

SUPREME COURT OF VERMONT

Callahan v. Callahan, 2008 VT 94

958 A.2d 673 (2008) · No. 2007-267 · Decided June 26, 2008

SUMMARY

The Vermont Supreme Court affirmed the denial of a husband's Vermont Rule of Civil Procedure 60(b)(6) motion seeking relief from a divorce-order provision awarding his former wife 25% of his military retirement pay. The court held that the motion was filed after an unreasonable delay and that the husband had ample opportunities to challenge the provision. It also upheld enforcement of the provision according to its plain terms, including the award of 25% of gross retirement pay without a coverture fraction.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	June 26, 2008
DOCKET	2007-267
DISPOSITION	affirmed
PROCEDURAL POSTURE	Husband appealed the denial of his Vermont Rule of Civil Procedure 60(b)(6) motion seeking relief from a final divorce order and the enforcement of a provision awarding wife 25% of his military retirement pay.
STANDARD OF REVIEW	A denial of relief under Rule 60(b) is reviewed for abuse of discretion and will not be reversed absent a clear and affirmative abuse or withholding of discretion. The interpretation and enforcement of a settlement agreement were also reviewed under the principles discussed in the opinion.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	James P. Callahan v. Leesa L. Callahan

TOPICS

- family law procedure
- divorce
- equitable distribution
- military law
- appellate procedure

PRACTICE AREAS

family law

civil procedure

appellate procedure

military law

remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by finding that husband's Rule 60(b)(6) motion was not filed within a reasonable time.
2. Whether the trial court was required to hold a hearing on husband's pre-final-order motion to set aside the stipulation.
3. Whether the pension provision was properly construed to require payment of 25% of husband's gross retirement pay.
4. Whether husband could obtain relief under equitable estoppel based on his claimed reliance on wife's representation about the stipulation.
5. Whether the parties' agreement required application of a coverture fraction to limit wife's share of husband's retirement pay.
6. Whether the court should consider husband's argument that the Servicemembers Civil Relief Act tolled the time for filing his Rule 60(b) motion.

HOLDINGS

1. The trial court did not abuse its discretion in finding that husband's approximately seven-year delay in filing his Rule 60(b)(6) motion was unreasonable.
2. The family court had discretion to dispose of husband's motion to set aside the stipulation without an oral hearing.
3. The pension provision required husband to pay wife 25% of his gross retirement pay, and the court properly treated the terms "pension" and "retirement pay" as interchangeable in the agreement.
4. Husband could not prevail on equitable estoppel because the record showed he had access to the stipulation and knowledge of the pension provision, and his failure to seek timely Rule 60(b) relief independently barred his claim.
5. A coverture fraction was not required because the parties voluntarily agreed that wife would receive 25% of husband's monthly pension income without reference to the length of the marriage or a fraction.
6. The court declined to consider husband's argument that the Servicemembers Civil Relief Act tolled the period for filing his Rule 60(b) motion.

KEY QUOTATIONS

"Rule 60(b) may be invoked to prevent the miscarriage of justice, it "is not intended to function as a substitute for a timely appeal." (676)

FACTUAL BACKGROUND

The parties married in 1990, divorced in Nevada in 1997, and remarried several months later. In connection with their second divorce, husband signed a stipulation providing wife 25% of his monthly pension income after he retired, and the Vermont family court incorporated that provision into a final divorce order entered in January 2000. Husband did not appeal and later claimed that he had not read the stipulation and had relied on wife's representation that it mirrored the prior Nevada divorce settlement, which had waived any claim to his military retirement pay. After husband retired in August 2006, wife sought enforcement and husband filed a Rule 60(b)(6) motion approximately seven years after entry of the final order.

PROCEDURAL HISTORY

The Vermont family court entered a final divorce order on January 28, 2000, incorporating the parties' stipulation requiring husband to pay wife 25% of his monthly pension income after retirement. Husband did not appeal the order. After retiring in 2006, husband challenged the pension provision through motions to clarify or modify and a Rule 60(b)(6) motion filed in May 2007. The trial court denied Rule 60(b) relief as untimely, enforced the pension provision, and ordered payment of arrearages and monthly benefits; the Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Cliche v. Cliche, 143 Vt. 301, 466 A.2d 314 (1983)
- Tetreault v. Tetreault, 148 Vt. 448, 535 A.2d 779 (1987)
- Lyddy v. Lyddy, 173 Vt. 493, 787 A.2d 506 (2001) (mem.)
- Pouech v. Pouech, 2006 VT 40, 180 Vt. 1, 904 A.2d 70
- Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 556 A.2d 81 (1988)
- Herbert v. Pico Ski Area Mgmt. Co., 2006 VT 74, 180 Vt. 141, 908 A.2d 1011
- In re Lyon, 2005 VT 63, 178 Vt. 232, 882 A.2d 1143
- Golden v. Cooper-Ellis, 2007 VT 15, 181 Vt. 359, 924 A.2d 19
- McDermott v. McDermott, 150 Vt. 258, 552 A.2d 786 (1988)
- Osborn v. Osborn, 159 Vt. 95, 614 A.2d 390 (1992)
- Guiel v. Guiel, 165 Vt. 584, 682 A.2d 957 (1996) (mem.)
- Johnson v. Johnson, 158 Vt. 160, 605 A.2d 857 (1992)

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