

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0307, In the Matter of Donna Malisos and Gregory Malisos, the court on December 17, 2009, issued the following order:

The respondent, Gregory Malisos, appeals an order of the trial court addressing the motion for qualified domestic relations order (QDRO) filed by the petitioner, Donna Malisos. He argues that the trial court erred in: (1) denying him an opportunity to conduct discovery; and (2) applying the Hodgins formula, see Hodgins v. Hodgins, 126 N.H. 711 (1985), to determine the amount of the respondent's pension to which the petitioner is entitled. We affirm.

The issues raised in this case involve the interpretation of Paragraph 14 of the parties' partial permanent stipulation. Although we have not been provided with a copy of the stipulation, the trial court found:

In relevant part to the present case, Paragraph 14 provided:

The Petitioner is awarded a portion of the Respondent's pension based on the formula set forth in Hodgins that the marital coverture is until the date of filing and/or February 4, 1997. The Respondent shall name the Petitioner as the beneficiary of any death benefit associated with the Petitioner's share of the pension. If this cannot be done by allocation and/or through a QDRO, the Respondent may elect to obtain a life insurance policy covering the present value of Petitioner's pension benefit.

The respondent first argues that the trial court erred in denying his request to conduct discovery. We will assume without deciding that the request for discovery was timely. The trial court found "no ambiguity in the language utilized by the parties." We agree. The Hodgins formula provides a method for distributing accrued pension rights in a divorce action when the actual value of the pension is not ascertainable at the time of the divorce. Id. at 715-16. This is true in this case, where the respondent continued to work after his divorce and his final pension benefits increased not only because of his overtime earnings but also because of his increased service credit. Accordingly, under Hodgins, the percentage of the pension to which the petitioner was entitled is determined by dividing the number of months the respondent was employed during the marriage and prior to commencement of the divorce proceedings, by the total

number of months of credit that he earned toward his pension as of the date benefits commenced. Id. at 716.

Contrary to the respondent's assertion, we find In the Matter of Lemieux & Lemieux, 157 N.H. 370 (2008), inapposite. In Lemieux, the appellant argued that both parties had been in error about the applicable law at the time of their divorce when they agreed to include certain pension distribution language in their stipulation. We remanded the case to allow the trial court to determine whether mutual mistake supported a claim for reformation. Id. at 374-75.

In this case, given the lack of ambiguity or any allegation that the petitioner was mistaken as to the intent of the language of Paragraph 14, we find no error in the trial court's order which denied respondent's request for discovery and determined that application of the Hodgins formula was appropriate to determine the amount of respondent's pension to which the petitioner was entitled.

Affirmed.

DUGGAN, HICKS and CONBOY, JJ., concurred.

**Eileen Fox,
Clerk**