

Case Notes

Court Acted Within Its Discretion in Ordering Life Insurance in Lieu of Survivor Benefits

Cuth v. Cuth, 263 A.3d 1186 (Pa. Super. 2021)

By Maris J. Weiner

Summary:

The Superior Court of Pennsylvania held that the trial court acted within its discretion in directing Wife to obtain and pay for a life insurance policy on Husband, in lieu of her receiving survivor benefits under Husband's pension, and the trial court acted within its discretion in terminating Wife's alimony pendente lite prior to completion of Wife's appeal.

Facts and Procedural History:

On August 13, 2015, Appellant ("Wife") filed a complaint for divorce and equitable distribution against Appellee ("Husband"), after 22 years of marriage. An appointed Master conducted a hearing on Sept. 17, 2017, and filed a report on Aug. 21, 2018. The trial court entered a preliminary order and decree implementing the report on Aug. 21, 2018. On Dec. 27, 2018, the trial court entered a qualified domestic relations order ("QDRO") regarding Husband's pension from the Whitehall Township Police Pension Fund and Trust (the "Trust"). Pursuant to the QDRO, Wife would receive survivor benefits under the pension if Husband predeceased her. The Trust rejected the QDRO in part, stating that Wife, as a former spouse, is ineligible for survivorship benefits under Husband's pension. Wife refused to execute a revised QDRO omitting the survivor benefit language (hereinafter "Paragraph 9"), and on April 17, 2019, the trial court remanded the matter to the Master for creation of a new equitable distribution scheme.

The Master conducted a hearing on July 9, 2019, and Wife maintained that she thought Paragraph 9 of the QDRO should be approved under the township's ordinance. Wife did not, however, take any legal action against Whitehall Township to enforce Paragraph 9. The parties also addressed the possibility of Husband obtaining an insurance policy on Husband's life in lieu of a portion of the survivor benefits of Husband's pension. Wife testified that a policy would cost \$200 to \$900 per month, depending on the duration and value of the policy. Wife brought no written documentation or supporting documentation to the hearing. Wife testified that she was unwilling to obtain life insurance on

Husband, in lieu of his survivor benefits under his pension, if she was solely responsible for the monthly premium. Wife considered \$200 per month an excessive life insurance premium. Wife's monthly income was \$5,500 and her household expenses were approximately \$2,500.

The Master issued a report recommending that Wife make an election as to securing a life insurance policy on Husband's life, in whatever form and death benefit payable she chooses, in order to secure a reasonable portion of the pension benefits that would be payable to her and that may be subject to forfeiture in the event of Husband's death. The Master stated that the terms of the pension plan simply would not honor Wife's designation to receive death benefits.

Both parties filed exceptions to the Master's recommended order. The trial court conducted a hearing on September 25, 2019. Wife asked the trial court for time to procure expert testimony on the value of the survivor's benefits she could no longer receive under Husband's pension. Wife wanted to request an offset of the value of the survivor benefit against other marital assets.

On Dec. 21, 2019, the trial court entered an order denying the parties' exceptions, except that it extended the date of termination of Husband's spousal support/alimony *pendente lite* ("APL") obligation to March 1, 2020. The Court also set March 16, 2020, as the date after which the divorce decree could be entered. On March 4, 2020, the trial court approved a revised QDRO with Paragraph 9 omitted. Wife's counsel requested and received several delays of the entry of the decree so she could procure a life insurance policy. The trial court entered the final divorce decree on May 1, 2020.

Issues on Appeal:

Wife filed a timely appeal raising two questions for the Superior Court's determination: 1) Whether the trial court erred in its distribution of Husband's pension by not considering the pension's value and directing Wife to secure an insurance policy to protect the risk that Husband would die first; and 2) Whether the trial court erred when it relieved Husband of his APL obligation prior to the completion of the divorce litigation?

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Superior Court Holding/Analysis:

In its analysis, the Superior Court narrowed the issue to whether the trial court acted within its broad discretion in declining to order Husband to assist Wife with premiums for a life insurance policy on Husband's life to cover benefits not included within Husband's pension plan. The Court found that Wife failed to make a case for any viable alternative to the life insurance policy. Further, the Court found that Wife's arguments for an offset were not based on evidence of record, but rather on evidence she wished to produce after a remand from the Superior Court. The Court held that after two hearings in the lower court and the sparse evidence of record, for which Wife was at fault, there was no basis upon which the Court could conclude that the trial court committed an error of law or abuse of discretion.

In her second issue on appeal, Wife claimed that the trial court erred in terminating APL prior to the completion of the appeal. Wife relied upon *DeMasi v. DeMasi*, 597 A.2d 101 (Pa. Super. 1991), in which the Superior Court held that, when an appeal is pending on matters of equitable distribution, APL continues throughout the appeal. While Wife's reading of *DeMasi* was correct, the record did not support a finding that APL could not be terminated. The Court found that there was no indication in the record that Wife ever sought APL. Wife filed a complaint for support pursuant to Rule 1910.4, but admittedly did not seek APL in her complaint. Further, Wife acknowledged that she never sought APL in the divorce action. The Court found that this results in a waiver. Rule 1920.30(c) specifically states that the failure to claim APL prior to the entry of a final decree of divorce or annulment shall be deemed as a waiver of those claims.

For all the foregoing reasons, the Superior Court affirmed the lower court's decree.

Comments:

There are two takeaways from this case. First, always be sure to make a complete record in a lower court proceeding, as there are rarely second bites of the apple, so to speak, in being able to retry a case and introduce new evidence and testimony. Second, a dependent spouse should always include a count for APL in any complaint, or counter-complaint, for divorce, so as to preserve the claim in the event of an appeal following the entry of a divorce decree.



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