

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

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|------------|------------------|---|----------------------|
| SK, | | : | NO. 16-21,058 |
| | Plaintiff | : | |
| | | : | |
| | vs. | : | |
| | | : | |
| | | : | |
| PK, | | : | |
| | Defendant | : | IN DIVORCE |

ORDER

AND NOW, this 8th day of **January, 2018**, after a hearing held on January 4, 2018, in regard to the Petition to Enforce Agreement/Petition for Contempt filed by Wife on June 30, 2017, at which time Wife was present with her counsel, Christina Dinges, Esquire, and Husband was present with his counsel, Janice Yaw, Esquire. The issue before the Court centers around the language in the Domestic Relations Order which provides for Wife to receive a percentage of the marital portion of Husband FERS.

At the time of a Master’s Hearing scheduled in regard to equitable distribution on February 28, 2017, the parties reached an agreement which resolved their outstanding economic issues. The agreement reached by the parties was placed on the record by Wife’s counsel with additions and corrections by Husband’s counsel throughout. The parties were divorced on March 6, 2017. The language of the parties’ agreement regarding Husband’s Federal Employment Retirement System is as follows:

“Ms. Dinges: The parties acknowledge that Husband is the owner of a pension plan through the Federal Employees Retirement System, is that what it’s called?

The Master: Yes.

Ms. Dinges: The parties agree that Wife shall receive 58.47% of the marital portion of the FERS pension payment pursuant to a qualified domestic relations order that will be prepared by Jonathan Cramer of Conrad Siegel. The parties agree that they will equally divide the cost of the preparation of the domestic relations order. For purposes of the marital portion, the parties agree that they were married on April 16, 1994, and they separated August—

Ms. Yaw: August 11th.”

Pursuant to the parties’ agreement, Jonathan Cramer of Conrad Seigel prepared a Domestic Relations Order. The cost was split equally between the parties.

Mr. Cramer was provided with a copy of the parties’ agreement to prepare the DRO.

The dispute between the parties centers around paragraph 8 of the Domestic Relations Order. The portion of paragraph 8 which is the basis of the parties’ dispute states as follows:

“This DRO assigns to Alternate Payee 58.47% of the marital portion of the Employee’s self-only basic monthly annuity, and any supplemental annuity, payable by the FERS, calculated as of the date of Employee’s benefit commencement date, and including any increase in the annuity due to unused sick leave credit.”

Wife is agreeable to sign the Domestic Relations Order as has been drafted by Mr. Cramer. Husband argues that the Domestic Relations Order should exclude any supplemental annuity and requests that this language be removed from the Domestic Relations Order. Based upon Husband’s employment, he is eligible for a special supplement until age 62. Mr. Cramer testified that certain categories of employees under FERS are eligible for the supplemental annuity due to the fact that they are required to retire before age 62. The supplemental annuity is received from the date of retirement until the employee turns 62 to bridge the employee until such time as they are eligible for Social Security benefits. The amount an individual receives in the

supplemental annuity may be reduced based upon other earnings that the individual may have. Mr. Cramer testified that the supplemental annuity is part of the retirement benefits. The retiree receives one check per month which is comprised of the basic monthly annuity and the supplemental annuity minus any reductions. Mr. Cramer testified that whether referring to the marital portion of Husband's FERS as the retirement benefit or retirement payment makes no difference. Mr. Cramer testified that he sees both of these as the same thing. Both parties stipulated that Mr. Cramer was an expert in regard to valuing and dividing retirement accounts and preparation of domestic relations orders for retirement benefits. Mr. Cramer testified that he included the supplemental annuity in the Domestic Relations Order for the division of Husband's FERS as there was no language in the parties' agreement which specifically excluded the supplemental annuity payment. Mr. Cramer testified that in his years of experience of preparing domestic relations orders in regard to FERS, there have only been one or two times where the supplemental annuity has been excluded and, in these instances, there was specific language in the parties' agreement to exclude the supplemental annuity.

Husband's counsel attempted to argue to the Court that the parties' agreement was ambiguous and, therefore, the Court should consider the intent of the parties and additional testimony in determining whether or not the supplemental annuity should be included in the Domestic Relations Order. The Court does not find that the parties' agreement is ambiguous. The parties' agreement clearly states that Wife will receive 58.47% of the marital portion of the FERS pension payment pursuant to a qualified domestic relations order. The Court finds that the DRO as prepared by Jonathan

Cramer, the jointly-hired expert, divides Husband's retirement consistent with the parties' agreement.

The Court will issue a separate DRO Order this date.

By the Court,

Joy Reynolds McCoy, Judge