

SUPREME COURT OF LOUISIANA

No. 01-C-0631

LULA MAE JENNINGS

VERSUS

JOHNNY E. TURNER, JR.

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS*

VICTORY, J.*

Recently, this Court addressed the very issue presented in this case, i.e., whether general divestiture language in a community property settlement agreement purporting to distribute all community assets precludes a non-employee spouse from subsequently asserting his or her rights in the employee spouse's pension.

In *Robinson v. Robinson*, this Court held:

Louisiana jurisprudence is clear; general divestiture language does not necessarily divest the non-employee spouse of his or her right in the employee spouse's pension. When the agreement does not expressly address the employee spouse's pension, the issue of whether the agreement divests the non-employee spouse of any community property rights in the pension depends on the intent of the parties.

99-3097 (La. 1/18/01), 778 So. 2d 1105, 1121. The issue of whether a pension was considered in property settlement discussions is a question of fact. *Id.* at 1119.

In this case, the parties executed a "Community Property Partition" (the "Agreement") on October 25, 1990, in order to "voluntarily partition the community of acquets and gains which existed between them up to the date of this agreement."

In this Agreement, Ms. Jennings transferred her interest in the following property to Mr. Turner: (1) the former family home located at 4418 Knight Drive in New Orleans,

*Retired Judge Robert L. Lobrano, assigned as Associate Justice Pro Tempore, participating in the decision.

Louisiana; (2) “all personal articles and items, jewelry, clothing and other personal effects belongings to Husband;” (3) all appliances and household furnishings located at 4418 Knight Drive; (4) two automobiles. In consideration of this, Mr. Turner transferred to Ms. Jennings: (1) \$30,000.00; (2) “all personal articles and items, jewelry, clothing and other personal effects which belong to Wife;” and (3) all appliances and household furniture in Ms. Jennings’ possession. In the Agreement, the parties acknowledged that they had each received an equal share of the community property which was acquired during their marriage, and released each other from any further accounting.

On November 22, 1995, Ms. Jennings filed a “Petition for Partition of Community Property,” claiming her rights to Mr. Turner’s pension, which he began to earn in 1982. Mr. Turner filed a motion for summary judgment, claiming that his pension was included in the Agreement, and, thus, Ms. Jennings was now precluded from seeking to partition his pension benefits. Along with his motion for summary judgment, he presented an affidavit of Ms. Jennings’ former attorney, which stated that the attorney had gone over the Agreement with Ms. Jennings, and Ms. Jennings knowingly accepted all the terms of the Agreement as complete and final and waived any further accounting relative to any community property which had not been specifically listed. The trial court denied the motion.

At trial, Ms. Jennings testified that at the time she signed the agreement, she was not aware that Mr. Turner had a pension plan, but that sometime shortly thereafter, her attorney told her that “You know, at 65 you can go in and draw his pension.” The only other witness to testify at trial was a retirement specialist who testified regarding Mr. Turner’s participation in his pension plan.

The trial court entered judgment in favor of Mr. Turner, finding that Ms.

Jennings was not entitled to partition the pension benefits, as the Agreement was prepared by Ms. Jennings' attorney, and the parties released each other from any further accounting and acknowledged that they had received an equal share of the community property acquired during the marriage.¹ The court of appeal affirmed, determining that "the language of the agreement is broad enough under any reasonable reading to demonstrate an intention to effect a partition of the entire community." *Jennings v. Turner*, 00-0762 (La. App. 4 Cir. 2/7/01) (unpublished opinion).

Under our holding in *Robinson v. Robinson*, general divestiture language does not necessarily divest the non-employee spouse of his or her right in the employee spouse's pension and when, as here, the agreement does not expressly address the employee spouse's pension, the issue of whether the agreement divests the non-employee spouse of any community property rights in the pension depends on the intent of the parties. Here, there is no language in the Agreement that can be reasonably interpreted as transferring Ms. Jennings' interest in the pension to Mr. Turner. Further, there is no evidence in the record that the parties intended to include the pension benefits in the Agreement. Ms. Jennings testified that she did not even know the pension existed, and Mr. Turner failed to testify.

DECREE

For the reasons stated above, the judgment of the court of appeal is reversed and the matter is remanded to the trial court to partition the pension benefits under the formula enunciated in *Sims v. Sims*, 358 So. 2d 919 (La. 1978).

REVERSED AND REMANDED.

¹The trial court also found that the matter had prescribed under La. C.C. art. 3497, which provides that any action for rescission of a partition of property must be brought within five years of the date of the partition or the discovery of error or fraud. The court of appeal did not address this issue. However, as Ms. Jennings is not seeking a rescission of the "Community Property Partition," La. C.C. art. 3497 does not apply. See *Rasbury v. Baudier*, 370 So. 2d 659 (La. App. 4 Cir. 1979). Thus, the trial court's ruling on this issue was erroneous.

