

STATE OF MICHIGAN
COURT OF APPEALS

MARIE ELIZABETH GONZALES, a/k/a MARIE
ELIZABETH FEELEY,

UNPUBLISHED
December 3, 2009

Plaintiff/Counter-Defendant-
Appellee,

v

FRANK GONZALES, JR.,

No. 288518
Wayne Circuit Court
LC No. 00-001254-DZ

Defendant/Counter-Plaintiff-
Appellant.

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order denying his motion to amend a prior Qualified Domestic Relations Order (“QDRO”) and ordering him to pay \$3,000 in attorney fees and costs to plaintiff. The trial court held that the parties’ earlier judgment of divorce and the QRDO were unambiguous and required the division of early retirement benefits, including supplemental allowance benefits and a lump sum buyout amount that defendant received when he accepted a severance package from Ford Motor Company. We vacate the trial court’s order and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties were married on March 18, 1972. They were divorced pursuant to a judgment of divorce dated March 5, 2001, which provides in pertinent part:

13. PENSION AND RETIRMENT [sic] ACCOUNTS/BENEFITS

Except as otherwise provided herein, each party is awarded all rights and interests in any pension, annuity, or retirement benefits or in any accumulated contributions in any pension, annuity, or retirement systems and any rights or contingent rights to unvested pension, annuity, or retirement benefits that he or she accrued during the marriage, free and clear of any rights or claims of the other party, whose rights are expressly terminated by this judgment.

The Plaintiff is awarded one-half of all Defendant[’]s accumulated retirement benefits, and subsequent accumulations to that portion of benefits, held

by Defendant through January 1, 2001 as a result of his employment with Ford Motor Company. The plans include but are not necessarily limited to the Ford Salaried Employees Pension Plan and the Ford Motor Stock Savings and Investment Plan.

The QDRO that addresses the “Ford General Retirement Plan,” dated April 18, 2001, states in pertinent part:

IT IS HEREBY ORDERED AND ADJUDGED that the pension benefits otherwise payable to the Participant shall be paid as follows:

1. The Ford Motor Company General Retirement Plan (the “Plan”) shall pay in accordance with the following to the Alternate Payee shown below a portion of the retirement benefits payable to the Participant show below:

a. The amount payable to the Alternate Payee with respect to the flat rate and contributory benefits shall be the amount payable to such Participant pursuant to the Plan multiplied fifty (50%) percent and multiplied by a fraction

Defendant accepted an offer from Ford to participate in the “2006 Salaried Retirement Window Program.” One of the two options in this program was described as “[t]he Regular Retirement with Lump-Sum Option,” which included a “Lump-Sum payment of 3 to 13 months of base salary, based on complete years of GRP credited service.” In addition, “[f]or those eligible under regular General Retirement Plan (GRP) eligibility rules . . . ,” three alternative choices were offered. One was “[a]n immediate Regular Early Retirement benefit, plus Supplemental Allowance benefits for those retiring prior to age 62” The effective exit date under the program was February 28, 2007. Defendant voluntarily terminated his employment with Ford under this program. The lump sum of 13 months’ salary was divided between defendant and plaintiff, and plaintiff began receiving a portion of the supplemental allowance benefit that defendant received through the Salaried Retirement Window Program. Defendant thereafter filed a motion requesting an order directing Ford Motor to pay him his buyout proceeds and to stop paying plaintiff from his supplemental plan. Defendant further requested that plaintiff pay back amounts that she had received. He subsequently filed amended motions that requested that the QDRO be amended to “clear any ambiguity” that existed regarding the buyout and supplemental allowance benefits.

The trial court denied defendant’s motion. The court first determined that the motion to amend was essentially seeking relief from an order and was governed by MCR 2.612(C). The court concluded that despite which subrule was applicable to defendant’s challenge, the motion was untimely. Nevertheless, the court addressed the merits of defendant’s arguments, concluding that the lump sum and supplemental-allowance payments were part of defendant’s early retirement benefits and, therefore, were correctly divided according to the judgment of divorce and the QDRO.

On appeal, defendant argues that the trial court incorrectly interpreted the judgment of divorce and the QDRO and incorrectly analyzed his motion as though it were brought pursuant to MCR 2.612(C).

A judgment of divorce that is entered on the basis of a settlement between the parties represents a contract. *Holmes v Holmes*, 281 Mich App 575, 587; 760 NW2d 300 (2008). If it is unambiguous, its interpretation is a question of law. *Id.* When interpreting the terms of a divorce judgment, “[i]f the term’s meaning is unclear or it is equally susceptible to more than one meaning . . . , interpretation is a question of fact, and the trial court may consider extrinsic evidence to determine the intent of the parties.” *Smith v Smith*, 278 Mich App 198, 200; 748 NW2d 258 (2008). “A trial court commits legal error when it incorrectly chooses, interprets, or applies the law.” *Id.*

The principal case addressing the specificity required in a judgment of divorce for the award of early retirement benefits is *Quade v Quade*, 238 Mich App 222; 604 NW2d 778 (1999). In that case, the *Quade* Court distinguished between pension benefits and early retirement benefits in the context of a challenge to the trial court’s adoption of a QDRO. *Id.* at 224-225. In *Quade*, the consent judgment of divorce awarded the plaintiff “50% of defendant’s Ford Motor Company Pension with rights of survivorship, transferred by way of a QDRO effective the date of this judgment, and including interest, dividends, etc.” *Id.* at 223. The plaintiff sought to have a QDRO pursuant to that provision, and the court entered one that transferred 50 percent of the defendant’s pension. *Id.* However, the trial court excluded language that would have granted plaintiff a share of the defendant’s early retirement benefits because they were not specifically granted to plaintiff in the judgment of divorce. *Id.* at 223-224. The *Quade* Court rejected the plaintiff’s argument that she was entitled to a share of the defendant’s early retirement benefits because it was part of the overall pension package, explaining:

Plaintiff would have this Court interpret the general provisions of a judgment of divorce to be all-inclusive, unless a particular component is specifically excluded. However, this Court has held that separate and distinct components of pension plans must be specifically awarded in a judgment of divorce in order to be included in a QDRO. In *Roth v Roth*, 201 Mich App 563, 569; 506 NW2d 900 (1993), this Court held that the right of survivorship in a pension plan will not be extended to a divorced spouse unless it is specifically included as part of the pension award in the judgment of divorce. Similarly, early retirement benefits are a separate and distinct component of defendant’s pension plan that were not specifically included in plaintiff’s property settlement in the judgment of divorce. [*Id.* at 224-225.]

The *Quade* Court agreed with the plaintiff that the judgment of divorce could have awarded the early retirement benefits, even though they were unvested, pursuant to MCL 552.18(2). *Id.* at 225. However, the judgment at issue in that case did not do so, and it appeared that the possibility of an early retirement was recognized during negotiations:

Although early retirement benefits may be awarded under this statute, the judgment of divorce does not provide for such an award. The parties could have added a provision for early retirement benefits in the judgment of divorce just as they did for the rights of survivorship. Moreover, because there is handwritten language in the alimony section that contemplates that defendant may take an early retirement, it would appear that the parties discussed the possibility of early retirement during settlement negotiations. Absent a specific provision in the judgment of divorce, we cannot conclude that the parties intended to include early

retirement benefits as part of plaintiff's property settlement. [*Quade, supra* at 225.]

In this case, the trial court reasoned that *Quade* was factually distinguishable for two reasons. First, the QDRO in this case was the product of the parties' consent and its terms comported with the parties' settlement agreement. However, this is a distinction without a difference. The difference in the procedural context in which this issue arose does not have any bearing on a determination that early retirement benefits are separate and distinct and not included in an award of a share of a "pension." Second, the trial court distinguished the cases on the basis of the specific language used in the judgment of divorce in this case, reasoning:

By contrast to *Quade*, the Judgment of Divorce in the case at bar expressly provides that Plaintiff "is awarded all rights and interests in any . . . retirement benefits . . . and any rights . . . to unvested . . . retirement benefits. . . [.]" (Judgment of Divorce, P 12, p 7). The [sic] "every; all." Random House Webster's College Dictionary (1997). Further, the term has been given the definition of "some; one out of many; an indefinite number." Black's Law Dictionary (5th ed). Therefore, the term "any" as utilized in the Judgment of Divorce is broad enough to mean retirement benefits of whatever kind, including early retirement benefits. Unlike the parties in *Quade*, then, the instant parties added a provision for early retirement benefits in the Judgment of Divorce as reflected in the QDRO.

We conclude that the trial court's analysis is premised on a misreading of the judgment. The judgment does not state that *plaintiff* "is awarded all rights and interests in any retirement benefits" Rather, the language quoted by the court is excerpted from the portion of the judgment that reserves to each party all rights to his *own* pension, *except* as otherwise provided in the subsequent paragraph. The controlling portion of the judgment is in the subsequent paragraph, and the issue is whether the lump-sum amount and the supplemental-allowance benefit payments are "accumulated retirement benefits, and subsequent accumulations to that portion of benefits, held by Defendant through January 1, 2001" Neither the trial court nor the parties address this point.

We do not agree with plaintiff that the language in the QDRO governing the Ford General Retirement Plan clearly authorizes the division of the lump sum and supplemental allowance benefits. The QDRO orders and adjudges "pension benefits otherwise payable to" defendant to be paid in a particular manner. In *Quade, supra* at 225, this Court held that early retirement benefits are a separate and distinct component of a pension plan that must be specifically awarded in a judgment of divorce to be included in a QDRO. If a reference to "pension" in a judgment does not include early retirement benefits, then a reference to "pension benefits" in a QDRO does not include early retirement benefits. Furthermore, the division referenced in paragraph 1.a. of the QDRO pertains to the "flat rate and contributory benefits" The documentation presented by defendant indicates that "Supplemental Allowance benefits" is a type of retirement benefit from defendant's former employer that is distinct from both "Flat Rate" and "Contributory" benefits.

Plaintiff contends that the trial court properly exercised its discretion to deny defendant's request to amend the QDRO because the motion was untimely under MCR 2.612, which

addresses relief from judgments or orders. However, MCR 2.612 is inapplicable to defendant's motion. He did not contend that there was a mistake in the judgment or QDRO, but rather argued that it had been misinterpreted because it was poorly drafted. Essentially, defendant sought clarification. Although the court has inherent power to interpret and clarify any ambiguous terms in a property settlement, "a clarification in a consent judgment of divorce is permitted only where no change in the substantive rights of the parties will result from the clarification." *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987).

Plaintiff contends that defendant's request for relief should fail because defendant knew before he accepted the severance package that his employer would give plaintiff a share of the benefits. However, plaintiff bases this assertion on defendant's employer's stated understanding of how the benefits would be divided, and his employer's opinions are not controlling with respect to the correct legal interpretation of the judgment and QDRO at issue.

In summary, the trial court's analysis of the judgment and QDRO was flawed and incomplete. We therefore vacate the trial court's order and remand this case for the court to reexamine whether the specific terms of the judgment of divorce and QDRO entitle plaintiff to a share of the lump sum amount and the supplemental allowance benefits.

Defendant also challenges the trial court order that he pay \$3,000 of plaintiff's attorney fees and costs incurred in defense of the motion. In a divorce case, a trial court may award attorney fees to enable an opposing party to defend or prosecute the action, or if a party is forced to incur fees because of the other party's unreasonable conduct during the course of litigation. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). We review a trial court's decision regarding the necessity or reasonableness of an award of attorney fees for an abuse of discretion. *Id.*

Plaintiff requested \$2,500 in attorney fees "for having to come down here and continually defend this." The trial court did not make any findings or provide any explanation for the award. In light of our conclusion that defendant's position with respect to the judgment and QDRO were meritorious, and because the trial court failed to make any findings to support its award of attorney fees, we likewise vacate the award of attorney fees.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis