[J-121-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JAMES W. MEYER	:	No. 0013 W.D. Appeal Docket 1999
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court at No. 1464PGH97, dated July 8,
v.	:	1998 affirming the Order of the Court of
	:	Common Pleas of Allegheny County,
	:	Family Division, at No. FD-83-04993,
ELAINE M. MEYER	:	dated June 27, 1997.
	:	
	:	
Appellee	:	
	:	SUBMITTED: September 8, 1999.
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DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: APRIL 17, 2000**

I dissent for the reasons expressed in my Concurring and Dissenting Opinion in Gordon v. Gordon, 545 Pa. 391, 681 A.2d 732 (1996). In my view, early retirement inducements accepted by an employee-spouse after separation should not be considered marital property where such inducements did not exist prior to the parties' separation. Because the early retirement inducement at issue here unquestionably did not exist during the period when the parties were married, I would reverse the Superior Court.

As I noted in Gordon, the crucial factor in determining whether a benefit should be deemed marital property is the time that the right to the benefit accrued.[1] The right at issue

[1] I found support for this proposition in the Superior Court's decision in LaBuda v. LaBuda, 349 Pa. Super. 524, 503 A.2d 971 (1986). In LaBuda, the Superior Court held that a (continued…)

here indisputably accrued long after the marriage ended. During the marriage, neither party had any reason to believe that Mr. Meyer would someday participate in the special retirement option ("SRO") later offered by his employer. The one-time SRO was offered on March 26, 1993, more than ten years after the parties had separated. Under the SRO, Mr. Meyer would receive a five-year credit for the purpose of calculating his pension in exchange for agreeing to retire prior to December 1, 1994. In addition, the SRO would not otherwise affect the amount paid under his pension plan as of the date of separation. Mr. Meyer elected to participate in the program and retired on July 1, 1994. Because his right to the SRO did not accrue during the parties' marriage, and the parties had no expectation that the benefit would someday arise, I would hold that the SRO is not marital property.

I further disagree with the majority's conclusion that the SRO benefit arose only through the passage of time, and required no "effort or contribution" on Mr. Meyer's part. In point of fact, when his employer announced the program, Mr. Meyer did not qualify for

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(…continued)
special one-time benefit offered to the employee-spouse after the date of marital separation should not be considered a marital asset, if that one-time benefit does not affect the parties' anticipated pension benefit. Mr. LaBuda was offered a special retirement program in April of 1983, whereby he would receive twenty-one monthly payments in exchange for retiring by July 31, 1983. Participation in the program would not alter his regular pension benefit. The employer offered the special program to Mr. LaBuda almost three years after the parties had separated. In determining that the benefit should not be considered marital property, the Superior Court focused on the expectations of the parties. "To the extent that a property right 'accrues' or 'arises' during the marriage, then, the spouses expect they will enjoy the property when they receive it." Id. at 533, 503 A.2d at 976. Mrs. LaBuda "could not have expected to enjoy [the benefit]. . . because neither party had any idea that [Mr. LaBuda] would receive the payments until after they separated." Id. at 534, 503 A.2d at 976.

This Court has approved the LaBuda analysis in Horner v. Horner, 1997 Pa. LEXIS 2835 at *6 (December 23, 1997)(rejecting claim that separation benefits paid after marriage ended was marital property: "[t]his interest was neither acquired during the marriage nor was it a benefit the acquisition of which could have been foreseen or anticipated."). The majority nevertheless dismisses that analysis as "unhelpful."

the program because he had insufficient years of service. He was able to qualify only by using over $5,000 of non-marital funds to repurchase two years of service based upon his non-marital military service. This is decidedly not a case where the mere passage of time led to an increase in benefits; affirmative and costly action was required by Mr. Meyer, while nothing was required by Mrs. Meyer.

In addition, as the dissenting memorandum in the Superior Court noted, Mr. Meyer made an additional post-marital "contribution" to obtain this benefit in that, in exchange for the benefit, he agreed to leave his employment "prematurely." Meyer v. Meyer, Superior Court Slip Opinion at 6 (July 8, 1998)(Tamilia, J., dissenting). The increased benefit attributable to the five-year credit was intended, in part, to compensate Mr. Meyer for losing an untold number of years of additional earnings if he had continued working. If Mr. Meyer did not participate in the SRO and retire early, his continued earnings clearly would not be considered marital property. Thus, it is illogical to hold that any of the compensation arising from the SRO becomes marital property simply because the SRO benefit was offered to Mr. Meyer as an inducement to retire. Accordingly, I respectfully dissent.

Messrs. Justice Zappala and Nigro join this dissenting opinion.