

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001193-MR

WILLIAM H. HOWARD, JR.

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE LARRY RAIKES, JUDGE
ACTION NO. 87-CI-000137

JULIA MAUREEN HARVEY
(FORMERLY HOWARD)

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, GUIDUGLI AND MILLER, JUDGES.

EMBERTON, JUDGE: This is an appeal concerning the division of appellant's pension benefits with the appellee, Julia Maureen Harvey. Appellant maintains that appellee is entitled to one-half her marital interest in the plan at the time the decree of dissolution of marriage was entered and not the value of that interest on the date of the qualified domestic relations order. We affirm.

Appellant and appellee were divorced in December 1987. On November 6, 1988, they executed a Property Settlement Agreement providing:

William E. Howard, Jr., is a participant in a pension/retirement plan through his employer, Salt River Rural Electric Cooperative. The parties agree that they shall divide between themselves the entire balance existing in William E. Howard, Jr.'s retirement to the date of the Decree of Dissolution entered in this action pursuant to a Qualified Domestic Relations Order to be separately entered in this action.

Following the entry of the decree, appellant continued to work for Salt River. Neither party, however, requested a QDRO be entered until June 30, 1997. The issue presented is the amount appellee is entitled to receive as her marital share of the pension plan.

Jeff Leonard of Benefit Actuaries, Salt River's Plan Administrator, testified concerning the design of the pension plan. He explained the plan is a non-contributory, defined benefit pension plan, which calculates a monthly life annuity guaranteed for five years utilizing a formula incorporating the years of service and compensation levels of the participant. The actuarially equivalent of a lump sum as of the date of the divorce was \$53,885.51, and at that time, each party was entitled to \$26,942.75. As explained by Mr. Leonard, however, the plan provisions did not permit a lump sum distribution to an alternative payee until the participant's retirement, thus, appellee's share could not be distributed. In the early 1990's, the provisions of the plan were changed to permit a former spouse's lump sum share to be placed in a separate account,

within the plan, for the benefit of the former spouse. Mr. Leonard testified that the marital portion of appellant's pension increased from \$53,885.51 as of December 1987, to \$105,798.38 as of October 1, 1997. The increase in the value resulted from the design of the plan and not from appellant's efforts. Nonmarital benefits have continued to accrue, and according to Mr. Leonard, probably exceed the value of the marital benefit.

Appellant maintains that appellee is limited to \$26,942.75, representing one-half the value of the pension on the date the decree was entered. The proper date for valuing a spouse's pension plan is the date of dissolution rather than the date of the Qualified Domestic Relations Order. Clark v. Clark, Ky. App., 782 S.W.2d 56, 62 (1990). If the pension plan at issue was a contributory plan and the increase in value attributable to appellant's nonmarital, post-dissolution efforts, we would be inclined to agree with appellant; according to Mr. Leonard, however, the increase in the marital portion of the plan was based solely on the plan provisions.

Appellee's marital interest in the plan, \$26,942.75, increased to \$52,000, from 1987 to 1997. The value of her marital interest increased as it would have had she been permitted to take the \$26,942.75 in a lump sum and prudently invested that amount. Appellee is entitled to the present value of her marital interest in the pension plan.

The judgment of the Nelson Circuit Court is affirmed.

GUIDUGLI, JUDGE, CONCURS.

MILLER, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

John Douglas Hubbard
Jason P. Floyd
Bardstown, Kentucky

BRIEF FOR APPELLEE:

Larry Langan
Bardstown, Kentucky