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DISTRICT III

August 5, 2025

To:

Hon. Annette M. Barna
Circuit Court Judge
Electronic Notice

Lori Gorsegner
Clerk of Circuit Court
Rusk County Courthouse
Electronic Notice

Stephanie L. Finn
Electronic Notice

Amanda J. Bartels
416 Dallas Street
Chetek, WI 54728

You are hereby notified that the Court has entered the following opinion and order:

2024AP1197 Bradley Kenneth Bartels v. Amanda J. Bartels
(L. C. No. 2015FA69)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Bradley Kenneth Bartels appeals a circuit court order denying his motion for relief from a qualified domestic relations order (QDRO) dividing his military retirement pay with his former spouse, Amanda J. Bartels.[1] As part of this motion, Brad argued that the court should enter an amended QDRO in order to implement the parties' intent that Amanda's share of Brad's future retirement benefit would be based on the benefits that Brad earned during the parties' marriage.

[1] Because the parties share a surname, we will refer to them by their first names. We also follow the appellant's lead in referring to Bradley as "Brad."

The court determined that the original QDRO accurately reflected the parties' marital settlement agreement (MSA) and therefore denied Brad's motion.

Based upon our review of Brad's brief[2] and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[3] Our supreme court has observed that "valuing and dividing pension benefits is one of the most difficult matters a circuit court faces" in a divorce case. ***Washington v. Washington***, 2000 WI 47, ¶¶30-31, 234 Wis. 2d 689, 611 N.W.2d 261. The present case is no exception. We conclude that the circuit court erroneously exercised its discretion by denying Brad relief from the original QDRO. We therefore summarily reverse the order denying Brad's motion. We remand with directions for the court to enter the amended QDRO and also to address Brad's claim for unjust enrichment by determining the excess payment that Amanda has received under the original QDRO.

Brad and Amanda were married on February 25, 2003, and were granted a judgment of divorce on February 17, 2016. At the time of the parties' divorce, Brad was in his eighteenth year of service as a reservist with the Wisconsin National Guard. Although Brad was not yet eligible for a military retirement, the MSA preserved a potential benefit for Amanda in the event that Brad ultimately became eligible. The relevant provision of the MSA stated,

[2] Amanda did not file a response brief. On October 3, 2024, we issued an order giving Amanda five additional days to either file a brief or request an extension. We warned Amanda that in the absence of a response, we could summarily reverse the circuit court's order under WIS. STAT. RULE 809.83(2). (Order dated 10/3/2024.) Amanda did not submit a brief or request an extension, so on October 18, 2024, we took "this appeal under submission … for review based upon the record and appellant's brief." (Order dated 10/17/2024.)

[3] All references to the Wisconsin Statutes are to the 2023-24 version.

> DEFENSE, FINANCE AND ACCOUNTING SERVICE, US MILITARY RETIREMENT PAY. Pursuant to 10 U.S.C. 1408, The Former Spouse is awarded Forty-five percent (45%) of the gross disposable military retired pay the Member would have received had the Member become eligible to receive military retired pay on February 17, 2016, with the rank of E-7, with 4,317 reserve retirement points, and with 18 years of service for basic pay purposes.

The MSA further provided that

> [t]he above retirement benefits must be divided by a court order that is suitable for processing with the United States Department of Defense, Finance and Accounting Center ["DFAS"] The parties agree to cooperate with the facilitation of the COAP[4] and agree to equally split the cost associated with such drafts. The parties shall hire jointly Divorce Financial Solutions, LLC to draft such DFAS Military Order. The parties shall be equally responsible for all expenses incurred in the preparation and the execution of such DFAS Military Order, including fees and each shall hold the other harmless therefrom.

The parties complied with the MSA by jointly hiring Grant Zielinski from Divorce Financial Solutions to draft and submit the QDRO. In a section entitled "Amount of Payments," the original QDRO incorporated the language from the MSA regarding Brad's retired base pay, reserve retirement points, and years of service at the time of the divorce. The QDRO further provided that any overpayments to Amanda would be recoverable. The circuit court entered the QDRO on December 16, 2022.

Brad retired from the military at the end of January 2023. A key fact for this appeal is that Brad originally anticipated retiring as a reservist, but he ended up earning an active-duty retirement. The military calculates retirement benefits for these two categories differently.

[4] "COAP" is an acronym for "Court Order Acceptable for Processing."

Shortly after his retirement, Brad noticed that Amanda was receiving significantly more of his retirement pay than he expected.

On November 8, 2023, Brad filed a motion to reopen the divorce case under WIS. STAT. § 806.07 in order to amend the QDRO. As part of this motion, Brad submitted a letter from DFAS stating that when DFAS calculated Amanda's share of Brad's retirement benefit, DFAS ignored the QDRO's reference to reservist points and instead only looked at the reference to 18 years of service. In other words, DFAS implemented the language in the QDRO to mean that Amanda's share of Brad's retirement benefit was based on 18 years of service rather than based on Brad's service during the parties' marriage. DFAS stated that "if this is not correct, a new court order will be needed to make any changes."

In his motion for relief from the original QDRO, Brad argued that the language in the MSA and the original QDRO was based on the parties' expectation that Brad would earn a reservist retirement rather than an active-duty retirement. Brad submitted an amended QDRO prepared by Zielinski, which provided that Amanda would receive 17.47% of Brad's active-duty retirement benefit. Brad submitted evidence that this calculation was the equivalent of what Amanda would have received under the formula set forth in the MSA and the original QDRO if Brad had retired as a reservist, as the parties had initially anticipated.

After a hearing, the circuit court issued an oral ruling denying Brad's motion for relief from the original QDRO. The court entered its written order on May 23, 2024. The circuit court concluded that there was no mistake justifying relief because the original QDRO contained the same language as the MSA, and it therefore reflected the contract negotiated and agreed to by the parties. The court rejected Brad's argument that the parties actually intended that Amanda's

share of the retirement benefit would be based on the equivalent of 11.99 years of service. Instead, the court concluded that the parties had agreed that Amanda's retirement benefits would be based on 18 years of service.

In reaching this conclusion, the circuit court identified three factors. First, the court explained that the original QDRO instructed DFAS to calculate Amanda's share of the retirement benefit using the language in the MSA, and "the military is the expert at deciding what" this amount should be, given the language agreed to by the parties. The court noted that it would have been willing to entertain testimony from DFAS to the contrary, but suggested that Zielinski's testimony on this point was not convincing. Second, the court determined that any ambiguity in the MSA and the QDRO should be construed against Brad, because Brad's attorney drafted the MSA and Brad and his attorney had selected Zielinski's firm to draft the QDRO. Third, the court found it significant that the MSA did address a different contingency for Brad's retirement, namely the possibility that Brad might forego retirement benefits for a disability retirement. Because the MSA addressed this contingency, but did not address the possibility that Brad might earn an active-duty retirement, the court determined that the parties did not intend for Amanda's share of benefits to depend on whether Brad earned an active-duty or reservist retirement. Brad appeals.

A circuit court may grant a party relief from a judgment or order based on "[m]istake, inadvertence, surprise, or excusable neglect." WIS. STAT. § 806.07(1). Brad argues that he is entitled to relief under § 806.07(1) because the language used in the original QDRO was a mistake or at least "confusing based on how Brad ultimately retired." In addition, Brad contends that "it was a surprise as to how DFAS interpreted the QDRO."

Specifically, Brad contends that DFAS's interpretation of the original QDRO language did not reflect the parties' intent that Amanda would receive a retirement benefit that was based on Brad's military service during the parties' marriage. Brad argues that this limitation on Amanda's share of his future retirement benefit was reflected in the language in the MSA stating that the benefit would be calculated based on "4,317 reservist retirement points."[5] Zielinski testified that this number represented "the total points earned during the marital period." Zielinski assumed that DFAS would divide the specified reservist points by 360 and then arrive at 11.99 as the equivalent years of service to use when calculating Amanda's share of Brad's retirement benefit. However, because Brad eventually earned an active-duty retirement, DFAS disregarded the reference to reservist points and instead implemented the QDRO as if the parties had agreed that Amanda would receive a benefit based on 18 years of active-duty service.

We review the circuit court's order denying Brad's motion under WIS. STAT. § 806.07 for an erroneous exercise of discretion. *See* ***Hottenroth v. Hetsko***, 2006 WI App 249, ¶33, 298 Wis. 2d 200, 727 N.W.2d 38. "[W]e affirm the circuit court's decision if it examined the relevant facts, applied the correct standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We will uphold any factual findings underlying the court's discretionary decision unless they are clearly erroneous. *See* ***Covelli v. Covelli***, 2006 WI App 121, ¶13, 293 Wis. 2d 707, 718 N.W.2d 260. To the extent the court's decision relies on its

[5] Because reservists only serve part time, their retirement benefit is calculated based on "reservist retirement points," which then need to be divided by 360 to yield an equivalent number of years.

construction of the MSA, we review that issue de novo. *See* ***Winters v. Winters***, 2005 WI App 94, ¶15, 281 Wis. 2d 798, 699 N.W.2d 229.

Brad argues that the MSA is ambiguous as to how Amanda's share of his retirement benefit should be calculated. *See* ***Washington***, 234 Wis. 2d 698-99, ¶18 ("[A]mbiguity exists when the language of the written instrument is subject to two or more meanings … as applied to the extrinsic facts to which it refers."). Specifically, Brad argues that the MSA is ambiguous as applied to the extrinsic facts regarding the type of retirement benefit that Brad would ultimately earn. Given this ambiguity, Brad argues that this court should construe the language in the MSA to carry out the parties' intent that Amanda would receive a benefit that corresponded to his military service during the parties' marriage. *See* ***id.***, ¶15 (explaining that when faced with ambiguity, "the circuit court has the power to effectuate its orders and do justice").

Brad argues that, in determining that the parties intended that Amanda's share would be based on 18 years of service, the circuit court erred by reading the phrase "18 years of service" in isolation, "while omitting the remainder of the language in the MSA." "The general rule as to construction of contracts is that the meaning of particular provisions in the contract is to be ascertained with reference to the contract as a whole." ***MS Real Est. Holdings, LLC v. Donald P. Fox Fam. Tr.***, 2015 WI 49, ¶38, 362 Wis. 2d 258, 864 N.W.2d 83. Here, Brad contends that the circuit court and DFAS both overlooked the reference to 4,317 reservist points, which is the equivalent of 11.99 active-duty years and also corresponds to Brad's military service during the parties' marriage. Brad further argues that his construction of the full MSA provision is the most logical because it would be unusual to award Amanda retirement benefits for Brad's postdivorce military service. *See* ***Bloomer v. Bloomer***, 84 Wis. 2d 124, 127 n.1, 267 N.W.2d 235 (1978)

("[A]ny contributions to the retirement fund after the divorce, whether made by employer or employee, would not be assets of the marital estate subject to division.").

Brad also contends that the circuit court made several errors in reaching its conclusion. First, he contends the court erred by suggesting that DFAS needed to testify regarding its calculations because he asserts that evidence was in the record and undisputed. Second, he argues the court erred by construing the MSA and QDRO against him. Third, he contends the court erred by assuming that the references to disability retirement meant that the MSA addressed all possible contingencies.

We again note that Amanda did not file a response brief. Although we could summarily reverse based solely on Amanda's failure to respond, we have considered Brad's arguments on the merits and conclude that the circuit court's order rested on findings of fact that were clearly erroneous. First, the circuit court clearly erred by determining that DFAS implemented the parties' agreement when it relied solely on the reference to "18 years of service" to calculate Amanda's share of Brad's retirement benefit. Although we can see why both the circuit court and DFAS focused on the reference to 18 years of service, that language can only be understood in the context of the full provision of the MSA in which it appears. Specifically, the MSA provides that Amanda's share of Brad's retirement benefit should be based on the amount that Brad "would have received had [Brad] become eligible to receive military retired pay on February 17, 2016." The MSA further states that at the time of the divorce, Brad was a reservist "with the rank of E-7, with 4,317 reserve retirement points, and with 18 years of service for basic pay purposes."

We conclude that the MSA's references to rank, reservist points, and years of service all describe Brad's status as of the date of the divorce. The circuit court erred by assuming that the reference to years of service reflected the parties' intent that Amanda could ultimately share in a retirement benefit that would be based on 18 years of active-duty service, given the fact that Brad had not yet earned this benefit at the time of the divorce. Instead, we conclude that the MSA's reference to "4,317 reservist points" reflects the parties' intent that Amanda would receive a share that corresponded to Brad's military service during the marriage—namely, 11.99 years of active-duty service.

Second, the circuit court clearly erred by finding that there was no mistake in the original QDRO. Instead, we conclude that Zielinski's decision to simply copy the language from the MSA into the original QDRO was a mistake that did not effectuate the MSA due to the unanticipated fact that Brad ultimately earned an active-duty retirement instead of a reservist retirement. Because DFAS used the active-duty retirement formula when processing the QDRO, DFAS unexpectedly disregarded the reference to 4,317 reservist retirement points and only implemented the reference to 18 years of service. By disregarding the reference to reservist points, DFAS's calculation did not effectuate the intent of the MSA that Amanda's share of Brad's retirement benefit would be based on Brad's military service during the parties' marriage.[6]

[6] The circuit court indicated that testimony from DFAS was necessary to evaluate this aspect of Brad's motion for relief from the original QDRO. However, DFAS's method of calculation was part of the record and it was not disputed by Amanda. In addition, DFAS would not have any insight into the parties' intent regarding the ambiguous language in the MSA.

In reaching the opposite conclusion, the circuit court construed the QDRO against Brad and also determined that the parties' reference to a different contingency—the possibility that Brad might take a disability retirement—meant that the MSA reflected all contingencies, including the possibility that Brad might earn an active-duty retirement benefit. We disagree with both aspects of the court's reasoning. The MSA provided that both parties "shall hire jointly" Zielinski and his firm to draft the QDRO, so the court erred by construing the ambiguity introduced by Zielinski's mistake against Brad. Moreover, it is undisputed that the MSA's provisions regarding a disability retirement simply reflect the requirements of federal law. Because these provisions are nonnegotiable, their presence in the MSA is not evidence that the parties negotiated over every possible contingency.

Finally, Zielinski testified that he has learned from his experience in this case and now incorporates the formula for active-duty retirements into all QDROs, even when the service member is likely to retire as a reservist. The fact that Zielinski is now using unambiguous language in his QDROs to prevent this problem in the future supports the conclusion that his use of ambiguous language for this QDRO was a mistake. We therefore conclude that the circuit court's factual finding that there was no mistake was also clearly erroneous.

In relying on clearly erroneous factual findings, the court circuit reached an unreasonable result—namely, allowing Amanda to receive a portion of the additional retirement benefit that Brad earned in the years after the parties' divorce. Courts do not have this authority, and to the extent the parties could agree to divide postdivorce contributions to Brad's retirement benefit, they did not do so here. *See* ***Bloomer***, 84 Wis. 2d 124, 127 n.1 (stating that post-divorce contributions to a retirement account are "not … assets of the marital estate subject to division"). For these reasons, we conclude that the circuit court erroneously exercised its discretion by

denying Brad relief under WIS. STAT. § 806.07(1). *See* ***Randall***, 235 Wis. 2d 1, ¶7. We therefore reverse the court's order denying Brad's motion and direct the court to enter the amended QDRO.

Regarding Brad's claim for unjust enrichment, it is undisputed that the QDRO requires Amanda to reimburse Brad for any overpayment. We therefore direct the circuit court to calculate the amount that Amanda has been overpaid under the original QDRO and enter a monetary judgment in that amount in favor of Brad.

Therefore,

IT IS ORDERED that the circuit court's order is summarily reversed and the cause is remanded with directions.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals