

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

KEITH ROBERT HUBBARD,

Appellant,

v.

Case No. 5D18-503

STEPHANIE LYNNE BERTH
F/K/A STEPHANIE LYNNE MURRAY-HUBBARD,

Appellee.

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Opinion filed August 16, 2019

Appeal from the Circuit Court
for Orange County,
Heather Rodriguez, Judge.

Moses Robert Dewitt, of Dewitt Law Firm,
P.A., Orlando, for Appellant.

Andrew T. Windle, of The Windle Family
Law Firm, P.A., Orlando, for Appellee.

ORFINGER, J.

The former husband, Keith Robert Hubbard, appeals an order granting the former wife's, Stephanie Lynne Berth f/k/a Stephanie Lynne Murray-Hubbard, post-judgment motion to enforce their final judgment of dissolution of marriage, for clarification of judgment, entry of a qualified domestic relations order, and for other relief. We affirm the

trial court's order in all respects without discussion, except as to the trial court's calculation of the marital portion of the former husband's pension.

The parties to this appeal were married twice. They first married in 1985 and divorced in 1989. Before ending that marriage, the parties executed a settlement agreement. The agreement stated in part that "each Party waives any and all claims, demands, rights, title, or interests that he or she may have or hereafter acquire in any present or future asset of the other. This release includes . . . the right to share in any pension or retirement benefits of the other" The parties married each other again in 1991 and again divorced in November 2004. Before dissolving their second marriage, the parties executed the marital settlement agreement now at issue, which provided that their marriage existed from 1991 to 2004 and divided the pension that the former husband was to receive upon his retirement. Specifically, it stated that "[t]he [former wife] shall be entitled to 1/2 of the [former husband's] pension which totals \$54,000.00 at the time of the parties' separation." The trial court approved the second agreement, incorporating it into the final dissolution of marriage judgment.

Many years later, the former wife moved to enforce the final judgment. The primary issue was the former husband's pension. In determining the marital portion of the pension that the former wife was to receive, the trial court included the duration of both the first and second marriages, relying on the Florida Supreme Court's decision in Cox v. Cox, 659 So. 2d 1051 (Fla. 1995). In Cox, the Florida Supreme Court was asked to determine whether remarriage or reconciliation would void a previous property settlement agreement or separation agreement. In that case, as here, the parties married twice. Following dissolution of the second marriage, the wife sought an interest in the husband's

military retirement benefits. In ending the first marriage, the parties executed a settlement agreement that made no mention of the husband's military retirement benefits. The husband argued that this settlement agreement was binding and operated as a waiver of the wife's entitlement to any military retirement benefits, including those accrued during the parties' second marriage. 659 So. 2d at 1052-53. The supreme court rejected the husband's argument, holding "that reconciliation or remarriage abrogates the executory provisions of a prior marital settlement agreement unless there is an explicit statement in the agreement that the parties intended otherwise." Id. at 1054. Then finding that the husband's future military retirement was, by definition, an executory interest, the court found the first agreement was abrogated as to the wife's interest in the husband's military retirement. Id. at 1054-55.

The former husband maintains that Cox is distinguishable from this case. We agree. Cox applies when a party is seeking to enforce the executory terms of a previous settlement agreement following reunification or remarriage. But it does not prevent parties from entering a second marital settlement agreement dividing marital property accrued during a second marriage following reunification. Nor does it prevent a party from entering into a settlement agreement that waives any claim to the other party's pension.

Unlike the parties in Cox, the former wife waived any interest she acquired in the former husband's pension during the first marriage in the first settlement agreement. And, the parties' second marital settlement agreement specifically divided only those assets acquired during the second marriage. Allowing the former wife to obtain pension benefits accrued during the first marriage—benefits she did not bargain for in the first or second marital settlement agreement—would rewrite both of the parties' settlement agreements.

For these reasons, we affirm the trial court's order awarding the former wife one-half of the former husband's pension including interest, DROP accrual, and cost of living increases that accrued during the second marriage. But, we reverse the order to the extent the trial court included the duration of the first marriage in calculating the marital portion of the pension.

AFFIRMED in part; REVERSED in part; and REMANDED.

EDWARDS and HARRIS, JJ., concur.