STATE OF MICHIGAN

COURT OF APPEALS

HETTA MOORE,

Plaintiff-Appellee,

v

CLARKE A. MOORE, Deceased, by the ESTATE of CLARKE A. MOORE,

Defendant-Appellant.

FOR PUBLICATION
April 28, 2005
9:00 a.m.

No. 251822
Macomb Circuit Court
LC No. 98-003538-DO

Before: Saad, P.J., and Fitzgerald and Smolenski, JJ.

SAAD, P.J.

Defendant appeals by delayed leave granted the trial court's order that denied defendant's motion for postjudgment relief. We reverse and remand.

I. NATURE OF THE CASE

We address the question of who is entitled to the proceeds of a life insurance policy and a pension death benefit, the decedent's estate or decedent's former wife. Here, the decedent named plaintiff, his former spouse, as the beneficiary, but after the divorce, he died without changing the beneficiary designation. The decedent and his former wife had entered into a Consent Judgment of Divorce that provided that each party's interests in the other party's life insurance policies[1] was terminated by the Judgment of Divorce. Defendant, the estate of Clarke A. Moore, maintains that plaintiff, Hetta Moore, waived any right to retain the funds paid to her as the named beneficiary by agreeing to the entry of the Consent Judgment of Divorce. On the other hand, plaintiff maintains that the Employee Retirement Income Security Act (ERISA)[2] preempts the Michigan statute[3] that mandates that all judgments of divorce contain language disposing of each party's interest in the others retirement and pension plans, and that this

[1] The waiver also included pensions and other similar retirement plans.

[2] 29 USC 1001 *et seq*.

[3] MCL 552.101

preemption negates any claimed waiver. Accordingly, plaintiff argues that she is entitled to retain the funds as the named beneficiary.

Though the United States Supreme Court has held that ERISA preempts state statutes that relate to benefits plans governed by ERISA, the instant case involves a question of the waiver of the rights to retain funds, and not the question of ERISA preemption. Here, the question is not whether a plan administrator should be required to determine whether someone other than the named beneficiary is entitled to the proceeds of ERISA plans, but rather, whether ERISA mandates that a named beneficiary who has expressly waived her right to those proceeds in a consent judgment of divorce should be allowed to retain those funds. We hold that where a named beneficiary to an ERISA benefits plan has expressly waived her interest in that plan in a consent judgment of divorce, he or she is not entitled to retain those benefits.

II. FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant's decedent were divorced on April 12, 1999. The Judgment of Divorce, signed by both parties, contained the following provisions concerning life insurance and pension and annuity benefits:

> IT IS FURTHER ORDERED AND ADJUDGED that *any* right of either party in *any* policy or contract of life, endowment or annuity insurance of the other, as beneficiary are hereby *extinguished* unless specifically preserved by this Judgment.
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> ***
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> IT IS FURTHER ORDERED AND ADJUDGED that *any* right of either party in:
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> A. *Any* vested pension or annuity or retirement benefits,
>
> B. *Any* accumulated contributions in any pension, annuity, or retirement system,
>
> C. *Any* right or contingent right in and to unvested pension, annuity, or retirement benefits,
>
> of the other party is hereby extinguished unless specifically preserved by this Judgment or a Qualified Domestic Relations Order. The parties hereto will enter into a Qualified Domestic Relations Order as to Defendant, CLARKE A. MOORE, JR.'s, pension through his employment.[4] [Emphasis added.]

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[4] Because *MacInnes v MacInnes*, 260 Mich App 280, 287-288; 677 NW2d 889 (2004), is controlling, we quote here the "waiver" language at issue in *MacInnes* to compare that language with the waiver provision quoted above:

(continued…)

During the marriage, the decedent designated plaintiff as the beneficiary of an employment life insurance policy worth $60,000 and a pension death benefit worth $72,000. Following the death of the decedent on February 17, 2003, the defendant estate sought to receive these proceeds, but learned from the plan administrator that these funds have already been disbursed to the named beneficiary. Relying on the waiver language in the divorce judgment, defendant moved in the trial court for post-divorce-judgment relief to invoke the original trial court's jurisdiction to enforce its Judgment of Divorce, and asked the trial court to order plaintiff to turn the proceeds over to the estate. The trial court ruled that plaintiff was entitled to these proceeds because she was the named beneficiary and because the waiver language was invalid, as preempted by ERISA.

III. ANALYSIS

Defendant argues the trial court erroneously denied his motion for payment of the funds, because the Consent Judgment of Divorce clearly terminated any interest plaintiff had in decedent's pension death benefit and life insurance policy.

A. ERISA and Preemption

In *Egelhoff v Egelhoff*, 532 US 141, 148; 121 S Ct 1322; 149 L Ed 2d 264 (2001), the United States Supreme Court held that that an ERISA plan administrator must pay plan benefits, such as the proceeds at issue here, to the named beneficiary only.[5] However, in *MacInnes v MacInnes*, 260 Mich App 280, 286-290; 677 NW2d 889 (2004), this Court determined that *Egelhoff* was inapposite in a case with a nearly identical fact pattern as the instant case. The ultimate issue in *MacInnes* was whether the named beneficiary had waived any right under ERISA to funds payable from ERISA benefit plans.

(…continued)

> It is further ordered and adjudged, that except as otherwise provided, all rights of either party in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the other in which said party was named or designated as beneficiary, or to which said party became entitled by assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, shall hereupon become and be payable to the estate of the owner of said policy, or such named beneficiary as shall hereafter be affirmatively designated. [*MacInnes v MacInnes*, 260 Mich App 280, 287-288 (2004).]

[5] The Retirement Equity Act of 1984 provides an exception to this restriction. A qualified domestic relations order (QDRO) "creates or recognizes the existence of an alternative payee's right to, or assigns to an alternative payee the right to, receive all or a portion of the benefits payable with respect to a participant under the plan." 29 USC 1056(d)(3)(B)(i) (I). Thus, a QDRO is exempted from ERISA's preemption provisions and may be used to distribute funds to a payee who was not a named beneficiary. 29 USC 1144(b)(7). Here, plaintiff concedes that no QDRO was filed with respect to the proceeds at issue.

Egelhoff involved a State of Washington statute that provided that a judgment of divorce *automatically* revokes a named beneficiary designation in all nonprobate assets, including life insurance policies and retirement and pension plans. *Egelhoff*, *supra* at 144. By contrast, MCL 552.101 does not revoke such designations by operation of law, but rather, it mandates that a trial court's judgment of divorce contain some language that disposes of the parties' rights to such benefits. Here, unlike *Egelhoff,* defendant does not argue that the plan administrator should have paid the funds to someone other than the named beneficiary, but rather, like *MacInnes,* that the named beneficiary, having received the funds, was not entitled to retain them because she had waived that right in a consent judgment of divorce. Accordingly, this case does not implicate ERISA's preemption provisions, but instead, is governed by principles of waiver and the issue is: did plaintiff waive her right to retain the funds paid to her as named beneficiary. See *MacInnes*, *supra*.

B. Waiver

Plaintiff is not entitled to the proceeds from the insurance policy and the pension death benefits because she expressly waived any entitlement in the divorce judgment. *MacInnes*, *supra* at 286-290. The facts of this case are nearly identical[6] to those in *MacInnes*, *supra*. In *MacInnes*, this Court stated, in language equally applicable here, "the circumstances of this case convince us that the issue presented is most appropriately resolved under principles of waiver rather than preemption." *MacInnes*, *supra* at 286.

As our Court noted in *MacInnes*, the federal courts are split on the question of whether ERISA preempts an attempt to explicitly waive a named beneficiary's rights to an interest in an ERISA-regulated benefits plan. *MacInnes*, *supra* at 286. The United States Court of Appeals for the Sixth Circuit has held that a common-law waiver cannot override the designation of a named beneficiary under ERISA. *Metropolitan Life Ins Co v Pressley*, 82 F3d 126, 129-130 (CA 6 1996); See also *MacInnes*, *supra* at 286 n 4. The trial court here relied on *Pressley* to rule in favor of plaintiff.[7] However, *Pressley* represents the minority view on this issue. *MacInnes*, *supra* at 286 n 4. The majority and better view holds that a person can explicitly waive her or his rights to ERISA plan benefits even where she or he may be the named beneficiary. *Id*. at 286, citing *Melton v Melton*, 324 F3d 941 (CA 7, 2003). And, with respect to questions of federal law, this Court is bound by precedent from federal courts only if there is no conflict among the various federal appellate courts. *MacInnes*, *supra* at 286 n 3, citing *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). However, where there is a conflict, and where the United States Supreme Court has not resolved this conflict, a state court may choose, as we do, to adopt the rule it determines to be most appropriate. *MacInnes*, *supra* at 286 n 3, citing *Schueler v Weintrob,* 360 Mich 621, 634; 105 NW2d 42 (1960). This Court expressly repudiated the minority view that waiver is not permitted by ERISA, and has instead adopted the majority view that allows waiver. *MacInnes*, *supra* at 286.

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[6] See footnote 3, *supra*.

[7] We note that the trial court issued its ruling on August 6, 2003, several months prior to our Court's release of *MacInnes* on January 8, 2004.

To determine whether a waiver is valid, our courts have asked if the waiver of ERISA-regulated benefits is explicit, voluntary, and made in good faith. *MacInnes*, *supra* at 287, citing *Melton*, *supra* at 945. As our Court in *MacInnes* said, quoting *Melton*, "Essentially, when we are evaluating whether the waiver is effective in a given case, we are more concerned with whether a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question than with any magic language contained in the waiver itself."[8] Michigan courts define "waiver" as the voluntary and intentional relinquishment of a known right. *MacInnes*, *supra* at 287.

Plaintiff does not argue that she did not knowingly and voluntarily agree to the waiver language contained in the Judgment of Divorce. Instead, she argues, disingenuously in our view, that this language is too vague to be considered a waiver. However, in *MacInnes*, this Court held that nearly identical language[9] explicitly indicated that the parties intended to waive any interest in the other's ERISA-regulated policies. *Id.* at 288. Here, plaintiff's attorney prepared the divorce judgment, and plaintiff signed it. The language in the divorce judgment is plainly a waiver of plaintiff's rights to the decedent's insurance proceeds and pension death benefits. Therefore, we hold that the trial court should have ordered plaintiff to turn over the proceeds of decedent's insurance policy and pension death benefits to be paid to defendant.

IV. CONCLUSION

Reversed and remanded for entry of judgment in favor of defendant consistent with our opinion.[10] We do not retain jurisdiction.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski

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[8] *Melton, supra* at 945-946.

[9] The language at issue here differs in form, but not substance, from the language in *MacInnes.* We emphasize that "waiver" will be found where, as here, a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question. In other words, there is no "magic" language required for a finding of waver.

[10] In light of our resolution of the above issue, we need not address the other issues that defendant raised on appeal.