

Husband v Wife

2007 NY Slip Op 31786(U)

May 10, 2007

Supreme Court, Broome County

Docket Number: 0001000/1988

Judge: Jeffrey A. Tait

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Supreme Court, in the City of Binghamton, New York on the 4th day of May, 2007

PRESENT: HONORABLE JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

HUSBAND,

Plaintiff,

vs.

DECISION AND ORDER

Index No. 1988-XXXX
RJI No. 1988-XXXX-U

WIFE,

Defendant.

APPEARANCES:

Albert Aaron, Esq.
Attorney for Plaintiff
89 Court Street
Binghamton, NY 13901

Lauren S. Cohen, Esq.,
Attorney for Defendant
142 Front Street
Binghamton, NY 13905

HON. JEFFREY A. TAIT, J.S.C.

The plaintiff, Mr. XXXX, and the defendant, Ms. XXXX, are former spouses who were divorced on XXXX, 1990. At issue now is the amount and payment of arrears due to Ms. XXXX from Mr. XXXX. In a prior Decision and Order, it was determined that Ms. XXXX is entitled to an amended Qualified Domestic Relations Order providing that she receive a portion of Mr. XXXX's pension pursuant to the 1990 Judgment of Divorce (*see XXXX v. XXXX*, Sup Ct, Broome County, March 22, 2007, Tait, J., Index No. 1988-1000). In that Decision and Order, it was determined that a hearing would be held to establish the total amount of arrears and the amount of periodic payments to pay the arrears (*see id.*). More specifically, the prior Decision and Order acknowledged that Mr. XXXX's current economic situation might be relevant to determining the period over which payment of the accrued arrears might be made and the amount of each payment over that period (*see id.*).

A hearing was held on May 4, 2007 at which both Mr. XXXX and Ms. XXXX testified. At the outset of the hearing, it was established that the arrears due are comprised of 56 monthly pension payments beginning October 2002¹ through May 2007 and that the share of each monthly payment due to Ms. XXXX was \$544.45. The total arrears to date is \$30,489.20.

Mr. XXXX testified that his total monthly pension payment is \$1,527.30. Out of that, his second wife receives \$229.09 each month and \$195.92 is deducted for his contribution to his

¹

When Mr. XXXX began receiving his monthly pension payments upon his early retirement.

health insurance. When Ms. XXXX \$544.45 monthly share of the pension is added to the other deductions from the payment, Mr. XXXX's share will be \$557.84.²

Mr. XXXX testified that as a result of a Chapter 13 bankruptcy proceeding, he makes a \$460.00 monthly payment to the trustee. He also stated that a mortgage foreclosure action has been commenced by the mortgagee of his home. According to Mr. XXXX, he purchased the home four years ago for \$30,000.00 and the balance now due on the mortgage is about \$25,000.00. The monthly mortgage payment is about \$400.00.³ He testified that he has no equity in the home.⁴ He also testified that his current wife is disabled and receives \$400.00 per month.

Upon questioning by Ms. XXXX's attorney, it was apparent that in the past Mr. XXXX did work on certain jobs with his son, who paid him without deducting any taxes or other normal and customary withholding payments. According to Mr. XXXX, he was of very little help to his son and simply handed tools to his son.

It is clear that Mr. XXXX's disposable income is very limited. He lacks sufficient funds to pay even modest customary and ordinary living expenses. After deducting the amount due

2

As of January 2007, Mr. XXXX was 59 years old. No mention was made in any testimony that he was receiving Social Security benefits.

3

His January 2007 Statement of Net Worth states that the payment is \$460.00 per month. However, one has to wonder how reliable the figures in that document are. After listing a multitude of expenses totaling well over \$1,000.00 per month, he inexplicably lists on page 5 of the Statement Total Monthly Expenses of \$114.50 and Total Annual Expenses of \$110.00.

4

This was in response to a question from his attorney. When I asked him what equity meant, he said he didn't know.

to Ms. XXXX (\$544.45) and the second Mrs. XXXX (\$229.09) and his monthly health insurance premium contribution (\$195.92) from his monthly pension payment (\$1,527.30), he is left with \$557.84 each month. After his \$460.00 payment to the bankruptcy trustee, he is left with \$97.84.

Even where the arrears due are for child support, applicable law provides a limitation on the amount of arrears that is due or may accrue where the payor's income is below the poverty line (*see Broome County Dept. of Social Serv. v. Paine*, 35 AD3d 1111 [3d Dept 2006]; *see* Family Court Act §413[1][g]). On the other hand, the award of a portion of Mr. XXXX's pension to Ms. XXXX is a distributive property award that in essence took an asset at the time of the divorce, divided it between the parties, and left its actual distribution to a later date. In such circumstances, justification to reduce or not enforce that agreed upon award is lacking.⁵

Therefore, the Court is left to fashion an appropriate remedy given these competing principles. Awarding Ms. XXXX a judgment against Mr. XXXX is of little practical effect, as it does not appear that there are any assets from which she could realize payment. Yet, awarding her a significant portion of Mr. XXXX's remaining unencumbered pension would leave him with no income.

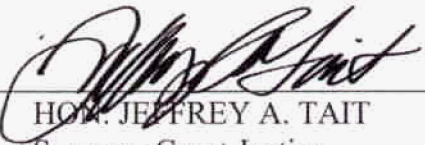
In light of the foregoing, Ms. XXXX is awarded an additional sum of \$100.00 from each monthly pension payment to be credited against arrears due from Mr. XXXX's pension. This is without prejudice to any future application for additional sums should assets or funds become available or known from which additional arrears might be paid.

5

For example, if the award were of a lump sum from a IRA account paid at the time of the divorce, Mr. XXXX would not have any prospect of forcing Ms. XXXX to return some or all of that money to him because of his current financial situation.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: May 10, 2007
Binghamton, New York



HON. JEFFREY A. TAIT
Supreme Court Justice