

SUPREME COURT OF LOUISIANA

No. 97-C-2305

CHARLENE ARCEMENT BLANCHARD

VERSUS

WAYNE P. BLANCHARD

MARCUS, J. (dissenting)

In this case, the trial judge partitioned community assets that include the plaintiff's interest in a defined benefit pension plan in which she is fully vested and under which she can retire at any time at her option. Relying on the stipulated present cash value of the retirement plan, the trial judge allocated the retirement benefits in their entirety to the planholder wife. He allocated the former family home, which had a similar stipulated value, to the husband. This real estate had been the boyhood home of the husband and was sold to the couple by his family.

La. R.S. 9:2801(c) provides that in allocating assets and liabilities in a partition proceeding, the trial judge may allocate an asset in its entirety to one of the spouses. In determining how to best effectuate a partition, the trial judge is to consider not only the nature of the assets, but also

the source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant.

Moreover, as we noted in our decision in Hare v. Hodgins, 586 So. 2d 118 (La. 1991), the present cash value method of valuing pension rights is frequently a preferred method where there is sufficient equivalent property to satisfy the claims of the non-employee spouse without undue hardship to the employee spouse. In my view, the trial judge did not commit manifest error in weighing the multiple considerations suggested by La. R.S. 9:2801(c) to determine that the entirety of the wife's retirement plan could be allocated to the wife and the entirety of the similarly valued former boyhood home of the husband could be allocated to the

husband without undue hardship to either party.

Accordingly, I respectfully dissent.