

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Richard W. Long

Court of Appeals No. L-11-1107

Appellant

Trial Court No. DM 1989-5239

v.

Suzanne M. Long

DECISION AND JUDGMENT

Appellee

Decided: August 10, 2012

* * * * *

Fritz Byers and Sheldon M. Slaybod, for appellant.

Beverly J. Cox, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Domestic Relations Division, ordering direct payment of pension benefits to appellee. Because we conclude that the trial court erred in calculating the amount of the payments, we reverse and remand.

{¶ 2} This is the third time this case has been before us on appeal. Appellant, Richard W. Long, and appellee, Suzanne M. Long, were granted a dissolution of marriage in 1989. Subsequently, issues pertaining to the division of appellant's pension benefits arose, were litigated, and were addressed on appeal in this court. See *Long v. Long*, 6th Dist. No. L-07-1241, 2008-Ohio-2380.

{¶ 3} On remand, however, the trial court again ordered that, in addition to the payments appellee received from the SERS pension, appellant make direct payments to appellee in an "amount necessary for the parties to share equally [appellant's] monthly SERS benefits."

{¶ 4} Appellant now appeals from that judgment, arguing the following sole assignment of error:

The trial court committed prejudicial error by ordering that Husband pay Wife the value of one-half of Husband's entire SERS pension, including the non-marital portion.

{¶ 5} In *Long v. Long*, 6th Dist. No. L-07-1241, 2008-Ohio-2380, we stated:

The record establishes that the trial court failed to utilize or order to be utilized the R.C. 3105.82(2)(a) and (b) statutorily mandated calculations in determining the percentage of appellant's monthly SERS benefits to be paid to appellee. A valid and enforceable DOPO must comply with the calculations established by R.C. 3105.82(2)(a) and (b). We find appellant's second assignment of error well-taken.

The trial court properly exercised jurisdiction in ordering a DOPO to be filed apportioning appellant's SERS retirement benefits. However, the trial court improperly ordered the benefits to be apportioned between the parties on a 50-50 basis contrary to the statutory fraction calculation formula mandated by R.C. 3105.82(2)(a) and (b).

Wherefore, the judgment of the trial court in exercising jurisdiction in ordering a DOPO of appellant's SERS retirement benefits is affirmed, the judgment of the trial court in ordering appellee's interest in appellant's SERS retirement benefits to be calculated under the original QDRO 50-50 basis is reversed, and the matter is remanded to the trial court for a DOPO to be ordered and issued in conformity with the statutory alternative payee calculations established by R.C. 3105.82(2)(a) and (b). *Id.*, at ¶ 23-25.

{¶ 6} In other words, appellee is entitled to only one-half of *the marital portion* of appellant's pension. Thus, the only thing the trial court needed to do on remand was to simply recalculate the amount appellee was to receive in conformity with the statutory formula. However, the trial court again imposed payments to appellee of 50 percent of appellant's pension, which we had ruled to be incorrect, and added additional payments that appellant was required to pay directly to appellee. So there is no misunderstanding of our orders, we will make the necessary calculations for proper determination of the amount of payment.

{¶ 7} During the marriage, appellant worked approximately eight years, from 1981 to 1989, for Anthony Wayne Schools. After the marriage he continued working another 14 years until his retirement in 2003. Therefore, his total years contributing to his pension before he retired, including non-marital years, was 22 years. Applying the statutory formula, the percentage of the pension which is marital is 36 percent.¹ Appellee is entitled to 18 percent of appellant's pension payments, or one-half of the *marital* portion (*not* one-half of the entire pension amount).

{¶ 8} Using the amounts provided in the record, the following is an illustration of how the parties' pension shares should be calculated. From Exhibit A, a 2010 listing provided by SERS of the gross yearly retirement disbursements to appellant, we find that in 2003, appellant was paid \$15,777.08. Appellee's 18 percent share of that year's disbursement would be \$2,839.87 ($\$15,777.08 \times 0.18$). In 2004, appellant was paid \$17,684.69; appellee's 18 percent share is \$3,183.24. The same calculation would continue each year, making sure to use appellant's gross amount. For subsequent years in which appellee was paid directly from the SERS pension fund, including the current year, the court should apply the 18 percent to the total gross amount disbursed to both parties to ensure that appellee is receiving the correct amount from SERS.

¹ Appellant claimed in a request to admissions that years worked during the marriage was 7.83. In reviewing appellant's total years worked, the record indicates that appellant retired with 21.5 years actually worked. Whether one uses 7.83 out of 21.5 or rounds out to 8 out of 22, the percentage remains as 36% for the marital portion of appellant's retirement.

{¶ 9} We are mindful that appellee did not begin receiving benefits when she should have in 2003, but also that appellant has, in fact, made additional direct payments to her towards any amount that she should have been paid. Therefore, despite our desire to end these proceedings, we lack information regarding the current total amounts paid to appellee from the pension or the total amounts paid directly to her by appellant. In addition, we do not have the current gross amounts paid after August 2010, or whether appellant had additional deductions from his gross amount. Therefore, regrettably, we cannot make the final determinations and must remand this case to the trial court for the following actions. The court must determine:

{¶ 10} (1) The gross total amount for any pension distributions to appellant, prior to when appellee first began receiving a monthly payment from SERS. Appellee is entitled to 18 percent of that total as an arrearage.

{¶ 11} (2) The gross total amount for pension distributions to each party, after appellee began receiving a monthly SERS payment. Appellant's distribution should equal 82 percent and appellee's should be 18 percent of the total amount added together.

{¶ 12} (3) The current monthly gross payments, again, should be divided to equal 82 percent to appellant and 18 percent to appellee.

{¶ 13} (4) After determining the total gross pension disbursement and the totals paid to each party from the fund to date, the court should then determine the amount of extra payments made directly to appellee by appellant and credit those payments toward the arrearage. If an overpayment exists, the amount overpaid should be returned to

appellant. If an arrearage still exists, then appellant should continue to make \$500 payments until any remaining balance is paid.

{¶ 14} In calculating the parties' benefits, the overriding consideration is that appellant's share is 82 percent and appellee's share is 18 percent. No other payments should be ordered beyond those distributed from the SERS fund pursuant to the DOPO, which should also be applying these same percentages. With this in mind, the trial court can now complete the necessary calculations.

{¶ 15} The judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is reversed and remanded for proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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