

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000562-MR

JOYCE RIDDLE

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 99-CI-00374

CHRIS RIDDLE

APPELLEE

consolidated with NO. 2003-CA-000599-MR

HARRY FLOOD HARDESTY

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 00-CI-00166

PAMELA RAY HARDESTY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: COMBS, Chief Judge; DYCHE, Judge; and EMBERTON, Senior
Judge.¹

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

COMBS, CHIEF JUDGE. The appellants, Joyce Riddle and Harry Flood Hardesty, appeal from orders of the Shelby Circuit Court entered in their respective dissolution actions on February 11, 2003. In the combined order under review, the trial court upheld the constitutionality of KRS² 61.690(2) as amended effective July 14, 2000. The statute relates to the treatment of retirement benefits of members of the Kentucky Retirement System with respect to dissolution of marriage actions. It was very short-lived as it was repealed by the 2002 General Assembly. However, during its brief existence, the statute had provided as follows:

A retirement allowance, a disability allowance, a member's accumulated contributions, or any other benefit under the system shall not be classified as marital property or as an economic circumstance as provided in KRS 403.190 in an action for dissolution of marriage.

Relying on Waggoner v. Waggoner, Ky., 846 S.W.2d 704 (1992), a case involving a similar statute relating only to teachers' pensions, the trial court upheld the state's interest in protecting the pensions of state employees. Appellants challenged the statute as violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. They argued that it created a preference for state workers as a class and accordingly caused prejudice to the

² Kentucky Revised Statutes.

class of their spouses, who were thereby excluded from receiving distribution in such benefits as marital property.

While most other benefits programs are subject to distribution as marital property in a divorce proceeding, this statutory exemption resulted in disparate treatment for that class of persons married to state employees. Thus, the benefits packages of state workers would not be subject to inclusion in the marital estate for purposes of division in a property settlement following a dissolution of marriage. This distinction constituted the basis of the equal protection challenge.

We need not resolve this issue based on the constitutional argument, however. We have concluded that the trial court erred as a matter of law in applying the statute after its repeal to these dissolution actions. Thus, we vacate and remand.

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Appellant Joyce Riddle argues that the court's ruling is moot because the statute was repealed effective July 15, 2002, prior to the entry of the decree of dissolution in her case. The appellee, Chris Riddle, ignores the mootness argument and instead agrees that the court's decision must be reversed and that the matter be remanded for a proper resolution of the division of his pension benefits pursuant to the current state

of the law. We agree. The statute had no legal effect after its repeal. Accordingly, the appeal is vacated and the matter is remanded for division of the Riddles' marital estate pursuant to the law in effect at the time of the division of marital property.

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We believe the same result is required in the Hardestys' appeal. The appellee, Pamela Hardesty, filed a petition seeking to dissolve the parties' twenty-seven-year marriage on May 8, 2000. A decree of dissolution was entered on February 21, 2001, reserving all issues pertaining to the division of property and marital debts. Those issues were referred to the Domestic Relations Commissioner for resolution.

At the parties' request, the Commissioner initially addressed only the pension-related issues. The relevant facts were undisputed. Pamela had worked for Kentucky state government for many years and had accumulated approximately \$44,000 in her retirement account at the time of dissolution. Harry, who was employed by Porter Paint, transferred his funds in the retirement account maintained by his employer after the company was sold. He placed the proceeds, nearly \$49,000, in an Individual Retirement Account (IRA) at Hilliard Lyons. The matter was somewhat complicated by the fact that some funds had

accrued in Pamela's retirement account before her marriage. Additionally, the parties had borrowed about \$9,000 against their marital residence (a debt which remained at the time of dissolution) in order to enhance Pamela's retirement fund by the purchase of thirty-six months of service.

On March 12, 2001, the Domestic Relations Commissioner recommended: (1) that Pamela's pension be totally exempted from classification as marital property pursuant to KRS 61.690(2); (2) that all of Harry's investment account be treated as marital property and divided equally; and (3) that the trial court consider the debt incurred by the parties in purchasing additional service time for Pamela in its division of marital property in just proportions. Thereafter, the Hardestys reached an agreement dividing all of their property and marital debts with the exception of their two retirement accounts.

Harry filed timely exceptions to the Commissioner's report challenging the constitutionality of KRS 61.690(2). In the alternative, he argued that his account at Hilliard Lyons should be treated as a retirement account for purposes of the set-off provisions of KRS 403.190(4). While the matter was pending in the circuit court, KRS 61.690(2) was repealed. It had been repealed for several months prior to entry of the trial court's final order completing the division of the Hardestys' assets.

There is nothing in this record or in the record compiled in the Riddles' dissolution to indicate that the trial court was aware of the change in the law or that any of the parties brought the repeal of KRS 61.690(2) to its attention. On February 11, 2003, the court entered its order applying the repealed statute and adopting the Commissioner's recommendations with respect to the Hardestys' retirement funds. The court noted that "however inequitable [KRS 61.690(2)] may be in some applications, [it] does not suffer from constitutional infirmity." This appeal followed.

Apparently, the Legislature was aware of the potential for inequity inherent in KRS 61.690(2) as amended in 2000 since its repeal followed so quickly in 2002.³ The Hardestys' situation highlights the injustice resulting from the statute's application. Pamela, the spouse with the pension fund administered by state government, was awarded her entire retirement fund as her non-marital property. However, the funds set aside to secure Harry's retirement were treated as marital property and were divided equally. Pamela thus received 100% of her retirement benefits plus 50% of Harry's. Although both of the parties had invested approximately the same amount of money for their individual retirement at the time of dissolution, the

³ KRS 61.690(2) in its present form concerns the retirement system's obligation to honor child support orders and is not implicated in these appeals.

application of KRS 61.690(2) resulted in Pamela's receipt of pension benefits worth more than three times those awarded to Harry. In light of the length of the marriage and the fact that the parties are near retirement age, the impact of the inequity created by the exemption is inescapable.

In acting swiftly to repeal the statute, the Legislature intended to remedy the flaws inherent in the 2000 version of KRS 61.690(2) and to restore the state retirement funds to their previous status as marital property (to the extent they were accrued during the marriage). The repeal of KRS 61.690(2) (as amended effective July 14, 2000) thus had **no legal effect after its repeal** -- as we have held with respect to the Riddle appeal. As to the Hardesty appeal, the unresolved property issues **pending** at the time of the statute's repeal should have been governed by the law in effect at the time of the effective date of the final judgment. Thus, on remand, the trial court is directed to treat both pensions (valued as of the time of dissolution) as marital property.

The judgments of the Shelby Circuit Court are vacated, and both matters are remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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