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IN THE  
**Supreme Court**  
OF THE  
**Commonwealth of the Northern Mariana Islands**

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**REBECCA C. WHITE,**  
*Plaintiff-Appellant,*

v.

**JOAQUIN T. CAMACHO,**  
*Defendant-Appellee.*

**Supreme Court No. 2021-SCC-0018-FAM**

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**OPINION**

**Cite as: 2022 MP 04**

Decided June 06, 2022

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CHIEF JUSTICE ALEXANDRO C. CASTRO  
ASSOCIATE JUSTICE JOHN A. MANGLOÑA  
ASSOCIATE JUSTICE PERRY B. INOS

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Superior Court Civil Action No. 17-0568  
Associate Judge Teresa K. Kim-Tenorio, Presiding

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CASTRO, C.J.:

¶ 1 Plaintiff-Appellant Rebecca C. White (“White”) appeals the denial of her motion requesting Defendant-Appellee Joaquin T. Camacho (“Camacho”) to pay to White one-half of all contributions made by Camacho to any government retirement fund account during their marriage under the Commonwealth Marital Property Act. For the following reasons, we REVERSE in part and REMAND for further proceedings consistent with this opinion.

### I. FACTS AND PROCEDURAL HISTORY

¶ 2 White and Camacho married on June 29, 2013. They separated on February 25, 2016, and White filed a complaint for divorce pro se. Neither White nor Camacho had an attorney during their divorce proceedings. Their marriage was dissolved on January 31, 2018. Before, during, and after the marriage, Camacho worked for the Northern Mariana Islands government in the Department of Fire and Emergency Medical Services. As a government employee, his retirement fund contributions are mandatory and deducted from his salary. 1 CMC § 8361(c).

¶ 3 The decree of divorce did not go into detail regarding property division. It only stated that “[t]here are no such<sup>1</sup> assets or obligations subject to disposition by the [Superior] Court in this proceeding” and “[a]ll marital assets and personal property of each party presently in the possession of each respective party shall be the property of said party.” *White v. Camacho*, Civ. No. 17–0568 (NMI Super. Ct. Jan. 31, 2018) (Decree of Divorce at 2).

¶ 4 In 2020, White filed a pro se motion requesting “an Order requiring Camacho to pay to [White] one-half of all contributions made by [Camacho] to any government retirement fund account, during the marriage of the parties, in accordance with the Commonwealth Marital Property Act.” Opening Br. 2. The court denied the motion because the request was made before Camacho retired or the funds otherwise became available. The court interpreted this request as asking for a portion of Camacho’s retirement benefits instead of a portion of the contributions made to the fund. *White v. Camacho*, Civ. No. 17–0568 (NMI Super. Ct. Mar. 30, 2021) (Order Den. Pet’r’s Req. for a Distribution of Resp’t’s Retirement Pension). White appealed the decision.

### II. JURISDICTION

¶ 5 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

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<sup>1</sup> The “such” in the sentence from the divorce decree refers to the language on the general complaint form for divorce, which asks for a declaration regarding assets and obligations presently known by the person requesting the divorce. Court Forms, *Complaint*, NMI JUDICIARY, <http://nmijudiciary.com/index.php/courtforms/> (last visited June 3, 2022).

### III. STANDARDS OF REVIEW

¶ 6 The Superior Court's interpretations of the motion and the divorce decree are questions of law and thus subject to de novo review. *Ada v. Calvo*, 2012 MP 11 ¶ 10.

¶ 7 We have previously determined that property characterization in divorce proceedings—marital, separate, or mixed—is a question of law that is reviewable de novo. *Hofschneider v. Hofschneider*, 4 NMI 277, 278 (1995). We further refined this to a multi-part process, where if the court correctly classified the property, we review the apportionment under the Commonwealth Marital Property Act of 1990 on a deferential abuse of discretion basis. *Sattler v. Mathis*, 2006 MP 6 ¶ 16.

### IV. DISCUSSION

#### *A. Procedural Posture of the Motion*

¶ 8 Before reaching the motion itself or whether the court correctly classified the property, we must first determine whether the motion necessitates reopening the divorce decree's division of marital property. The Superior Court's interpretations of both the motion and the divorce decree are questions of law reviewable de novo. *Ada*, 2012 MP 11 ¶ 10. We find it unnecessary to modify the divorce decree.

¶ 9 Generally, a decree of divorce becomes absolute once the period to appeal has expired. 8 CMC § 1103(a). A decree of divorce is a judgment subject to the NMI Rules of Civil Procedure. 8 CMC § 1813(c); 8 CMC § 1103(b). The divorce in this instance became final thirty days after January 29, 2018, making an appeal of the divorce terms now untimely.<sup>2</sup> *White v. Camacho*, Civ. No. 17–0568 (NMI Super. Ct. Jan. 31, 2018) (Decree of Divorce at 4).

¶ 10 The divorce decree not only ended the parties' marriage, but also divided their marital property: “[a]ll **marital assets** and personal property of each party presently in the possession of each respective party shall be the property of said party.” *White v. Camacho*, Civ. No. 17–0568 (NMI Super. Ct. Jan. 31, 2018) (Decree of Divorce at 2) (emphasis added). We have previously stated that “[w]hen a court grants a divorce it may make any appropriate orders . . . for the disposition of the parties' interests in marital property.” *Santos v. Santos*, 2000 MP 9 ¶ 12 (citing 8 CMC § 1311). A divorce decree is a contract between the parties regarding the division of marital property. *Ada*, 2012 MP 11 ¶ 10. The language in such contracts is “to be given its plain grammatical meaning unless doing so would defeat the parties' intent.” *Id.* (citing *Commonwealth Ports Auth.*

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<sup>2</sup> The Rules of Civil Procedure permit relief from a judgment or order of the Superior Court in certain situations. NMI R. CIV. P. 60. However, the motion was not filed as a Rule 60(b) motion, and the court did not treat it as such.

v. *Tinian Shipping Co.*, 2007 MP 22 ¶ 17). Thus, to address issues of marital property division, it would be necessary to return to the divorce decree itself.<sup>3</sup>

¶ 11 We find the court did not interpret the motion as a request to reopen a settled divorce decree or as a request for marital property. Instead, the court interpreted it as asking for a portion of Camacho’s retirement benefits, which it determined to be a type of mixed property under 8 CMC § 1828(b). The divorce decree did not address this type of property at all.

¶ 12 Section 1828(b) is clear that the valuation of the benefit “shall be made as of the death of a spouse or a dissolution,” unless other arrangements are made through “a decree, marital property agreement, or written consent.” 8 CMC § 1828(b). As the divorce decree is silent regarding mixed property, and no other marital property agreement or evidence of written consent exists, the language of the statute fills in the gaps in the parties’ decree.

¶ 13 The language of the statute sometimes necessitates addressing issues of deferred employment benefit distribution many years after a marriage has ended. In *Sattler*, we explained that “valuation . . . shall be made as of . . . dissolution” meant that, “upon dissolution of marriage, the trial court must determine the relevant dates so that the statutory fraction can be set.” 2006 MP 6 ¶ 24. The court is not required to set the value of the deferred employment benefit at the time of the parties’ divorce. *Id.* ¶¶ 29, 24 (where we “refuse[d] to adopt” the option that the court must “value the retirement benefit as of the date of dissolution”). Thus, determining the division of the deferred employment benefits in this instance does not require a reopening of the divorce; rather, Section 1828(b) provides the basis for the motion.

¶ 14 The court exercised appropriate flexibility in applying 8 CMC § 1828(b) in its analysis. White filed for divorce and later filed the motion without an attorney. The motion referenced both the Commonwealth Marital Property Act generally and the contributions Camacho made to his government retirement fund; thus, the court applied the part of the Act that appeared the most relevant to the request. Opening Br. 2. Family court matters provide unique challenges to

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<sup>3</sup> In *Ada v. Calvo*, we found that the court may modify a marital property settlement agreement over the objection of one of the parties when there is: “(1) fraud; (2) a contractual provision allowing modification; (3) overreaching; or (4) a scrivener’s error.” 2012 MP 11 ¶ 20 (internal citations omitted). This approach is in line with our sister courts. For example, Alaska only permits reopening finalized marital property agreements when certain “extraordinary circumstances” justify such modification, including: “(1) the fundamental, underlying assumption of the dissolution agreement had been destroyed; (2) the parties’ property division was poorly thought out; (3) the property division was reached without the benefit of counsel; and (4) the [property in question] was the parties’ principal asset.” *McGee v. McGee*, 974 P.2d 983, 990 (Alaska 1999). Guam does not permit modification of a property settlement in a divorce decree unless fraud or gross inequity is shown. *Scroggs v. Scroggs*, 2014 Guam 2 ¶ 18. However, this analysis does not apply here since neither White nor the court considered modifying the property distribution in the divorce decree. Additionally, Camacho has not objected or responded to the motion.

courts. In establishing a family court, our legislature recognized that it would require judges with “special training and flexibility,” as many who make use of the court do not have attorneys or specialized legal training. 1 CMC § 3205; PL 9-51 § 2. The court exercised such flexibility here in interpreting the motion as a request for a portion of the benefits instead of an attempt to revisit the divorce decree.

¶ 15 The court viewed the motion as a request for a division of mixed property under Section 1828(b) instead of an attempt to revisit a long-settled divorce decree. Therefore, we find the court properly heard the motion, and it was not required to modify the divorce decree in this instance.

*B. Mixed Property Determination*

¶ 16 The next issue centers on whether retirement contributions are marital property or mixed property. This is a question of law subject to de novo review. *Sattler*, 2006 MP 6 ¶ 16. We agree with the court’s determination that the retirement contributions are mixed property.

¶ 17 Property not owned by an individual spouse is classified as marital property or mixed property at dissolution of the marriage. Generally, marital property is split between spouses, and “[e]ach spouse has a present undivided one-half interest” in such property.<sup>4</sup> 8 CMC § 1820(c). Mixed property is marital property combined with property that is fully owned by one spouse, for example, retirement benefits where the spouse worked before, during, and after the marriage. 8 CMC § 1829(a); 8 CMC § 1828(b). Mixed property division requires two steps. In cases involving mixed property division of retirement benefits, the court first determines the portion of the entire benefit that should be considered marital property, then it divides that amount between the spouses equally. 8 CMC § 1828(b).

¶ 18 White asserts that the court mistakenly classified Camacho’s retirement contributions as mixed property instead of marital property, as the plain language of Section 1820 provides that “[i]ncome earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is marital property.” 8 CMC § 1820(d). There is also a general presumption that property of spouses is presumed to be marital property. 8 CMC § 1820(b). However, this same statute also provides exceptions to the general classification of marital property, including property that “is classified otherwise by this chapter.” 8 CMC § 1820(a). Deferred employment benefits are classified in 8 CMC § 1828(b).

¶ 19 The statute describing the classification of employment benefits specifies that benefits accrued during the marriage are marital property, but where a spouse also accrued benefits either before or after the marriage, the total benefits are mixed property. 8 CMC § 1828(a)–(b). Camacho was working before, during, and after the marriage. If the court was correct that contributions to a

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<sup>4</sup> There is an exception when restrictions under Article XII of the NMI Constitution apply regarding land, which is not relevant to this case. 8 CMC § 1820(c).

retirement fund are a part of a spouse's deferred employment benefits, it would be correct in determining the contributions to be mixed property. See 8 CMC § 1828(b). However, if retirement contributions are instead a subcategory of income, then it would be appropriate to classify the contributions as marital property. 8 CMC § 1820(d). The issue before us now centers upon whether the contributions to the retirement fund are income—and thus marital property—or are part of his deferred employment benefits—and thus mixed property.

¶ 20 This presents a question of timing. At what point does a contribution from one's income become a deferred employment benefit? We addressed the division of retirement benefits between former spouses in *Sattler*. 2006 MP 6. We have not analyzed the specific question as to when income becomes a deferred employment benefit under 8 CMC § 1828(b).

¶ 21 To examine the question of timing, we first turn to the statute itself. We look to the plain meaning of the language when interpreting a statute. *In re Pangelinan*, 2021 MP 11 ¶ 18. Section 1828(b) provides that a “deferred employment benefit attributable to employment of a spouse occurring during marriage and partly before and partly after the determination date is mixed property.” Section 1813(d) defines in relevant part:

“Deferred employment benefit” means a benefit under a plan, fund, program, or other arrangement under which compensation or benefits from employment are expressly, or as a result of surrounding circumstances, deferred to a later date or the happening of a future event. Such an arrangement includes: a pension, profit sharing, or stock-purchase plan; a savings or thrift plan; an annuity plan; a qualified bond-purchase plan; a self-employed retirement plan; a simplified employee pension; and a deferred compensation agreement or plan.

Timing appears to be a crucial part of this definition, as it requires such compensation to be deferred to a later point in time.

¶ 22 The word “deferred” in particular is important. *Black's Law Dictionary* defines “defer” as “to postpone” or “to delay.” *Black's Law Dictionary* 383 (9th ed. 2010). The definition of a deferred employment benefit in 8 CMC § 1813(d) does not only refer to the money or benefits which would be available to a person at the moment of retirement, but also to the process of “expressly” deferring such payments “to a later date.” 8 CMC § 1813(d).

¶ 23 Built into the statutory definition of a deferred employment benefit is the act of withholding a part of what would otherwise be accrued income. Thus, a contribution to the retirement fund is immediately a deferred employment benefit.

¶ 24 The definition in 8 CMC § 1813(d) does not leave temporal space for funds that are contributed to a pension plan without becoming a part of the pension plan. There is no room for a separate, discrete contribution of money which is both separate from an employee's income and also not a part of a retirement plan.

Thus, it is apparent from the definition of “deferred employment benefits” in 8 CMC § 1813(d) that under the Marital Property Act, the contributions set aside from a person’s income for their retirement fund are part of that person’s retirement benefits.

¶ 25 In addition, Camacho’s contributions are mandatory deductions from his salary. 1 CMC § 8361(c). Unlike a separate savings account, where Camacho would first need to receive his income in order to deposit it, the retirement fund takes a percentage of his income by law without his direct input. It is not dispositive in this instance whether the contributions are mandatory or not; however, it is relevant in the present case that the structure of the retirement plan is such that Camacho does not have independent control of the contributions before they are made on his behalf. He did not take possession of the funds as income before making the contribution.

¶ 26 As a contribution to a retirement fund is a part of a deferred employment benefit scheme, it follows that the court correctly turned to 8 CMC § 1828(b). It also follows that, as Camacho was employed both before and during marriage, the retirement benefits classify as mixed property. Thus, we agree that his contributions are mixed property, not marital property.

*C. Application of Mixed Property Equation in 8 CMC § 1828(b)*

¶ 27 As the court correctly identified the contributions as mixed property, we review its apportionment under the Marital Property Act on a deferential abuse of discretion basis. *Sattler*, 2006 MP 6 ¶ 16. The court did not apportion any part of the retirement benefits on the basis that White is not entitled to them yet. We have previously found in *Sattler* that merely bringing up the statutory fraction without taking further steps to apply it to the facts of a case is insufficient. *Id.* ¶ 33. Thus, we find that the court did not apply the equation in this case.

¶ 28 The equation in Section 1828(b) determines the apportionment of deferred employment benefits: the entire benefit must be multiplied by the last to occur of either the determination, employment, or marriage date, minus the date of official separation, divided by the total number of years employed.<sup>5</sup> In *Sattler*, we provided general guidance in applying the equation:

The court must find, from the evidence before it, four dates: 1) the determination date; 2) the date employment began; 3) the date of marriage; and 4) the date of separation. The time period comprising the numerator does not begin running until numbers 1, 2, and 3 (the determination date, the date employment began, and the date of marriage) have each occurred. Thus, the numerator is found by the

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<sup>5</sup> In this case, the last date to have occurred was the marriage date. Thus, the Section 1828(b) formula presented mathematically would be:

$$(\text{entire benefit}) \times \left( \frac{(\text{marriage date}) - (\text{date of divorce})}{(\text{total number of years employed})} \right)$$

equation: (last to occur of the determination date, employment date, or marriage date) minus (the date of separation).<sup>6</sup> The denominator is the total number of years employed.  
2006 MP 6 ¶ 23.

We determined that it would be an abuse of discretion for the court to bring up the equation but then not apply it as described in the text of the law itself. *Id.* ¶¶ 33, 35 (“[t]he retirement benefit was correctly deemed mixed property, so the trial court *must* utilize the 8 CMC § 1828(b) statutory equation in allocating the benefit between marital and separate property”). The statutory formula presumptively applies to apportionment of deferred employment benefits when the benefits are determined to be mixed property.

¶ 29 The court must go beyond simply pointing out that the statutory equation is relevant. As discussed above, we determined that the language in Section 1828(b), “valuation . . . shall be made as of . . . dissolution,” required the court to “determine the relevant dates so that the statutory fraction can be set.” *Id.* ¶¶ 24, 29. Specifically, we said that “the trial court must fix the numerator of the fraction and the start date of employment, so that upon termination of employment the denominator will be set and the statutory fraction would be readily ascertainable.” *Id.* ¶ 24. In this case, the court did not determine the available numbers for the equation or otherwise clarify whether White is entitled to a portion of Camacho’s retirement benefits when they become available. The court may rectify this by determining the relevant dates and fixing the applicable numbers in the equation.

¶ 30 Courts generally may not modify property divisions in finalized divorce decrees on the request of one of the former spouses. *Ada*, 2012 MP 11 ¶ 20. However, as we explained above, this case does not require the court to modify the divorce decree, as it did not cover mixed property or retirement benefits. Rule 60(d)(1) of the Rules of Civil Procedure permits the court to “entertain an independent action to relieve a party from a judgment, order, or proceeding.” We find that the court, by entertaining this motion under Section 1828(b), must now apply the equation as outlined in our precedent, *Sattler*.

¶ 31 The court abused its discretion by merely mentioning the equation without applying it. It is true that White is not currently entitled to any of the contributions or other part of Camacho’s pension as the facts currently stand, because it does not appear that he has retired or that the benefits have become available through

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<sup>6</sup> We used “the date of separation” as a more general term to include instances where a marriage ends in other ways apart from a divorce, such as through a decree of dissolution, an annulment, a declaration of invalidity, or an entry of a decree of legal separation. 8 CMC § 1813(g)(i)–(ii). As the statute regarding the division of deferred employment benefits specifically states “during marriage,” it does not limit the time to when the spouses separated before divorcing. 8 CMC § 1828(b). In *White* and *Camacho*’s case, the dates regarding the length of the marriage are clear, and the proper date to use in this part of the fraction is the date of their divorce.



other means. However, as she will be entitled to a portion of them at some future date, the court should determine as much of the equation as is currently possible.

¶ 32 The statutory equation in Section 1828(b) serves to protect the rights of spouses or ex-spouses in instances where property division is not clearly decided; however, the parties may choose to come to a different arrangement. For example, as we stated in *Sattler*, in cases where the value of the retirement benefit is reasonably ascertainable, the employee spouse may choose to “buy out” the other spouse’s share. 2006 MP 6 ¶ 27. This determination requires the court to carefully examine the circumstances of both parties to help them reach the most equitable approach.

#### V. CONCLUSION

¶ 33 We find that it is unnecessary to modify the divorce decree’s division of property to address the motion presented in this case. We also find that the court correctly determined the retirement fund contributions to be deferred employment benefits and therefore mixed property pursuant to 8 CMC § 1828(b). However, the court abused its discretion by not applying the equation once it concluded that it applied. The court should apply the fraction by determining as much of the equation as is currently possible, or in the alternative and based on the parties’ wishes, provide them with an opportunity to negotiate an alternative arrangement. For the foregoing reasons, we REVERSE in part the court’s order denying the motion regarding the application of the equation and REMAND this case for further proceedings consistent with this opinion.

SO ORDERED this 6th day of June, 2022.

/s/  
ALEXANDRO C. CASTRO  
Chief Justice

/s/  
JOHN A. MANGLOÑA  
Associate Justice

/s/  
PERRY B. INOS  
Associate Justice

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