

## Every word counts when dividing ‘retirement benefits’

By Barbara L. Jones

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When it comes to construing the terms of an agreement to divide marital property, retirement benefits are retirement benefits and disability benefits are ... not.

That’s the holding of the Court of Appeals in the post decree case of *Ertl v. Ertl*, which reversed a Dakota County District Court judge’s ruling awarding a portion of the husband’s disability benefits to the wife where the stipulated judgment and decree called for a division of “retirement assets.”

“Stipulated judgments, such as the Judgment and QDRO at issue in this case, are ‘accorded the sanctity of binding contracts,’ [cite omitted], and we therefore construe a stipulation using the ordinary rules of contract interpretation, wrote Judge Denise Reilly for the court.

The parties stipulated to a detailed agreement dividing the husband’s Teachers Retirement Association retirement benefits valued at \$2,769 per month and a Fidelity 403 (b) account of \$151,679.00. The payments were to be made pursuant



Judge  
Denise Reilly

to a Qualified Domestic Relations Order which the parties signed in May 2011.

Under the Employee Retirement Income Security Act, a QDRO recognizes that payments should be made to an alternate payee.

The agreement also provided that if the husband qualified for “Rule of 90” benefit payments, the wife would receive an additional \$20,000 payment. The Rule of 90 refers to certain benefits if a retiree’s age plus years of service equal 90.

In 2014 the husband began receiving disability benefits which the retirement plan divided with the wife pursuant to a QDRO. The husband moved to clarify the judgment and decree to exclude the disability payments from the QDRO.

The District Court judge denied the motion, saying that the judgment and decree, read as a whole, included disability benefits along with retirement benefits.

The court also sua sponte found that the husband had qualified for the Rule of 90 benefits and awarded the wife \$20,000.

The Court of Appeals reversed, saying that the clear language of the judgment and decree limited the award to the wife to 50 percent of retirement benefits, and not disability benefits.

“The parties clearly expressed their intent to



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appellate attorney

limit wife’s award to 50% of husband’s ‘retirement benefits’ and the district court erred by failing to give effect to the plain and ordinary meaning of the stipulated terms in the Judgment,” wrote Judge Denise Reilly for the court.

The Court of Appeals said its interpretation of the judgment and decree harmonized the law and the facts of the case and preserved the sanctity of the stipulated judgment.

“This case illustrates the importance that the QDRO issued conform to the Judgment and Decree,” said appellate attorney Kay Nord Hunt, who represented the husband. “In this case the QDRO as ordered by the trial court omitted the word ‘retirement’ before the word ‘benefits’ in a situation where the Judgment and Decree decreed a division only of retirement benefits.”

“It’s helpful to have a published decision that makes it clear that the QDRO must conform to the judgment and decree. If it doesn’t, you can get it amended because it is an



Kay Nord Hunt

enforcement order,” she said.

Additionally, the court said that the District Court judge erred by sua sponte determining that the husband had reached the Rule of 90, entitling the wife to an additional payment. There was no motion before the court to award that sum and no factual basis for it, the appellate court said.

The wife’s attorney, Andrew Moran, could not be reached for comment.