

[Cite as *Ballinger v. Ballinger*, 2017-Ohio-7077.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105180

BETTY J. BALLINGER

PLAINTIFF-APPELLEE

vs.

NORMAN D. BALLINGER, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-12-343703

BEFORE: E.A. Gallagher, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: August 3, 2017

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Norman Ballinger appeals from a Qualified Domestic Relations Order issued by the Cuyahoga County Court of Common Pleas, Division of Domestic Relations. We affirm.

Facts and Procedural Background

{¶2} This is the second appeal in a divorce case between appellant and plaintiff-appellee Betty Ballinger. In *Ballinger v. Ballinger*, 8th Dist. Cuyahoga Nos. 100958, 101074, 101655, and 101812, 2015-Ohio-590, this court affirmed a nunc pro tunc judgment entry of divorce between the parties as well as the issuance of two related Qualified Domestic Relations Orders (“QDRO”).

{¶3} As part of the trial court’s nunc pro tunc entry of divorce appellant was ordered to pay appellee \$30,000.00 from his “VT Halter retirement fund” for her attorney’s fees. The trial court’s entry of divorce further states that:

It is further ordered, adjudged and decreed that the attorneys prepare all necessary documents for the transfer of said assets. The parties shall cooperate in effectuating the division of all assets and shall sign all documents and perform acts necessary to divide the assets consistent with this judgment entry.

{¶4} On October 20, 2016 the trial court issued a QDRO to facilitate the assignment of \$30,000.00 of funds in appellant’s VT Halter Marine, Inc. 401(k) profit sharing plan to appellee pursuant to the division of property set forth in the judgment entry.

Law and Analysis

{¶5} In his sole assignment of error appellant argues that the trial court abused its discretion by issuing a QDRO inconsistent with the terms and conditions of the judgment entry of divorce. Appellant first argues that, despite the above quoted transfer and cooperation provision, a QDRO is impermissible in this instance because the judgment entry failed to explicitly mention its use as a tool to distribute the \$30,000.00 award. We find no merit to this argument.

{¶6} A QDRO is an order that “creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan.” *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 2010-Ohio-252, 922 N.E.2d 214, ¶ 18, citing the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1056(d)(3)(B)(i)(I), and 26 U.S.C. 414(p)(1)(A)(i). A QDRO is not an independent judgment entry of the court, but is rather an enforcement mechanism pertaining to a trial court’s previous judgment entry of divorce or dissolution. *Ware v. Ware*, 5th Dist. Licking No. 14 CA 28, 2014-Ohio-5410, ¶ 14. A QDRO implements a trial court’s decision of how a pension is to be divided incident to divorce or dissolution. *Wilson v. Wilson*, 116 Ohio St.3d 268, 2007-Ohio-6056, 878 N.E.2d 16, ¶ 7. A QDRO does not in any way constitute a further adjudication on the merits of the pension division, because its sole purpose is to implement the terms of the divorce decree. *Id.* at ¶ 16.

{¶7} When a QDRO is inconsistent with the final divorce decree it is void and the trial court lacks jurisdiction to issue it. *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 2010-Ohio-252, 922 N.E.2d 214, ¶ 19. The question of whether a QDRO conflicts with a divorce decree presents a question of law that we review de novo. *Enty v. Enty*, 8th Dist. Cuyahoga No. 104167, 2017-Ohio-4177, ¶ 16.

{¶8} Consistent with the above principles of law we find no inconsistencies between the terms of the trial court’s judgment entry and the QDRO. We further note that even if we were to accept appellant’s argument that the explicit mention of a QDRO as an enforcement tool was legally required appellant failed to raise this argument during the original appeal wherein this court upheld the issuance of two prior QDROs. Therefore, his argument would be barred by res judicata.

{¶9} Appellant next argues that the trial court erred in failing to comply with Domestic Relations Division Local Rule 28(F) that calls for a trial court to include language in the final judgment entry stating that it retains jurisdiction with respect to QDROs and further orders necessary to enforce the assignment of benefits. While appellant is correct that the trial court failed to include the language contemplated within Loc.R. 28(F), we find no prejudice to him.

{¶10} “Local rules are created with the purpose of promoting the fair administration of justice and eliminating undue delay” and “also assist practicing attorneys by providing guidelines for orderly case administration.” *Cavalry Invests. v. Dzilinski*, 8th Dist. Cuyahoga No. 88769, 2007-Ohio-3767, ¶ 16. “[C]ourts are to be given

latitude in following their own local rules; the enforcement of rules of court is held to be within the sound discretion of the court.” *In re T.W.*, 8th Dist. Cuyahoga Nos. 88360 and 88424, 2007-Ohio-1441, ¶ 39, quoting *Ciokajlo v. Ciokajlo*, 1st Dist. Hamilton No. C-810158, 1982 Ohio App. LEXIS 12823, *4 (July 28, 1982); *Jackson v. Jackson*, 11th Dist. Lake Nos. 2011-L-016 and 2011-L-017, 2012-Ohio-662, ¶ 30.

{¶11} We find no abuse of discretion in this instance because appellant has suffered no prejudice because the QDRO is wholly consistent with the terms of the trial court’s nunc pro tunc judgment entry. Conversely, appellee could suffer significant prejudice if the trial court’s omission of the Loc.R. 28(F) language were to bar her from obtaining a QDRO and receiving the benefits assigned to her by the judgment entry. Furthermore, appellant again failed to raise this argument when this court considered the prior QDROs in this case in his original appeal.

{¶12} Finally, appellant argues that the QDRO contains terms regarding gains, losses and appreciations that are inconsistent with the nunc pro tunc judgment entry. The record reflects that the offending language to which appellant refers was removed following his objections below and is not present in the QDRO issued by the court on October 20, 2016.

{¶13} Appellant’s sole assignment of error is overruled.

{¶14} The judgment of the trial court is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

EILEEN A. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR