

IN THE SUPREME COURT OF THE STATE OF NEVADA

BROOKS LEWIS, JR.,  
Appellant,  
vs.  
FAY LEWIS,  
Respondent.

No. 46922

FILED

JAN 31 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court order granting a motion to modify a divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Lisa Brown, Judge. Because we conclude that the district court's determination of the parties' intent was supported by substantial evidence, we affirm.

In May 2001, appellant Brooks Lewis, Jr. and respondent Fay Lewis filed a joint petition for summary divorce.<sup>1</sup> In the petition, the parties agreed that Brooks be awarded 100 percent of his United States Air Force disability benefits, and 57.5 percent of his gross United States Air Force pension/retirement benefits. They also agreed that Fay be awarded the remaining 42.5 percent of the pension benefits. The district court entered a decree of divorce on May 24, 2001, incorporating the parties joint petition, including the percentage allocation of the pension benefits.

Several years later, Brooks received a considerable increase in his disability rating. In order to receive the increase in his tax-exempt disability benefits, Brooks voluntarily chose to forfeit a corresponding

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<sup>1</sup>See NRS 125.181.

amount of his monthly pension benefits, as required by federal law. This caused a substantial reduction in Fay's monthly share of the pension. As a result, Fay filed a motion to modify the divorce decree, requesting that the district court award her a monthly sum equal to the amount of the pension benefits she received before the increase in Brooks' disability status. Citing this court's holding in Shelton v. Shelton,<sup>2</sup> the district court granted the motion to modify, and ordered Brooks to pay Fay an amount equal to what 42.5 percent of Brooks' pension benefits would have been, had he elected to receive them.

While military pension benefits are divisible as community property, federal law prohibits state courts from treating military disability pay as community property.<sup>3</sup> Nonetheless, in Shelton, this court determined that state courts can apply state contract principles to divorce decrees involving military pension benefits, even when disability pay is involved.<sup>4</sup> Specifically, when parties intend for one spouse to receive a certain amount of a pension benefit, a veteran spouse cannot escape this

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<sup>2</sup>119 Nev. 492, 78 P.3d 507 (2003).

<sup>3</sup>Id. at 496, 78 P.3d at 509.

<sup>4</sup>Id. Interpretation of the terms of a contract, such as a joint divorce petition, when the facts are not in dispute is a question of law reviewed de novo. Shelton, 119 Nev. at 497, 78 P.3d at 510. However, intent of the parties is a question of fact, and a district court determination of intent must be upheld if it is supported by substantial evidence, and may not be set aside unless it is clearly erroneous. James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996). In other words, if a reasonable person could accept evidence as adequate to support a conclusion, this court will not disturb the holding of the district court. Id.

contractual obligation by voluntarily choosing to forfeit his retirement pay in exchange for increased disability benefits.<sup>5</sup>

Here, the district court determined that under the terms of the joint petition, the parties intended Fay to receive an amount equal to 42.5 percent of Brooks' retirement benefits before his disability rating increased. Brooks argues that this is incorrect because the divorce decree awarded him 100 percent of his disability benefits. However, the district court based its determination on language in the joint petition indicating that Fay was entitled to a 42.5 percent of Brooks' "gross USAF pension/retirement benefits." This wording suggests that the parties intended for Fay to receive a percentage of Brooks' pension benefits prior to any deductions for additional disability pay.

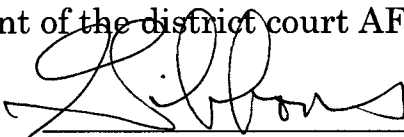
It also appears that at the time the parties filed their joint petition, Brooks was already receiving some disability benefits. Based on this, a reasonable person could conclude that the parties intended Brooks to receive 100 percent of his current disability pay at the time of the divorce, and Fay to receive an amount equal to 42.5 percent of Brooks' remaining retirement benefits. Therefore, the district court's finding that the parties intended for Fay to receive an amount equal to 42.5 percent of Brooks' retirement benefits, before any additional deductions for increased disability pay, was not clearly erroneous. As a result, under Shelton, Brooks cannot escape his contractual obligation to pay Fay this amount by

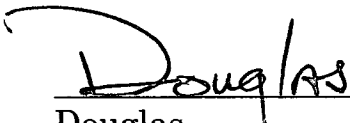
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<sup>5</sup>Shelton, 119 Nev. at 496, 78 P.3d at 509.

voluntarily choosing to forfeit his retirement pay in exchange for increased disability benefits.<sup>6</sup> Accordingly we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Lisa Brown, District Judge, Family Court Division  
Brooks Lewis Jr.  
Fay Lewis  
Eighth District Court Clerk

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<sup>6</sup>We reject Brooks' remaining arguments that Shelton is inapplicable, including his argument that Shelton is distinguishable on the ground that the Sheltons' divorce decree listed the wife's share of her husband's military pension as both a percentage and a dollar amount. Although the Shelton court ultimately determined that, in light of the ambiguity, the parties intended for the wife to receive the dollar amount listed, this court relied on several cases in which the divorce decree listed only the percentage of a pension. See Shelton, 119 Nev. at 496-97, 78 P.3d at 508 (citing Poullard v. Poullard, 780 So. 2d 498, 499-500 (La. Ct. App. 2001) (holding that the wife was entitled to one-half of her husband's retirement pension, prior to any deductions for disability benefits); Higsen v. Higsen, 554 N.W.2d 494, 498 (S.D. 1996) (finding that the divorce decree required a husband to pay his wife one-half of his total gross retirement payments, prior to any reductions for disability benefits)). We also reject Brooks' claim that the district court erred when it brought this court's holding in Shelton to the attention of the parties.