



RESEARCH MEMO

Supreme Court Holds Pension Plan Terms Determining Who is Beneficiary Control Over Divorce Decree "Waiver"

Ex-Wife Still Beneficiary After Divorce

The Supreme Court recently ruled on a case in order to resolve a split among the Courts of Appeals and State Supreme Courts *over a divorced spouse's ability to waive pension plan benefits through a divorce decree not amounting to a QDRO*. Unfortunately, a technical discussion of *ERISA* is part of the Court's decision, but in simplest terms the moral of the story is the same. When a pension plan document has rules on the procedures and forms a participant must use in designating a beneficiary, these rules control over any purported waiver of any interest in the pension plan by an ex-spouse in a divorce decree.

The result in this case was the ex-wife who "waived" her interest in her ex-husband's plan in a divorce decree still remained the beneficiary under the pension plan. Years prior to the divorce, the participant had designated her as his beneficiary according to the terms of the pension plan and never took any steps to undo his designation of the ex-wife as his beneficiary. State law said a spouse's designation as a retirement-plan beneficiary is invalidated by a subsequent divorce.

In *Kennedy v. Plan Administrator for Dupont Savings and Investment Plan*, 2009 WL 160440 (Jan. 26, 2009) the U.S. Supreme Court held that an ex-wife's waiver of any rights under her husband's savings and investment plan (SIP) in a divorce decree that was not a QDRO did not control over her ex-husband's designation of her as his beneficiary in accordance with the terms and forms of the SIP. Contrary state law did not control. A copy of the case is available by "[clicking here](#)."

In other words, even though the ex-wife waived any interest in the SIP in the divorce decree, the terms of the SIP still controlled. She was still the designated beneficiary under the SIP and remained the beneficiary as the ex-husband took no steps to remove her as beneficiary or name a new beneficiary, as he was required to do under the terms of the SIP if that was his intent. However, if the SIP had said that in the event of a divorce the designation of an ex-spouse is automatically nullified and the beneficiary shall be the participant's estate until he names a beneficiary – this case would have had a different ending.

THE CASE

Marriage, Divorce and a Designated Beneficiary

In this case, the decedent, William Kennedy, participated in his employer's savings and investment plan (SIP). In 1971, William married Liv Kennedy, and, in 1974 *he signed a form designating her to take benefits* under the SIP, but naming no contingent beneficiary to take benefits if she disclaimed her interest. He had the power both to designate a beneficiary to receive the funds upon his death and to replace or revoke that designation as prescribed by the plan administrator. The SIP required *"all authorizations, designations and requests concerning the Plan to be made by employees in the manner prescribed by the plan administrator,"* and provides forms for designating or changing a beneficiary.

Under the terms of the SIP, if there is no surviving spouse or designated beneficiary at the time of death, distribution is made as directed by the estate's executor or administrator. William and Liv divorced in 1994 and the *decree divested Liv of her interest in the SIP*. However, Kennedy did not execute a document removing Liv as the SIP beneficiary. He did execute a new beneficiary-designation form naming his daughter, Kari Kennedy, as the beneficiary under a separate pension plan, DuPont's Pension and Retirement Plan, but he never named anyone else as beneficiary under the SIP.

Death and The Fight Over Who Is The Beneficiary

On William's death, his daughter and the executrix of his Estate, asked for the SIP plan funds to be distributed to the Estate, but the plan administrator relied on William's designation form and paid them to Liv. The Estate filed suit, alleging that Liv had waived her pension plan benefits in the divorce and thus respondents, the employer and the plan administrator (together, DuPont), had violated *ERISA* by distributing the benefits to Liv. As relevant here, the District Court entered summary judgment for the Estate, ordering DuPont to pay the benefits to the Estate. However, the Fifth Circuit reversed that judgment, holding that Liv's waiver was an assignment or alienation of her interest to the Estate barred by *ERISA*. The Supreme Court affirmed the Fifth Circuit. Its opinion is discussed below.

The Supreme Court Says...

The Supreme Court said *"the question remains whether the plan administrator was required to honor Liv's waiver with the consequence of distributing the SIP balance to the Estate. We hold that it was not, and that the plan administrator did its statutory ERISA duty by paying the benefits to Liv in conformity with the plan documents."*

After a technical discussion of whether the divorce decree violated *ERISA*'s anti-alienation or anti-assignment clauses, the court said the waiver in the decree did not violate such provisions. The Court reasoned it was uncontested that the SIP and the summary plan description are "documents and instruments governing the plan." *ERISA* requires *"....every employee benefit plan to be established and maintained pursuant to a written instrument,....specifying the basis on which payments are made to and from the plan"*.

The Court noted the plan administrator is obliged to act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of *ERISA*, and the Act provides no exemption from this duty when it comes time to pay benefits."

The Court concluded those documents provide that the plan administrator will pay benefits to a participant's designated beneficiary, with designations and changes to be made in a particular way. William's designation of Liv as his beneficiary was made in the way required; Liv's waiver was not.

The Court explained the administrative ease this approach fosters. By giving a plan participant a clear set of instructions for making his own instructions clear, *ERISA* forecloses any justification for inquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

The decision keeps plan administrators from being forced "to examine a multitude of external documents that might purport to affect the dispensation of benefits," and be drawn into litigation like this over the meaning and enforceability of purported waivers.

But...

In spite of clarifying that the plan document, procedures and forms control the determination of who is the designated beneficiary when there is a divorce decree that purports to waive any interest in the plan, the Court did make specific note that its decision "*leaves open any questions about a waiver's effect in circumstances in which it is consistent with plan documents.*" Here, the waiver was not contemplated by the terms of the SIP and had no effect. Nor did the Court express any view as to whether the Estate could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed.

The Court also noted it "*expressed no view regarding the ability of a participant or beneficiary to bring a cause of action under *ERISA* where the terms of the plan fail to conform to the requirements of *ERISA* and the party seeks to recover under the terms of the statute.*"

Given the important role beneficiary designation procedures can play, pension plans and welfare plans may wish to revisit their beneficiary designation rules in the plan, SPD and forms to make sure they are consistent, clear and followed.

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