

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL B. NORMAN,  
Appellant,  
vs.  
THERESA S. NORMAN,  
Respondent.

No. 57913

**FILED**

SEP 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal of a district court post-decree order in a divorce case. Second Judicial District Court, Family Court Division, Washoe County; Chuck Weller, Judge.

In the divorce decree, the district court ordered appellant to pay respondent spousal support and entered a Qualified Domestic Relations Order (QDRO) dividing appellant's pension, awarding 43 percent of appellant's monthly Public Employees' Retirement System (PERS) retirement benefit to respondent. The district court fixed the amount of spousal support based on appellant's earning capacity as a law enforcement officer and former military member. In order to meet his support obligations, appellant took a position with an employer outside of the PERS system, which provided him with income while maintaining his PERS benefit.<sup>1</sup> Appellant then left that job and took a position as a police officer with Truckee Meadows Community College (TMCC). Because TMCC is part of the PERS system, and a person may not draw PERS

---

<sup>1</sup>We note that appellant admits that he was able to comply with the divorce decree while working at his former job outside the PERS system.

benefits while employed with a member of the PERS system, appellant's PERS benefits were suspended. Thus, the payments respondent had been receiving from PERS in accordance with the QDRO ceased. Respondent moved the district court to order appellant to continue to pay her spousal support and to pay the amount specified in the QDRO out-of-pocket. Appellant opposed the motion through counsel. The district court granted the motion and ordered appellant to continue paying both spousal support and the PERS benefit amount set forth in the QDRO out-of-pocket. This appeal followed.

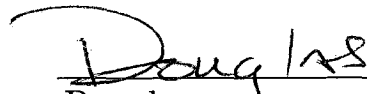
Appellant contends that the district court erred in ordering him to pay respondent the PERS benefit out-of-pocket by erroneously applying Sertic v. Sertic, 111 Nev. 1192, 901 P.2d 148 (1995), to the underlying case. This court reviews a district court's legal conclusions de novo. Clark County v. Sun State Properties, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003). Sertic, like the instant case, concerned the division of a community interest in a pension, and concluded that when a party who is eligible to retire elects not to retire, that party may be ordered to pay out-of-pocket what his or her former spouse would have received from his or her community property interest in the retirement income. 111 Nev. at 1194, 901 P.2d at 149.


Appellant contends that Sertic does not apply to his case because he did retire upon first eligibility. At the time of divorce, appellant was retired and drawing a pension from the PERS system. Appellant contends that he would have remained retired, and attended nursing school, but based on the support award in the decree, he was compelled to work. Here, appellant was eligible to retire from the PERS system and to receive PERS benefits while still working for a non-PERS

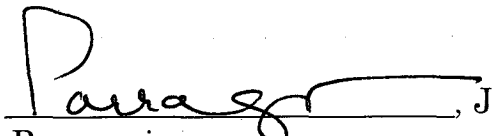
system employer. As such, respondent was entitled to her community interest in appellant's PERS pension. Id.

We conclude that electing to take employment within the PERS system is the same as electing to not retire, and thus, falls within the ambit of Sertic. When appellant elected to work within the PERS system, he was obligated to pay respondent out-of-pocket the amount she would have received if appellant had remained retired and had continued drawing a pension from the PERS system. Id. As such, we perceive no error in the district court's order that warrants reversal. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Chuck Weller, District Judge, Family Court Division  
Darrell B. Norman  
Fahrendorf, Vilorio, Oliphant & Oster, LLP  
Washoe District Court Clerk