

COURT OF APPEALS  
MORGAN COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

BARBARA J. SCHAAD	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
ROGER F. SCHAAD	:	Case No. 18AP0010
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. CV05-098
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JUDGMENT:	Reversed
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DATE OF JUDGMENT:	June 19, 2019
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APPEARANCES:

For Plaintiff-Appellee

DEBORA WITTEN  
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For Defendant-Appellant

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*Wise, Earle, J.*

{¶ 1} Defendant-Appellant, Roger F. Schaad, appeals the August 29, 2018 order of the Court of Common Pleas of Morgan County, Ohio, Domestic Relations Division, vacating a 2007 property division order on the STRS pension benefits of Plaintiff-Appellee, Barbara J. Schaad.

#### FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant and appellee were divorced via decree filed April 13, 2006. The decree indicated the parties had reached an agreement regarding all of the pending issues. Pursuant to the decree, appellant was to receive fifty percent of appellee's STRS pension after his share was reduced by a social security offset as calculated by Pension Evaluators. A division of property order regarding the pension was filed on June 20, 2007. Pursuant to the order, appellant was to receive 43.27 percent of a fraction of appellee's periodic benefit or lump sum payment calculated at the time she elected to start receiving benefits. After appellee retired on July 1, 2010, appellant started receiving a gross amount of \$1,188.66 per month.

{¶ 3} On February 20, 2018, appellee filed a motion, claiming the calculation of the marital portion of the pension was inaccurately determined and as a result, appellant received an overpayment. Appellee asked the trial court to recalculate the marital portion of the parties' retirement benefits, sought a reimbursement for overpayments, and requested termination of the order dividing her STRS pension benefits. A hearing was held on July 9, 2018. By order filed August 29, 2018, the trial court vacated the division of property order, acknowledged an overpayment in the amount of \$8,320.62, and

ordered appellant to pay appellee "five hundred forty dollars and forty-eight cents (\$583.69) each month as long as Plaintiff lives" to equalize their monthly incomes.

{¶ 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 EXCEEDED ITS CONTINUING JURISDICTION OVER THE DIVISION OF PROPERTY ORDER BY VACATING IT, CONTRARY TO THE INTENT AND TERMS OF THE DIVORCE DECREE."

II

{¶ 6} "TRIAL COURT ERRED IN AWARDING SPOUSAL SUPPORT TO THE APPELLEE WHEN THERE WAS NO RESERVATION OF JURISDICTION OVER THE ISSUE IN THE DIVORCE DECREE."

I

{¶ 7} In his first assignment of error, appellant claims the trial court exceeded its continuing jurisdiction over the division of property order by vacating it contrary to the intent of the decree of divorce. We agree.

{¶ 8} Pension or retirement benefits accumulated during a marriage are subject to property division in a divorce proceeding. *Hoyt v. Hoyt*, 53 Ohio St.3d 177, 559 N.E.2d 1292 (1990). By agreement of the parties, the decree of divorce filed April 13, 2006, stated the following at No. 4:

Roger Schaad shall be entitled to fifty (50) percent of Barbara Schaad's STRS pension after his share is reduced by the Social Security

off set as calculated by Pension Evaluators as of July 21, 2005. This pension shall be divided by further order and each party shall draw their share of the pension at the time Barbara Schaad retires, which shall not be later than the age of 65.

{¶ 9} R.C. 3105.171 governs division of marital property. Subsection (I) states: "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."

{¶ 10} The decree of divorce did not reserve jurisdiction over the property distribution. However, the trial court clearly stated the pension "shall be divided by further order." The division of property order filed June 20, 2007, awarded appellant 43.27 percent of a fraction of appellee's periodic benefit or one-time lump sum payment calculated at the time she elected to start receiving benefits. Appellee retired effective July 1, 2010, and elected a monthly benefit. Appellant's gross share was \$1,188.66 per month.

{¶ 11} The division of property order contained the following provision at ¶ VIII: "The Court shall retain jurisdiction to modify, supervise, or enforce the implementation of this order notwithstanding Section 3105.171(I), Revised Code."

{¶ 12} Appellee points out that appellant's counsel agreed the matter is "reviewable." T. at 25. That does not mean the review is limitless. The trial court retains broad jurisdiction to clarify and construe its original property division so as to effectuate

the judgment, but cannot change the original intent of the property division agreed to by the parties. *Casner v. Casner*, 5th Dist. Licking No. 18-CA-48, 2018-Ohio-5078.

{¶ 13} The division of the STRS pension as cited above is clear and unambiguous. The division of property order set out the fractional amount appellant was entitled to receive based upon appellee's years in the plan while she was married to appellant and her total years of service credit. The division of property order did not include any dollar amounts. Appellee does not argue that the fraction was an incorrect computation, nor does appellee argue that appellant's share fails to include the reduction by a social security offset. In fact, during the hearing, appellee's counsel acknowledged the fractional share included the offset. T. at 6.

{¶ 14} In her February 20, 2018 motion, appellant made a general allegation that the "calculation and determination of the marital portion was inaccurately determined at the time of the decree, and as a result, the Defendant has been receiving over payments from the Plaintiff's STRS." During the hearing, appellant argued Pension Evaluators miscalculated the value of appellee's pension because it included a 4.0 to 4.7 percent interest rate and a 3 percent cost of living allowance, and the division of property order "was then put in place based upon that evaluation that gave the 4.7 percent interest rate on her account as well as the 3 percent cost of living." T. at 6; Exhibit 3. This is a false argument.

{¶ 15} Exhibit 3 is a document prepared by Pension Evaluators on December 6, 2005. The document calculated the "present day" 2005 value of appellee's STRS pension with actuarial adjustments, including the aforementioned interest rate and cost of living allowance. Appellee's pension was not distributed according to this "present day" 2005

value. The pension was divided at the time of appellee's retirement in 2010 based on the amount appellee was entitled to receive in 2010. We do not find any evidence to establish that the actuarial assumptions in 2005 have a bearing on the payout of appellee's pension in 2010. We do not find how the trial court arrived at its determination that appellant received an overpayment.

{¶ 16} At the hearing, appellee further argued appellant was receiving veterans benefits that were "never divided or never even mentioned in the divorce decree." T. at 11. Appellant argued the veterans benefits were premarital and that is why "the last divorce attorneys didn't include it" in the decree of divorce. T. at 21. In her trial brief filed August 23, 2018, appellee argued appellant was inequitably receiving more than she was after adding together his STRS portion, his social security, and his veterans benefits. The trial court agreed, finding the following in its August 29, 2018 order:

It is ORDERED, ADJUDGED, AND DECREED that it is clear from the evidence and documents introduced that the benefits Plaintiff is receiving is less than the total benefits the Defendant is receiving. Presently, the Plaintiff has two thousand and ninety-nine dollars and ninety-five cents (\$2,099.95) coming in each month. Presently, the Defendant has a total of one thousand eighty-eight dollars and 66 cents (\$1,188.66) from the Division of Property Order, three thousand sixty-eight dollars and ninety cents (\$3,068.90) from VA Benefits, and one thousand two hundred thirty-five dollars (\$1,235.00) from Disability Social Security for a total of five thousand four hundred and ninety-two dollars and fifty-six cents (\$5,492.56)

coming in each month. Therefore, after ten (10) years of payment on the present Division of Property Order the Court finds that equity must prevail and the Division of Property Order is vacated. The overpayment of monies to Defendant, Roger Schaad, from the STRS since the filing of this motion is \$8,320.62.

{¶ 17} We find the trial court exceeded its jurisdiction in vacating the division of property order contrary to the intent of the decree of divorce. The order followed the dictates of the decree. The decree, as agreed to by the parties, did not include any consideration of appellant's veterans benefits. The trial court's order did not modify the division of property order to effectuate the terms of the decree, it changed the decree by eliminating appellant's right to receive a portion of appellee's pension as agreed to by the parties.

{¶ 18} Upon review, we find the trial court exceeded its jurisdiction in vacating the division of property order.

{¶ 19} Assignment of Error I is granted.

## II

{¶ 20} In his second assignment of error, appellant claims the trial court erred in awarding "spousal support" to appellee when the decree of divorce did not reserve jurisdiction over the issue. We agree.

{¶ 21} In its order filed August 29, 2018, the trial court ordered the following:

Defendant shall pay to the Plaintiff the sum of five hundred forty dollars and forty-eight cents (\$583.69) each month as long as the Plaintiff lives, effective February 20, 2018. This will make both Parties to have the same monthly income which is the fair and equitable resolution in a divorce of a thirty-six (36) year marriage. The Defendant Roger Schaad would owe \$4,085.83 at this time.

{¶ 22} The numerical amount of \$583.69 matches the amount listed in a June 12, 2018 letter addressed to appellee's attorney from QDRO Group. The letter stated: "As you directed, we offset the total monthly benefits payable from the Veterans Administration, Social Security and STRS. The result of the offset is Mr. Schaad paying \$583.69 per month to Ms. Schaad."

{¶ 23} As cited above, appellant's share of appellee's STRS pension was to be "reduced by the Social Security off set." The decree of divorce, agreed to by the parties, is silent as to appellant's veterans benefits. The decree at No. 11 included a one-time equalization of assets payment from appellee to appellant, but nothing from appellant to appellee. The decree clearly did not provide for a monthly equalization payment or spousal support, and the trial court did not reserve jurisdiction to do so in the future.

{¶ 24} Upon review, we find the trial court did not have jurisdiction to order appellant to pay the monthly amount to appellee.

{¶ 25} Assignment of Error II is granted.



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

By Wise, Earle, J.

Hoffman, P.J. and

Delaney, J. concur.

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