

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2004-0605, In the Matter of Peggi-Ann Nightingale and Warren A. Nightingale, the court on July 21, 2005, issued the following order:**

The respondent, Warren A. Nightingale, appeals a post-divorce order of the trial court concerning preparation of a Qualified Domestic Relations Order (QDRO). We affirm in part, vacate in part and remand.

In this case, the parties agreed in their permanent stipulation that the petitioner, Peggi-Ann Nightingale, would receive a portion of the pension of the respondent. Under the terms of the stipulation, her attorney was to prepare a QDRO to accomplish this. A QDRO was never executed by the parties. After a hearing, the trial court transferred responsibility for preparing the QDRO to the respondent and ordered any costs incurred for its preparation to be deducted from the pension proceeds due to the petitioner. On appeal, the respondent argues that: (1) the award of the pension should be modified based on the petitioner's misrepresentation that she would prepare the QDRO at the time of the divorce; (2) laches barred the petitioner from enforcing her rights; (3) the petitioner was not entitled to retroactive payment of the benefits; and (4) the court's order that the costs of preparing the QDRO be deducted from the amount due the petitioner under the pension was legally impermissible.

Property settlements in divorce decrees may not be modified absent fraud, deceit, undue influence or misrepresentation. Labbe v. Labbe, 137 N.H. 53, 55 (1993). The trial court specifically found that none of these factors were present in this case. See In the Matter of Giacomini & Giacomini, 150 N.H. 498, 500 (2004) (findings and rulings of trial court are affirmed unless unsupported by evidence or legally erroneous). Based on the record before us, we find no error in this ruling.

While the respondent did not specifically invoke the term "laches" before the trial court, he cited factors to be considered under this doctrine in determining whether the petitioner should be barred from receiving her share of his pension. We will therefore consider this issue and assume that this equitable doctrine may apply to enforcement of property settlements in divorce decrees. Having reviewed the record, we find no error in the trial court's ruling. See Thayer v. Town of Tilton, 151 N.H. 483, 485-86 (2004) (whether laches applies requires consideration of petitioner's knowledge, respondent's conduct, the interests to be vindicated and resulting prejudice). In this case, the interest to be vindicated was the enforcement of petitioner's property award; the respondent

had received and retained the petitioner's award and any alleged prejudice resulting to the respondent from the delay was caused by his receiving assets to which he was not entitled. For the same reasons, we find no merit in the respondent's argument that the petitioner was not entitled to retroactive benefits.

The respondent also contends that the trial court erred in ordering that the costs of preparing the QDRO be deducted from proceeds of the amount owed to the petitioner. We agree. Because federal law prohibits the assignment of these benefits, we vacate that portion of the trial court's order addressing the method of payment and remand for further relief consistent herewith. We note that the petitioner has not appealed the trial court's ruling that she is liable for the reasonable preparation costs of the QDRO; the trial court therefore need not revisit the question of liability upon remand. In addressing the method of payment, the trial court should consider whether the drafting costs must be paid by the petitioner in advance or whether the payment of benefits should be prospective only, perhaps as an offset to the drafting costs.

Affirmed in part; vacated in part and remanded.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox  
Clerk**