A Timely Analysis of Legal Developments

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In a unanimous decision, the U.S. Supreme Court has held that under ERISA, plan administrators must distribute plan assets in accordance with the terms of lawful plan documents without regard to a waiver of benefits contained in a divorce decree. In *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, the plan administrator distributed the proceeds from a savings plan to a deceased employee's ex-wife who was listed as the beneficiary on the plan documents despite the fact that she had earlier waived all rights to the benefits in a divorce decree.

Supreme Court Upholds the Primacy of ERISA Plan Documents over Divorcee's Waiver of Pension Benefits

By Susan Katz Hoffman

On January 26, 2009, the United States Supreme Court issued a unanimous opinion in *Kennedy v. Plan Administrator for the DuPont Savings & Investment Plan*, No. 07-636. This case generated significant interest because it promised to resolve the oft-arising dilemma plan administrators and sponsors face when they encounter a now-deceased plan participant failed to remove his or her ex-spouse as a named beneficiary of a pension or life insurance benefit, despite the fact that the ex-spouse had waived all rights to the benefit in the divorce. Adding further interest was the unusual fact that the Court initially granted certiorari only on the question of whether the spousal waiver was an unlawful assignment or alienation under ERISA, but during oral argument, decided that the real question was whether the plan document would control (an issue that the appellants had raised but the Court had rejected as a basis for its review).

As might be expected from this convoluted history, the Court's decision turned on the plan document question. But in the process, the Court also resolved significant questions with respect to waivers and disclaimers of benefits.

Simply put, the Court held that because ERISA requires plan administrators to follow the terms of lawful plan documents, no divorce decree (other than a properly-drafted qualified domestic relations order – "QDRO") can override the specific terms of the plan. Accordingly, where a benefit plan has a specified procedure for designating beneficiaries and for revoking or replacing a beneficiary designation, the plan administrators *must* follow those plan procedures, despite the fact that the designated beneficiary has waived those same benefits in the divorce decree.

Notwithstanding this general rule, the Court also held that the designated beneficiary has the right (just as under traditional trust law) to disclaim his or her interest in the benefit, at least where the plan provides for such a disclaimer.

Background Facts

In the *Kennedy* case, William (the employee) had designated his wife, Liv, as the beneficiary for his pension plan and his savings plan. When they divorced, William executed a new beneficiary form for his pension plan, naming his daughter, Kari, as the beneficiary, but he did not execute a new form for the savings plan. In the divorce decree, Liv was "divested" of all her rights to any of William's retirement or pension plan or any other benefit program. When William died, Kari was named executrix of his estate and demanded payment of the savings plan account under the plan provision providing for payment to the estate where there is no valid beneficiary designation. Instead, the plan administrator paid Liv. The estate then sued the plan sponsor and plan administrator for violations of ERISA.

The district court held for the estate, following cases treating divorce decrees as enforceable waivers. The Fifth Circuit Court of Appeals reversed, on the theory that those prior cases involved life insurance, which is not subject to ERISA's anti-alienation rule. Rather, the Fifth Circuit held that the asserted waiver would be an improper assignment or alienation of Liv's benefits and therefore could not be honored. Because the QDRO rules are an exception to the anti-alienation rule, the Fifth Circuit reasoned that the divorce decree waiver must violate that rule if it does not satisfy the requirements for a QDRO.

Supreme Court's Analysis

With respect to the anti-alienation issue, the U.S. Supreme Court reversed the Fifth Circuit on the grounds that an assignment or alienation has to transfer the property to a specific person or entity, such as the estate. Since the divorce decree simply waived the rights to the pension, it could not be an assignment or alienation of the benefit to the estate, even though the estate was the default beneficiary. The Court found guidance in IRS regulations and common-law trust law to support the propositions that a benefit can be disclaimed, and that the disclaimer is not an assignment or alienation under a spendthrift trust. The Court also noted that a beneficiary seeking only to relinquish her rights to a benefit cannot do so under a QDRO because a QDRO requires payment to a specified person – the alternate payee. Therefore, the divorce decree was not governed by the anti-alienation rule, and the waiver could have been given effect despite that rule (if it were not for the second issue in the case).

The Court then turned to the question of the plan documents, holding that "[t]he Estate's claim ... stands or falls by 'the terms of the plan.'" ERISA encourages employers to give a plan participant "a clear set of instructions for making his own instructions clear" and thereby precludes "enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule." Rather than force plan administrators to examine external documents that might control a participant's intentions, a plan administrator merely is required to look to the plan documents (which, of course, would include plan-recognized QDROs) to determine the appropriate payee. Because the DuPont plan included a specific procedure for changing a beneficiary (which William did not follow) and a specific procedure for disclaiming a benefit (which Liv did not follow), the plan administrator properly distributed the benefit to Liv.

Action Items

Plan administrators in jurisdictions that previously had followed the "waiver" approach of the Fifth Circuit must ensure that they follow plan provisions with respect to identification of beneficiaries and disclaimers of benefits. They should remember that the Court's decision applies to all pension and welfare benefits – not just pension benefits subject to the anti-alienation rule. Plan administrators and sponsors also may wish to review the provisions in their benefit plans relating to default beneficiaries, QDROs, and the effect of divorces on beneficiary designations, and make sure that: (a) these provisions and the procedures that must be followed in these situations are clear and straightforward; and (b) plan descriptions and materials are clear to and understandable by the average plan participant undergoing a divorce or seeking to change beneficiary designations.

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