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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of JOSEPH and
CATHYE CURRERI.

B278248

(Los Angeles County
Super. Ct. No. BD546312)

JOSEPH CURRERI,

Respondent,

v.

CATHYE CURRERI,

Appellant.

APPEAL from judgment of the Superior Court of Los Angeles County, Carl H. Moore, Judge. Affirmed.

Burlison Law Group, Robert C. Burlison, Jr.; Stoner & Grannis, William Stoner, for Appellant.

Stone Busailah, Michael P. Stone, Muna Busailah, and Michael D. Williamson, for Respondent.

Appellant Cathye Curreri appeals from the judgment in the marriage dissolution action filed by respondent Joseph Curreri.¹ Cathye contends the court erroneously apportioned Joseph's pension benefits based on the time period worked during the marriage, rather than the monetary contributions made during the marriage. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Joseph started employment with the Los Angeles Police Department on September 3, 1974. He and Cathye were married on December 31, 1984. Joseph's retirement became effective on September 5, 2004, when he enrolled in the Deferred Retirement Option Plan (DROP) program. He retired as a Tier 5 member of the Los Angeles Fire and Police Pension System with 30 years of service. Upon entering retirement and the DROP program, he exchanged his pension contributions and interest for a lifetime pension. Joseph continued making pension contributions until September 1, 2007, as required for a Tier 5 member. While

¹ As is customary in family law cases, we refer to the parties by their first names for convenience and clarity.

working under the DROP program, Joseph continued receiving his monthly salary, but he was no longer earning service time for calculating retirement benefits. Pension payments were deposited into a separate account that Joseph transferred into an individual retirement arrangement (IRA) account on August 31, 2009, when his participation in DROP ended. The amount transferred (the DROP funds) was \$700,273.12. The couple separated on June 9, 2011, when Joseph filed for divorce after 26 years 6 months of marriage.

Joseph and Cathye addressed specific financial issues through a stipulated domestic relations order (DRO).² The DRO was needed to give the pension plan sufficient information to divide the pension benefits. The DRO used the “time rule” to calculate the community property interest in Joseph’s pension by dividing the time period worked during marriage by the total years of service, and then multiplying the resulting percentage by Joseph’s monthly pension amount. Cathye was awarded one-half of the community property interest, including any allowable cost of living adjustments. On October 29, 2012, the court ordered the parties to file the DRO and serve it on the pension plan “so the money being held in trust for [Cathye’s] benefit can be released to her.” The court reserved jurisdiction to amend

² The DRO serves a purpose similar to a qualified domestic relations order (QDRO), defined in 29 U.S.C. § 1056(d)(3)(B)(1). (See *In re Marriage of Oddino* (1997) 16 Cal.4th 67, 75–76.)

or modify any language of the DRO “at a later date according to proof.”

One of the issues addressed during a five-day court trial that ended on April 20, 2015, was whether the DRO erroneously applied the time rule to award Cathye a portion of Joseph’s pension benefits. After a number of continuances and additional briefing, a final statement of decision was filed July 19, 2016. The trial court rejected Cathye’s argument that she was coerced into signing the DRO and that she considered it a temporary order. It also found the time rule to be the correct method for dividing the pension payments and rejected Cathye’s proposed alternative method.

DISCUSSION

The trial court found that Joseph’s pension and the DROP funds comprised both separate and community property, and that the time rule was the appropriate method for determining the community property interest. Cathye contends the trial court erroneously applied the time rule to apportion the community and separate property interests in Joseph’s pension benefits and the DROP funds.

Standard of review

“When a trial court concludes that property contains both separate and community interests, the court has broad

discretion to fashion an apportionment of interests that is equitable under the circumstances of the case. [Citation.] ‘[T]he disposition of marital property is within the trial court’s discretion, by whatever method or formula will “achieve substantial justice between the parties.”’ [Citations.]” (*In re Marriage of Steinberger* (2001) 91 Cal.App.4th 1449, 1459 (*Steinberger*).) We apply the abuse of discretion standard of review to the apportionment. (*Id.* at p. 1460.)

Apportionment of pension benefits

Cathye contends the court incorrectly relied upon the time rule to apportion Joseph’s pension benefits as one-third Joseph’s separate property and two-thirds community property, where those benefits were based on Joseph’s 30 years of service, with 10 of those years being before marriage. We find no legal error in the court’s decision to follow the time rule to apportion the separate and community property interests in Joseph’s pension.

“In California, pension benefits are viewed as ‘a form of deferred compensation for services rendered,’ and ‘an employee acquires a property right to pension benefits when he enters upon the performance of his employment contract.’ (*In re Marriage of Brown* (1976) 15 Cal.3d 838, 845.) ‘[I]f the right to retirement benefits accrues, in some part, during marriage before separation, it is a community asset and is therefore owned by the community in which the

nonemployee spouse as well as the employee spouse owns an interest.’ (*In re Marriage of Lehman* (1998) 18 Cal.4th 169, 179.)” *In re Marriage of Peterson* (2016) 243 Cal.App.4th 923, 929–930 (*Peterson*).) “The traditional ‘time rule’ provides that whenever credited time of service is a substantial factor in determining the benefit payable under a defined benefit plan, the extent to which that service was provided during the marriage in comparison to the total duration of service will alone determine the community share.” (*In re Marriage of Gray* (2007) 155 Cal.App.4th 504, 508, fn. 3 (*Gray*).) “Generally, under the time rule, the community is allocated a fraction of the benefits, the numerator representing length of service during marriage but before separation, and the denominator representing the total length of service by the employee spouse. That ratio is then multiplied by the total benefit received to determine the community interest. [Citation.]” (*Steinberger, supra*, 91 Cal.App.4th at p. 1460.)

Cathye argues that the time rule is inapplicable when it fails to adequately account for the community’s contribution to the pension benefit. Cathye presented evidence that Joseph made a total of \$200,370.67 in contributions towards his pension, and only \$19,300.64 was contributed prior to marriage. She argues that because the contributions during marriage make up 87.5% of total contributions, the community’s share of the benefit is 87.5%, rather than the two-thirds calculated under the time rule.

Cathye’s argument ignores the fact that Joseph’s pension benefits are based not on the monetary value of his pension contributions, but on the length of his employment with the LAPD and his average salary during the final year before retirement. Accordingly, the trial court was correct to apply the time rule in determining the community property interest in Joseph’s pension payments. (See, e.g., *In re Marriage of Gowan* (1997) 54 Cal.App.4th 80, 88–89 [affirming application of time rule and rejecting husband’s argument that post-separation service time resulted in enhanced pension benefits]; *In re Marriage of Poppe* (1979) 97 Cal.App.3d 1, 9 [time rule not applicable where husband’s pension is not substantially related to the number of service years].) The time rule “divides the separate property and community property interests in a pension by giving equal weight to each year of service, regardless of whether the divorce occurred early in the employed spouse’s career (when salary-based pension contribution deductions might be smaller but would have longer to grow) or closer to retirement (when salary-based pension contribution deductions might be greater but would have less time to grow).” (*Gray, supra*, 155 Cal.App.4th at p. 508, fn. 3.)

To the extent Cathye contends the court did not adhere to the requirements of Family Code section 2610, subdivision (a),³ we disagree. “This statute provides that once a court determines each party’s ‘community property share in any

³ All further statutory references are to the Family Code unless otherwise indicated.

retirement plan,’ the court then has the power to make all ‘necessary or appropriate orders’ to ensure that the party receives the full share awarded. (§ 2610, subd. (a).)” (*Peterson, supra*, 243 Cal.App.4th at p. 935, fn. 4.) The trial court ultimately ordered Joseph’s pension benefits to be divided based upon the DRO, which directed the pension administrator to pay Cathye “one-half of the community property interest” in Joseph’s pension benefit as established under the time rule. This approach complies not only with section 2610, subdivision (a), but with California law requiring community property to be divided equally. “[U]nlike virtually every other state, California has restricted judicial authority by requiring trial courts to divide the community estate equally between the parties, except for limited circumstances . . . which are inapplicable here.’ [Citation.] ‘[T]he court possesses no authority to divide the community estate between the parties other than equally’ [Citation.] Therefore, ‘except as otherwise agreed by the parties or specifically provided by statute, no trial court has discretion to divide the community estate unequally and if it does so, the trial court errs as a matter of law. (Fam. Code, § 2550.).’ [Citation.]” (*Id.* at p. 937.)

Cathye repeatedly focuses on the court’s comment that the time rule is applied in 99% of the cases, but does not offer any plausible argument why it would be an abuse of discretion to apply it here. We reject any argument that the court failed to exercise its discretion when it adopted the time rule as the method for apportioning between separate

and community property interests in the pension benefits. The statement of decision demonstrates that the court was aware of its discretion to choose from different methods of apportioning Joseph's pension benefits, and it expressly considered and rejected the method proposed by Cathye.

Cathye asks this court to remand the matter "with directions to enter a judgment dividing the community interest based on a percentage of community and separate interest contributions." Alternatively she seeks a holding that as a matter of law, "the division of interests between community and separate property interests be divided based on contributions made during the years of service according to the parties' community and separate property interests of 87.5 percent and 12.5 percent, respectively." No remand is required, as we conclude there was no error.

Apportionment of DROP funds

Cathye's arguments in support of her contention that the court erred in apportioning the DROP funds based on the time rule parallel those made with respect to the court's apportionment of Joseph's pension benefits. For the same reasons discussed above, we find no abuse of discretion. (See *In re Marriage of Davis* (2004) 120 Cal.App.4th 1007, 1015–1017 [affirming division of DROP funds consistent with the court's appropriation of pension benefits between community and separate property].)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent Joseph Curreri.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.