



COURT OF APPEALS AFFIRMS TRIAL COURT HOLDING THAT THE AWARD TO W OF A PORTION OF H'S FEDERAL PENSION DID NOT INCLUDE A SURVIVORSHIP BENEFIT

Gray v Gray, Mich App No. 344636 (June 25, 2020) Unpublished
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Facts

- In their Consent Judgment of Divorce, it was provided that W would receive a coverture fraction share of H's Civil Service Retirement System (CSRS) pension plan (Plan).
- The Judgment also provided that W would be "entitled to her prorated share of any and all other ancillary benefits associated with the Plan."
- W submitted a proposed Court Order Acceptable for Processing (COAP—essentially a QDRO for CSRS plans—which provided her with a survivor benefit.
- H objected, claiming that in the divorce negotiations it was noted that his pension did not provide a survivor annuity for W.
- He further claimed that creating a survivor benefit for W would reduce his pension benefit by 10%.
- H's counsel stated that a survivor annuity was not a regular part of the Plan and that such a benefit "would be a separate and distinct benefit."
- W's counsel stated that under MCL 552.101(4), all components of a pension plan are assigned with a retirement plan benefit divided in divorce.
- The trial court noted that the parties negotiated the specific percentage that W would receive and, further, that they made no provisions applicable on the death of either party.
- Hence, the court ruled that the parties did not contemplate survivor benefits and that the COAP should not provide for any.
- W appealed.

Court of Appeals Decision

- In an unpublished decision, the Court upheld the trial court's ruling.
- In doing so, the Court noted that the situation was similar to that in the published case of *Hudson v. Hudson*, 314 Mich App 28 (2016).
- In *Hudson*, the Court ruled that H, an alternate payee of 39.5% of W's state pension, could not elect a benefit option of a single life annuity based on his life, an option to which W was not entitled to elect on her share of H's federal pension.
- H claimed that pursuant to MCL 552.101(4), he was entitled to all components associated with W's pension.
- To this the *Hudson* Court stated the question was whether the right to select a particular payment option was a "component" of the plan subject to the statute. The Court ruled that it was not such a component and held against H's claim.
- The Court in *Gray* held that W's assertion that the survivor benefit – specifically referred to as a "component" in MCL 552.101(4) – was "foreclosed for the reasons this Court articulated in *Hudson*."
- In a persuasive dissent, Judge Ronayne Krause essentially stated that (1) *Hudson* did not apply to the *Gray* circumstances and (2) under the plain meaning of MCL 552.101(4), a survivor benefit is a component of a plan.

Comments on the Case

- The facts in the *Gray* case are complicated, including that:
 - The plan involved was federal pension about which less is generally understood than with the more common commercial company plans.
 - It was noted in the trial transcript that it had been agreed at mediation that W’s lawyer was to prepare a letter with questions about the government plan. Apparently this letter, if sent, did not ask about survivor benefits.
 - And, according to H’s counsel, survivor benefits were not part of the plan but rather were “separate and distinct.”

- **Takeaway** – It is virtually always preferable to specify in the Judgment or Settlement Agreement, as the case may be, what benefits are included with the transfer of a retirement benefit.

Otherwise, issues such as those in *Gray* and *Hudson* may arise.

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.

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