

Circuit Court for Baltimore City
Case No. 024-D-14-001722

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 0609, 2624

September Term, 2018

PAUL JAMES

v.

TERESA JAMES

Leahy,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: July 30, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Paul James, and appellee, Teresa James,¹ were granted a Judgment of Absolute Divorce (Judgment) on October 17, 2017, in the Circuit Court for Baltimore City. The Judgment awarded appellee a 50 percent share of the marital portion of appellant's pension fund. The parties were ordered to prepare a Qualified Domestic Relations Order (QDRO) to effectuate payments to appellee for the court's approval and docketing within 90 days, but they were unable to agree on the contents of the QDRO. Appellee filed a Petition for Contempt, Motion to Enforce Judgment and a Motion to Execute and Docket QDRO. Following hearings on these matters, the court granted appellee's QDRO motion and found appellant in contempt for failing to make direct pension payments to appellee. Appellant presents the following issues for our review:

1. Whether the circuit court had jurisdiction to sign and execute the QDRO after the 90-day deadline imposed by the Judgment of Absolute Divorce?
2. Does ERISA pre-empt the purge provision of the Circuit Court of Maryland's contempt order which requires husband to pay arrears directly to wife?
3. Did the Circuit Court for Baltimore City err in finding husband in Contempt for his failure to directly pay wife half of his monthly pension benefit when the Judgment of Absolute Divorce indicates husband's marital share of the pension is to be "apportioned" via a QDRO?²

For the reasons discussed below we shall reverse in part and affirm in part.

BACKGROUND

¹ Appellee reverted to her maiden name, Teresa Benford, after the divorce.

² We have consolidated our discussion of issues two and three.

The parties were married on June 26, 1964. In 1991 the parties separated and have lived separate and apart for 28 years. On July 10, 2014, appellant filed a complaint for absolute divorce and on September 3, 2015, appellee filed a counter complaint for absolute divorce. Following a merits hearing on October 16 and 17, 2017, the court entered a Judgment awarding appellee a 50 percent interest in appellant’s STA-Baltimore-ILA Pension Fund. The order stated, in pertinent part:

ORDERED that [appellee] is awarded fifty percent (50%) of the marital share on an “if as and when basis” of the [appellant’s] STA of Baltimore - I.L.A. Pension Fund, to be apportioned by a Qualified Domestic Relations Order (“QDRO”). The QDRO shall be filed with this Court by [appellee] within ninety (90) days of the date of this Judgment of Absolute Divorce; and it is further

ORDERED that pursuant to Md. Code Ann., Fam. Law §8-203, the jurisdiction of this Court shall remain open for ninety (90) days for the limited purpose of considering and executing a Qualified Domestic Relation Order (“QDRO”) . . .

On December 27, 2017, appellee’s counsel forwarded a draft QDRO, prepared by a pension attorney, to appellant for review and signature. Approximately two days later, appellant’s counsel responded that changes would need to be made, but that she had to “speak with the pension office.” Later that same day, appellee’s counsel asked the pension attorney to submit the QDRO to the plan administrator then informed appellant’s counsel of this action.

On January 9, 2018, appellee and her counsel, having received no further communication from appellant, again forwarded the QDRO to appellant’s counsel for execution. On January 15, 2018, the 90th day pursuant to the court’s order, counsel for appellee attempted to communicate with appellant’s attorney about the delay and requested

the QDRO be signed by January 17, 2018. On January 17, 2018, the plan administrator emailed both parties' counsel and stated she had reviewed the proposed QDRO, which included appellant's changes, and, upon execution by the court, the QDRO would be acceptable. Appellant's counsel inquired whether appellee and her counsel would need time to review the draft QDRO and appellee's counsel replied that additional time would be needed. Ultimately, the parties could not agree on the contents of the document, and the QDRO was not signed.

On January 3, 2018, appellee filed a Petition for Contempt and Motion to Enforce Judgment of Absolute Divorce, alleging that appellant had failed to pay pension benefits directly to her, pending resolution of the QDRO. Appellee also filed, on March 16, 2018, a Motion to Execute and Docket the QDRO and requested a hearing.

Hearing on the QDRO

On May 18, 2018, five months after the 90-day deadline, a hearing was held. At the hearing, appellee argued that the court had "continuing jurisdiction over the [QDRO]" and, thus, could execute and docket the order. Appellee also argued that any delay was due, in part, to appellant's lack of response. Appellant maintained the court no longer had jurisdiction nor did he willfully delay the process. The court found:

[T]his is in fact a court of equity . . . from my view I find it inequitable that [appellee] would be, [appellee] would be simply cut out of the marital portion of the QDRO because of this missed time limit which appears at least to this court to be somewhat due to the actions of [appellant].

And I say somewhat due to the actions of [appellant] or his counsel, certainly some of the blame lies with him . . . But it is my belief that [appellee] should still be entitled to her 50 percent of the marital portion of the QDRO that Judge Carrion ordered.

But the reason that I don't believe it will be appropriate to cut [appellee] out of the QDRO simply for the parties not having signed a QDRO agreement because that would reward one party who didn't want to sign the QDRO.

The parties then agreed to take a break to review the pre-approved QDRO. When the hearing resumed, appellant's attorney stated that he would not sign the QDRO because he did not agree with the court's ruling and he did not want to "lose [his] right for an appeal or at least [his] argument for an appeal. The QDRO was then executed by the court and docketed on May 18, 2018.

Hearing on Contempt

On June 21, 2018, the court held a hearing to determine whether appellant should be held in contempt for not making direct payments to appellee. Appellant's counsel argued that appellant could not be held in contempt because appellee could only receive her benefits by way of a QDRO, which would not be effective until July 2018.

The court disagreed and found appellant in contempt stating, "[appellant], the provision of the order if and when, knew or should have known that he was liable for to [sic] pay the [appellee] half of his pension." The court stated the purge provision as \$26,219.70 (purge provision) and reduced it to a judgement. The court also found, "[i]t is to me an unjust enrichment for him to not pay the order to retroactively pay the monies that he has received pursuant to Judge Carrion's order and so I am finding him in contempt."

Appellant filed this timely appeal.

STANDARD OF REVIEW

Maryland Rule 8-131 (c) provides appellate courts are to review cases tried without a jury by reviewing both the law and evidence and “will not set aside the judgment of the trial court on the evidence unless clearly erroneous.” Appellate courts will reverse the lower court’s decision only “upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous.” *Dronney v. Dronney*, 102 Md. App. 672, 683–84 (1995). This Court does not weigh the evidence; rather we merely assess its sufficiency.” *Id.* at 684.

DISCUSSION

I. The circuit court had jurisdiction to sign and execute the QDRO after the 90-day deadline imposed by the Judgment of Absolute Divorce.

Appellant argues that docketing the QDRO was error by the court because the 90-day deadline had expired, and thus, the court lacked jurisdiction. Appellant maintains the deadline was the “law of the case,” and the judge was required to abide by it, and further that equitable relief is precluded under Md. Rule 2-324(b), Md. Rule 2-206, and Md. Code., Family Law § 8-213. Conversely, appellee contends that there is no time limit as to the execution and docketing of a QDRO. She asserts the court mistakenly imposed a 90-day deadline and the expiration of the 90-day deadline did not prevent the court from docketing the order.

In evaluating marital property issues in a divorce case, the judge engages in a three-step process which is subject to statutorily prescribed time limits. The process is as follows:

In Step One, the judge “shall determine which property is marital property.” That requirement is spelled out in Maryland Code, Family Law Article §8-203. In Step Two, the judge then “shall determine the value of all marital property.” That requirement is spelled out in §8-204. In Step Three, the judge “may . . . grant a monetary award.” That provision is §8-205 . . . Although the three steps are inextricably intertwined, the time limits that concern us literally apply only to Step One . . . Although . . . all three steps are almost always telescoped into a single phenomenon, they are not literally the same.

Steinhoff v. Sommerfelt, 144 Md. App. 463, 470–72 (2002).

Section 8-203 provides:

- (a) In a proceeding for an annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property:
 - (1) when the court grants an annulment or an absolute divorce;
 - (2) within 90 days after the court grants an annulment or divorce, if the court expressly reserves in the annulment or divorce decree the power to make the determination; or
 - (3) after the 90-day period if:
 - (i) the court expressly reserves in the annulment or divorce decree the power to make the determination;
 - (ii) during the 90-day period, the court extends the time for making the determination; and
 - (iii) the parties consent to the extension.

Section 8-204 provides:

- (a) Except as provided in subsection (b) of this section, the court shall determine the value of all marital property.

Section 8-205 provides:

- (a)(1) Subject to the provisions of subsection (b) of this section, after the court determines which property is marital property, and the value of the marital property, the court may transfer ownership of an interest in property

described in paragraph (2) of this subsection, grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.

To be sure, Family Law §8-203 requires a court to make a determination of what constitutes marital property. It then addresses the circumstances where a court can extend its jurisdiction to make such a determination. Here, at the conclusion of the merits hearing, the court found, among other things, appellant’s pension to be marital property. The court then determined the value of the pension fund and awarded appellee a 50 percent portion. The court ordered that appellee’s share was to be “apportioned by a QDRO” that “shall be filed with this Court by Defendant/Counter Plaintiff within ninety (90) days of the date of this Judgment.” It further stated that its jurisdiction would remain open, “pursuant to Md. Code Ann., Fam. Law §8-203, for ninety (90) days for the limited purpose of considering and executing a Qualified Domestic Relation Order (“QDRO”).”

In our view, the trial court satisfied §8-203’s requirements when it determined that appellant’s pension fund was marital property at the conclusion of the hearing and further memorialized it in its Judgment. No language in §8-203 addresses extending a court’s jurisdiction for the purpose of executing or recording a QDRO. Thus, we hold it was error for the court to include the 90 day limiting language in its order.

Further, a QDRO is not, in and of itself, marital property and thus it is not subject to the requirements of §8-203. Rather, it is the mechanism through which marital property is to be received. In *Potts v. Potts*, this Court noted that it is not required that a QDRO be included in a divorce judgment and it is often drafted apart from the divorce order either before or after the order has been granted. 142 Md. App. 448, 458 (2002). QDROs “can

be either collateral to a judgment as an avenue for enforcement or it can be an integral part of the judgment itself.” *Id.* at 459 (citing *Rohrbeck*, 318 Md. at 42–43; *Jenkins v. Jenkins*, 112 Md. App. 390, 400 (1996)). When a QDRO is used subsequent to a judgment to allocate property under Md. Fam. Law Code Ann. § 8-205, it is considered collateral to the judgment. *Id.* at 460–61. “In light of the current practice of often presenting QDROs months, sometimes even years, after a marriage has ended . . . if one party drags his or her feet, the other party will be unable to appeal other issues contained in the judgment for absolute divorce.” *Potts*, 142 Md. App. at 461. We also stated, “[w]e have found no case, statute, or rule in Maryland or elsewhere that requires a QDRO to be filed within a specific time frame after a judgment of absolute divorce has been entered.” *Id.* at 461.

In *Rohrbeck v. Rohrbeck*, the Court of Appeals examined whether a trial court committed error when it determined it lacked jurisdiction to execute later submitted QDROs. 318 Md. 28, 47 (1989). At the divorce hearing the judge ordered that the QDROs be submitted to the court approximately two weeks following the hearing. The orders, however, were submitted a month later because the parties could not agree on content. *Id.* at 38–40. The trial judge declined to sign the orders, concluding that she no longer had jurisdiction. *Id.* at 39. The Court first examined whether a final judgment was entered at the conclusion of the merits hearing or when the proposed QDROs were presented for execution. The Court stated:

If a ruling of the court is to constitute a final judgment, it must have at least three attributes: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the

adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601.

Id. at 41.

The Court further explained:

From the point of view of State law, where a QDRO is needed to enforce an earlier entered support order, it obviously cannot be part of the underlying judgment . . . when the QDRO is required to effectuate a disposition under Md. Fam. Law Code Ann. § 8-205, there may be circumstances where the need for the order may not be apparent at the time the judgment is entered or where an order entered as part of a judgment has to be modified later because some deficiency in it precludes it from being accepted as a QDRO. We therefore expressly recognize the ability of a party otherwise entitled to a QDRO to obtain one as an aid to enforcing a previously entered judgment.

Id. at 43–44. The Court then held because the trial judge made clear that the “judgment” she was purporting to enter would not be final and complete until the individual QDRO’s were signed” the proposed QDROs were not “collateral to the judgment” *Rohrbeck*, 318 Md. at 43–44.

The Court stated that the QDRO was “thought by the court to be necessary in order to resolve effectively the claim made by Mrs. Rohrbeck with respect to Mr. Rohrbeck’s employee benefit plans . . . Until those [QDROs] orders were signed . . . a claim in the action remained unresolved.” *Id.* at 44. Finally, the clerk did not make a record indicating the judgement was final; the court noted that the docket entry stated, “ORDER TO BE SUBMITTED,” further supporting there would be no final disposition until the QDRO was docketed. *Id.* at 44.

In the case at bar, the judgment was final and it adjudicated all of the claims and the clerk recorded it as final. The QDRO, therefore, was not an integral part of the judgment,

but rather it was collateral. Here the QDRO was simply an avenue for enforcement, and the court acted properly in executing and docketing the QDRO beyond the deadline.

II. The circuit court of Baltimore City committed error when it found appellant in contempt because ERISA preempts the purge provision of the circuit court’s contempt.

Appellant argues the court erred in finding him in contempt because appellee was to receive her portion of the marital pension benefits through a QDRO governed by ERISA, which preempts the purge provision in the court’s order. Appellee argues the court properly found appellant in contempt, but if the court erred, it was harmless because the court could have ordered appellant to pay pursuant to appellee’s Motion to Enforce Judgment. Appellee further maintains that ERISA does not prevent state courts from enforcement proceedings, and both ERISA and state jurisdictions have the authority to enforce a judgment “associated with benefits [to be] received by a party.”

ERISA was enacted by Congress to protect the beneficiaries of employee pension plans and employee welfare plans. *Eller v. Bolton*, 168 Md. App. 96, 106–107 (2006). ERISA “supersede[s] any and all State laws” when it relates to pension plans. 29 U.S.C.A. § 1144. “An attempt to cause pension plan benefits payable to one party to be paid to an alternate payee, whether through an attachment in aid of a support obligation or pursuant to the Marital Property Disposition Act (Md. Fam. Law Code Ann. § 8–205) can succeed only through the mechanism of a QDRO.” *Rohrbeck v. Rohrbeck*, 318 Md. 28, 35–36 (1989). Pension benefits subject to ERISA will not be able to be transferred from one payee to another without a QDRO. *See Fischbach v. Fischbach*, 187 Md. App. 61, 95 (2009).

Here, the judgment did not order appellant to pay appellee directly from any of his assets. Rather, the court granted appellee 50 percent of appellant’s pension fund, which was to be effectuated through a QDRO. We hold the court abused its discretion in finding appellant in contempt as the Judgment did not address direct payments to appellee pending execution or docketing of the QDRO.

Appellee argues that the present case is similar to *Fischbach v. Fischbach*, where this Court upheld the circuit court’s decision to grant a former wife pension arrears that accrued after a Judgment of Divorce was entered but before a QDRO was docketed. 187 Md. App. at 100. In *Fischbach*, the parties entered into a Separation Agreement, which was incorporated, but not merged, into the Judgment of Absolute Divorce. *Id.* at 69. Twelve years later, the wife filed a complaint alleging that she was entitled to arrears during the periods between her former husband’s retirement and her receipt of the first partial payment pursuant to the approved QDRO. *Id.* at 70–71. We found that her complaint was not time barred and she was entitled to arrears. We stated, “the proper procedure for seeking payment of pension arrearages was the filing of a proper petition and the issuance of an order enforcing the divorce decree ‘by execution or attachment as to all unpaid installments which may have become due within the preceding twelve years.’” *Id.* at 84 (citing *Marshall v. Marshall*, 164 Md. 107 (1933)).

The present case is distinguishable. Here, appellee sought to enforce her right to arrears through the contempt process. However, the court’s Judgment of Absolute Divorce was not specific and did not put appellant on notice that he was required to make direct payments pending the docketing of the QDRO. Appellee’s argument that her Motion to

Enforce renders the court’s contempt error as harmless is without merit. Appellee argued “[t]hat the [c]ourt has the authority to enforce the Consent Order by finding the [appellant] in contempt.” The court, in deciding to find appellant in contempt, relied on its finding that because of the provision in the Judgment stating, “if and when,” appellant “knew or should have known that he was liable to pay.”

We conclude the contempt order was improper because the Judgment did not include specific and definite language ordering direct payments pending an effective QDRO. However, even if the Judgment had included such language and a contempt order was issued, the purge provision would nevertheless be preempted by ERISA. The purge provision ordering appellant to pay appellee arrears from the pension benefits he received would violate ERISA as it would bypass ERISA’s requirement that a QDRO be in place.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND REVERSED IN PART; COSTS
TO BE SPLIT EQUALLY BETWEEN
APPELLANT AND APPELLEE.**