

# SUPREME COURT OF LOUISIANA

No. 97-C-2305

CHARLENE ARCEMENT BLANCHARD

Versus

WAYNE P. BLANCHARD

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIFTH CIRCUIT, PARISH OF JEFFERSON, STATE OF LOUISIANA

**JOHNSON, Justice, dissenting**

La. R.S. 9:2801 gives to the district courts vast discretion in effectuating community property settlements. The court may divide a particular asset or liability equally or unequally. It may allocate an asset in its entirety to one of the spouses, the only consideration being allocation of the community assets and liabilities so that each spouse receives property of equal net value. The trial judge in the instant case clearly had statutory authority to allocate the house to Mr. Blanchard and the pension rights to Mrs. Blanchard.

At the time of trial, Plaintiff had been employed by the Jefferson Parish School System as an accountant for twenty-two years. As a Jefferson Parish School System employee, she had a pension account with the Teacher's Retirement System of Louisiana.<sup>1</sup> The parties have stipulated that the community portion of this

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<sup>1</sup> La. R.S. 11:761 states that a member of the pension plan may retire after twenty years of creditable *teaching service*. (emphasis added). Mrs. Blanchard is eligible for membership in this pension plan despite the fact that she is an accountant and not a teacher. The word "teacher" has been defined for purposes of this pension plan as, ". . . any employee of a city or parish school board, parish or city superintendent, or assistant superintendent of public schools . . ." La. Rev. Stat. Ann. § 11:701 (23)(a) (1993). The term "teacher" has been interpreted by the Office of the Attorney General to include clerical employees and teacher's aides. *See*, Op. Att'y Gen. 87-9 (1987).

pension account is valued at \$50,267.<sup>2</sup> The parties have also stipulated that the family home is valued at \$44,000.<sup>3</sup> In the present case Mrs. Blanchard argues that in awarding the pension rights to her, the trial court awarded her only a hope of a future benefit rather than tangible property that she could liquidate, sell, transfer, or dispose of. She asserts that the pension is an incorporeal right to future benefits which is contingent upon certain circumstances, and that its true value is speculative. She maintains that the home, on the other hand, is a corporeal immovable with a marketable and redeemable fixed present cash value that can be used immediately. Her position is that the retirement account does not translate in value the same way immovable property does in the market place. Plaintiff further argues that she cannot access her asset without terminating her current employment. Defendant, on the other hand, argues that the community assets were equally and equitably divided between the parties by the trial court.

Mrs. Blanchard's rights in her pension are fully vested and cannot be forfeited even though those rights have not matured. The trial court in the instant case applied the "present cash value" method to apportion the unmatured pension instead of the "fixed percentage" method. In general, the valuation and division of pension rights is a matter for the trial court's discretion. Hare v. Hodgins, 586 So. 2d 118, 124 (La. 1991). Neither the Civil Code nor the Louisiana Revised Statutes contains any provisions that require courts to follow the fixed percentage method to the exclusion of others. Because of the great variations in pension plans and factual situations, no one method of valuation can accomplish justice in every case.

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<sup>2</sup> The value of Mrs. Blanchard's pension at the time of trial was \$100,672. The community portion of this amount is eighty-seven percent or \$87,585. However, Mr. Blanchard agreed to use the value of the pension on November 7, 2004 and stipulated that the community portion of the pension is only sixty percent or \$50,567. November 7, 2004 is the date on which Mrs. Blanchard will have thirty years of service in the Jefferson Parish School system.

<sup>3</sup> In order to equalize the amounts that each party received, the trial judge ordered Mrs. Blanchard to pay \$3,079 to Mr. Blanchard.

Therefore, it is essential that trial courts are allowed flexibility, and are able to take advantage of reasonable alternatives and adjustments in order to accomplish an equal distribution in an equitable manner.

In this case, the trial court has given a worker full ownership of her retirement account. However, she makes the unusual argument in this court that we should uphold the court of appeal opinion which designates her ex-spouse as co-owner of the pension plan until her retirement. In my mind, the trial court was correct in its allocation of community assets. With divorce cases, the goal is to bring some finality to the proceedings. The last step in this process is usually the partition of community property. The purpose of the partition is to bring an end to the shared community, so that each spouse exits the marriage with separate property to manage and control. The goal is to end ownership in indivision where practicable. Here, Mr. Blanchard can neither manage nor control his rights to the pension because Mrs. Blanchard, as the employee spouse, has total control over when her pension will mature. Mrs. Blanchard's pension will only mature when she decides to stop working. The choice as to whether or not Mrs. Blanchard will continue working is entirely up to her. When at all possible, a divorced spouse should not be held hostage by an ex-spouse's choices.