

SUPREME COURT OF NEBRASKA

Leners v. Leners

302 Neb. 904 (2019) · No. No. S-18-072 · Decided April 19, 2019

SUMMARY

The Nebraska Supreme Court affirmed a marital dissolution decree awarding the parties shared legal and physical custody, allocating child-related expenses, dividing pension interests, and ordering Sharon Leners to pay attorney fees. The court held that the district court did not abuse its discretion in awarding Stacy Leners his railroad pension, establishing the parenting schedule, allocating expenses, or awarding fees based on vexatious conduct during the litigation.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 19, 2019
DOCKET	No. S-18-072
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sharon B. Leners appealed from a decree dissolving the parties' marriage after the district court denied her timely motion for new trial and motion to alter or amend.
STANDARD OF REVIEW	In a marital dissolution action, the appellate court reviews the case de novo on the record to determine whether the trial judge abused his or her discretion. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sharon B. Leners v. Stacy M. Leners

TOPICS

- dissolution of marriage
- child custody
- equitable distribution
- appellate procedure
- standard of review

PRACTICE AREAS

family law

divorce

child custody

equitable distribution

attorney fees

QUESTIONS PRESENTED

1. Whether the district court improperly interpreted federal railroad retirement law or abused its discretion by awarding Stacy his railroad pension as his separate property rather than dividing the divisible Tier II benefits.
2. Whether the district court abused its discretion by awarding shared legal and physical custody and equal parenting time.
3. Whether the decree adequately allocated the parties' responsibility for the children's reasonable and necessary expenses, including extracurricular activities.
4. Whether the district court abused its discretion by awarding Stacy \$9,000 in attorney fees.

HOLDINGS

1. The district court did not abuse its discretion by awarding Stacy his railroad pension as his separate property in the overall equitable division of the marital estate, even though the court overstated Sharon's potential divorced-spouse annuity and miscalculated the divisible portion of Stacy's pension.
2. The district court did not abuse its discretion by awarding the parties shared legal and physical custody and a parenting-time schedule providing Stacy substantial and equal parenting time.
3. The district court did not abuse its discretion by requiring the parties to share medical expenses equally and to share extracurricular expenses only when mutually agreed upon in writing.
4. The district court did not abuse its discretion by ordering Sharon to pay Stacy \$9,000 in attorney fees.

KEY QUOTATIONS

“Although the district court may have overstated Sharon’s entitlement to a divorced spouse annuity in connection with Stacy’s railroad pension, it did not abuse its discretion in awarding Stacy his entire pension in equitably dividing the marital estate.” (905)

“There is no guarantee she will receive “a substantial sum from Union Pacific as a divorced spouse pension.”” (912)

“We do not agree that § 4-212 requires a trial judge to grant one parent carte blanche to compel the other parent to pay (either wholly or partially) for every conceivable extracurricular activity for a child.” (916)

“Courts have the inherent power to award attorney fees in certain unusual circumstances amounting to conduct during the course of litigation which is vexatious, unfounded, and dilatory, such that it amounts to bad faith.” (917)

FACTUAL BACKGROUND

The parties married in 1997 and had two children, one of whom was fifteen at the time of the custody dispute. Stacy worked for Union Pacific Railroad and had railroad retirement benefits consisting of Tier I and Tier II components; Sharon also had an employer pension, a 401(k), and a Nebraska Public Employees Retirement

Systems account. The district court awarded each party his or her own pension and retirement accounts, ordered shared custody and parenting time, allocated specified child expenses, and ordered Sharon to pay Stacy attorney fees based on the contentious and allegedly vexatious conduct during the litigation.

PROCEDURAL HISTORY

The Gage County District Court dissolved the parties' marriage, awarded shared legal and physical custody and a parenting-time schedule, divided the parties' pensions and other property, allocated certain child expenses, and ordered Sharon to pay Stacy \$9,000 in attorney fees. After the court denied Sharon's posttrial motions, she filed a timely appeal, which the Nebraska Supreme Court moved to its docket.

DISPOSITION

affirmed

CASES CITED

- Wiedel v. Wiedel, 300 Neb. 13, 911 N.W.2d 582 (2018)
- Gerber v. P & L Finance Co., 301 Neb. 463, 919 N.W.2d 116 (2018)
- Hisquierdo v. Hisquierdo, 439 U.S. 572, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979)
- Shearer v. Shearer, 270 Neb. 178, 700 N.W.2d 580 (2005)
- McGraw v. McGraw, 186 W. Va. 113, 411 S.E.2d 256 (1991)
- Webster v. Webster, 271 Neb. 788, 716 N.W.2d 47 (2006)
- Vogel v. Vogel, 262 Neb. 1030, 637 N.W.2d 611 (2002)
- Connolly v. Connolly, 299 Neb. 103, 907 N.W.2d 693 (2018)
- Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017)
- State on behalf of Jakai C. v. Tiffany M., 292 Neb. 68, 871 N.W.2d 230 (2015)
- Moore v. Moore, 302 Neb. 588, 924 N.W.2d 314 (2019)
- Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018)