

STATE OF MICHIGAN
COURT OF APPEALS

GAETANA DiGESU,

Plaintiff–Appellee,

v

NICOLO DiGESU,

Defendant–Appellant.

UNPUBLISHED

July 12, 1996

No. 176126

LC No. 93-318769

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from an amended qualified domestic relations order (“QDRO”) entered by the circuit court as a result of a hearing conducted after a divorce decree was entered between the parties. This amended QDRO required that plaintiff be named as the sole recipient of surviving spouse benefits under defendant’s pension plan. We affirm.

Portions of the judgment of divorce between the parties were entered in accordance with the parties’ stipulation, while other provisions were decided by the circuit court after trial. Unfortunately, the judgment and the record as a whole do not clearly indicate which provisions resulted from stipulation and which were imposed by the court.

First, defendant asserts that the trial court lacked authority to enter the amended QDRO because plaintiff did not file her motion to amend the QDRO until approximately two months after the final judgment of divorce and initial QDRO were entered. Defendant cites MCR 2.119(F)(1). However, that subrule concerns the time that a party has to file for rehearing or reconsideration of a decision on a postjudgment motion. It is inapplicable to a motion to amend a final judgment, such as a judgment of divorce. *Thomas v Thomas*, 337 Mich 510, 512-513; 60 NW2d 331 (1953), also cited by defendant, is inapposite as its requirements regarding an application for rehearing from a final decree in a divorce case were based on a provision of the Michigan Court Rules of 1945.

However, defendant also contends that the circuit court’s entry of the amended QDRO impermissibly modified the terms of the parties’ property settlement. We reject this claim.

* Circuit judge, sitting on the Court of Appeals by assignment.

The parties' judgment of divorce provided:

PROPERTY SETTLEMENT

* * *

IT IS FURTHER ORDERED that the parties shall enter into a Qualified Domestic Relations Order awarding Plaintiff, Gaetana DiGesu, one-half (1/2) or \$338.00 monthly of Defendant, Nicolo DiGesu's monthly current retirement benefits of \$676.00 from Ford Motor Company.

The judgment also provided:

RETIREMENT BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED, that each of the parties hereto shall retain their respective interest in any pension, annuity or retirement benefits; any accumulated contributions in any pension, annuity or retirement system, and any right or contingent right in or to any unvested pension, annuity or retirement benefits, free and clear of any claim of the other party thereon.

It is undisputed that, at the time of the divorce, plaintiff had been designated as the surviving spouse under the Ford pension. This designation created survivorship rights in favor of plaintiff. Compare *Roth v Roth*, 201 Mich App 563; 506 NW2d 900 (1993). Under these circumstances, we do not view the court's amended QDRO as a modification of the underlying divorce judgment, but a clarification to more completely reflect the terms of the judgment of divorce. Under the judgment, plaintiff was entitled to a fifty percent share of the pension for an unlimited amount of time, and she was also entitled to retain her survivorship interest in the pension. Because the amended QDRO does not expand or alter her rights as set forth in the divorce judgment, the trial court did not abuse its discretion in entering the order.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo

* Circuit judge, sitting on the Court of Appeals by assignment.