

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D36233  
O/kmb

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Argued - September 18, 2012

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
SHERI S. ROMAN, JJ.

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2011-05631

DECISION & ORDER

Patricia McVeigh, respondent, v Warren Curry,  
appellant.

(Index No. 11046/08)

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Bruce A. Burns, White Plains, N.Y., for appellant.

Patricia McVeigh, Nanuet, N.Y., respondent pro se.

In a matrimonial action in which the parties were divorced by judgment dated December 15, 2010, the defendant appeals from so much of an order of the Supreme Court, Rockland County (Jamieson, J.), dated April 11, 2011, as granted that branch of his motion which was, in effect, to direct the plaintiff to furnish him with a copy of her birth certificate to enable him to elect the annuity option of his pension fund only to the extent of directing her to furnish the birth certificate for the purposes of his electing the 100% joint and survivor option of his pension fund or his obtaining life insurance, and granted that branch of the plaintiff's cross motion which was, in effect, to direct the defendant to elect either the 100% joint and survivor option of his pension fund or obtain life insurance to cover her 50% share of the marital portion of the defendant's pension.

ORDERED that the order is modified, on the law, (1) by deleting the provision thereof granting that branch of the defendant's motion which was, in effect, to direct the plaintiff to furnish him with a copy of her birth certificate to enable the defendant to elect the annuity option of his pension fund only to the extent of directing her to furnish the birth certificate for the purposes of his electing the 100% joint and survivor option of his pension fund or his obtaining life insurance, and substituting therefor a provision granting that branch of the defendant's motion to the extent of directing the plaintiff to furnish the defendant with a copy of her birth certificate for the purposes of his electing the 50% joint and survivor option of his pension fund or his obtaining life insurance,

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and (2) by deleting the provision thereof granting that branch of the plaintiff's cross motion which was, in effect, to direct the defendant to elect either the 100% joint and survivor option of his pension fund or obtain life insurance to cover her 50% share of the marital portion of the defendant's pension, and substituting therefor provisions granting that branch of the plaintiff's cross motion to the extent of directing the defendant to elect either the 50% joint and survivor option of his pension fund or obtain life insurance to cover the plaintiff's 50% share of the marital portion of the defendant's pension, provided that, if the defendant elects the 50% joint and survivor option, any Qualified Domestic Relations Order must specify that the plaintiff is to receive no more than her 50% share of the marital portion of the defendant's pension, pursuant to *Majauskas v Majauskas* (61 NY2d 481); as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The parties' marriage was terminated in a judgment of divorce dated December 15, 2010. With respect to the equitable distribution of the defendant's pension, the judgment of divorce, in accordance with a stipulation of the parties and an order dated May 25, 2010, provides, in essence, that the plaintiff is entitled to a 50% share of the marital portion of the defendant's pension, and that share must be distributed pursuant to the equitable distribution formula established in *Majauskas v Majauskas* (61 NY2d 481). The judgment of divorce, in accordance with the order dated May 25, 2010, also provides that, if the defendant elects a pension option that does not have any survivor benefits, he must obtain appropriate life insurance.

The defendant moved, inter alia, in effect, to direct the plaintiff to furnish him with a copy of her birth certificate to enable him to elect the annuity option of his pension fund. Under the annuity option, the defendant would specify the annual amount the plaintiff would receive for the rest of her life upon his death. The plaintiff opposed the defendant's motion and cross-moved, inter alia, in effect, to direct the defendant to elect the 100% joint and survivor option of his pension or obtain life insurance to cover her 50% share of the marital portion of the defendant's pension. In the order appealed from, the Supreme Court directed the plaintiff to furnish a copy of her birth certificate only for the purposes of the defendant's electing the 100% joint and survivor option of his pension fund, or his obtaining life insurance. In addition, the Supreme Court determined that the annuity option was not a joint and survivor option. The defendant appeals, and we modify.

Under the circumstances of this case, where the parties never discussed the annuity option prior to the judgment of divorce, the Supreme Court properly declined to direct the plaintiff to furnish the defendant with a copy of her birth certificate to enable him to elect the annuity option of his pension fund (see *Matter of Gursky v Gursky*, 93 AD3d 1127; *Newman v Newman*, 269 AD2d 873; *Von Buren v Von Buren*, 252 AD2d 950, 951).

However, we agree with the defendant that the Supreme Court erred in directing the plaintiff to furnish the defendant with a copy of her birth certificate only for the purposes of his electing the 100% joint and survivor option of his pension fund or his obtaining appropriate life insurance, as that option could potentially result in an award to the plaintiff that is more than she is entitled to under the equitable distribution formula enunciated in *Majauskas v Majauskas* (61 NY2d 481) (see *Chambers v Chambers*, 259 AD2d 807, 807-808). The 100% joint and survivor option would, upon the defendant's death, provide the plaintiff with the full monthly retirement allowance

of the defendant's pension for the rest of her life. In contrast, Option 3 of the defendant's pension fund, the 50% joint and survivor option, would, upon the defendant's death, provide the plaintiff with 50% of the original monthly retirement allowance for the rest of her life. The 50% joint and survivor option is closer to the equitable distribution formula set forth in *Majauskas* (61 NY2d 481) (see *Erickson v Erickson*, 281 AD2d 862, 863; *Chambers v Chambers*, 259 AD2d at 807-808).

Under these circumstances, the order must be modified as indicated herein.

The plaintiff's remaining contention is without merit.

RIVERA, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court