

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORINE S. HEDLUND,  
Appellant/Cross-Respondent,  
vs.  
VINCENT O. HEDLUND,  
Respondent/Cross-Appellant.

No. 48944

FILED

SEP 25 2009

ORDER OF REVERSAL AND REMAND

THACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal and cross-appeal from an amended divorce decree. Second Judicial District Court, Washoe County; Charles M. McGee, Judge.

On appeal, appellant/cross-respondent Norine Hedlund contends that the district court abused its discretion in its division of community property. Specifically, Norine assigns error to the district court's finding that respondent/cross-appellant Vincent Hedlund was not eligible to receive his Public Employees Retirement System (PERS) pension benefits because he had not retired, even though he was eligible for retirement. On cross-appeal, Vincent argues that the district court erred when it amended the divorce decree and increased Norine's monthly alimony.

For the following reasons, we conclude that Norine's argument has merit. We therefore reverse and remand and direct the district court to recalculate the property division using the date of the divorce. In so doing, we determine that Norine is entitled to her share of Vincent's PERS benefits because he is eligible to retire; this conclusion is consistent with our jurisprudence and with NRS 125.155. Additionally, we determine that Vincent's argument is without merit. The parties are familiar with the

facts, and we do not recount them here except as necessary to our disposition.

Distribution of PERS pension benefits

Norine's primary contention on appeal is that, as the nonemployee spouse, she is presently entitled to receive her share of Vincent's PERS pension benefits because he is eligible to retire. She argues that the district court abused its discretion and misapprehended the law when it found that it could not order Vincent to pay to Norine her share of the PERS benefits. We agree.

We review a district court's division of community property for an abuse of discretion. Wolff v. Wolff, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996). Here, we find that the district court abused its discretion in finding that Vincent did not have to pay Norine her share of his PERS benefits because he had chosen not to retire—even though he was eligible.

In reaching this conclusion, we consider this court's holding in Gemma v. Gemma, 105 Nev. 458, 778 P.2d 429 (1989), in light of the enactment of NRS 125.155. In Gemma, the district court determined that Lois Gemma had an interest in Joseph Gemma's police retirement pension, even though his pension rights had not vested. Id. at 459, 778 P.2d at 429. In addition, the district court determined that Lois could elect to receive pension benefits when Joseph was first eligible to retire. Id. This court affirmed, holding that a nonemployee spouse could elect to receive pension benefits when the employed spouse first becomes eligible to retire. Id. at 459, 778 P.2d at 430.

After this court issued its opinion in Gemma, the Legislature passed NRS 125.155. The statute governs the valuation and distribution of pension or retirement benefits provided by PERS or the Judicial

Retirement Plan upon dissolution of marriage. In relevant part, NRS 125.155(2) states that

[t]he court may, in making a disposition of a pension or retirement benefit provided by [PERS] or the Judicial Retirement Plan, order that the benefit not be paid before the date on which the participating party retires.

(Emphasis added.) When interpreting a statute, this court must follow its plain meaning. Loomis v. Whitehead, 124 Nev. \_\_\_, \_\_\_, 183 P.3d 890, 892 (2008). Here, the statute's unambiguous language expressly states that the statute is permissive in nature. Accordingly, we determine that NRS 125.155 gives the court full discretion to consider directing the employee spouse to pay the nonemployee spouse his share of PERS benefits at the first eligible retirement date or to order that the nonemployee spouse wait until the employee spouse actually retires.<sup>1</sup>

The district court noted that Norine entered the property settlement agreement under the belief that she could elect to receive her interest in Vincent's PERS benefits immediately by way of a qualified

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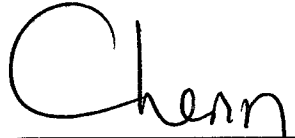
<sup>1</sup>We note that the legislative history of NRS 125.155 indicates that the statute was enacted to correct any assumptions that Gemma requires Nevada courts to order pension payments at first eligibility. Hearing on A.B. 292 Before the Senate Judiciary Comm., 68th Leg. (Nev., June 26, 1995) (debate at hearing reflecting a concern that, pursuant to Gemma, police officers and firefighters who were eligible to retire, but chose not to do so, would end up paying to former spouses his/her interest in pension benefits before employee spouse ever actually retired). However, we conclude that because the legislature used permissive language in crafting the statute, ultimately, lawmakers left it to the district court's discretion whether to order an employee spouse to make pension benefit payments to the nonemployee spouse before the actual retirement of the employee spouse.

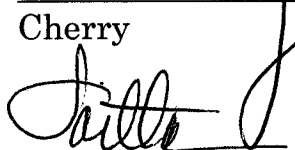
domestic relations order (QDRO). In the amended decree of divorce, the district court further noted that it too had labored under the same assumption during settlement negotiations. The district court found that it and Norine were incorrect. We disagree.

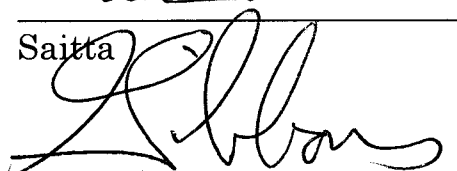
Norine and the district court were correct in assuming that Norine could elect to receive her share of Vincent's PERS benefits when Vincent was first eligible to retire. NRS 125.155; Gemma, 105 Nev. at 459, 778 P.2d at 430. It was entirely within the district court's discretion to order Vincent to pay Norine her share of his PERS benefits because Vincent was eligible to retire at the time. The district court's mistaken belief that it could not do so led to a series of miscalculations as to the division of community property, including the increase in Norine's alimony. Our review of the appellate record indicates that the district court awarded the increase in alimony to remedy what it perceived to be its own mistake as to the law. We, however, conclude that there was no initial mistake and the district court was correct in assuming that it could order Vincent to pay Norine her share of his PERS benefits. We determine that in lieu of an increase in alimony, Norine is entitled to elect to receive her share of Vincent's PERS benefits, even though Vincent has chosen not to retire but is eligible to do so. Therefore, we reverse and remand for the district court to recalculate the property division, using the

date of the divorce. This decision renders Vincent's argument on cross-appeal moot.<sup>2</sup> Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

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

  
\_\_\_\_\_, J.  
Saitta

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

cc: Chief Judge, Second Judicial District  
Hon. Charles M. McGee, Senior Judge  
Lester H. Berkson, Settlement Judge  
Jeffrey Friedman  
Lance R. Van Lydegraf  
Willick Law Group  
Woodburn & Wedge  
Washoe District Court Clerk

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<sup>2</sup>Norine also, without citing to any legal authority, argues that the district court abused its discretion when it did not expressly protect her future interest in Vincent's PERS benefits in the QDRO in the event Vincent dies. There is no legal support for this assertion. The district court followed proper procedure when it entered the QDRO, naming Norine as an alternative payee. See Carlson v. Carlson, 108 Nev. 358, 362-63 n.7, 832 P.2d 380, 383 n.7 (1992). Accordingly, we conclude that Norine's argument is without merit.