

COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Bray and Senior Judge Hodges
Argued at Alexandria, Virginia

THOMAS E. McGLATHERY

v. Record No. 1550-96-4

SHARRON A. McGLATHERY

MEMORANDUM OPINION* BY
JUDGE RICHARD S. BRAY
APRIL 8, 1997

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA
Donald H. Kent, Judge

James Ray Cottrell (Christopher W. Schinstock;
Gannon, Cottrell & Ward, P.C., on briefs), for
appellant.

Bruce Richard Eells (Matthew & Snider, on
brief), for appellee.

Thomas E. McGlathery (husband) appeals from the trial court's determination that Sharron A. McGlathery (wife) was entitled to a percentage of husband's total disability retirement benefits, including that portion attributable to a workers' compensation award, pursuant to the terms of a property settlement agreement between the parties. We conclude that the court correctly ascertained the sum due wife and affirm the decree.

The parties are fully conversant with the record, and this memorandum opinion recites only those facts necessary to a disposition of the appeal.

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

THE AWARD

The 1994 order adjudicating husband's earlier declaratory judgment petition resolved that "all pension benefits and/or disability payments" payable to husband are retirement benefits contemplated by the agreement. During those proceedings, husband advanced no argument that a portion of the disability retirement then in issue had been temporarily displaced by a workers' compensation award and was, therefore, beyond the embrace of the agreement. Rather, husband sought to limit those monies due wife to a computation based upon his basic retirement pension and not his disability retirement benefits. Finding no merit in husband's contention, the court ordered husband to pay wife that percentage of his disability benefits specified in their agreement.¹

Assuming, without deciding, that husband's workers' compensation benefits are insulated from wife's claim, the decree of the trial court did not constitute an assignment of such award to wife or subject it to a creditor claim in violation of Code § 65.2-531. In Owen v. Owen, 14 Va. App. 623, 419 S.E.2d 267 (1992), we addressed a federal statute which prohibited assignment of military disability benefits and reasoned that the recipient is not precluded "from entering into an agreement to

¹A ruling by the trial court from the bench during the hearing of December 13, 1995, suggests it considered the workers' compensation issue res judicata. However, such finding is not reflected in subsequent orders and will not be addressed on appeal.

provide a set level of payments, the amount of which is determined by considering [non-assignable] disability benefits as well as retirement benefits." Id. at 628, 419 S.E.2d at 270; see id. at 626-28, 419 S.E.2d at 269-70. Similarly, in this instance, the object of the agreement was that amount due wife from husband in relation to his pension, later judicially determined to include disability benefits, payable from such monies as husband deems appropriate.

DUE PROCESS

Husband timely appealed the disputed May 22, 1996 order, entered by the court following several ore tenus hearings, attendant argument of counsel, and consideration of the December 13, 1995 proceedings, the related order of January 24, 1996, and subsequent orders. Thus, it is apparent from the record that husband's defense to wife's claim was fully presented to and considered by the court, thereby preserving husband's right to due process, notwithstanding delay in adjudicating the cause. See, e.g., Eddine v. Eddine, 12 Va. App. 760, 763, 406 S.E.2d 914, 916 (1991) (quoting Dohany v. Rogers, 281 U.S. 362, 369 (1930)) ("The requirements of the due process clause are satisfied if a party 'has reasonable notice and reasonable opportunity to be heard and to present his claim or defense'"). Moreover, husband has not specified any prejudice occasioned by the disputed procedural course. Cf. Jamborsky v. Baskins, 247 Va. 506, 511, 442 S.E.2d 636, 639 (1994) (violations

of due process arising from delay in entering order are determined on case-by-case basis; no denial of due process absent prejudice).

Finally, we deny husband's request for attorney's fees and costs.

Accordingly, we affirm the decree.

Affirmed.