

SUPREME COURT OF GEORGIA

Plachy v. Plachy, 282 Ga. 614

652 S.E.2d 555 (2007) · No. No. S07F0834 · Decided October 29, 2007

SUMMARY

The Supreme Court of Georgia affirmed the trial court's entry of a court order acceptable for processing concerning the equitable division of a federal employee's Civil Service Retirement System pension. The court held that directing payments to the former wife's estate if she predeceased the husband did not add a substantive term to the parties' settlement agreement because the retirement benefits were marital property owned by the wife as equitable distribution. The court also distinguished equitable distribution of retirement benefits from periodic alimony, which generally terminates upon the recipient's death.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham, Justice; All the Justices
JURISDICTION	Georgia
DECIDED	October 29, 2007
DOCKET	No. S07F0834
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband sought discretionary appellate review of the trial court's denial of his motion challenging a court order acceptable for processing (COAP) concerning the division of his federal civil-service retirement benefits.
STANDARD OF REVIEW	Review of the trial court's interpretation and enforcement of the incorporated settlement agreement and its entry of the COAP for reversible error.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Georgia.
PARTIES	Douglas Plachy v. Beverly Plachy

TOPICS

- equitable distribution
- divorce
- dissolution of marriage
- family law procedure
- federal employment law

PRACTICE AREAS

family law

federal employment law

administrative law

QUESTIONS PRESENTED

1. Whether the trial court erred by entering a COAP providing that Wife's marital share of Husband's CSRS retirement benefits would continue to Wife's estate if Wife predeceased Husband.
2. Whether the post-death payment provision was an impermissible addition to the parties' incorporated settlement agreement or merely an expression required to implement Wife's ownership of her equitable share of marital property.

HOLDINGS

1. The COAP did not add a new substantive provision because Wife owned her equitable share of the CSRS retirement benefits as marital property, and the express post-death direction implemented that ownership under Georgia law and federal requirements.
2. The installment payments remained equitable distribution of marital property and were not periodic alimony terminating at the death of the recipient former spouse.

KEY QUOTATIONS

“The inclusion in the COAP of the express statement required by federal law to give effect to Georgia law was not the addition of a new substantive provision.” (556)

“That the equitably divided retirement benefits are to be distributed to Wife by means of monthly installments does not make the payments alimony payments that are terminated at the death of the recipient former spouse.” (556)

FACTUAL BACKGROUND

After a 24-year marriage, Douglas and Beverly Plachy divorced, and their final judgment incorporated a settlement agreement dividing Husband's CSRS retirement benefits earned during the marriage. The agreement awarded Wife fifty percent of Husband's gross annuity benefits as of the settlement date, reduced by the cost of survivor annuity benefits, and assigned her fifty percent of the maximum possible survivor annuity. The trial court's COAP expressly directed that Wife's payments continue to her estate if she predeceased Husband, although the settlement agreement did not expressly address post-death payments to Wife's estate.

PROCEDURAL HISTORY

The parties' divorce judgment incorporated their mediated settlement agreement, which awarded Wife fifty percent of Husband's marital CSRS retirement benefits and fifty percent of the maximum survivor annuity. The trial court later entered a COAP directing that Wife's share continue to her estate if she predeceased Husband and denied Husband's motion asserting that this provision exceeded the settlement agreement. The Supreme Court of Georgia granted discretionary review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Hips v. Hips, 278 Ga. 49(1), 597 S.E.2d 359 (2004)
- Hollis v. Hollis, 278 Ga. 303, 304 n. 4, 602 S.E.2d 644 (2004)
- Andrews v. Whitaker, 265 Ga. 76(4), 453 S.E.2d 735 (1995)
- Winokur v. Winokur, 258 Ga. 88, 365 S.E.2d 94 (1988)
- Couvillion v. OPM, 129 Fed. Appx. 613 (C.A.Fed.2005)
- Miller v. Miller, 2007 WL 2592465 (Va.App.2007)
- Stare v. Stare, 2004 WL 2004152 (Ohio App. 2004)

OPINION

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BENHAM, J.

652 S.E.2d 555 (2007)

PLACHY

v. PLACHY. No. S07F0834. Supreme Court of Georgia. October 29, 2007. Carlton Edward Joyce, Anne Allen Westbrook, Bouhan, Williams & Levy, LLP, Savannah, for Appellant. Molly M. Howard, Jenni Fallin Swan, Howard & Whatley, PC, Savannah, for Appellee. BENHAM, Justice. The 24-year marriage of appellant Douglas Plachy (Husband) and appellee Beverly Plachy (Wife) concluded with the entry of a final judgment and decree of divorce on July 16, 2006. The judgment incorporated the terms of the parties' settlement agreement which provided, among other things, for the equitable division of Husband's retirement benefits under the Civil Service Retirement System (CSRS) earned during the marriage as a result of Husband's employment with *556 the United States Army Corps of Engineers. On October 18, 2006, the trial court entered a court order acceptable for processing by the Office of Personnel Management (OPM), which oversees and administers Husband's retirement pension (see 5 C.F.R. § 838.101), and denied Husband's motion that the terms of the court order acceptable for processing (COAP)[1] did not accurately reflect the terms of the mediated settlement incorporated into the final judgment and decree of divorce. We granted Husband's petition for discretionary appeal to review the trial court's decision. In the incorporated settlement agreement, the parties agreed to divide Husband's CSRS retirement benefits as equitable division of property, with Wife receiving fifty percent of Husband's gross annuity benefits under the CSRS earned as of the date of the agreement, less the amount deducted for the cost of survivor annuity benefits. Wife was also assigned fifty percent of the maximum possible survivor annuity. The COAP assigned to Wife an amount equal to fifty percent of Husband's gross annuity as of the date of the settlement agreement, reduced by the amount necessary to provide Wife with survivor annuity benefits, and a "former spouse survivor

annuity" equal to fifty percent of the maximum survivor annuity. The COAP provided that payments were to continue to Wife for Husband's lifetime and to Wife's estate should she predecease Husband.[2] Husband maintains the trial court committed reversible error by entering the COAP because the COAP's provision for payment of benefits to Wife's estate should she predecease Husband was not a part of the incorporated settlement agreement. While the settlement agreement did not expressly state that the benefits were to survive the death of Wife, because the retirement benefits acquired during the marriage were marital property (*Hipps v. Hipps*, 278 Ga. 49(1), 597 S.E.2d 359 (2004)), and Wife received a share of the retirement benefits as equitable distribution of marital property, which had the effect of awarding title to the property (*Hollis v. Hollis*, 278 Ga. 303, 304 n. 4, 602 S.E.2d 644 (2004)), Wife owned her share of the retirement benefits. The inclusion in the COAP of the express statement required by federal law to give effect to Georgia law was not the addition of a new substantive provision. That the equitably divided retirement benefits are to be distributed to Wife by means of monthly installments does not make the payments alimony payments that are terminated at the death of the recipient former spouse. See *Andrews v. Whitaker*, 265 Ga. 76(4), 453 S.E.2d 735 (1995) (equitable division of retirement benefits is not periodic alimony). See also *Hipps v. Hipps*, supra, 278 Ga. 49, 597 S.E.2d 359 ("Equitable property division is distinctly different from alimony"); *Winokur v. Winokur*, 258 Ga. 88, 365 S.E.2d 94 (1988) (obligation to pay periodic alimony generally terminates at the death of either party).[3] The trial court did not err when it entered the COAP and denied Husband's motion to enforce the settlement agreement incorporated into the final judgment and decree of divorce. Judgment affirmed. All the Justices concur.

NOTES

[1] A court order acceptable for processing (COAP) is required by federal regulations in order for OPM to distribute, as provided for in a state court decree of divorce, a marital share of a party's CSRS pension to a person other than the federal employee. 5 U.S.C. § 8345(j)(1); 5 C.F.R. §§ 838.101, 838.303-306.

[2] OPM will honor a COAP that directs OPM to pay, after the death of the recipient spouse, that spouse's share of the retirement benefits to the estate of the deceased recipient spouse. 5 C.F.R. § 838.237(b)(3). *Couvillion v. OPM*, 129 Fed. Appx. 613 (C.A.Fed.2005). See also *Miller v. Miller*, 2007 WL 2592465 (Va.App.2007) (unreported decision). If there is no express provision giving direction regarding post-mortem payments, the recipient spouse's share of the benefits reverts to the federal employee spouse. 5 C.F.R. § 838.237(a).

[3] *Stare v. Stare*, 2004 WL 2004152 (Ohio App. 2004) (unreported decision), relied upon by Husband, is distinguishable in that it involved Ohio law, the appellate court disagreed with the trial court's application of the law, and the appellate court believed an evidentiary hearing was necessary under the circumstances of that case.