



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



FRANCENE L. VINCENT v. PATRICK J. SHANOVICH
CV-17-0175-PR

PARTIES:

Petitioner: Patrick J. Shanovich

Respondent: Francene L. Vincent

FACTS:

On August 25, 2000, Francene Vincent filed a petition for dissolution of her marriage to Patrick Shanovich. The decree of dissolution, entered on October 2, 2002, provided as follows:

RETIREMENT: [Vincent] to be awarded a one-half (1/2) portion of [Shanovich's] retirement including employer contribution and accrued interest as of the date of filing the Petition for Dissolution and shall provide a Qualified Domestic Relations Order stating such provisions.

(Emphasis supplied).

In April 2004, the trial court entered a Qualified Domestic Relations Order (“QDRO”) to secure Vincent’s interest in Shanovich’s retirement benefits. The QDRO provisions failed to provide, consistently with the dissolution decree, that Vincent’s entitlement to Shanovich’s later-earned retirement benefits would end on the date of filing of the petition for dissolution. Despite the inconsistency between the decree and the QDRO, Shanovich did not appeal or seek to correct the QDRO and was by his own admission unaware of the disparity until 11 years later. After the divorce, Shanovich remarried and continued to work for the City of Mesa and to earn additional retirement benefits.

In 2015, Shanovich began planning for retirement and contacted a pension plan administrator. The plan administrator informed Shanovich that he intended to pay Vincent one-half of Shanovich’s entire pension, including one-half of the benefits that Shanovich earned in the fifteen years after the petition for dissolution ended their marriage. Shanovich was, by his description, shocked to learn of the administrator’s intentions regarding the extent of payments to his ex-wife.

In December 2015, Shanovich filed a motion to set aside the QDRO, pointing out that, while the decree limited Vincent’s entitlement to retirement assets “as of the date of filing the Petition for Dissolution,” the QDRO contained no such limitation. The motion asserted two bases for relief from the error: Ariz. R Fam. L. P. Rule 85(A) (Clerical Mistakes) (“Clerical mistakes in

judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party . . .”); and Ariz. R. Fam. L. P. Rule 85(C)(2) (motions to set aside an order as void must be filed within a “reasonable time”).

In response, Vincent argued, among other things, that the motion was untimely because the QDRO could have been challenged by direct appeal in 2004. The trial court denied Shanovich’s motion to set aside the QDRO based on the following reasoning:

Husband contends that [the] clerical error was discovered “within a reasonable time” under Rule 85 of the Rules of Family Law Procedure, since this error was easily overlooked and was only discovered as Husband reached retirement age.

“Whether error is judgmental or clerical turns on the question whether the error occurred in rendering judgment or in recording the judgment rendered. The power to correct clerical error does not extend to the changing of a judgment, order, or decree which was entered as the court intended.” *Ace Auto. Prods. Inc. v. Van Duyne*, 156 Ariz. 140, 142-143, 750 P. 2d 898, 900-91 (App. 1987). However, in making this determination even if a judgment is ambiguous, court[s] may use “general rules of construction for written instruments,” but “may not consider extrinsic evidence.” *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, 293 P. 3d 504 (App. 2012). Here the Decree and the QDRO are clear and unambiguous on their face, and Husband has cited no evidence to suggest rendering the Decree was the result of a clerical error. See *Hatch v. Hatch*, 113 Ariz. 130, 134, 547 P. 2d 1044, 1048 (1976)

Shanovich filed an appeal from the denial of his motion to set aside the QDRO. The Court of Appeals dismissed his appeal on the grounds it was essentially a challenge to the merits of the QDRO eleven years after the appeal period for that order had expired. Shanovich filed a Petition for Review, which the Arizona Supreme Court granted.

ISSUE:

“Special orders entered after judgment are generally appealable under A.R.S. § 12-2101(A)(2), but there is an exception for special orders involving substantive arguments that could have been raised in a direct appeal from the underlying judgment. *Reidy v. O’Malley Lumber Co.*, 92 Ariz. 130, 136, 374 P.2d 882, 886 (1962). This case represents the first time the Court of Appeals has ever applied *Reidy* to deny jurisdiction of a non-substantive special order; specifically, an order denying a request to correct a clerical error. Should *Reidy* apply to special orders regarding clerical errors even though: (1) clerical errors do not go to the merits of the underlying judgment, and (2) clerical errors are, by their very nature, difficult to detect in a timely manner?”

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