COURT OF APPEALS OF VIRGINIA

Edward J. Primm v. Denise Otero Primm, 12 Va. App. 1036

407 S.E.2d 45 (1991) · No. Record No. 1797-90-1 · Decided July 30, 1991

SUMMARY

The Court of Appeals of Virginia affirmed a pension award in a divorce proceeding that entitled the wife to twenty-five percent of the marital share of the husband's pension benefits as received, without a cap tied to the pension's stipulated present value. The court held that Virginia Code § 20-107.3(G) authorized this structure and that the award was consistent with Zipf v. Zipf.

CASE DETAILS

COURT	Court of Appeals of Virginia
WRITING FOR THE COURT	Moon; Barrow; Coleman
JURISDICTION	Virginia
DECIDED	July 30, 1991
DOCKET	Record No. 1797-90-1
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband appealed a divorce decree awarding wife twenty-five percent of the marital share of his pension benefits as received, without a cap on the total amount.
PRECEDENTIAL VALUE	Published Virginia Court of Appeals opinion
PARTIES	Edward J. Primm v. Denise Otero Primm

TOPICS

equitable distribution · family law · statutory interpretation · remedies

PRACTICE AREAS

Family law · Equitable distribution · Pension benefits

QUESTIONS PRESENTED

1. Whether a court may award a spouse a percentage of pension benefits payable as received, without imposing a dollar cap based on the pension's stipulated present value.

2. Whether Code § 20-107.3(G) or Zipf v. Zipf requires a specific dollar cap when the pension is not yet being received.

HOLDINGS

1. A court may award a spouse a percentage of pension benefits as the benefits are received without imposing a dollar cap, subject to the statutory limitation that the payment may not exceed fifty percent of the cash benefits actually received by the other party.
2. Zipf does not require a specific dollar cap when the pension payments will occur in the future rather than immediately.

KEY QUOTATIONS

> *"Thus, authority for awarding a percentage share of a pension, without a limit, save for the fifty percent limitation, is plainly granted by the statute."* (407 S.E.2d at 46)

> *"We do not read the holding in Zipf as requiring that a specific dollar cap must be stated so that a party may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court."* (407 S.E.2d at 47)

FACTUAL BACKGROUND

The parties married in 1971, and the husband worked for the United States Department of Defense during the marriage. His pension was not yet being paid, although its stipulated present value as of the parties' separation was $21,361.51. The circuit court awarded the wife twenty-five percent of the marital share of pension benefits as they were received, calculated through a marital-service fraction, and imposed no total-dollar cap.

PROCEDURAL HISTORY

The circuit court awarded the wife a pro rata portion of twenty-five percent of the marital share of the husband's pension payments for as long as the husband received them. The husband argued that the award should have been capped at twenty-five percent of the stipulated present value of the marital share. The Court of Appeals of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Zipf v. Zipf, 8 Va. App. 387, 382 S.E.2d 263 (1989)