

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001215-MR

BILLY R. PARKER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 99-FC-007643

CHARLOTTE M. PARKER

OPINION
REVERSING AND REMANDING
** **

BEFORE: BUCKINGHAM, EMBERTON, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Billy R. Parker appeals from an order of the Jefferson Family Court calculating the benefits that his ex-wife, Charlotte M. Parker, is entitled to receive from his pension plan with Ford Motor Company. We reverse and remand.

Billy and Charlotte were married on December 28, 1968, and were divorced on January 6, 1986. The divorce decree incorporated stipulations by the parties entered into the record on October 7, 1985. The stipulation pertinent to this case reads as follows:

The parties acknowledge that they have a pension program in place at Ford Motor Co. and when Respondent becomes entitled to receive pursuant to said pension program,

Petitioner shall receive her interest in this pension plan. Petitioner's interest shall be determined by the following formula: $\frac{1}{2} \times 17/\text{number of years of service} \times \text{monthly payment}$.

Billy was employed by Ford Motor Company during the seventeen years of the parties' marriage. Following the divorce, Billy remained employed at Ford until he retired on January 1, 2000. When Billy retired, the parties disagreed as to the amount of money that Charlotte would receive from the pension program. Billy argued that Charlotte was not entitled to share in the increases in his pension since their divorce, while Charlotte argued that the trial court lacked authority to modify the parties' stipulation incorporated into the decree. Agreeing with Charlotte, the trial court held that it "cannot change the parties['] initial agreement as to the calculation of the benefit." Further, the court ordered that "the benefit shall be calculated as ordered previously by the Court and agreed to by the parties which results in the inclusion of the supplement and increases." This appeal followed.

When the trial court entered its order in April 2000, it did not have the benefit of this court's opinion in Armstrong v. Armstrong, Ky. App., 34 S.W.3d 83 (2000), which became final in December 2000. We faced practically the same issue in that case. In Armstrong, the divorce decree contained a provision that provided "[a] Qualified Domestic Relations Order shall issue dividing equally the parties['] interests in Petitioner's pension from the date of the marriage to date of dissolution." Id. at 84. In determining the non-employee spouse's interest in the pension "from the date of marriage to date of dissolution," we

stated that the issue before us was whether the employee's salary at the time of the divorce decree or his salary upon which benefits would ultimately be based should be used in determining the non-employee's interest under the formula. Id. at 87. We then cited various cases as precedent and held that the employee's salary at the time the decree was issued should be used to compute the benefits to which the non-employee spouse would be entitled to receive. Id.

In Foster v. Foster, Ky. App., 589 S.W.2d 223 (1979), this court held that a non-employee spouse was not entitled to share in any pension benefits earned after divorce and before retirement. Id. at 225. Thereafter, in Light v. Light, Ky. App., 599 S.W.2d 476 (1980), this court held as follows:

The value of a pension and the amount to be paid must be determined as of the time of the dissolution. A maintenance theory might seem to call for more flexibility, but if the primary purpose is to share an asset or potential asset, it should be based on the estimated monthly value at that time. This will account for current pay, rank, and time in service. It will not allow for future promotions and pay increases or decreases.

Id. at 479. Further, as we stated in the Light case, "[t]he value of a pension, if any should therefore be marital property for the portion accrued during coverture." Id. at 478.

If we follow the method of calculating a non-employee spouse's interest in the Armstrong case, then Billy will prevail in his appeal. However, Charlotte argues that the trial court did not err and that to accept Billy's argument would result in the decree being modified years after it was entered. As we view the written stipulation entered by the parties in late 1985, it

is apparent that the parties intended Charlotte to receive her interest in the pension plan. That interest was to be computed by multiplying $\frac{1}{2}$ times the coverture fraction times the monthly payment. The stipulation did not specify whether the term "monthly payment" meant the monthly payment to which Billy would be entitled upon retirement or the monthly payment to which he would be entitled at the time of the decree.

We conclude that the intention of the parties was to award Charlotte her interest in the pension plan, as the stipulation clearly stated this intent. In Brosick v. Brosick, Ky. App., 974 S.W.2d 498 (1998), this court noted that "[i]t is the pension, not the benefits, which is the marital asset that is divided by the court." Id. at 503. We conclude that Charlotte's interest in the pension plan must be computed in accordance with the Armstrong case using the monthly payment at the time of the divorce decree.

The order of the Jefferson Family Court is reversed, and this case is remanded for further proceedings consistent with this opinion.

EMBERTON, JUDGE, CONCURS.

TACKETT, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

John V. Hanley
Louisville, Kentucky

BRIEF FOR APPELLEE:

J. Russell Lloyd
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