is owned by either or both of the spouses, including, but not limited to, *the retirement benefits* of the spouses, and that was acquired by either or both of the spouses during the marriage". R.C. 3105.171(A)(3)(a)(i) (emphasis added). "During the marriage" means the period of time from the date of the marriage to the final hearing in the divorce action. R.C. 3105.171(A)(2)(a). The trial court in a divorce proceeding is required to determine what is marital property and what is separate property. R.C. 3105.171(B). "In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section." *Id.*

Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section.

R.C. 3105.171(C)(1). “When considering pension or retirement benefits, a trial court must be given discretion.” *Hoyt v. Hoyt*, 53 Ohio St.3d 177, 180, 559 N.E.2d 1292 (1990).

{¶5} In this case, there is no dispute that the portion of the pension earned during the marriage is marital property. Tracy merely claims that Ray failed to show that he was entitled to one-half of the marital portion. However, a review of the record indicates that the parties had fully agreed to the division of all other assets and agreed that that division was equitable. Tr. 21, 37. Pursuant to the statute, marital property is to be divided equally absent a showing that to do so would be inequitable. R.C. 3105.171(C)(1). In this case, no evidence was presented by either party that the division of the marital portion of the pension in equal amounts was inequitable. Thus, the trial court did not abuse its discretion in ordering that the marital portion of the pension be distributed equally.

{¶6} While Tracy claims that Ray had to prove that he was entitled to the maximum benefit of one half of the pension, there is no case law that supports such a conclusion. She cites to *Hoyt, supra* and *Teeter v. Teeter*, 18 Ohio St.3d 76, 479 N.E.2d 890 (1985). *Hoyt* held that the trial court erred in awarding the wife 50% of the total pension, *including a non-marital portion*, without an explanation as to why she was being awarded a portion of the husband’s separate property. That is not the same as this case because Ray was only awarded half of

Case No. 13-14-40

the marital portion of the pension. Likewise, in *Teeter*, the wife was awarded one half of the husband's pension, *which included a non-marital portion*. *Teeter, supra*. The Supreme Court of Ohio held that the trial court did not err in awarding the wife more than one half of the marital assets because there was evidence to support the trial court's finding that the division awarded was equitable. *Id.* This case is also not the same as the case before us.

{¶7} Here, the division of marital property and debts was done by the parties pursuant to the separation agreement and no exact amounts were presented to the trial court other than the value of the pension. The parties agreed that the division of assets and liabilities as set forth in the separation agreement was equitable. The sole issue to be decided by the trial court was the division of the pension. The trial court followed the statute and divided the marital portion of the pension equally. There was no evidence presented by either side at the hearing that this was not equitable. The sole testimony given by either side that was contradictory was that Ray testified he did not recall signing away Survivor Benefits Rights and Tracy testified that he did. Tr. 22, 32-33. Contrary to Tracy's argument, Ray did not need to present evidence to show that he was entitled to the equal division of the marital asset as it is statutorily presumed to be the result of his equal contribution to the acquisition of the marital asset. R.C. 3105.171(C)(2). Tracy presented no evidence to show that Ray was not entitled to the equal

Case No. 13-14-40

division of the marital asset. Without some evidence that an equal division of the marital asset was inequitable, the trial court correctly divided the asset equally. The trial court did not err in doing so and the assignment of error is overruled.

{¶8} Having found no error prejudicial to the appellant, the judgment of the Court of Common Pleas of Seneca County, Domestic Relations Division is affirmed.

Judgment Affirmed

ROGERS, P.J. and SHAW, J., concur.

/jlr