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18-P-1566

Appeals Court

JOZEF WARNAJTYS vs. JANET E. WARNAJTYS.

No. 18-P-1566.

Worcester. September 13, 2019. - June 16, 2020.

Present: Wolohojian, Hanlon, & Desmond, JJ.

Probate Court, Divorce, Judicial discretion. Divorce and Separation, Division of property, Agreement respecting life insurance, Child support. Workers' Compensation Act, Lump-sum settlement. Parent and Child, Child support.

Complaint for divorce filed in the Worcester Division of the Probate and Family Court Department on February 25, 2016.

The case was heard by Kathryn M. Bailey, J.

Howard J. Potash for the husband.
Gary Bridgman for the wife.

DESMOND, J. The former husband (husband) appeals from a judgment of divorce nisi under G. L. c. 208, § 1B. He argues that the judge erred by treating his workers' compensation settlement as a divisible marital asset, and that awarding the former wife (wife) a portion of that settlement was inequitable.

He also claims that it was improper for the judge to require him to maintain a life insurance policy as security for his child support obligation. In December of 2019, we entered an order requiring the trial judge to make additional written findings regarding the distribution of the marital assets and the workers' compensation settlement. After reviewing those findings and the separation agreement, which has now been added to the record appendix by the husband, we affirm.

Background. We summarize the record, borrowing from our initial order and incorporating the judge's findings and the separation agreement. After approximately eight years of marriage, the husband filed a complaint for divorce in February 2016. The parties have one daughter, born in 2012, who resided with the wife in the marital home after the divorce.

In April 2017, prior to the entry of the divorce judgment, the husband received a workers' compensation lump-sum settlement of \$240,000 for a workplace accident that occurred during the marriage in 2014. As some of the settlement funds were distributed to both the husband and wife during the pendency of the divorce proceedings, \$123,230 of the settlement remained in escrow at the time of the trial.¹ The parties entered into a partial separation agreement whereby the husband agreed to pay

¹ Proceeds were held in escrow per an order of a probate judge.

the wife \$128 per week for child support. They also agreed to retain their respective bank accounts, cars, pensions, and stock, and waived any rights to alimony. The remaining issues went to trial.

The divorce judgment incorporated the separation agreement by reference and was dated March 30, 2018, nunc pro tunc to January 19, 2018. In determining that the wife should receive \$50,000 of the remaining workers' compensation settlement, the judge considered that the "[h]usband is in average health and was continuously employed prior to his injury, . . . [the w]ife has maintained primary physical custody of the child since the separation of the parties in 2016, the [w]ife's modest income and inconsistent work history, the length of the marriage, and [the w]ife will buy out [the h]usband's \$105,000.00 share in the marital home."² Based on his reported income and expenses, the husband was also ordered to secure his child support obligation with a life insurance policy costing up to \$1,000 annually.³ The husband's application for Social Security disability insurance

² The wife was found to be in good health and employed as a customer service representative at an energy company. She had periods of unemployment during the marriage and was found to possess the ability to acquire "very modest future income." The wife reported a weekly salary of \$890.50 per week and total weekly expenses of \$454.03.

³ The husband had not worked since suffering the workplace injury. He received \$604.09 in gross weekly income from workers' compensation and had weekly expenses of \$569.30.

benefits (SSDI) was pending at the time the judgment entered. The husband began receiving those benefits a few months thereafter.

Discussion. 1. Workers' compensation settlement. The husband principally challenges the assignment of a portion of the workers' compensation settlement proceeds to the wife, arguing that a workers' compensation settlement is not a divisible marital asset under G. L. c. 208, § 34. We review questions of statutory interpretation de novo. See Chin v. Merriot, 470 Mass. 527, 531 (2015). He also argues that the award was inequitable.⁴ We review that claim for an abuse of discretion. See Heins v. Ledis, 422 Mass. 477, 480-481 (1996).

First, we agree with the judge that under these circumstances the workers' compensation settlement qualifies as marital property. Here, the accident occurred during the marriage and the settlement was received before the judgment of divorce nisi became final. A workers' compensation claim, like a pending personal injury claim, is an "unliquidated claim for money damages," Hanify v. Hanify, 403 Mass. 184, 187 (1988), and thus "fall[s] within the divorce court's broad power to divide

⁴ Specifically, he claims that the order regarding the workers' compensation settlement is unfair because the settlement constitutes his "income for the remainder of his life due to his disability," yet the judge did not allocate any of the wife's income to him.

marital property. . . . [A]ll personal property, tangible and intangible, in which a spouse acquires an interest is includable [as property to be divided by the court]" (quotation and citation omitted). Id. We discern no reason why a workers' compensation settlement would be excluded from that definition. See Dalessio v. Dalessio, 409 Mass. 821, 829 (1991).

Second, we see no abuse of discretion in the judge's allocation of the worker's compensation settlement to the wife. Trial judges retain broad discretion in weighing and balancing the factors described in G. L. c. 208, § 34. See Kittredge v. Kittredge, 441 Mass. 28, 43-44 (2004). "As long as the judge's findings show that all relevant factors in § 34 were considered, and the reasons for the judge's conclusion are apparent and flow rationally from the findings and rulings, a judge's determination on the equitable division of marital property will not be disturbed." Williams v. Massa, 431 Mass. 619, 631 (2000). "Mathematical precision is not required of equitable division of property" (quotation omitted). Ross v. Ross, 50 Mass. App. Ct. 77, 81 (2000). Here, the judge's findings were thoughtful and well-reasoned. The \$50,000 award to the wife was rationally balanced against her need to buy out the husband's \$105,000 interest in the marital home. There is ample evidence that the judge considered the equities in light of the parties'

equal contributions to the marriage, their ages, health, and other statutory considerations.

2. Life insurance policy. Finally, the husband challenges that portion of the judgment requiring him to secure his child support obligation with a life insurance policy, arguing that the order was duplicative in light of the SSDI benefit.⁵ Again, we see no abuse of discretion. A judge has the authority to order a party in a divorce to secure a life insurance policy for the benefit of a child, see Robbins v. Robbins, 16 Mass. App. Ct. 576, 579 (1983), and at the time of the trial, the husband's SSDI application had yet to be approved. If the husband wishes to modify his obligation to carry life insurance in light of events occurring after the judgment issued, his recourse lies in the trial court.

Judgment of divorce nisi
affirmed.

⁵ The SSDI dependent benefit continues until the child's emancipation.