



The parties were married in 1969. The wife commenced an action for divorce in 1994. The husband answered, but did not counterclaim for divorce. Five years later, following long and contentious pretrial proceedings, the wife moved for permission to discontinue the action. The husband opposed the motion, and cross-moved to amend his answer to assert a counterclaim for divorce. Supreme Court granted the wife's motion to discontinue the action and denied the husband's cross motion.

Almost immediately, the husband commenced this action for divorce and ancillary relief. After finding that the husband was entitled to a divorce on the ground of constructive abandonment, Supreme Court held a bench trial to resolve disputed equitable distribution issues.

Supreme Court held that the husband's pension must be valued as of the commencement date of the present action, rather than the commencement date of the wife's 1994 action. Relying on Domestic Relations Law § 236(B)(4)(b), the court reasoned that it was precluded from selecting a valuation date earlier than the commencement of the pending action. The court further observed that there was no evidence of "wrongdoing or ill-motive" in the wife's election to discontinue the prior divorce action. After considering the duration of the marriage and the other statutory factors pursuant to Domestic Relations Law § 236(5)(d), Supreme Court determined that the marital property, including the marital portion of the pension, should be divided equally between the

parties.

The Appellate Division modified the judgment of divorce, in part, and otherwise affirmed, holding that Supreme Court improvidently exercised its discretion in valuing the pension as of the commencement date of the present action. The court concluded that the "appropriate valuation date was the commencement date of the 1994 action" because there was "no evidence that the parties reconciled and continued to receive the benefits of the marital relationship after the prior action was commenced" (25 AD3d 670, 671 [2006]).

We now modify the order of the Appellate Division and remit the matter to Supreme Court for further proceedings.

Domestic Relations Law § 236(B)(1)(c) defines marital property as all property acquired "during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action." Thus, in the absence of a separation agreement, the commencement date of a matrimonial action demarcates "the termination point for the further accrual of marital property" (Anglin v Anglin, 80 NY2d 553, 556 [1992]). The definition of marital property "should be construed broadly in order to give effect to the 'economic partnership' concept of the marriage relationship recognized in the statute" (Price v Price, 69 NY2d 8, 15 [1986]). Once property is classified as marital or separate, the trial court has broad discretion to select an "appropriate date for measuring the value of [the]

property" (McSparron v McSparron, 87 NY2d 275, 287 [1995]).

However, the valuation date must be between "the date of commencement of the action [and] the date of trial" (Domestic Relations Law § 236 [B][4][b]).

In determining whether the commencement of a particular "matrimonial action" terminates the accrual of marital property, we have looked to "the overall legislative intent of the Domestic Relations Law and . . . the particular application of the equitable distribution regime" (Anglin, 80 NY2d at 556). In Anglin, this Court held that the commencement of a separation action does not cut off the accrual of marital property because such an action "does not, ipso facto, terminate the marital economic partnership" (id. at 554). Rather, "[t]he economic partnership should be considered dissolved when a matrimonial action is commenced which seeks 'divorce, or the dissolution, annulment or declaration of the nullity of a marriage,' i.e., an action in which equitable distribution is available" (id. at 557, quoting Domestic Relations Law § 236[B][5]). We observed that this rule "provides internal consistency and compatibility and objective verification, as opposed to uneven, ephemeral, personal interpretations as to when economic marital partnerships end" (id.).

For similar reasons, we conclude that the value of marital property generally should not be determined by the commencement of an action for divorce that does not ultimately

culminate in divorce. Equitable distribution is available "in an action wherein all or part of the relief granted is divorce" (Domestic Relations Law § 236[B][5]). Where there is no divorce, there can be no equitable distribution. Consequently, permitting the commencement date of the prior, unsuccessful divorce action to govern the valuation date of marital property for the purposes of a later, successful action in which equitable distribution is available would be inconsistent with the statutory scheme.

In short, we hold today that courts must use the commencement date of the later, successful action as the earliest valuation date for marital property. However, the circumstances surrounding the commencement of the earlier action can and should "be considered as a factor by [the trial court], among other relevant factors, as [it] attempt[s] to calibrate the ultimate equitable distribution of marital economic partnership property acquired after the start of such an action by either spouse" (see Anglin, 80 NY2d at 558).

Here, as Supreme Court concluded, the pension benefits are marital property to the extent that they were earned prior to the commencement of the present divorce action (see Olivo v Olivo, 82 NY2d 202, 207 [1993]; Majauskas v Majauskas, 61 NY2d 481, 491 [1984]; see also Scheinkman, Practice Commentaries, McKinney's Cons Laws of NY, Book 14, Domestic Relations Law § 236, C236B:26, at 424 ["Pension rights are determined as of date of commencement of action since rights earned subsequently cannot

be considered marital property"]). As a result, the marital portion of the pension could not be valued at any time earlier than the commencement date (see Domestic Relations Law § 236 [B][4][b]).

Accordingly, the judgment appealed from and the order of the Appellate Division brought up for review should be modified, with costs to defendant, and the matter remitted to Supreme Court for further proceedings in accordance with the opinion herein and, as so modified, affirmed.

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Judgment appealed from and order of the Appellate Division brought up for review modified, with costs to defendant, by remitting to Supreme Court, Nassau County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed. Opinion by Judge Pigott. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith and Jones concur.

Decided June 26, 2008