

[Cite as *Rice v. Rice*, 2011-Ohio-1366.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95221

JAMES J. RICE, JR.

PLAINTIFF-APPELLANT

vs.

ANTOINETTE RICE

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Divison
Case No. D-312638

BEFORE: S. Gallagher, J., Kilbane, A.J., and Rocco, J.

RELEASED AND JOURNALIZED: March 24, 2011

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SEAN C. GALLAGHER, J.:

{¶ 1} Appellant James Rice appeals the decision of the Cuyahoga County Court of Common Pleas, Domestic Relations Division granting appellee Antoinette Rice’s motion for relief from judgment issued on May 20, 2010. Appellant argues that the domestic relations court erred by adopting the magistrate’s decision and vacating the division of property order (“DOPO”) entered on January 15, 2009. Appellee claims the DOPO conflicted with the entry of divorce journalized on February 25, 2008. For the following reasons, we affirm the judgment of the domestic relations court.

{¶ 2} The domestic relations court entered its final judgment entry of divorce on February 25, 2008. Among other provisions, the entry provides that appellant shall receive

“fifty percent (50%) of Wife’s STRS [State Teacher’s Retirement System] Retirement Benefits, Deferred Compensation, and/or any and all accumulated sick/vacation leave which was accumulated during the marriage, as of the date of filing, September 26, 2006.” The domestic relations court entered the DOPO on January 15, 2009,¹ to implement that clause.

{¶ 3} At the time of the divorce through the present, appellee received disability payments from the STRS. The January 15, 2009 DOPO included a provision that equally divided the disability payments, amounting to approximately \$20,000, between appellant and appellee. Appellee claims this was executed in error and impermissibly modifies the entry of divorce, which omitted reference to the disability payments altogether. Appellee successfully sought to have the domestic relations court vacate the DOPO on those grounds.

{¶ 4} Appellant raises two assignments of error for our review. The first is as follows: “The trial court erred and abused his discretion by granting the Appellee’s motion for

¹ The court’s practice of allowing parties almost 11 months to journalize such a necessary entry invites the type of dispute underlying the current appeal. In 11 months, even diligent attorneys misremember the minute details of a client’s case, and changes in circumstances may occur that are not contemplated by the parties at the time of the entry of divorce. It makes it more difficult to overlook the details if the parties draft such orders closer in time to, if not contemporaneously with, the entry of divorce. In fact, simple adherence to the Local Rules of the Cuyahoga County Court of Common Pleas, Domestic Relations Division might have prevented the current appeal. Loc.R. 28(E)(1)(b) specifies that the parties in this case should have prepared the DOPO within 60 days of the final entry. We must caution courts that if not requiring the DOPO or QDRO contemporaneously with the entry of divorce, the courts at the very least should journalize the deadline and any penalties for non-compliance to minimize issues and offer the parties more finality with the judgments.

relief from judgment and ordering the division of property order void.” Appellant’s first assignment of error is not well taken.

{¶ 5} Appellate review of the domestic relations court’s judgment is subject to the abuse of discretion standard. “Abuse of discretion connotes more than an error of law or of judgment; it implies an unreasonable, arbitrary or unconscionable attitude on the part of the court.” (Citations and quotations omitted.) *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342, 1998-Ohio-387, 695 N.E.2d 1140.

{¶ 6} Appellant argues that the DOPO was consistent with the judgment entry of divorce. He further argues that appellee failed to establish entitlement to relief under Civ.R. 60(B).

{¶ 7} We first note that DOPOs and qualified domestic relations orders (“QDROs”) merely implement a trial court’s decision of how a pension is to be divided incident to a final divorce entry. *Wilson v. Wilson*, 116 Ohio St.3d 268, 2007-Ohio-6056, 878 N.E.2d 16, ¶ 7.

The entry of divorce divides the property; the QDRO “is merely a tool used to execute the divorce decree.” *Id.* at ¶ 19. The terms DOPO and QDRO are used interchangeably for the purposes of this appeal. See *Abernathy v. Abernathy*, Cuyahoga App. No. 91735, 2009-Ohio-2263 (treating DOPOs as QDROs according to law and holding that evidence supported finding that wife’s disability pension in lieu of retirement was a marital asset, therefore divisible between the parties).

{¶ 8} This court has further already held that “A QDRO 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. Once a division of property is established in the divorce decree that decision is not subject to future modification by the court. * * * A QDRO that fails to implement the divorce decree is void.” (Internal citations and quotations omitted.) *Brownlee v. Brownlee*, Cuyahoga App. No. 94494, 2010-Ohio-5602, at ¶ 6-8. In *Brownlee*, the husband filed a motion to vacate a QDRO relating to a savings plan because the QDRO used a different valuation date and inaccurately reflected the valuation formula from the divorce decree. The *Brownlee* court reversed the domestic relations court’s denial of a motion to vacate the QDRO because the QDRO was a “void attempt to modify the [divorce] decree” based on the highlighted deviations. Id. at ¶ 9.

{¶ 9} The current case presents a similar issue of whether the DOPO attempts to modify the entry of divorce. The domestic relations court has “inherent power to vacate a void decree. A party need not comply with Civ.R. 60(B) to vacate a void decree.” Id. at ¶ 8; *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph four of the syllabus. A finding that the domestic relations court did not abuse its discretion in finding that the DOPO modified the divorce decree will render as moot appellant’s arguments that appellee failed to present a meritorious claim or otherwise establish relief pursuant to Civ.R. 60.

{¶ 10} The domestic relations court found that Section B(3) of the separation agreement, incorporated into the entry of divorce, did not include the STRS disability payments. Section B(3) is the only provision dealing with the couple's retirement plans or benefits. The court adopted the following analysis from the magistrate's decision in formulating this conclusion:

“Section B(3) of the Separation Agreement attached to the Judgment Entry of Divorce does not reference Defendant's STRS disability benefits, but only references ‘Retirement benefits, deferred Compensation, and/or any and all accumulated sick/vacation leave which was accumulated during the marriage, as of the date of filing, September 26, 2006.’ Moreover, the child support guidelines, which are attached and incorporated into the Judgment Entry of Divorce as exhibit C provide that, for the purposes of child support [appellant's] annual gross income is \$176,539.00 and [appellee's] annual gross income is \$19,621.00. [Appellee's] annual gross income as set forth in these guidelines is the full amount of her disability benefit, therefore the Retirement Benefits provision of the Separation Agreement must be understood to exclude STRS disability benefits in order to maintain the internal consistency of the Judgment Entry of Divorce.”

{¶ 11} Contrary to appellant's argument, the domestic relations court concluded that the entry of divorce is not ambiguous based on a plain reading of the entire entry. In order to maintain the consistency within the entry of divorce, appellee's disability payments making up her gross income after divorce necessarily means that the disability payments were not included within the meaning of “retirement benefits” as appellant argues. It logically follows that since the entry of divorce did not apportion any right to appellee's disability payments to

appellant, the DOPO improperly modified the entry of divorce by equally dividing the pension payments between the couple.

{¶ 12} Appellant cites to *Murphy-Kesling v. Kesling*, Summit App. No. 24176, 2009-Ohio-2560, for the proposition that if neither the entry of divorce nor the DOPO specifically references the STRS disability payments, the court did not err in dividing the disability benefits. Appellant's reliance on *Kesling* is misplaced. The *Kesling* court affirmed the domestic relations court's judgment denying appellant's Civ.R. 60(B) motion to vacate the DOPO. The court simply stated: "Given that the DOPO was entered in September 2003 with terms expressly delineating Husband's unconditioned interest in Wife's STRS benefits, the trial court did not abuse its discretion in denying Wife's motion for reconsideration because it was not 'made within a reasonable time.'" Id. at ¶ 21. The *Kesling* court did not reach the merits of the argument, and the decision does not stand for the proposition appellant advanced.

{¶ 13} The domestic relations court's application of Ohio law is consistent with this court's *Brownlee* decision. The court had the inherent power to void the DOPO and order appellant to draft another version that properly implemented the terms of the entry of divorce. Appellant's first assignment of error is therefore overruled.

{¶ 14} Appellant's second assignment of error provides as follows: "The trial court erred by adopting the magistrate's decision without entering its own judgment on the issues."

Appellant argues that the domestic relations court did not undertake a thorough, independent review of the magistrate's decision as the court adopted the decision "in its entirety" as a matter of course.

{¶ 15} Pursuant to Civ.R. 53(D)(3)(d), "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." The Supreme Court has cautioned trial judges against the practice of adopting a magistrate's decision as a matter of course. *Hartt v. Munobe*, 67 Ohio St.3d 3, 5, 1993-Ohio-177, 615 N.E.2d 617.

{¶ 16} In this case, the domestic relations court did not adopt the magistrate's decision in its entirety. The court's May 20, 2010 order overruling appellant's objections and adopting the magistrate's decision modified that decision. The magistrate's decision did not order the appellee to prepare a new DOPO. The domestic relations court included the additional condition that appellee prepare a new DOPO consistent with the entry of divorce. The court reviewed the record to determine that an additional order was necessary to carry out the entry of divorce and therefore did not adopt the magistrate's decision as a matter of course.

We find no basis to conclude that the trial court did not engage in an independent review. For this reason, we must overrule appellant's second assignment of error.

{¶ 17} Having found that the domestic relations court did not abuse its discretion in vacating the DOPO or adopting the magistrate's decision, we affirm the judgment of the court.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR