

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL ALAN FRANKLIN,

Plaintiff/Counter Defendant-  
Appellant,

v

LAURIE JEAN FRANKLIN,

Defendant/Counter Plaintiff-  
Appellee.

UNPUBLISHED

August 6, 2002

No. 231629

Genesee Circuit Court

LC No. 99-215190-DO

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Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right a consent judgment of divorce entered by the circuit court. We vacate in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff challenges only two provisions of the consent judgment of divorce, arguing that they do not reflect the agreement the parties placed on the record about two months before the judge entered the consent judgment. These provisions involve the division of plaintiff's personal savings plan (PSP) and his pension.

After the parties agreed to a settlement, defendant's counsel placed the terms of the settlement on the record. As for plaintiff's General Motors pension, defendant indicated that the valuation date for the pension would be July 1999 and that the pension would "be split using a Qualified Domestic Relations Order [QDRO]—fifty percent to each party." Counsel noted an agreement regarding survivorship benefits. In the proposed judgment prepared by defendant, the paragraph pertaining to the pension provides that defendant shall receive fifty percent of the value of plaintiff's pension as of July 1, 1999, "including any early retirement supplement."

As to the PSP, defendant's counsel stated that the parties stipulated the value of the PSP as of September 1999 as \$84,723. They further agreed that "that amount will be split pursuant to a [QDRO]—fifty/fifty to each spouse." Defendant included the following language in her proposed judgment: "After segregation of Defendant's portion, Defendant is entitled to any increase and/or decrease in her amount."

Plaintiff argued before the trial court that the judgment as proposed by defendant did not reflect the parties' agreement as stated on the record. The trial court eventually signed the proposed judgment prepared by defendant. Plaintiff appeals, arguing that the trial court erroneously entered the consent judgment because it does not reflect the parties' agreement with respect to his pension and PSP. We agree.

In the absence of fraud, duress, mutual mistake or severe stress that prevented a party from understanding the nature and effect of the act, courts are bound by the property settlements reached through the parties' negotiations and agreement. *Keyser v Keyser*, 182 Mich App 268, 269; 451 NW2d 587 (1990). "This rule applies whether the settlement is in writing and signed by the parties or their representatives or the settlement is orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the lower court." *Id.* A consent judgment is a reflection of the parties' agreement. *Klawiter v Reurink*, 196 Mich App 263, 266; 492 NW2d 801 (1992). In this case, the judgment signed by the court does not reflect the parties' agreement as it was placed on the record.

The Court addressed the division of early retirement benefits in *Quade v Quade*, 238 Mich App 222; 604 NW2d 778 (1999). The trial court did not include an award to the plaintiff of the defendant's early retirement benefits as part of his regular pension because it was not specifically granted to the plaintiff in the judgment of divorce. *Id.* at 223-224. This Court noted that "separate and distinct components of pension plans must be specifically awarded in a judgment of divorce in order to be included in a QDRO." *Id.* at 224. Because the parties could have but did not add a provision for early retirement benefits, the Court could not conclude that they intended to include early retirement benefits as part of the property settlement. *Id.* at 224-225.

As in *Quade*, we find that the parties, when they expressed their agreement on the record, did not include early retirement benefits as part of their property settlement. They could have specifically agreed to include early retirement benefits just as they did rights of survivorship, but they did not. Because they did not, we cannot conclude that they intended to include a division of early retirement benefits. The trial court erred in providing for such benefits in the consent judgment of divorce.

As for the PSP, the parties stipulated the value of the PSP as of September 1999. They agreed on the record that they would split that amount fifty/fifty through a QDRO. The parties did not speak of the increase or decrease of the PSP after the date of valuation, although they were specific about other terms of the settlement. We find that the parties did not agree that defendant would receive the benefit of any increase—or detriment of any decrease—in the PSP. They agreed that she would receive \$42,361.50. The addition of language providing that defendant is entitled to any increase and/or decrease in her amount is contrary to the terms of the settlement that the parties placed on the record. Therefore, the trial court erred in entering a judgment that includes those terms.

The consent judgment of divorce is vacated in part, and this matter is remanded for amendment of the consent judgment of divorce consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra