

Roberta Z. FENNEY *v.* William C. FENNEY

76-51

537 S.W. 2d 367

Opinion delivered June 7, 1976

[Rehearing denied July 6, 1976.]

DIVORCE — RETIREMENT PAY AS PERSONAL PROPERTY — SCOPE OF STATUTE. — The right to receive retirement pay from the armed forces is not considered to be personal property within the meaning of Ark. Stat. Ann. § 34-1214 (Repl. 1962), for the right to a pension and retirement pay, not yet due and payable, cannot be assigned, sold, transferred, conveyed or pledged.

Appeal from Pulaski Chancery Court, First Division, *Murray O. Reed*, Chancellor; affirmed.

Carpenter, Finch & Dishongh, for appellant.

Wayne R. Foster, for appellee.

CONLEY BYRD, Justice. Appellant Roberta Z. Fenney having been granted a divorce from appellee William C. Fenney appeals from the trial court's holding that she was not entitled to one-third of her husband's Air Force retirement pay. We affirm the trial court.

Ark. Stat. Ann. § 34-1214 (Repl. 1962) provides that a wife who is granted a divorce "shall be entitled to one-third [1/3] of the husband's personal property absolutely, and one-third [1/3] of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage for her life, . . ."

We do not consider the right to receive retirement pay from the armed forces to be personal property within the meaning of Ark. Stat. Ann. § 34-1214, *supra*. The right to a pension and retirement pay, not yet due and payable, cannot be assigned, sold, transferred, conveyed or pledged. See *In re Marriage of Ellis*, 538 P. 2d 1347 (Colo. App. 1975).

Appellant relies upon cases from community property states, such as *Ramsey v. Ramsey*, 96 Idaho 672, 535 P. 2d 53 (1975), and *Miser v. Miser*, 475 S.W. 2d 597 (Tex. Civ. App. 1971), to support her position. For the reasons stated in *In re*

Marriage of Ellis, supra, we do not find the decisions from the community property states to be persuasive. In effect, the community property jurisdictions treat armed forces' retirement pay as alimony; otherwise, it is not collectible, 42 U.S.C. § 659 (Supp. IV, 1974).

Affirmed.
