

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT**

Coleman v. Bland

187 So. 3d 298 (Fla. 5th DCA 2016) · No. 5D14-3779 · Decided February 29, 2016

SUMMARY

The Florida Fifth District Court of Appeal considered whether the marital portion of a former husband's pension was de minimis and could therefore be awarded entirely to him in an equitable distribution proceeding. The court held that the trial court erred in assigning no value to the marital pension interest, reversed the relevant order, and remanded for reconsideration of its disposition.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Palmer, J.; Lawson, C.J.; Evander, J.
JURISDICTION	Florida
DECIDED	February 29, 2016
DOCKET	5D14-3779
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The former wife appealed an order entered after remand in a dissolution proceeding. The order awarded her no portion of the former husband's pension on the ground that the marital portion was de minimis.
STANDARD OF REVIEW	Abuse of discretion for the trial court's determination of equitable distribution and its valuation and distribution of marital assets; the distribution must be supported by factual findings based on competent substantial evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Florida Fifth District Court of Appeal
PARTIES	Arvita M. Coleman, former wife v. Michael Bland, former husband

TOPICS

- equitable distribution
- family law
- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

family law

equitable distribution

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by determining that the marital portion of the former husband's pension was de minimis and awarding the former wife no portion of it.
2. Whether the trial court's valuation and disposition of the marital portion of the pension were supported by competent substantial evidence and equitable-distribution principles.

HOLDINGS

1. The trial court erred by determining that the marital portion of the pension was of de minimis value and by awarding the former wife no portion of it.

KEY QUOTATIONS

“The \$89.67 might be de minimis to [the former husband]; however, it is clearly not de minimis to [her] as it would increase her \$331 per month income by 27.1%.” (187 So. 3d at 300)

“Thus, the trial court erred when it determined that the marital portion of the pension was of de minimis value.” (187 So. 3d at 300-01)

FACTUAL BACKGROUND

The former husband worked for the Yonkers School Board of Education for approximately 31 years and retired after 49 weeks of marriage to the former wife. The parties' marriage lasted 39 months, and the former husband's pension paid approximately \$5,900 per month. On remand, the trial court determined that approximately three percent of the pension was earned during the marriage but awarded the former wife no share, finding the marital portion de minimis in light of the parties' circumstances and support the husband provided after the petition for dissolution was filed.

PROCEDURAL HISTORY

The circuit court dissolved the parties' marriage and equitably distributed their marital property. On the former wife's first appeal, the Fifth District affirmed in all respects except the pension issue, reversing and remanding because the trial court had failed to make findings concerning whether any portion of the pension was marital property. On remand, the trial court calculated that approximately three percent of the pension was marital but awarded the former wife no portion of it, deeming the amount de minimis. The former wife appealed that order, and the Fifth District reversed in part and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reconsider the proper disposition of the marital portion of the former husband's pension.

CASES CITED

- Coleman v. Bland, 73 So. 3d 795 (Fla. 5th DCA 2011)
- Bardowell v. Bardowell, 975 So. 2d 628 (Fla. 4th DCA 2008)
- Claughton v. Claughton, 625 So. 2d 853 (Fla. 3d DCA 1993)
- Locke v. Locke, 832 So. 2d 971 (Fla. 2d DCA 2002)

OPINION

PALMER, J.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT
NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED ARVITA M. COLEMAN, Appellant, v. Case No. 5D14-
3779 MICHAEL BLAND, Appellee. _____/ Opinion filed
March 4, 2016 Appeal from the Circuit Court for Orange County, Sally D.M.

Kest, Judge. Carlton Pierce, of Carlton Pierce, P.A., West Palm Beach, for Appellant. Michael B. Jones, of The Wheelock Law Firm, LLC, Orlando for Appellee. PALMER, J. Arvita M. Coleman, the former wife, appeals the trial court's order entered on September 22, 2014, upon remand from this court. Determining that the trial court erred in ruling that the value of the marital portion of the former husband's pension plan was de minimis, we reverse.

Michael Bland, the former husband, worked for the Yonkers School Board of Education for approximately 31 years. After 49 weeks of marriage to the former wife, the former husband retired from this position. After a 39-month marriage, the former husband filed a petition seeking dissolution of the parties' marriage.

The trial court dissolved the parties' marriage and equitably distributed the marital property. The former wife appealed. We affirmed the dissolution judgment, in all respects except one. We held: Arvita M. Coleman ["Former Wife"] appeals the final judgment dissolving her marriage to Michael Bland ["Former Husband"].

We find no reversible error in any of the issues raised on appeal, save one. Among the issues in dispute between these parties was the question whether any part of Former Husband's pension was a marital asset. The trial court made no finding in the final judgment concerning whether this asset was marital or non-marital, as required by section 61.075(3), Florida Statutes (2009).

Former Wife contends on appeal that the lack of findings constitutes reversible error as to this and other assets; however, as to all except the pension, we find, after our review of the record, that any error was harmless.

We are unable to make an adequate review of the pension issue without findings, however. The record seems to show that some portion of the pension, although small, was earned during the marriage and should be classified as a marital asset.

We therefore reverse as to that issue only and remand for the trial court to hear and to make proper findings on the disposition of the Former Husband's pension. *Coleman v. Bland*, 73 So. 3d 795, 795-96 (Fla. 5th DCA 2011).

On remand, the trial court conducted a hearing which addressed the former husband's pension. The trial court applied the following methodology to determine the marital portion of the pension: 31 years times 52 weeks... [equals] 1,612 weeks of which 49 were during the marriage. So... 49 divided by one – [1]612 is three percent which would be the marital portion and divided in half would equal 1.5 percent.

[1.5% multiplied by \$5,900 [the amount received monthly] equals \$88.50]. But three percent is the marital portion. At the close of the hearing, the trial court stated: The Court finds that given all of the circumstances of the case including the fact that the wife received a car which was purchased with the husband's non-marital funds and was supported for three years, in fact almost longer than the term of the marriage, in the home after the filing of 2 the petition as well as other items that the d[e] minimus amount of the retirement account that would be marital, that it is a d[e] minimus amount and that the Court will find that at this time it's not an equitable distribution given all the circumstances particularly those presented today concerning the support provided by the husband for three years following the filing of the petition and is sufficient that the Court will find that the amount of the marital portion of the husband's retirement should remain his sole -- to be his sole property.

In a written order, the trial court awarded the former wife no portion of the former husband's pension. The former wife appeals. “The standard of review of a trial court's determination of equitable distribution is abuse of discretion. Distribution of marital assets and liabilities must be supported by factual findings in the judgment or order based on competent substantial evidence.” *Bardowell v. Bardowell*, 975 So.

2d 628, 629 (Fla. 4th DCA 2008) (citations omitted) (internal quotation marks omitted). Also, “the trial court's valuation and distribution of the marital assets” is reviewed for abuse of discretion. *Claughton v. Claughton*, 625 So. 2d 853, 855 (Fla. 3d DCA 1993).

The former wife contends that the trial court erred in its de minimis valuation, arguing that the transcript reveals that the trial court's calculation of [her] share was \$89.67 per month based on [the former husband's] receiving \$5,900 per month in pension times 1.5%.

The \$89.67 might be de minimis to [the former husband]; however, it is clearly not de minimis to [her] as it would increase her \$331 per month income by 27.1%. We agree. In *Bardowell*, the court

observed: At trial, the wife submitted evidence of a “retirement forecast” document prepared by the FRS, which stated that, as of December 2004, the husband's current FRS balance was worth \$17,438.

The document noted that the current FRS balance “is the present value of your accrued FRS benefit given current years of service.” The FRS documentation provided competent evidence that the present value of the husband's FRS pension 3 was approximately \$17,438 as of December 2004. This is not a nominal value. While the trial court would have been within its discretion to value the pension at an amount lower than \$17,438 to account for the fact that the pension was not yet vested, the trial court was not free to ascribe a nominal value to the FRS pension.

The trial court's decision to assign a nominal value to the FRS pension was not reasonable or equitable. 475 So. 2d at 629-30. See also *Locke v. Locke*, 832 So. 2d 971, 972 (Fla. 2d DCA 2002) (“We find that a difference of several thousand dollars should not have been dismissed [as de minimis] without a more precise inquiry.”).

Here, as in *Bardowell*, some portion of the pension was earned during the course of the parties' marriage. Over the course of ten years, the payout of the marital portion of this pension would be roughly \$21,600. Thus, the trial court erred when it determined that the marital portion of the pension was of de minimis value.

Accordingly, we reverse the order entered on September 22, 2014, and remand for the trial court to reconsider the proper disposition of the marital portion of the pension. **AFFIRMED** in part; **REVERSED** in part; and **REMANDED**. LAWSON, C.J. and EVANDER, JJ., concur. 4