

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001778-MR

LOIS J. TAYLOR

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE ELEANORE M. GARBER, JUDGE
ACTION NO. 05-CI-501508

DOUGLAS E. TAYLOR

APPELLEE

OPINION REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; LAMBERT, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Lois Taylor appeals from orders of the Jefferson Circuit

Court concerning the division of marital assets and the entry of a qualified domestic

relations order (QDRO) on August 22, 2006. For the reasons stated below, we reverse

and remand.

Lois and Douglas Taylor were married in August, 1997. At that time,

Douglas was employed by Ford Motor Company (Ford). The parties were divorced, and

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

a final decree of dissolution was entered on August 12, 2005. Both parties signed a marital settlement agreement on July 26, 2005, which was incorporated into the final decree. At the time of their divorce, Douglas had retired from Ford. Douglas filed a mandatory case disclosure acknowledgment on July 27, 2005, stating that he was receiving \$2,706.85 per month as his Ford pension payment.

In the Taylors' settlement agreement, it states with regard to the division of retirement:

[Lois] has no retirement plans or funds. The parties agree that they shall equally divide [Douglas'] Ford TESPE, as of the date of decree. **The parties agree that [Lois] shall receive one half of [Douglas'] pension accumulated during the marriage.** [Lois] shall have survivorship rights to her one-half (½) of the pension accumulated during the marriage, if such benefits are available from the Plan. [Lois'] attorney shall prepare the Qualified Domestic Relations Orders to divide these plans.² (Emphasis added).

Subsequent to the entry of the decree of dissolution, Lois' attorney prepared a QDRO. After the QDRO had been approved by Ford, Lois filed a motion with the Jefferson Circuit Court to enter the QDRO, which provided that Lois was entitled to “50% of [Douglas'] benefit accrued between August 31, 1997 and July 25, 2005.” The QDRO also provided that Lois was entitled to a pro-rata share of “early retirement supplements, interim supplements, or temporary benefits” in an equal proportion to her interest in Douglas' total benefits. Douglas entered an objection to the QDRO concerning the part that awarded Lois a share of his early retirement benefits.

² Douglas' TESPE Plan is not at issue in this appeal.

A hearing was conducted on April 7, 2006, and each party presented arguments. On July 6, 2006, the trial court entered an order denying Lois a share of Douglas' early retirement benefits. The court held that the early retirement benefits were similar in nature to social security benefits. Since Lois would not be entitled to social security benefits because the parties had not been married for longer than ten years, the court reasoned that she was similarly not entitled to the early retirement benefits. The trial court also noted that Douglas' failure to indicate on his disclosure that the pension payment included more than one type of benefit was excused because the disclosure does not provide a space to do so. Lois filed a motion to alter, amend or vacate with the trial court. That motion was denied by an order entered on July 26, 2006. The trial court entered a QDRO reflecting its judgment from the hearing on August 22, 2006. Lois now appeals the July 6, 2006 order, the July 26, 2006 order, and the QDRO.

On appeal, Douglas argues that the early retirement benefits are separate from his pension because they were offered to him as an incentive to retire early and are considered future earnings. Lois argues that she is entitled to a share of Douglas' early retirement benefits, as outlined by their marital settlement agreement, because these benefits were accumulated during the marriage. We agree and so must reverse the trial court's order and remand for further proceedings.

The marital settlement agreement, quoted previously, does not make a distinction in the types of payments Douglas received from Ford. The agreement does not separate the retirement payment benefits into regular retirement and early retirement.

The agreement simply states that Lois is entitled to “one half of [Douglas'] pension accumulated during the marriage.” The mandatory case disclosure that Douglas filed also states that he receives \$2,706.85 per month from his Ford pension. It makes no distinction between retirement benefits and early retirement benefits. The check Douglas receives is also in one lump sum, not two different sums reflecting the different benefits.

Under Kentucky law, it is well settled that Douglas' pension must be valued as of the date of decree of dissolution. *Perry v. Perry*, 143 S.W.3d 632, 633 (Ky. App. 2004) (citing *Foster v. Foster*, 589 S.W.2d 223 (Ky. App. 1979)). At the time of dissolution, Douglas was already retired from Ford and his pension was in “pay status.” The early retirement benefits were accumulated during the marriage because Douglas was receiving the benefits at the date of dissolution. The parties agreed that Lois would receive one half of Douglas' pension that accumulated during the marriage. Since no distinction was made between the types of payments, the trial court erred in denying Lois a share of the early retirement benefits. It does not matter how these benefits are labeled. They were accumulated during the marriage and must be divided in accordance with the marital settlement agreement.

For the foregoing reasons, we reverse the judgment of the Jefferson Family Court and remand this matter for further proceedings in accordance with this opinion.

COMBS, CHIEF JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

LAMBERT, JUDGE, DISSENTING: Respectfully, I dissent and would affirm the July 5, 2006, Order of the Jefferson Circuit Court, Family Division Five, in its entirety and in all respects.

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