# STATE OF MICHIGAN

# COURT OF APPEALS

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WAYNE S. BARBER,

Plaintiff-Appellant,

v

SHARON BARBER,

Defendant-Appellee.

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UNPUBLISHED
January 6, 1998

No. 198752
Macomb Circuit Court
LC No. 93-003351 DO

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Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

By delayed leave to appeal granted, plaintiff challenges a post-judgment order of the Macomb Circuit Court, construing the spousal support provisions of the divorce judgment and ancillary qualifying domestic relations order (QDRO) so as to require plaintiff to continue paying alimony until his fiftieth birthday, which occurred on June 19, 1997. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

In relevant part, the spousal support provisions of the divorce judgment provided for termination of the plaintiff's alimony obligation upon "defendant's eligibility to collect her General Motors' retirement benefits." The contemporaneous QDRO, in subparagraphs 5.a.(i)-(iv) accorded to defendant various options as to when she might elect to receive her fifty-percent share of plaintiff's pension benefits under the plan of his employer, General Motors Corporation. Under these provisions of the QDRO, defendant could elect to begin receiving her share of the pension benefits at different possible times, and such options would be removed only by the fact of plaintiff's actual retirement prior to the exercise of such elections.

Paragraph 5.c. of the QDRO grants defendant "the right to elect to receive benefit payments under the plan at any time beginning when the participant reaches early retirement age as defined in § 414(p)(4)(B) of the Internal Revenue Code of 1986, as amended." Unfortunately, the Internal Revenue Code does not use the term "early retirement age", and, a fortiori, does not define such an unused term, but the referenced section of the Internal Revenue Code does define "earliest retirement age." The statutory definition is the earlier of (B)(i), the date on which the participant is entitled to a distribution

under the plan, or (ii), the later of (I) the date the participant attains age fifty, or (II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service. Here, plaintiff could have begun receiving pension benefits under the plan on March 1, 1996, on which date he achieved 30 years of service. As this date is prior to his fiftieth birthday, however, and he did not elect to retire prior to attaining age fifty, under § 414(p)(4)(B)(ii)(I), his "earliest retirement age" was properly determined by the circuit court to be age fifty. Thus, under subparagraph 5.c. of the QDRO, that is the date on which defendant could elect to receive pension benefits, and therefore the date on which plaintiff's alimony obligation terminates, other possibilities not actually having come to fruition.

To the extent that the judgment of divorce and QDRO are in any respect ambiguous on this point, the trial court has broad discretion in interpreting its own decretal judgments, and its interpretation of the judgment of divorce and accompanying QDRO does not represent an abuse of that discretion. *Greene v Greene*, 357 Mich 196, 202; 98 NW2d 519 (1959). The proffered opinion of a certified public accountant by plaintiff, on motion for reconsideration, was properly rejected by the trial court, since the construction of judgments, orders, and statutes is a question of law on which such expert opinion would invade the province of the trial judge. *People v Drossart*, 99 Mich App 66, 75-76; 297 NW2d 863 (1980).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Harold Hood
/s/ Joel P. Hoekstra