

Amicus Curiae Briefs Family Law Issues

Divorce and Property Distribution – Pension Plans

Case: *Tirmenstein v. Tirmenstein*

Court: Court of Appeals of Indiana, Second District, 1989

Amicus Brief: NOW Legal Defense and Education Fund

Case: The trial court granted the Tirmensteins a divorce and awarded Bette Tirmenstein a fifty percent interest in her husband's then currently vested police pension, which was payable when the husband retired. On appeal, the Court affirmed. The Court of Appeals held that the pension was marital property and that the trial court correctly divided the pension benefits that existed at the time the marriage was dissolved.

Amicus Brief: The brief argues that marriage is an “economic partnership,” in which the contributions of both spouses should be recognized. Bette Tirmenstein contributed to her husband's ability to earn pension benefits and should be compensated as such. An injustice would be created if Bette Tirmenstein were unable to benefit from Mr. Tirmenstein's pension plan as it would leave her in financial distress and would fail to recognize her indispensable contributions to the marriage and her husband's earning capacity. Mr. Tirmenstein's pension is marital property that is subject to division as it vested before the Tirmenstein's final separation. Police pensions are not exempt from division with a former spouse due to the “Spendthrift” statute which states that they are, “exempt from seizure or levy upon attachment, garnishment, execution, and all other process” and are “not subject to sale, assignment, or transfer by a beneficiary.” I.C. 36-8-7.5-19. The court's order does not constitute a seizure, levy, attachment, garnishment, execution, sale, assignment, or transfer but is instead just an order of payments by Mr. Tirmenstein to Bette Tirmenstein. Once the husband has received the funds they are his and are not subject to the limitations of I.C. 36-8-7.5-19.

CWEALF: CWEALF joined the brief due to the fact that women should be recognized for their efforts during marriage. Marriage is an economic partnership and both parties contribute to the monetary earnings. Women should not be denied the right to claim a portion of the pension benefits, which their husbands obtained due in large part to the wives' assistance.

Holding: The Court of Appeals affirmed the decision of the trial court, which had awarded Mrs. Tirmenstein a fifty percent interest in her husband's then vested police pension.

Case: *Adams v. Adams*

Court: Supreme Court of Indiana, 1989

Amicus Brief: NOW Legal Defense and Education Fund

Case: Mr. Adams claimed that the dissolution decree incorrectly deemed Mrs. Adams as the alternate payee under his pension plan and ordered payments to begin at a time that would necessitate his early retirement. The Court rejected Mr. Adams' argument citing Ind. Code § 31-

1-11.5-2(d), which states that Mr. Adams' police pension was able to be included in the marital estate for distribution. Furthermore, the Court held that Ind. Code § 31-1-11.5-11(a) and (b) provided that the trial court had the power to dispose of any property that fell within the statutory definition of property. Additionally, the Court found that Ind. Code § 22(b) of the Dissolution Act allowed the trial court to dispose of three classifications of property belonging to the parties to a marriage dissolution proceeding.

Amicus Brief: The brief argues that Mr. Adams' pension is subject to division as it vested before the dissolution hearing and is therefore marital property under I.C. 31-1-11.5-11(b). The brief further argues that the trial court correctly divided Mr. Adams' pension because vesting is not conclusive of whether pension rights earned during marriage are marital property. Additionally, marriage should be viewed as an economic partnership and the rights of the nonemployee spouse should not be discounted by excluding unvested pensions from the pool of marital assets. Under the current view, husbands and wives are viewed as economic partners during their marriage and are both therefore entitled to benefit from the economic gains of the marriage. Finally, due to their support of their husbands/families during their marriages and their resulting inability to support themselves financially, many women rely on their husbands and are therefore clearly entitled to the pension rights earned during the marriage.

CWEALF: CWEALF joined this brief because marriage is an "economic partnership" in which both parties contribute and should be able to benefit from a pension that both helped to create. By not allowing a wife to share in a pension that she helped create, a court is undervaluing her contribution. It is therefore only right that the court value a wife's vital contribution and award her a fair share of the pension.

Holding: The Court cited Ind. Code § 31-1-11.5-2(d), which states that Mr. Adams' police pension was able to be included in the marital estate for distribution. Furthermore, the Court held that Ind. Code § 31-1-11.5-11(a) and (b) provided that the trial court had the power to dispose of any property that fell within the statutory definition of property. Additionally, the Court found that Ind. Code § 22(b) of the Dissolution Act allowed the trial court to dispose of three classifications of property belonging to the parties to a marriage dissolution proceeding.

Case: *Berrington v. Berrington*

Court: Pennsylvania Supreme Court, 1993

Amicus Brief: Women's Law Project

Case: The parties married in 1955, separated in 1984, and divorced in 1987. During the marriage, the husband was employed by Westinghouse Electric Corporation, through which he had a retirement plan. The husband continued to participate in the retirement plan after the date of separation. For contributions to the retirement plan, the employer contributed matching funds contributed by the employee. From the date of separation, the husband contributed almost \$15,000 to the plan. At the divorce, the trial court awarded the wife 60% of the pension plan. However, issues arose with how to value the pension plan; the husband valued it as of the date of separation and the wife valued it as of the date of deferment (i.e. retirement or death). The trial court entered orders pursuant to the deferred method of compensation and the husband appealed.

The Superior Court reversed, holding that the pension must be calculated using the present value plus any increases in the pension unrelated to the husband's contributions or contributions of his employer. The wife appealed.

Amicus Brief: The brief argues that the Superior Court's decision departs from clearly established precedent that valuation of a pension is as of the date of retirement, not the date of separation. Deferred valuation also protects divorced women from facing impoverishment after they entered into marriage and into the role of homemaker with the belief they would be protected in their elder years.

CWEALF: CWEALF joined this brief because of its belief that present valuation of retirement plans, which are often the only asset in lower income households, places women in jeopardy of becoming impoverished. Especially for women who were married at a time when a woman's role was undisputedly in the home, a pension plan promised a way of being cared for once their husbands retired. Receiving only present value of a retirement plan leaves women in the position of having to create a way to survive in their elder years without the support they had once envisioned and to which they contributed by supporting their family through unpaid work.

Holding: Explaining that most property accrued after the date of separation is not considered marital property, the Court affirmed the Superior Court's use of the present value of the pension to determine the wife's share. The Court's reasoning was that after the separation, the wife was no longer participating in the contributions made into the retirement plan.

Case: *Krafick v. Krafick*

Court: Connecticut Supreme Court, 1995

Amicus Brief: Connecticut Women's Education and Legal Fund

Case: The parties were divorced in November 1992, at which time the trial court distributed the couple's property and awarded the wife alimony. While the plaintiff wife put into evidence a present value appraisal of the defendant husband's pension, the trial court did not include the pension in the property distribution. The plaintiff wife appealed this omission to the Connecticut Appellate Court, which affirmed the trial court's decision. The plaintiff then appealed to the Connecticut Supreme Court.

Amicus Brief: The brief focuses on whether a pension should be considered property that the court must distribute in an equitable fashion at the time of dissolution. Citing studies that have highlighted the feminization of poverty and judicially-ordered property distributions that inadvertently contribute to this trend, the brief argues that a pension which has been earned by a paid working spouse while the other spouse has remained at home caring for the family is property of the marriage and should be divided as such. The brief explains that the majority of states have chosen to recognize pensions as property and have begun to distribute them in an equitable fashion, valuing the pension at the time of dissolution. This analysis is in accord with Congress' enactment of the Retirement Equity Act, which permits pension plans under the Employment Retirement Income Security Act to be considered marital property that may be

distributed under a Qualified Domestic Relations Order. The brief argues that this same view of pension plans should be adopted the Sate of Connecticut.

CWEALF: CWEALF wrote the brief because it believes that any truly equitable division of marital assets will include a division or valuation of pension plans. For women who traditionally have acted in unpaid caretaking roles as opposed to pursuing paid positions outside the home, exclusion from pension benefits accrued by a working spouse creates much hardship once a divorced is finalized. Even if these women pursue paid positions after the divorce, they will be unable to accrue the number of years and benefits that their working spouses were able to accrue during the marriage and, as such, they will find it difficult to support themselves in their retirement years. By not valuing the pension and dividing it as property, the court undervalues the work of homemakers, which goes unpaid but which is essential to a working spouse.

Holding: The Connecticut Supreme Court held that pensions plans should be considered property for purposes of distribution in a dissolution of marriage action. In so holding, the Court found that pension benefits, when not yet receivable, are intangible property rights, a type of property right recognized by a common understanding of property, as that term is defined in legal dictionaries and treatises. The Court remanded the case to the trial court for a valuation of the pension plan and an appropriate distribution of all the marital assets. On remand, the trial court recomputed the assets, this time including all available pension plans, and made a property distribution that roughly equalized the assets awarded to both parties.