

Ruling on shared pensions in divorce

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IN A groundbreaking judgment for couples married in community of property but divorced, the Supreme Court of Appeal has ruled that pensions fall into their joint estate and form part of half of the assets each party would receive.

Pretoria divorce lawyer Selwyn Shapiro said that prior to this judgment, there were conflicting judgments as to whether or not a pension interest automatically fell into a joint estate if the parties were married in community of property.

"The Supreme Court of Appeal has now clarified this and found that if an order is granted that the joint estate be divided – the so-called blanket division order – the pension interest of both parties automatically formed part of their joint estate."

According to Shapiro, the effect was that when dividing the joint estate, the parties' respective pensions were included and an adjustment could be made in favour of the party whose pension was less than the other's.

Alternatively, the party whose pension was more than the other's may have to make payment to the other of an amount equalling out the division of the joint estate, so that each party receives 50% of the joint estate, inclusive of pension interests.

"This judgment, once and for all, clarifies the legal position and will be of great assistance in future to divorced parties, legal practitioners and dividers of joint estates," Shapiro said.

The judgment was sparked by the divorce in 2012 of a couple, identified only as N vs N. They were married in community of property and by agreement, all their assets were divided in half.

Nothing was said at the time about their respective pension benefits. A year later the woman's attorneys wrote to her then former husband's attorneys demanding that their respective pension funds had to be equally divided between them.

The man refused and the woman turned to the Pretoria High Court. The man said their pensions did not form part of the assets they had agreed to divide when they got divorced and saw no reason why it should be done a year later.

He was adamant his pension was his and did not form part of their joint estate, as she did not demand it when they agreed to share their assets 50/50.

The woman, on the other hand, said the law made provision for everything to be shared if parties were married in community of property, and this included their pensions.

The high court ruled in favour of the man and found that in the absence of a court order by the divorce court declaring the pension interests formed part of the joint estate, it did not form part of the joint estate.

The woman approached the Supreme Court of Appeal, where three judges agreed that their pensions should be equally divided.

The judges said sight must not be lost of the fact that the parties were married in community of property. One consequence of such a marriage was that, subject to a few exceptions, the spouses became co-owners of all interests acquired during marriage.

The joint estate in this case must include the pension interests of both parties, the judges said.

The couple were both members of the Government Pension Fund.