

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000819-MR

RONALD W. EDEN

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE JEFFERY M. WALSON, JUDGE
ACTION NO. 09-CI-01566

SHARON C. EDEN (NOW CHAMBERS)

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: CAPERTON, CLAYTON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ronald W. Eden brings this appeal from a February 2, 2012, judgment entered in the Madison Circuit Court, Family Court Division, adjudicating marital property issues. We vacate and remand.

Eden and Sharon C. Eden, now Sharon Chambers (hereinafter Chambers), were married on July 19, 1986. Chambers filed a motion for

dissolution of marriage on October 8, 2009. After eight attempts to reschedule a final hearing, the family court agreed to submit the case via deposition. Chambers submitted the deposition of John N. Craft, C.P.A., who testified as to the valuation and division of the parties' retirement benefits. Eden did not present a deposition and did not submit a verified disclosure statement. The parties agreed to bifurcate the proceedings, and the marriage was dissolved by decree of dissolution entered March 24, 2011. The decree reserved the issues of property allocation and division for later adjudication.

On February 2, 2012, the family court entered its findings of fact and conclusions of law adjudicating all remaining property issues. Therein, the family court found that Eden began his career as a teacher prior to the parties' marriage and subsequently retired as superintendant of the Breathitt County Schools. The court also found that Eden currently received a monthly retirement benefit from the Kentucky Teacher's Retirement Systems (KTRS) in the sum of \$7,705.12 per month. The court further noted that Chambers was employed by the Kentucky Lottery Corporation since 1990 and held a retirement account from such employment at the time of the hearing.

Relevant to the calculation and division of the parties' retirement benefits, the family court adopted the expert opinion of Craft. In accordance with Craft's calculations, the court determined that the present value of Eden's retirement was \$1,332,771.02 and of that amount, \$1,112,864 was acquired during the marriage. The court also found that Chambers possessed retirement benefits

totaling approximately \$385,603 and that the combined retirement benefits of both parties were \$1,498,467. Based upon Craft's opinion, the court concluded that if Chambers retained her retirement benefits of \$385,603, the sum of \$363,631 would be required to equalize the parties' benefits. The court further concluded that to effectuate the division Chambers would receive 27.284 percent of Eden's monthly retirement benefit and, thus, the court awarded Chambers 27.284 percent of Eden's monthly retirement benefits. This appeal follows.

We begin our analysis by noting that our Court will only disturb the family court's findings of fact in a dissolution of marriage proceeding if such findings are clearly erroneous. *Cochran v. Cochran*, 746 S.W.2d 568 (Ky. App. 1988). And, division of marital assets is within the sound discretion of the family court and will not be disturbed absent an abuse of that discretion.

Eden contends that the family court erred in its valuation and division of his retirement benefits with KTRS. Eden specifically asserts that the family court erroneously relied upon Craft's expert opinion because his opinion did not comport with 102 Kentucky Administrative Regulations (KAR) 1:320 Section 7 (2014).

Initially, it is well-settled that properly promulgated and adopted administrative regulations have "the full effect of law." *United Sign, Ltd. V. Com.*, 44 S.W.3d 794, 798 (Ky. App. 2000). 102 KAR 1:320 Section 7 sets forth the method of calculation and division of a KTRS benefit plan upon dissolution of marriage:

Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty (50) percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under [KRS 403.190\(4\)](#), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

102 KAR 1:320 Section 7. Under 102 KAR 1:320 Section 7, the valuation and division of retirement benefits is a multi-step analysis. Initially, the participant's total service retirement allowance must be obtained as of the date of divorce. Then, the total service allowance is reduced by the amount of retirement benefits held by the alternative payee (or spouse). The remaining amount of allowance is then multiplied by a fraction; the numerator is the years of creditable service earned during the marriage, and the denominator is the total years of service credit earned through the date of divorce. We observe that this multi-step analysis is consistent with the Kentucky Supreme Court's opinion of *Shown v. Shown*, 233 S.W.3d 718 (Ky. 2007) which interpreted Kentucky Revised Statutes 403.190(4). The Supreme Court emphasized in *Shown* that KRS 403.190 must be harmonized with KRS Chapter 161 to give effect to both statutes. *Id.* KRS 161.700 requires

the Board of Trustees of KTRS to promulgate regulations for the administration of qualified domestic relations orders.

In this case, the record reveals that Craft failed to follow the mandates of 102 KAR 1:320 Section 7 when he valued and divided Eden's retirement benefits. Craft did not use the multi-step analysis and failed to properly consider the years of service used to exempt part of Eden's benefits equal to the amount of Chamber's benefit as required under 102 KAR 1:320 Section 7. As Craft's expert opinion did not comport with 102 KAR 1:320 Section 7, we are constrained to conclude that the family court erred by adopting Craft's opinion to value and divide Eden's KTRS retirement benefits. We, thus, vacate the family court's opinion and remand to the family court for reconsideration of its valuation and division of Eden's KTRS retirement benefits. Upon remand, we observe that the family court's valuation and division of Eden's retirement benefits shall conform to 102 KAR 1:320 Section 7.

For the foregoing reasons, the judgment of the Madison Circuit Court, Family Court Division, is vacated and this case is remanded for proceedings consistent with this opinion.

CAPERSON, JUDGE, CONCURS.

CLAYTON, JUDGE, CONCURS IN RESULT AND FILES

SEPARATE OPINION:

CLAYTON, JUDGE: I concur with the majority decision but write separately for two reasons. First, I am dismayed by the appellant's failure during

the trial to present any evidence about the pension or to provide legal arguments. Based on the appellant's failure to do so, this case was not resolved in February 2012. Further, the re-valuing of the pension may have a "ripple" effect on the division of the remaining marital property.

Second, as the majority has stated, KRS 161.700 is pivotal in our decision to remand this case. Specifically, KRS 161.700(6) reads in part:

"...Notwithstanding any statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees." (Emphasis added).

Therefore, the court's discretion under KRS 403.190 is directly affected by the requirements of KRS 161.700. While the majority has remanded this case because of an administrative regulation, I believe that it is the impact of KRS 161.700 and not the administrative regulation which requires remand of this case.

Notwithstanding the factors listed in KRS 403.190, KRS 161.700(6) requires courts to value Kentucky Teacher's Retirement accounts pursuant to its provisos. Accordingly, courts have to consider the requirements of KRS 161.700 as well as the equitable division of all of the marital property as mandated by KRS 403.190. Thus, I think it should be clearly stated that the remand is for the reconsideration of the division of all of the marital property.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Jerry W. Gilbert
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