IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLA MCPHERSON,
Appellant,
vs.
GINAMARIE SEGNO,
Respondent.

No. 86043-COA

ORDER OF REVERSAL AND REMAND

Marla McPherson appeals from a district court order granting respondent's motion to enforce the parties' divorce decree and enter an amended Qualified Domestic Relations Order (QDRO).[1] Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.

Marla and respondent Ginamarie Segno were divorced by stipulated decree of divorce in 2019. Pursuant to the terms of the decree, the parties agreed that Ginamarie would receive "1/2 of the community property portion of Marla's NV PERS" as well as half of the community share of two of Marla's other retirement accounts. The decree further provided that "the parties will equally divide the costs of any QDROS that

[1]The underlying "Order from December 16, 2022, Hearing" also addressed the parties' requests for relief related to Marla's motion for the parties' minor child to begin therapy, and respondent's motions to obtain a passport for the minor child and for attorney fees and costs. Because Marla does not challenge these decisions, we do not address them in resolving this appeal.

may be necessary to divide any assets, which will be prepared by Family Law Solutions for a total of $850 per QRDO."

During a hearing on issues unrelated to this appeal in February 2020, Ginamarie's counsel informed the district court that Marla refused to sign a PERS QDRO prepared pursuant to the terms of the decree. After making brief inquiries of counsel for both parties regarding the status of the QDRO, the court asked Ginamarie's counsel if the QDRO had been preapproved by the PERS plan administrator, and Ginamarie's counsel confirmed that it had been preapproved. At that point, the court acknowledged that it did not see any reason why Marla should not sign the QDRO, and Marla's counsel agreed she would sign the document. Marla signed the QDRO following the hearing.

As relevant here, the terms of this initial QDRO indicated that Ginamarie is entitled to one half of Marla's PERS benefits earned during the marriage, but also stated that "[t]he Alternate Payee is entitled to a portion of the Participant's retirement based upon a selection of Option 2." The QDRO further stated that "this Order is intended to be merged to the decree of divorce in this matter and is subject to all provisions of that Decree except in cases where this QDRO and the Decree contradict, in which case the QDRO shall control."

Despite the representations of Ginamarie's counsel during the hearing that the QDRO had been preapproved, PERS rejected the signed QDRO on the basis that the language of the provision relating to when the alternate payee is to receive benefits under the QDRO was unclear. Thereafter, Ginamarie and her counsel revised the QDRO to comply with PERS' request, but Marla refused to sign the revised document on the basis

that the QDRO did not comply with the terms of their stipulated divorce decree, which only provided that Ginamarie would receive a one-half community property interest in her PERS retirement—not a survivor beneficiary interest under Option 2.

Ginamarie subsequently moved the district court for an order directing Marla to execute the amended QDRO to satisfy the terms of the divorce decree, which required the parties to "execute any and all documents that may be required to effectuate transfer of any and all interests . . . as specified herein," and also under *Wolff v. Wolff*, 112 Nev. 1355, 1362, 929 P.2d 916, 920 (1996), which held that upon divorce, the community interest that each party has in the other's retirement account became the separate property of the former spouse.

In her opposition, Marla argued that Ginamarie's request for relief should be denied as the QDRO is drafted contrary to the express terms of the stipulated divorce decree, which only awarded Ginamarie a one-half community property interest in her PERS benefits. Marla further argued that enforcing the amended QDRO as written would run afoul of the holding in *Henson v. Henson*, 130 Nev. 814, 815-16, 334 P.3d 933, 934 (2014), wherein the supreme court held that "unless specifically set forth in the divorce decree, an allocation of a community property interest in the employee spouse's pension plan does not also entitle the nonemployee spouse to survivor benefits." Finally, Marla alleged that Ginamarie attempted to deceive her when having her execute the first QDRO.

Following a hearing on unrelated issues regarding the parties' minor child, as well as the QDRO issue, the district court entered the challenged order granting Ginamarie's motion to compel Marla to execute

the amended QDRO. As relevant here, the court found that while Marla argued that the application of *Henson* was appropriate because Ginamarie was not expressly awarded survivor benefits in the decree of divorce, the court nonetheless found that "*Wolff v. Wolff* is the correct authority in this case and the Court agrees with [Ginamarie's] understanding of her interest in the pension benefit."

Without further explanation of these findings, or consideration of Marla's contention that she was deceived into signing the initial QDRO, the district court ordered that the "request for a QDRO dividing Marla's Nevada PERS pension benefit under a mandatory selection of Option 2 is granted." Marla now appeals the portion of the district court's order related to the enforcement of the QDRO.

"An appellate court reviews a district court's disposition of community property deferentially, for an abuse of discretion." *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error" or findings so conclusory that they mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015).

On appeal, Marla contends, among other things, that the district court erred in enforcing the Amended QDRO and awarding Ginamarie a survivorship benefit under Option 2 by ignoring the controlling precedent of *Henson v. Henson*. We agree.

In *Wolff*, our supreme court recognized that, upon divorce, the community interest that one spouse has in the other spouse's retirement account became the separate property of the former spouse. 112 Nev. at 1362, 929 P.2d at 920. Here, Ginamarie argued—and the district court

accepted—that, under *Wolff*, because she was awarded a community property interest in Marla's PERS pension, that interest became her separate property upon the parties' divorce and thus she was entitled to enforce this interest through Marla's mandatory selection of Option 2 in the amended QDRO. But this argument, and the district court's resolution of this issue in its order, disregards the more recent controlling authority in *Henson*, which determined that "unless *specifically set forth in the divorce decree,* an allocation of a community property interest in the employee spouse's pension plan does not also entitle the nonemployee spouse to survivor benefits." 130 Nev. at 815-16, 334 P.3d at 934 (emphasis added). Thus, the community property interest Ginamarie was awarded in the divorce decree is not sufficient by itself to entitle her to survivor benefits, and the question is whether the mandatory selection of an Option 2 survivor beneficiary was an agreed-upon term of the parties' divorce decree.

Here, the original divorce decree did not expressly include an Option 2 designation and instead only specified that Ginamarie would receive one half of the community property portion of Marla's PERS benefits. However, the parties in this case also signed the initial QDRO, which provided Ginamarie with an Option 2 benefit, and expressly stated that the QDRO is intended to merge into the divorce decree and shall control over the terms in the decree in all cases in which the QDRO and the decree contradict. Because the district court relied upon *Wolff* instead of applying *Henson*, the court did not address whether the parties reached an enforceable contract reflected by the initial QDRO that would modify the divorce decree and incorporate the provisions of that QDRO in determining the allowable interests under *Henson*, or—as Marla argued on appeal and

below—equitable circumstances and defenses exist that would either void that contract or render it unenforceable, requiring the district court to apply the holding of *Henson* to the divorce decree alone, without any consideration of the initial QDRO provisions.

As the district court did not address these issues, it is inappropriate for this court to determine the application of *Henson* in the first instance, as these arguments present questions of fact more appropriately resolved by the district court first. *See Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve); *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). In light of these significant questions of fact, we direct the district court, on remand, to consider Marla's equity-based arguments and determine whether an agreement was created by the signing of the initial QDRO and, if so, whether that agreement impacted the terms of the stipulated decree of divorce. After making these findings, we direct the district court to consider and apply the holding in *Henson* to the circumstances presented by this case.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Nadin Cutter, District Judge, Family Division
Pecos Law Group
Ginamarie Segno
Eighth District Court Clerk