

SYNOPSIS OF THE CASE

2011 MT 284, DA 11-0032: In re the marriage of KAREN ARNESON SPAWN, Petitioner and Appellant, v. DAN WALLACE MCGOWAN, Respondent and Appellee, Cross-Appellant.¹

Karen Spawn (Spawn) and Dan McGowan's (McGowan) marriage was dissolved by the District Court in Lewis and Clark County in 2010. The order included an allocation of McGowan's state employee retirement plan, which Spawn appealed. The Montana Supreme Court reversed.

Spawn and McGowan were married for nearly 19 years. This entire time, McGowan worked for the State of Montana and was required to participate in the Public Employees' Retirement System. The defined benefit plan in which McGowan participated provides a lifetime monthly retirement benefit that is based upon age at the time of retirement, years of service and salary. The District Court ordered the following division of the account:

Karen [Spawn] is entitled to receive a withdrawal of 50 percent of the marital portion of Dan's vested account balance ... as of the date of separation ... plus regular interest earned on that amount ... until the date of withdrawal.

McGowan claimed that this meant Spawn was entitled to 50 percent, plus interest, of what the account would be worth if he were to liquidate it immediately. Karen argued that she should be awarded 50 percent of the marital portion of McGowan's benefits at the time he begins receiving them after retirement. A substantial sum was disputed under these varying interpretations.

The Supreme Court concluded that Spawn's argument was correct under the "time rule" for deferred distribution of pension plans as set forth in *Rolfe v. Rolfe*, 234 Mont. 294, 766 P.2d 223 (1988). Because McGowan continues to work and contribute to the plan, unknown benefit factors such as age at retirement, salary, and length of service could not be applied. The time rule addresses this problem by awarding the non-employee spouse a fraction of each pension payment that represents the amount earned during the marriage. The Court ordered that upon remand, the account should be divided according to that formula.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.