TAX TRENDS AND DEVELOPMENTS

Hudson v. Hudson, Mich App No. 322257

By Joseph W. Cunningham, JD, CPA

In a published case, the Court of Appeals rules on availability of a single life annuity for H in W's teachers' pension where same is not available to W in H's federal pension. *Hudson v. Hudson*, Mich App No. 322257 (1/2/16)

Facts

- The 2013 divorce judgment provides that (1) W is to receive a 50% interest in H's accrued Federal Employees Retirement System (FERS) pension and (2) H is to receive 39% of W's accrued Michigan Public School Employees Retirement System (MPSERS) pension.
- H presented an EDRO for entry in which he elected to receive his 39% interest in W's MPSERS pension as a single life annuity (SLA) based on his life–one of the three options offered in the Office of Retirement Services (ORS) model EDRO form.
- W objected to the EDRO because FERS does not offer an alternate payee the option of a SLA based on the alternate payee's life.
- The trial court signed the EDRO, ruling, in part, that MCL 552.101(5) allows an alternate payee such as H to select whatever option is available under MPSERS.
- MCL 552.101(5) provides, essentially, that, unless specifically excluded, a proportionate share of all component parts associated with a pension are transferred with part of a pension via QDRO or EDRO.
- The trial court stated that, since the right to elect a SLA on his life was not expressly excluded, H was entitled to do so under MCL 552.101(5).
- The trial court also ruled that the agreed on judgment provided for division of the pensions and that, under court rule, the parties are bound by what "they put on the record in the courtroom."
- W appealed.

Court of Appeals Decision

- The COA (Court) upheld the trial court's decision, but not based on MCL 552.101(5).
- Rather, the Court ruled that the right to elect a form of benefit–such as a SLA on one's life, or a joint & survivor annuity–is not a "component" of a retirement benefit.
- Thus, the Court distinguished selection of a form of benefit from "components" such as cost of living adjustments, survivor benefits, early retirement supplements, and death benefits.
- But, the Court agreed with the trial court that "the parties were bound by the language of the judgment of divorce."
- The Court stated that the fact that W could not also elect a SLA based on her life does not "render the resulting division contrary to the parties' stated intent in the judgment of divorce."
- The Court noted that the parties had the opportunity "to fully explore available form of payment options" before agreeing on a settlement and that it was "incumbent on the parties and their counsel to include within the judgment of divorce a determination of all rights of the parties relative to each other's pension plans."

Comments on the Case

- The case illustrates the importance of discovering the pertinent features of each retirement plan involved in a divorce.
- This is important so that an equitable division of such benefits can be achieved.
- It is also important so that a divorcing party knows before agreeing to a settlement what income – and the timing thereof – will be available post-divorce.
- Finally, it is simply good practice to be as specific as possible in the retirement benefits provision of a judgment of divorce or settlement agreement.

- Doing so minimizes disputes and misunderstandings concerning what a party believed he or she was to receive.
- Since the COA rarely publishes family law cases, evidently the Court wanted to send a message about the importance of clearly specifying the rights of parties concerning retirement benefits divided in divorce.

About the Author

Joe Cunningham *has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy though his practice is statewide.*