

Equitable Distribution: QDROs, DROs, and a statute of limitations

In this earlier post, I wrote about whether the [10-year statute of limitations](#) for initiating an action on a judgment bars the entry of a QDRO if the request for the QDRO is made more than 10 years following entry of the equitable distribution judgment. <https://civil.sog.unc.edu/so-someone-forgot-to-draft-that-qdro-now-what/>

The court of appeals recently answered this question, holding that the entry of a QDRO, or a DRO as discussed further below, is a procedural method of effectuating and completing a judgment rather than a substantive mechanism for enforcement of a judgment. Therefore, a request for the court to enter the order is not an action on a judgment and is not barred by the statute of limitations.

[Welch v. Welch \(NC App, May 2, 2023\)\(Welch II\)](#)

An equitable distribution consent judgment entered in 2008 ordered that plaintiff transfer one-half of his ownership interest in an IRA to defendant. Plaintiff failed to make the transfer. In 2019, defendant filed a motion for contempt or, in the alternative, for a [Rule 70](#) order directing another person to execute the documents to effectuate the transfer. The trial court dismissed the defendant's motions after ruling that the 10-year statute of limitations in [GS 1-47\(1\)](#) barred all actions to enforce a judgment filed more than 10 years after its entry. Defendant appealed but the court of appeals agreed with the trial court, holding that both the contempt motion and the motion for the [Rule 70](#) order were actions seeking to enforce the ED judgment. [Welch v. Welch, unpublished opinion, 278 NC App 375 \(2021\) \("Welch 1"\)](#). The court of appeals, however, specifically declined to address the authority of the trial court to enter a domestic relations order to effectuate the transfer.

Following that appeal, defendant filed another motion in the trial court, this time asking the court to enter an "IRA Domestic Relations Order (DRO) pursuant to [IRC section 408\(d\)\(6\)](#) transferring the current balance of plaintiff's Schwab IRA account" to "effectuate" the equitable distribution judgment and to effectuate her vested property rights in the IRA that were created by the ED judgment. The trial court denied the motion, first concluding that the IRA was not a "qualified retirement plan" pursuant to ERISA and therefore could not be distributed by a QDRO or other order and concluding that defendant's motion was another action seeking to enforce the ED judgment and was therefore barred by the 10-year statute of limitations set out in [GS 1-47](#).

This time the court of appeals disagreed with the trial court and held that the entry of a DRO (domestic relations order) is the appropriate procedural mechanism for distributing an IRA and holding that the statute of limitations does not bar a request for entry of a DRO as a means of effectuating a prior order if the entry of the DRO does not affect the substantive rights of the

parties.

QDRO or DRO??

The court of appeals held that defendant's interest in plaintiff's IRA vested when the equitable distribution consent judgment was entered granting defendant one-half of plaintiff's IRA. [GS 50-20.1\(g\)](#) provides that an interest in a retirement account is distributed "by means of a qualified domestic relations order [a QDRO], or as defined in [section 414\(p\) of the Internal Revenue Code of 1986](#), or by domestic relations order [a DRO] or other appropriate order." [GS 50-20.1\(h\)](#) specifically states that these methods of distribution apply to the distribution of individual retirement accounts [IRAs].

The court of appeals pointed out that distribution of employer-sponsored retirement accounts subject to the [federal Employee Retirement Income Security Act of 1974 \(ERISA\)](#) require a "special class of DRO" called a qualified domestic relations order (a QDRO) as defined by [29 USC section 1056\(d\)\(3\)\(A\)](#). But IRAs that are not funded by an employer are not subject to ERISA and can be distributed by "a simpler DRO." The DRO will contain whatever findings of fact, conclusions of law, and other information required by the administrator of the specific IRA to be distributed. Contrary to the conclusion of the trial judge, "the IRA does not need to be a qualified retirement plan under ERISA for the trial court to issue a DRO."

The Statute of Limitations

[GS 1-47](#) specifies that the statute of limitations for initiating an action upon a judgment is ten years from the date of entry of the judgment. In the first appeal of this case, the court of appeals held that a motion for contempt and a [Rule 70](#) motion were "actions to enforce a judgment" and subject to the 10-year limitation period. In this appeal, the court held that the request for entry of a DRO is not "an action on a judgment" but rather a request to effectuate or complete the equitable distribution judgment.

As support, the court of appeals quoted the Vermont Supreme Court:

"We simply disagree with the conclusion that entry of a DRO is an attempt to enforce the underlying final divorce order or that the filing of a DRO is an attempt to enforce the underlying final divorce order or that the filing of a DRO constitutes an execution upon the judgment. ... [T]he right to obtain the retirement funds awarded in a final divorce order depends upon the approval of a third-party, the plan administrator. There is no 'judgment' to execute or enforce until that step has been taken."

Johnston v. Johnston, 212 A.3rd 627, 636 (Vt. 2019).

Also citing a Michigan appellate court, the court of appeals explained that while the statute of

limitations would apply to an attempt to claim a *substantive* right to retirement benefits granted by a judgment, the limitation statute does not apply to a request for the *procedural* mechanism required to accomplish the distribution ordered by the equitable distribution judgment. *Dorko v. Dorko*, 934 NW2d 644 (Mich. 2019).

Does it matter that the ED judgment did not order entry of a DRO?

It is common for equitable distribution judgments to specifically order that appropriate domestic relations orders be entered to effectuate the distribution of retirement accounts. In [Welsh II](#) however, the consent judgment stated that the distribution would happen by way of a “trustee to trustee transfer.” The court of appeals noted this but stated that the fact that the judgment did not order transfer by a DRO or a QDRO did not impact the holding in this case. The court explained that the principles outlined in the opinion allow the trial court to enter a domestic relations order to effectuate the judgment, even if the trial court did not specifically order entry of the DRO or QDRO in the equitable distribution judgment.