

SUPREME COURT OF OHIO

Walsh v. Walsh

2019-Ohio-3723 (Ohio 2019) · No. 2018-1073 · Decided September 18, 2019

SUMMARY

The Supreme Court of Ohio held that a trial court may not modify a property division in a final divorce decree without the express written consent or agreement of both spouses under R.C. 3105.171(I). The court also held that Civ.R. 60(B) cannot be used to circumvent that statutory restriction, and that retention of jurisdiction over a QDRO does not authorize modification of the divorce decree itself. The court reversed the judgment of the Eleventh District Court of Appeals and remanded the case.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	DeWine, J.; O'Connor, C.J.; Kennedy, J.; Donnelly, J.; French, J.; Fischer, J.; Stewart, J.
JURISDICTION	Ohio
DECIDED	September 18, 2019
DOCKET	2018-1073
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Todd Walsh appealed the Eleventh District Court of Appeals' affirmance of a domestic-relations court order granting Sandra Walsh relief under Civ.R. 60(B) and modifying the final divorce decree's stated marriage term and pension-division provisions.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Todd Walsh v. Sandra Walsh

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a trial court may use Civ.R. 60(B) to modify a property division in a final divorce decree without the express written consent or agreement of both spouses under R.C. 3105.171(I).
2. Whether a trial court's retention of jurisdiction over a QDRO authorizes it to modify the final divorce decree.
3. Whether Civ.R. 60(B)(4) or (5) permits modification of the decree when the motion is filed more than one year after judgment.

HOLDINGS

1. A trial court may not modify a property division in a final divorce decree unless both spouses expressly consent or agree in writing to the modification. Changing the stated length of the marriage altered the pension property division, and because Todd did not consent, the trial court lacked authority to make the change.
2. Retention of jurisdiction over a QDRO does not authorize a trial court to alter the final divorce decree, because the QDRO and the divorce decree are separate court orders and the retained jurisdiction applied only to the QDRO.
3. Even apart from the statutory prohibition in R.C. 3105.171(I), Civ.R. 60(B)(4) and (5) did not authorize the requested modification. Where a decree reserves jurisdiction, relief affecting the decree must still proceed under Civ.R. 60(B)(1), (2), or (3), which require filing within one year of judgment.

KEY QUOTATIONS

“A trial court does not have jurisdiction under Civ.R. 60(B) to modify a division of property in a final decree of divorce when both spouses have not consented to the modification.” (¶ 1)

“Because R.C. 3105.171(I) does not permit modification absent the consent of both parties, Civ.R. 60(B) cannot provide a workaround.” (¶ 23)

“Thus, even if we were to conclude that R.C. 3105.171(I) did not apply, the trial court still lacked authority to modify the divorce decree.” (¶ 28)

FACTUAL BACKGROUND

Todd and Sandra Walsh married in 1994, separated six years later, and later entered into a consent judgment of divorce. The decree awarded Sandra a share of Todd's military pension based on a six-year marriage term but did not state her share as a percentage or dollar amount. Because the decree did not satisfy the federal requirements for direct military payment, Sandra sought to change the marriage term to ten years and specify a 15 percent pension allocation. The trial court granted that relief without Todd's written consent.

PROCEDURAL HISTORY

The parties entered into a consent judgment of divorce that awarded Sandra a share of Todd's military pension based on a six-year marriage term and retained jurisdiction over a QDRO. After a consultant determined that the decree did not permit direct military pension payments because it lacked a percentage allocation and did not

satisfy the federal 10/10 rule, Sandra moved for relief under Civ.R. 60(B)(4) and (5). The domestic-relations court modified the decree to state a ten-year marriage term and a 15 percent pension allocation. The Eleventh District affirmed, but the Supreme Court of Ohio reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the trial court for proceedings consistent with the Supreme Court of Ohio's opinion.

CASES CITED

- Wilson v. Wilson, 116 Ohio St. 3d 268, 2007-Ohio-6056, 878 N.E.2d 16
- Mackey v. Mackey, 95 Ohio St. 3d 396, 2002-Ohio-2429, 768 N.E.2d 644
- Daniel v. Daniel, 139 Ohio St. 3d 275, 2014-Ohio-1161, 11 N.E.3d 1119
- Hoyt v. Hoyt, 53 Ohio St. 3d 177, 559 N.E.2d 1292 (1990)
- Gordon v. Gordon, 144 Ohio App. 3d 21, 759 N.E.2d 431 (8th Dist. 2001)
- Morris v. Morris, 148 Ohio St. 3d 138, 2016-Ohio-5002, 69 N.E.3d 664
- In re Whitman, 81 Ohio St. 3d 239, 690 N.E.2d 535 (1998)
- Knapp v. Knapp, 24 Ohio St. 3d 141, 493 N.E.2d 1353 (1986)