

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 01-21,698
	:	
D.B.,	:	
Defendant	:	

ORDER

This matter comes before the court on a Petition for Special Relief filed by Husband, in which he requests the court to order Wife to give him a survivorship benefit in Wife's pension plan, in order to secure Wife's debt to him.

In equitable distribution, the parties reached a stipulation regarding the valuation of marital assets and the property each was to receive, but they requested the Master to determine the percentage of distribution. The Master awarded Husband 58% of the marital estate, and Wife 42%. Neither party filed exceptions. The marital estate was valued at \$313,516.11. Wife received property totaling \$258,224.86; Husband received property totaling \$55,291.25. Therefore, Wife owed Husband \$126,548.09. The parties agreed that Wife would pay Husband \$58,573.00 in cash upon refinancing the marital residence in her name, and that the balance (\$67,975.09) would be paid to Husband as a deferred distribution of Wife's pension. The pension was valued at \$127,453.59; therefore, Husband was to receive 53.3% of the marital portion of the pension.

The disagreement arose when the Qualified Domestic Relations Order was being prepared. The QDRO prepared by Law Data included a survivorship benefit for Husband, for his portion of the pension. Wife did not agree with including a survivorship benefit, as it limits the choice of options available to her at retirement.

Wife points to the case of Barlett v. Barlett, Lyc. Co. Docket #96-21,315. In that case, both parties wanted to be the one to select the method of payment once the

pension was drawn. The Hon. Dudley N. Anderson ruled that the pension holder should be the one to make the election, since that party has a greater interest in the plan.

Bartlett, however, is distinguishable because in Bartlett the pension was divided, and the non-holder (Wife) was awarded a portion of the pension as part of her equitable distribution award. In the case before the court, however, Wife was awarded the entire pension. As a result of that award and other property she received (primarily the marital residence), Wife owed Husband a large sum, which the parties agreed could be paid off in part through a pension distribution. This created a debt Wife owed to Husband. The pension distribution was merely a means of paying that debt.

If the marital portion of the pension had simply been distributed between the parties, Wife could choose a retirement option and Husband would have to live with that choice. In that case, Husband would have received a certain percentage of the pension, whatever that turned out to be. In the event of Wife's untimely death, Husband could have received little or nothing. However, the parties chose to structure the equitable distribution differently, apparently because Wife wanted to receive both the pension and the marital residence. This created a debt due to Husband, and Husband has a right to be secured in regard to this debt. As Husband has pointed out in his brief, equitable distribution debts survive the death of the debtor. It would be unfair to put Husband at risk of losing part of the amount owed—or even the entire amount owed—simply because he agreed to permit Wife to pay the debt through a pension distribution.

Wife argues that a survivorship benefit reduces the value of the pension which Wife received, and therefore Husband's request for a survivorship benefit is untimely. The court does not agree. The survivorship benefit is a means to secure the \$67,975.09 Husband is owed. It would be inequitable to reduce the amount Husband is owed merely because Wife is required to secure this debt.

Wife also argues that Husband's survivorship benefit would have to be valued, and attributed to him. See Palladino v. Palladino, 713 A.2d 676 (Pa. Super. 1998) (a

survivorship benefit acquired during and pursuant to the marriage is marital property, with a value to be assessed to the holder for equitable distribution purposes). In the case before this court, the proposed survivorship benefit was not acquired during the marriage. Instead, it would be created after the dissolution of the marriage, as a means of securing an equitable distribution debt owed by Wife to Husband.

In conclusion, the equitable distribution scheme established by the parties themselves created a large debt due from Wife to Husband. The parties agreed that debt could be paid, in part, through distribution of Wife's pension once it came into pay status. Husband has a right to a guarantee that the debt will be paid. If Wife can put into place some means of securing the debt other than creating a survivorship benefit, she is free to do so.¹ However, if all else fails, Wife must elect a survivorship benefit in the amount owed to Husband.

¹ For instance, granting Husband a lien on her property, or acquiring a life insurance policy for him on her life.

ORDER

AND NOW, this _____ day of February, 2004, for the reasons stated in the foregoing opinion, the Petition for Special Relief filed by the defendant on October 13, 2004 is granted and Delores A. Brown is ordered and directed to secure the debt she owes to Daniel L. Brown, in the amount of \$67,975.09. She shall have forty-five days from the date of this order in which to provide Daniel L. Brown with proof of such security.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray, J.
Christina Dinges, Esq.
Rita Alexyn, Esq.
Gary Weber, Esq., Lycoming Reporter