

*Zehner v. Zehner*

Superior Court of Pennsylvania

No: 1645 WDA 2017

2018 Pa. Super. 242

August 31, 2018

Before: Olson, Dubow and Musmanno

Opinion by: Musmanno

This Superior Court opinion serves as either 1) proof that some spouses will litigate even in the face of an inherently unfair result from a flawed Consent Order; or 2) a primer on division of retirement plans for law students and recent law graduates, or 3) a reminder that pension divisions in divorce actions should be thoughtfully undertaken and executed. The Superior Court affirmed the trial court's mandate to execute a new amended Qualified Domestic Relations Order (QDRO) that contained a corrected coverture fraction.

Husband and Wife signed a 2014 Consent Order and a 2015 QDRO in their divorce. The Consent Order provided that the parties would divide the marital portion of their respective retirement assets equally. It also provided that each party would retain 50% of the marital portion of his and her retirement plans and 100% of the non-marital portion of his and her retirement plans. All would have been well, if that were the end of the provisions, but the Consent Order also provided that the coverture fraction for Wife's pension "shall be determined as follows: the numerator shall be the Date of Marriage through the Date of Separation; the denominator shall equal the amount of [Wife's] service through the date of separation." This language resulted in Husband receiving 50% of Wife's non-marital pension, while Wife did not receive any portion of Husband's non-marital portion. This result was clearly unintended by the parties.

Regardless of the obvious error in this result, Wife was forced to file a Petition for Special Relief, attend a hearing and file a brief. On appeal, Husband presented six issues for the Court's review. The six issues were decided in Wife's favor and the trial court's order was affirmed.