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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE MARRIAGE OF:)

NEIL BECK,)

Appellant-Respondent,)

vs.)

No. 52A02-0706-CV-491

ANNETTE BECK,)

Appellee-Petitioner.)

APPEAL FROM THE MIAMI CURCUIT COURT
The Honorable Dennis H. Parry, Special Judge
Cause No. 52CO1-9907-DR-259

December 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Neil Beck (“Husband”) appeals a 2007 trial court order requiring him to pay his ex-wife, Annette Beck (“Wife”), a sum representing one-half the enhanced value of his pension as part of the trial court’s 2001 property disposition order. He also appeals the court’s imposition of a ten-percent interest rate on sums owed to Wife pursuant to the 2007 order and a 2002 property settlement judgment. We affirm in part, reverse in part, and remand.

Issues

Husband raises the following issues for review:

- I. Whether the trial court’s 2007 order requiring him to pay Wife \$80,357.93 constitutes an improper modification of the 2001 property disposition order; and
- II. Whether the trial court erred in imposing a ten-percent interest rate on sums owed to Wife.

Facts and Procedural History

On May 1, 1995, Husband and Wife began cohabiting. They were married on November 9, 1997, and Wife filed for divorce on July 7, 1999. During this four-year period, the couple acquired assets and incurred liabilities. After they separated, Husband filed for bankruptcy.

On November 21, 2001, the trial court entered a decree of dissolution, which included an order disposing of the marital property. The trial court entered findings and conclusions regarding each asset and liability and created a balance sheet to reflect these findings and conclusions. Pursuant to the property disposition order, Wife assumed

\$116,488.28 of the couple's \$139,649.04 total liabilities. Husband assumed a post-bankruptcy bank loan of \$2938.02 and a \$20,222.73 nondischargeable loan against his state police pension.

Among the couple's marital assets was \$160,715.90, representing the enhanced value of Husband's pension during the time of their cohabitation and marriage. The court divided this asset evenly and ordered that each spouse receive \$80,357.95 of its value. This amount was reflected both in the court's findings and on its accompanying balance sheet.¹ Before the decree was entered, as part of the loan against the pension, Husband and Wife had signed a form assigning to the creditor rights to receive money from the pension until the debt was repaid in full.

After taking into account the total assets as well as the liabilities assumed by each spouse, the court, in an attempt to equalize the division of property, ordered Husband to pay Wife a \$4982.07 cash settlement plus \$14,625.00 for dissipation of an asset worth \$29,250.00, for a total of \$19,607.06. The court ordered Husband to pay Wife \$500 per month; in the event that he failed to comply, a ten-percent interest rate would be added to the judgment. Neither party appealed the 2001 property distribution order.

On June 11, 2002, the trial court gave Husband a \$7000.00 credit and reduced the amount of the judgment to \$12,607.80. Because Husband had failed to comply with the \$500-per-month payment plan, however, the trial court included in its settlement

¹We note for future reference and for clarification a \$500 clerical error in Husband's column on line six of the 2001 balance sheet: \$80,857.95 should read \$80,357.95. We also note computational errors in the "ASSETS" and "RECAPITULATION" sections: total assets should read \$245,079.29 instead of \$235,079.29; net worth should read \$105,430.26 instead of \$95,430.26; and 50/50 division should read \$52,715.13 rather than \$47,715.13.

judgment an interest rate of ten percent upon the \$12,607.80. On September 3, 2002, the trial court ordered garnishment of Husband's wages in payment of the June 11 judgment. Husband did not appeal the 2002 orders.

In the spring of 2006, the loan against Husband's pension was satisfied. On November 15, 2006, having received no payments from the pension plan, Wife filed a motion to enforce the dissolution decree and to determine the balance of garnishment. On February 2, 2007, Husband filed his response, contesting Wife's claim to any money related to his pension. On March 7, 2007, following a hearing, the trial court ordered Husband to pay Wife the \$80,357.95 enhanced value of the pension, payable at \$500 per month plus ten-percent interest. On March 16, 2007, the trial court entered an addendum clarifying the balance owed on the 2002 garnishment order. Husband now appeals.

Discussion and Decision

I. Propriety of Order to Pay Half of Enhanced Value of Pension

Husband challenges the trial court's 2007 order requiring him to pay Wife one-half the enhanced value of his pension. He specifically asserts that the trial court's 2007 property disposition order amounts to an improper modification of the 2001 order. He relies on Indiana Code Section 31-15-7-9.1, which provides in part that "orders concerning property disposition entered under this chapter may not be revoked or modified, except in case of fraud." He claims that, because Wife made no allegation of fraud, the trial court had no authority to issue its 2007 order.

We disagree. Indiana Code Section 31-15-7-10 provides:

Notwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by:

- (1) contempt;
- (2) assignment of wages or other income; or
- (3) any other remedies available for the enforcement of a court order; except as otherwise provided by this article.

As we discuss more fully below, the trial court's 2007 order is a valid enforcement of its 2001 order.

Husband appears to contend that, because the trial court listed \$80,357.95, i.e., one-half the value of the pension, in Wife's column on the balance sheet, that amount was considered as satisfied upon his payment of the \$19,607.06. While we agree with Husband's assertion that the 2001 findings and balance sheet clearly reflect the trial court's consideration of the pension fund in its original order, we disagree with the conclusion that Husband draws therefrom. Admittedly, balance sheet line item six lists "State Police Retirement" as an asset with a total value of \$160,715.90, with half that amount (\$80,357.95) entered in each spouse's column. However, listing the \$80,357.95 as Wife's asset presumes that she will actually receive it, and the record as a whole makes it clear that Husband never transferred that asset to her. His position that an item's appearance on a balance sheet constitutes a satisfaction of judgment is meritless. The amount was never paid, and the obligation did not go away. *See* Ind. Code § 34-11-2-12 (stating that a judgment remains in effect for twenty years). The court's original intent was clear: Husband was to pay Wife half the enhanced value of his pension. What the trial court did not specify in its 2001 order was exactly *how* Wife was to receive those

funds. Thus, what Wife sought in 2006 was simply to enforce the trial court's intent as expressed in its 2001 order.

Husband contends that Wife waived her right to raise the issue of distribution of the pension award because she did not file a direct appeal from the 2001 order. We disagree. What Wife lacked after the 2001 order was a mechanism to reach the money due her from Husband's pension. The order to pay Wife could not come in the form of a qualified domestic relations order ("QDRO") because the law exempts certain governmental pension plans such as the police pension plan in this case. *See In re Marriage of Adams*, 535 N.E.2d 124, 127 n.2 (Ind. 1989). In addition, Wife's delay in seeking enforcement of the 2001 order was based on the fact that she previously executed an assignment of pension benefits pursuant to the loan against Husband's pension until such debt was completely satisfied. That debt was not paid in full until the spring of 2006. Soon thereafter, having not received any payments from Husband, Wife filed the motion to enforce. The court's 2007 order merely provided her a mechanism to receive the sum Husband owed her pursuant to the original property disposition order. We find no error here.

II. Propriety of Ten-Percent Interest Rate

With regard to interest on money judgments, Indiana law provides a statutory maximum rate of eight percent. Ind. Code § 24-4.6-1-101. Husband contends that the trial court erred in subjecting him to an interest rate that exceeds the statutory maximum. To the extent that his challenge pertains to the ten-percent interest charged on the 2002 garnishment of his wages, his failure to file a direct appeal from the 2002 orders is fatal

to his claim. Ind. Appellate Rule 9(A)(5). The 2007 order was merely a clarification of the balance still owed on the 2002 settlement judgment and garnishment. If Husband had wished to challenge the ten-percent interest rate, he should have done so within thirty days after the court imposed it in June 2002. Ind. Appellate Rule 9(A)(1).

We now address the trial court's 2007 order that Husband pay ten-percent interest on the pension payments owing to Wife. In *Zoller v. Zoller*, 858 N.E.2d 124 (Ind. Ct. App. 2006), we addressed the application of the statutory maximum interest rate to the disposition of marital property: “[A] ‘judgment’ includes a decree and any order from which an appeal lies. A dissolution decree becomes final and appealable when entered by the trial court. When the property in a marital estate is divided, the amount one spouse is ordered to pay the other is a money judgment.” *Id.* at 126 (citations omitted). When interest accrues pursuant to a marital property disposition order, it does so according to Indiana Code Section 24-4.6-1-101. *Id.* at 127; *see also Hasty v. Hasty*, 427 N.E.2d 1119 (Ind. Ct. App. 1981) (reversing an interest rate of eleven and one-half percent on a sum payable pursuant to a property distribution order). Therefore, we reverse and remand with instructions to amend the 2007 order to provide an interest rate of eight percent on Husband's pension payments to Wife.

Affirmed in part, reversed in part, and remanded.

DARDEN, J., and MAY, J., concur.