

April Case Law Review

Malmon-Berg v. Malmon-Berg, 2014 Ohio 1784

Procedural History: The parties are the divorced parents of two minor children. Previously, the parties entered into an agreed shared parenting plan whereby mother relocated to California with the parties' daughter while father remained in Wooster with the parties' son. The parties agreed the plan would be "revisited and renegotiated" if father found employment and moved outside of Wayne County.

Father found employment in Colorado and filed a notice of intent to relocate. Mother opposed the relocation and filed a motion to restrain father. Mother also filed a motion for reallocation of parental rights and modification of the shared parenting plan.

After a hearing on the matter, the trial court denied mother's motions. Mother appealed.

Synopsis: As a preliminary matter, father argued that mother failed to file a notice of appeal within the prescribed thirty days. The Ninth District found that because the trial court never instructed the clerk to serve all parties, the running of time for an appeal was tolled. Therefore, mother's appeal was timely.

Mother argued that the trial court did not properly consider the "best interest of the child" factors when denying her motion to modify the shared parenting plan and motion for reallocation of parental rights.

The Ninth District disagreed. Mother argued that father's addiction has consumed him to the point that he is unable to adequately care for the parties' son. The evidence did not support this argument. The evidence showed that father sought ongoing treatment, enrolled the child in counseling and that the child was doing well in his care.

Decision: Affirmed.

Kent v. Kent, 2014 Ohio 1502

Procedural History: The parties were divorced on January 21, 2010. The divorce decree ordered that the parties' retirement accounts should be split evenly between the parties using January 7, 2010 as the assignment date.

On August 30, 2013, the trial court issued several orders dividing the parties' retirement accounts. It is from this order that husband, proceeding *pro se*, appealed.

Synopsis: Husband's assignments of error deal with whether the orders dividing the retirement accounts comply with the divorce decree. The Ninth District found that the orders were in complete compliance.

Decision: Affirmed.

Murphy-Kesling v. Kesling, 2014 Ohio 1816

Procedural History: When the parties divorced, they agreed that husband should receive part of wife's STRS pension. The parties were to "employ Pension Evaluators to determine the marital portion of [the STRS account] and determine the value of a Social Security offset for [husband's] right to receive Social Security benefits. The marital portion of said account less said Social Security offset will then be divided equally between the parties".

Subsequently, wife began receiving disability payments from STRS and husband was paid a portion of wife's payments. Wife then returned to work and worked until her retirement in 2013. After she retired, STRS did not pay any of her benefits to husband

because the division of property order directed it to distribute only the “first” payment to husband (the original disability payments). Husband motioned the court for a new division of property order. Husband’s motion was granted and wife appealed.

Synopsis: On appeal, wife argued that the trial court erred in creating a new division of property order. The Ninth District disagreed. In the case of *Wilson v. Wilson* (2007 Ohio 6056), the Supreme Court found that a QDRO “implements a trial court’s decision of how a pension is to be divided incident to divorce or dissolution” but “does not in any way constitute a further adjudication of the merits of the pension division...”.

Here, the trial court had found that the term “first” in the original division of property order did not mean “only”. The Ninth District agreed with the trial court’s finding that it would be inequitable for wife to defeat husband’s claim to her retirement by receiving disability benefits. The Ninth District found that the trial court’s modification of the division of property order was proper and not barred by the doctrine of *res judicata*.

Decision: Affirmed.