

**IN THE COURT OF APPEALS 04/08/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00615 COA**

**JAMES CARROLL WALDRON**

**APPELLANT**

**v.**

**LINDA WALDRON STAHLKE**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM ROBERT TAYLOR, JR.

COURT FROM WHICH APPEALED: CHANCERY COURT OF LAMAR COUNTY

ATTORNEY FOR APPELLANT:

CAROLYN B. MILLS

ATTORNEY FOR APPELLEE:

EUGENE L. FAIR

NATURE OF THE CASE: DOMESTIC RELATIONS -- ACTION FOR CONTEMPT BECAUSE APPELLANT FAILED TO DELIVER BALANCE OF VALUE OF STOCK IN RETIREMENT ACCOUNT TO APPELLEE PER PROPERTY SETTLEMENT AGREEMENT IN DIVORCE GRANTED ON GROUNDS OF IRRECONCILABLE DIFFERENCES

TRIAL COURT DISPOSITION: COURT ORDERED APPELLANT TO PAY APPELLEE \$22,358.15 PLUS ACCRUED INTEREST FOR VALUE OF UNDELIVERED STOCK IN APPELLANT'S RETIREMENT ACCOUNT

EN BANC

COLEMAN, J., FOR THE COURT

James Carroll Waldron appeals from a judgment of the Chancery Court of Lamar County by which the chancellor awarded Waldron's former wife, Linda Waldron Stahlke, an outstanding balance owed to her under a previous property settlement agreement. The outstanding balance of \$22,358.15 represented the value of shares of Chevron stock in Mr. Waldron's retirement account with Chevron, his employer when he and Ms. Stahlke were divorced, which Mr. Waldron had not delivered to Ms. Stahlke even though he had agreed to do so in their property settlement agreement. Along with this sum, the chancery court ordered Waldron to pay interest accrued on this amount from the date of September 2, 1987, the date on which Waldron had first become obligated to pay this amount to Stahlke pursuant to an earlier order dated August 17, 1987. This Court affirms the order from which Mr. Waldron has appealed.

## I. FACTS

James Carroll Waldron and Linda Faye Waldron (Stahlke) were married in Jones county on January 21, 1961, and they separated on or about January 2, 1985. Waldron and Stahlke jointly filed for divorce on the statutory ground of irreconcilable differences in the Chancery Court of Lamar County. On September 30, 1985, that court granted unto Waldron and Stahlke a divorce on the grounds of irreconcilable differences. In its judgment of divorce the chancery court confirmed and ratified the couple's agreement which provided that approximately 2,040 shares of Chevron, U.S.A. stock would be divided equally between them. These shares of Chevron stock were a part of Waldron's corporate profit sharing plan as an employee of Chevron. For whatever reason, Waldron failed to transfer one half of these shares of Chevron U.S.A. stock to his former wife.

On July 18, 1986, Stahlke filed a petition to cite for contempt against Waldron. In this petition Stahlke charged that Waldron had "wilfully, contemptuously and obstinately failed and refused to transfer one-half of the 2,040 shares of Chevron U.S.A. stock to [her]." On June 19, 1987, in response to Waldron's and Stahlke's joint motion ore tenus, to reset the case "for at least sixty days from th[at] date in order to give . . . Waldron an opportunity to secure the transfer of the Chevron stock to [Stahlke]," the chancery court reset Stahlke's petition to cite for contempt for August 17, 1987. On August 17, 1987, the chancery court rendered its order in which it found and adjudicated as follows:

[P]roblems have arisen and it has become evident that [Waldron] has been unable to effectuate a transfer of said stock to [Stahlke]. Therefore, [Waldron and Stahlke] agree that James Carroll Waldron shall purchase the Plaintiff, Linda Faye Waldron's, fifty per cent (50%), or one-half of the 2,040 shares of Chevron U.S.A. stock at the price per share that the stock was selling on the stock exchange on the date the divorce was entered, that date being September 30, 1985. [Waldron] is hereby granted fifteen (15) days within which to pay [Stahlke] the value of one-half of the approximately 2,040 shares of Chevron U.S.A. stock that he owned on September 29, 1985.

On September 30, 1985, one share of common stock in Chevron U.S.A. was worth \$37.00. As of September 30, 1985, Waldron owned 2,317.513 shares of this stock worth \$83,747.98. Thus, as the chancery court subsequently calculated, Waldron owed Stahlke \$42,873.99 for her one-half of those 2,317.513 shares of Chevron U.S.A. stock.

Waldron did not pay Stahlke \$42,873.99 within fifteen days of August 17, 1987, the date of that order. Instead, eight months later, on April 20, 1988, Waldron sent Stahlke a check for \$22,686.55. This amount was \$20,187.44 less than the September 30, 1985, value of one-half of Waldron's 2,317.513 shares of Chevron U.S.A. stock. More than three years later, on May 8, 1991, Stahlke once again filed a petition to cite for contempt against Waldron. Waldron filed his answer to this petition on May 20, 1991. The record reflects that after the petition and answer were filed, (1) both litigants changed attorneys two or three times, (2) the case was set and reset for trial no fewer than six times, and (3) continuing negotiations occurred between Waldron and Stahlke's ever-changing lawyers to resolve Stahlke's claim against Waldron.

On February 23, 1993, almost two years after Stahlke filed her second contempt petition, Don A. McGraw, Jr., who then represented Ms. Stahlke, wrote the secretary for James R. Hayden, who continued to represent Waldron:

Pursuant to our conversation you are to obtain a \$15,000.00 Cashier's Check made payable to Ms. Linda Stahlke as settlement in full of the Petition [f]or Citation for Contempt presently pending in Civil Action File No. 11,497-T.

I will prepare an Order dismissing the case with prejudice for Mr. Hayden's signature.

Later, pursuant to yet another setting for trial, James R. Hayden, Waldron's counsel, wrote Don A. McGraw, Stahlke's counsel, on March 15, 1993, to advise him that he was unavailable for the setting for trial on March 22, 1993, because he had a prior trial setting in circuit court. Hayden included this sentence in his letter: "I would like to inform you that Mr. Waldron said that he would give Ms. Stahlke \$15,000.00 without interest." Ten days later, Hayden again wrote McGraw to advise him that he had received McGraw's letter of February 23, 1993. He then advised McGraw as follows:

If you will, please prepare the Judgment for the \$15,000.00 as settlement in the case. It is my understanding that this money will come from Chevron; in other words, they will give Mr. Waldron the balance of his money and cut a check out of that directly to [Stahlke] for \$15,000.00.

We need to get to Chevron and figure out how we are going to do that. Please advise at your convenience if you want me to do this, or if you would rather do it.

Chevron U.S.A. continued to frustrate Waldron's effort to withdraw the sum of \$15,000 from his profit sharing and savings plan, the consequence of which was that on June 2, 1993, the chancery court rendered a qualified domestic relations order (QDRO) "as defined by §414(p) of the Internal Revenue Code of 1986, as amended," in which that court ordered that [Stahlke] was "hereby awarded \$15,000.00 cash of and from the Chevron Corporation Profit Sharing and Savings Plan in which . . . Waldron is a participant and which is administered by Administrator, Chevron Corporation." Chevron did not respond to the QDRO, and Stahlke never received the \$15,000.00

which Waldron and she had contemplated would settle her claim against him.

Almost four years after Stahlke filed her second contempt petition against Waldron, the matter came to trial on April 4, 1995. By this time Eugene A. Fair represented Stahlke, and Carolyn B. Mills represented Waldron. At the trial, Waldron, Don A. McGraw, and James R. Hayden testified. After both parties had rested, the chancellor took a five minute recess and then returned to the bench from which he rendered an opinion about the issues in the case. The chancellor found that Waldron and Stahlke had not consummated their settlement agreement because Waldron had not paid her the sum of \$15,000.00 to settle her claim against him. About this settlement, he opined:

This is a very curious case involving whether or not there was a settlement reached. . . . There was some argument about that it was settled for the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00), but it was always contingent upon receipt of the money within a reasonable frame. Time was of the essence, one (1) attorney explained. The money was going to come from Chevron. Well, that got fouled up. Well, I think that both parties expected that the Agreement to be finalized within a reasonable time, it never was. . . . There was no consummation of the agreement. The money was not paid. That's the bottom line.

About the QDRO, the chancellor opined:

There was some issue about the QDRO being a Final Judgment resolving and dismissing the case. It does not say that. A QDRO is for Internal Revenue purposes only. There should have been an Order presented to this Court dismissing this case with prejudice reflecting a total settlement. That was not done in addition to the QDRO. The QDRO is between the parties and the corporate entity that has the pension funds. It is not a Judgment concluding the Civil Action.

In the judgment which the chancellor entered pursuant to his bench opinion, he recited that "the [QDRO] as entered June 2, 1993, in no manner modified or amended the Order of August 17, 1987. And that said [QDRO] was not a compromise of any claims [Stahlke] may have had against [Waldron]." The chancellor then proceeded to render in favor of [Stahlke] and against [Waldron] for the original sum of \$42,873.99 "with interest thereon at the rate of 8% from and after September 2, 1987, the date which is 15 days after the Judgment of this Court of August 17, 1987." The chancellor credited Waldron with the sum of \$22,686.55 which he had paid Stahlke on April 20, 1988. The chancellor calculated that the exact amount of the balance due Stahlke as of the date of the hearing, April 4, 1995, was \$34,805.21, of which \$22,358.15 represented the principal balance of Waldron's debt for the value of the Chevron U.S.A. stock and interest of \$12,447.06 which had accrued on the principal balance. It is from this judgment that Waldron has appealed.

### **III. REVIEW AND RESOLUTION OF THE ISSUE**

We state the one issue which Waldron has presented to us for our resolution in his language as we find it in his brief:

Was the qualified domestic relations order as entered by the Chancellor on June 18, 1993, a final settlement of Appellee's claims.

## **A. Standard of review**

The standard of review in domestic matters such as this case is well-known: In *Crow v. Crow*, 622 So. 2d 1226, 1228 (Miss. 1993) repeated it:

Our scope of review in domestic relations matters is limited. "This Court will not disturb the findings of a chancellor unless the chancellor was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Bell v. Parker*, 563 So.2d 594, 596-97 (Miss.1990).

In other words, "[o]n appeal [we are] required to respect the findings of fact made by a chancellor supported by credible evidence and not manifestly wrong." *Newsom v. Newsom*, 557 So.2d 511, 514 (Miss.1990). This is particularly true "in the areas of divorce and child support." *Nichols v. Tedder*, 547 So.2d 766, 781 (Miss.1989).

## **B. Application of the standard of review to the issue in this case**

### **1. The contents of Qualified Domestic Relations Order**

In *Parker v. Parker*, 641 So. 2d 133, 1135 (Miss. 1994), an action for divorce, the chancellor assigned the wife thirty percent (30%) of the husband's vested interest in his employer's profit sharing plan as of the date the chancellor granted their divorce. To effect his assignment of this thirty percent interest to the wife, the chancellor entered what the supreme court described as "an order purporting to be a Qualified Domestic Relations Order (QDRO) pursuant to Section 26 U. S. C. A. § 414(p) of the Internal Revenue Code." *Id.* As was Stahlke in the case *sub judice*, the wife was named as alternate payee and beneficiary. *Id.* The issue in *Parker* was "the correctness of the chancellor's award to the wife of a percentage of the husband's vested profit sharing plan. *Id.* Thus, unlike the case *sub judice*, the issue in *Parker* was not whether the QDRO constituted a final settlement of the wife's claim against her husband for her share of his vested profit sharing plan.

Nevertheless, because *Parker* contains a concise, scholarly explanation of the origin of the qualified domestic relations order in the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829 (1974), and the clarification of its use in the Retirement Equity Act of 1984, Pub. L. 98-397, 98 Stat. 1426 (1984). *Id.* at 1135-36, we refer to *Parker* in this opinion. The supreme court explained the purpose of a QDRO as follows:

The [Retirement Equity Act which amended the Employee Retirement Income Security Act] permitted state domestic relations courts to enter a "Qualified Domestic Relations Order" (QDRO) to assign to a spouse rights in the participant's pension plan.

*Id.* at 1136 (citations omitted). The Mississippi Supreme Court then warned of the dire consequence of the failure to enter a QDRO as follows:

[I]n the absence of a QDRO, a divorce and the settlement of all marital property rights extinguishes all enforceable rights of an individual against an ERISA-covered pension plan in which the individual's former spouse is participating.

*Id.* Our resolution of this issue rests on the purpose of a qualified domestic relations order (QDRO),

which is "to assign to a spouse rights in the [participating spouse's] pension plan." *See Parker*, 641 So. 2d at 1136.

Indeed, Waldron and Stahlke intended for the QDRO to serve that exact purpose. Paragraph no. 4. of the QDRO which the chancery court rendered on June 2, 1993, read as follows:

4. The participant [Waldron], the alternate payee [Stahlke], and the Court intend this Order to be a Qualified Domestic Relations Order made pursuant to and in compliance with §414(p) of the Internal Revenue Code of 1986, as amended, and other applicable law, including the Retirement Equity Act of 1984.

Conspicuously absent from the text of this QDRO is any language which indicates that Waldron and Stahlke also intended this QDRO to be a final settlement of Stahlke's claim against Waldron for the unpaid balance of the value of the 1,158.756 shares of common stock in Chevron U.S.A. which Waldron owned on September 30, 1985, the date the chancery court granted Waldron and Stahlke their divorce on the grounds of irreconcilable differences. Waldron relies on it in his brief to support his assertion that the chancellor erred when he found that the QDRO in the case *sub judice* was not a final settlement of his former wife against him.

In *In re. Estate of Stamper*, 607 So. 2d 1141, 1145 (Miss. 1992), the Mississippi Supreme Court established the following criteria for interpreting an order of the court such as the QDRO in the case *sub judice*:

A judgment decree or opinion of court is a legal text, and, when questions of meaning arise, answers are sought by "the same rules of construction which appertain to other legal documents." *Gillum v. Gillum*, 230 Miss. 246, 255 92 So. 2d 665, 668 (1957), quoting *Rayl v. Thurman*, 156 Miss. 8, 15, 125 So. 912, 914 (1930) . . . Courts must give the prior decree the most coherent and principled reading its words will bear. Of course, the record of proceedings before the court are the principal part of the objective accessible world the construing court may consult en route to construction. *Wray v. Wray*, 394 So. 2d 1341, 1343-44 (Miss.1981); *Gillum v. Gillum*, 230 Miss. at 255, 92 So. 2d at 669.

An application of the foregoing quotation to the text of the QDRO in the case *sub judice*, especially its paragraph no. 4, compels the conclusion that the intent of Waldron and Stahlke when they obtained the QDRO was to require Chevron U.S.A. to transfer \$15,000.00 from Waldron's account to Stahlke's separate account. Otherwise, it would not have contained paragraph no. 4 in which the intent of the litigants was specifically explained. The QDRO did not provide that it also constituted a final settlement of Stahlke's claim against Waldron for the balance of the value of the shares of Chevron U.S.A. stock in Waldron's retirement account.

## **2. Extrinsic evidence of the purpose of the Qualified Domestic Relations Order**

The chancellor received testimony from former counsel for both Waldron and Stahlke about whether the QDRO was intended to be an order of final settlement in this case. Waldron asserted that it was; Stahlke contended that it was not. Because we have found that the QDRO was not ambiguous, such testimony might be deemed parole evidence, which is usually inadmissible where the terms and provisions of the instrument are not ambiguous. However, in *Valley Mills, Division of the Merchants*

*Company, Inc. v. Southeastern Hatcheries of Mississippi, Inc.*, 245 Miss. 71, 145 So. 2d 698, 702 (1962), the Mississippi Supreme Court recognized the following exception to the parole evidence rule:

The [parole evidence rule] is not violated by allowing parole evidence to be given of a distinct, valid, contemporaneous agreement between the parties which was not reduced to writing, when the same is not in conflict with the provisions of the written agreement.

While the QDRO did not provide that it was to be a final order of settlement of Stahlke's claim against Waldron, neither does it contain language which conflicts with Waldron's and Stahlke's intent that it also be a final order of settlement. Thus, we must now review and analyze the testimony and the evidence on which the chancellor determined that the QDRO was not a final order of settlement and apply the previously quoted standard of review to determine if he erred when he so found.

James R. Hayden, Waldron's counsel, testified about the finality of the QDRO as follows:

Q. But in your mind this was the final disposition of this case?

A. No question about it.

....

Q. And there's no doubt in your mind today, that this [QDRO] as entered on June 18, 1993 was a negotiated settlement for Mr. Waldron of all past due issues?

A. Yes ma'am. I mean that was to resolve all problems, all legal aspects that these parties had with each other. This was supposed to finish it, that Order there. [Stahlke] was supposed to get her money from Chevron and that was suppose to be the end of it.

Q. And exactly why did you do a Qualified Domestic Relations Order rather than just a usual Judgment of this Court?

A. To the best of my memory, either myself, or maybe Mr. McGraw, or someone had contacted Chevron, and I think it may have been a joint decision between me and Mr. McGraw to do the Domestic Qualified Relations Order. I don't really remember. Or maybe it was a combination of both of ours, or what Chevron told us that they would honor. I don't recall, but that's why it was done that way.

On the other hand, Don A. McGraw, Jr., counsel for Stahlke, testified:

Q. What was your understanding, Mr. McGraw, as to the finality of this Order that was entered on June 18, 1993, styled Qualified Domestic Relations Order?

A. I basically believed that it was done in order to get fifteen thousand dollars

(\$15,000.00), but as it turned out, it was unsuccessful, but that was the purpose of entering it.

Q. Did you and Mr. Hayden have a meeting of the minds that this was the final Order?

A. If we could have gotten the fifteen thousand dollars (\$15,000.00) I think it probably would have been the final Order. At that time we were looking at a way to get that money.

Q. So, in your mind, if you had received fifteen thousand dollars (\$15,000.00), then that would have been a final settlement of the claim?

A. The settlement, as I remember it, it would have been if we could have gotten FIFTEEN THOUSAND DOLLARS (\$15,000.00) in that time-frame we would have taken it.

Waldron's counsel asked McGraw about whether Waldron's payment of fifteen thousand dollars would have settled Stahlke's claim for McGraw's fee which she would owe him:

Q. When this Order was entered, this Qualified Domestic Relations Order was entered, was it your intent that you were giving up your seeking of attorney's fees and damages for the fifteen thousand (15,000)?

A. If we had gotten fifteen thousand (15,000) we would have taken that at that point.

The record contains the following chancellor's interrogation of McGraw:

BY THE COURT: Would that be reasonable in light of your understanding of the facts of the case?

A. That was my understanding, was that if we had gotten the fifteen thousand (15,000) within a short time after we did the QDRO, of course, everything would have been over with. We didn't get the money and she was still upset because they hadn't had a trial date so she retained [another lawyer].

Although Stahlke called Waldron as an adverse witness, after which his attorney questioned him, neither attorney queried him about whether the QDRO was intended as an order of final settlement. His explanation for the QDRO was simply: "I was trying to get them to cash some stock in for the money."

The evidence overwhelmingly supports the chancellor's finding that "[t]here was no consummation of the agreement," and that "[t]he money was not paid." The law and the evidence equally supports the chancellor's finding that the QDRO was not a "[f]inal [j]udgment resolving and dismissing the case"

simply because the QDRO did "not say that." The chancellor accepted Stahlke's former counsel's testimony that the QDRO did not become "a judgment concluding the civil action" because there was never a consummation of the proposed settlement that Waldron pay Stahlke the sum of \$15,000.00. This Court finds that there was substantial extrinsic evidence to support the chancellor's finding that the QDRO was not a final of settlement of Stahlke's claims against Waldron.

### **C. Summary**

Therefore, pursuant to the standard of review which it earlier quoted, which requires this Court "to respect the findings of fact made by a chancellor [which are] supported by credible evidence and not manifestly wrong," this Court affirms the chancellor's finding that the qualified domestic relations order as entered by the Chancellor on June 18, 1993, was not a final settlement of Stahlke's claims against Waldron. We so affirm the chancellor's finding because it was not clearly erroneous and because we also find that he did not apply an erroneous legal standard. Indeed, according to *Parker*, the chancellor correctly applied the principle that the purpose of a QDRO is "to assign to a spouse rights in the participant's pension plan." Especially is this principle applicable to the QDRO in this case because, while it recited that the parties intended it for that purpose, the QDRO failed to recite that it was meant to serve as a final order of settlement.

**THE JUDGMENT OF THE CHANCERY COURT OF LAMAR COUNTY IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT, JAMES CARROLL WALDRON.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**