

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|-----------|---|--------------------|
| MHC, | : | NO. 95-20,605 |
| Plaintiff | : | |
| | : | |
| vs. | : | CIVIL ACTION - Law |
| | : | In Divorce |
| REC, | : | |
| Defendant | : | |

OPINION AND ORDER

Before the Court is a Motion to Vacate a Qualified Domestic Relations Order (QDRO) entered approximately two (2) years ago. The background of this matter arises out of a Property Settlement Agreement entered into by the parties before Family Court on May 12, 1997. The Defendant had a retirement plan through the PA State Retirement System and it was agreed that Plaintiff would receive one-third (1/3) of the marital portion of that account. There is no further detail contained in the agreement. A QDRO was prepared, signed and then made an Order of Court on December 8, 1998. The total marital value of the plan was determined to be \$121,896.00. The terms of the QDRO provide in part as follows:

“The alternate payee may exercise any right, privilege or option offered by the State Retirement System (SRS) pertaining to her share of the benefits. Her choice shall not effect the options available to the member. ...”

Apparently, Plaintiff was advised by counsel that she could elect an annuity that would pay her \$24,791.00 over her life span. The QDRO was then submitted to the SRS but was rejected as the SRS could not accept a plan with the above-language included.

Plaintiff now asks that the Order be vacated. While it is recognized the QDRO was signed by both parties and effectively forms a contract, the contract is of no effect unless it is accepted by the Retirement Plan Administrator. In this case, because of the language contained in the QDRO, the

Retirement Plan Administrator has declined to accept the Order. The Court is not in any position to enforce an agreement or an Order over a Retirement Plan Administrator who is not a party to the action. Further, it is not the Court's intent or purpose to pass judgement on a Qualified Retirement Plan that is not only the subject of another jurisdiction but was a product of legislative creation. Accordingly, the Court will grant Plaintiff's request to vacate the QDRO.

The Court will decline to vacate the parties' original Property Settlement Agreement and therefore Plaintiff is still entitled to one-third (1/3) of the marital portion of the retirement plan. Plaintiff has asked the Court to Order the Defendant to elect the option that would provide the maximum benefit to Plaintiff in the annuity. Since this was not part of the agreement, and since Defendant is the owner of the plan and has a greater interest in the plan than does Plaintiff, it occurs to the Court the election would remain with the Defendant. However, the Court has not been asked to resolve the issue of the language to be employed in the QDRO and therefore will not proceed beyond the scope of the Petition.

ORDER

AND NOW, this 24th day of January, 2001, Plaintiff's Motion to Vacate the Order is granted. The Court Order dated December 8, 1998 providing the QDRO Agreement dated December 8, 1998 as an Order of Court is hereby vacated.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Ramin Yaw, Esq.
William Miele, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson