

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002082-MR

DAVID EDWIN TURPIN

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 00-CI-00286

NORMA LYNN TURPIN

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BARBER AND MINTON, JUDGES.

COMBS, CHIEF JUDGE: David Turpin appeals from an order of the Boyle Circuit Court awarding his ex-wife, Norma Turpin, a share of his disability benefits. He argues that the trial court improperly treated the benefits as marital property. We are bound by the precedent of the Kentucky Supreme Court in the case of Holman v. Holman, 84 S.W.3d 903 (Ky. 2002), which characterized as non-marital certain disability payments: namely, those which replace future income that a spouse would earn after the dissolution of the marriage. The disability

benefits at issue in this case fit what Holman defines as non-marital in nature. Therefore, we vacate the order of the trial court and remand this case for entry of an order denying Norma's request to divide David's pension.

David and Norma were married from 1989 to 1999. During that entire time, David worked as a firefighter and contributed to a retirement plan administered by a state agency. When they divorced, the Pulaski Circuit Court entered an order restoring non-marital property, dividing marital property, and establishing custody and support for their minor children. The court ordered David to "execute any and all documents necessary to have entered a Qualified Domestic Relations Order [a QDRO] dividing one-half to each of the parties [the] retirement plan currently held by [David.]" David took no action to comply with the order to execute a QDRO relating to his pension.

Four years after the divorce, in December 2003, David became disabled and was unable to continue his employment as a firefighter. He applied for and received disability retirement. At that point, his pension ceased to exist and became instead a disability retirement plan. The funds which he would have received at normal retirement age were transferred to an account from which he currently receives disability benefits to replace the income that he would have otherwise earned as a firefighter. After learning that David's disability was not subject to

division under a QDRO, Norma filed a motion asking the Boyle Circuit Court to divide David's disability benefits in the same manner that the original dissolution decree had sought to divide his pension. The trial court made a finding that Norma was entitled to the one-half of the value of David's pension which accrued while the parties were married. In an order dated September 9, 2004, the court made the following findings:

Based upon a statement provided by the Kentucky Retirement Systems dated May 10, 2004, a copy of which has been filed in the record, the Court finds that the current total vested value of [David's] retirement is \$41,063.21 as of January 1, 2004; that the value of [David's] retirement prior to the parties' marriage was \$510.99 and is [David's] non-marital property; that the sum of \$26,010.71 accrued during the marriage of the parties and is marital property subject to division by this order; that the sum of \$14,541.91 accrued after the date of the parties' Final Decree herein and is [David's] non-marital property; that [David] receives monthly benefits of \$1,662.18 from the Kentucky Retirement Systems as the result of his disability; that the marital percentage of the retirement subject to division by this Order shall be determined by dividing the marital value of \$26,010.71 by the total value of \$41,063.21; that the marital percentage of the total value is 63.33%, which is \$1,052.66; that [Norma] is entitled to receive one-half (1/2) of said amount or \$526.33 per month from each of [David's] monthly disability benefits retroactive to the date [David] first began to draw said benefits in January 2004; and that [David's] retirement is a hazardous duty retirement not subject to division by qualified domestic relation orders pursuant to the provisions of ERISA.

The trial court then ordered David to pay Norma \$526.33 immediately upon receipt of each disability check for as long as he continues to draw disability benefits. The order was retroactive to January 2004. This appeal followed.

David argues that the trial court erred in dividing his disability benefits. He relies on Holman, supra, which designates such benefits as non-marital and, therefore, not subject to division. In the alternative, he contends that the trial court abused its discretion in the method it utilized to divide his disability benefits so as to result in a windfall to Norma. Norma contends that the facts in Holman are distinguishable and that it does not control in this case.

Despite the factual differences between the two cases, we are persuaded that the reasoning of the Kentucky Supreme Court in Holman applies in this case. The Holmans were married for sixteen years. Both before the marriage and during the first six years of the marriage, the husband worked as a firefighter. After thirteen years of service, he became permanently disabled and began drawing disability benefits -- even though he was able to work as a car salesman. The parties divorced ten years later, and the wife claimed that the husband's disability benefits were (at least in part) marital in nature because contributions were made to his pension during the marriage. The trial court held that the disability benefits

were marital property because they had been serving as income during the marriage. The wife was awarded one-half of the marital contribution to the husband's pension, which represented 31% of the disability benefits. The Court of Appeals affirmed, noting that there was no statutory exemption providing that the disability benefits be classified as non-marital property.

Recognizing that the issue was one of first impression, the Kentucky Supreme Court examined statutes and case law from other jurisdictions and adopted an analytical approach to classifying disability benefits.

Under this approach, benefits which actually compensate for disability are not classified as marital property because such benefits are personal to the spouse who receives them and compensate for loss of good health and replace lost earning capacity.

Holman, 88 S.W.3d 903, 906. In reversing the Court of Appeals, the Supreme Court explained as follows:

Pension and retirement benefits compensate individuals who live past retirement age. Such benefits constitute deferred compensation for services rendered and function as a substitute for life savings. Like any joint savings accumulated during the marriage, pension and retirement benefits are subject to distribution as marital property upon divorce. On the other hand, disability benefits do not substitute for savings but instead 'protect against the inability of an individual to earn the salary or wages to which he or she was accustomed in the immediate past.' Generally, therefore, disability benefits replace income which is lost before retirement. Logic dictates that disability

benefits and income should be treated in the same manner since disability benefits are income replacement. Since the future income of each spouse is not classified as marital property, disability benefits which replace future income should not be classified as marital property.

We recognize that marital funds were used to acquire Appellant's disability coverage, but that does not change the character of the property the disability benefits replace. Disability coverage itself has been analogized to a form of term insurance "from which the marital partnership derived a full measure of protection during the marriage." Like the proceeds of property insurance that take their character from the nature of the property they replace and not from the source of the funds used to pay the insurance premium, Appellant's disability benefits should be classified according to the nature of the wages they replace rather than the source of the funds used to acquire his disability coverage.

(Footnotes omitted). Holman at 907-908.

In relying upon Holman, David argues that his disability benefits were received as a replacement for future income that he would have earned after the dissolution. Therefore, they are non-marital and not subject to division. Norma argues that David's pension was fully vested at the time of their divorce. Therefore, upon entry of the dissolution decree, she believes that she immediately acquired one-half of the pension account as her separate property pursuant to our holding in Brosick v. Brosick, 974 S.W.2d 498 (Ky. App. 1998).

Kentucky law allows the division of pensions which are vested yet immature. While Norma may have owned a portion of David's retirement at the time of the divorce, she had no immediate right to receive any funds from his pension at that point. If David had quit his job as a firefighter before working long enough to be entitled to retirement benefits, he would have received only the money that he had paid into his pension account. Norma would have been entitled to her marital portion of those funds. If he had continued to work as a firefighter until he qualified for retirement, David and Norma would each have received a portion of his monthly retirement benefits. However, when David became disabled, his pension account ceased to exist and was converted instead into a disability retirement account. Pursuant to Holman, supra, Norma's separate property interest was extinguished at that time. Thus, Holman takes the division of a pension a step beyond Brosick by addressing the impact of disability payments as transforming the nature of the funding source.

Norma also contends that David's appeal from the order entered by the Boyle Circuit Court is an impermissible collateral attack against the original decree of dissolution of the Pulaski Circuit Court. She argues that the time for taking an appeal from the dissolution decree is long past and that we are not permitted to examine the issue of the proper

classification of the pension at this time. We disagree. David did not appeal from the original judgment of the Pulaski Circuit Court, and our opinion in no way considers the propriety of that court's division of the pension. It was Norma who invoked the jurisdiction of the Boyle Circuit Court. Upon discovering that David's disability was no longer subject to division under a QDRO, Norma asked the Boyle Circuit court to divide David's pension. That is the order from which this appeal is properly taken.

Under the controlling precedent set forth in Holman, supra, we hereby vacate the order of the Boyle Circuit Court and remand this case for entry of an order denying Norma's motion to divide David's disability retirement benefits.

ALL CONCUR.

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