

No. 67626-7

SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, deceased
DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, wife and husband,
Petitioners,

v.

SAMANTHA EGELHOFF, a minor, by and through her natural parent
KATE BREINER; and DAVID EGELHOFF, a single-person,

Respondents.

SECRETARY OF LABOR'S BRIEF AS *AMICUS CURIAE* IN OPPOSITION
TO RESPONDENTS' MOTION FOR FURTHER DETERMINATION
UPON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

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INTEREST OF THE SECRETARY OF LABOR

The Secretary of Labor ("the Secretary") is charged with the mandate of interpreting and enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA" or "the Act"), as amended, 29 U.S.C. § 1001 et seq. As the federal officer with primary enforcement authority for numerous ERISA provisions, the Secretary has a significant interest in the proper application of the safeguards Congress established with respect to the administration and operation of employee benefit plans. The Secretary's interests also include promoting uniformity of law, protecting beneficiaries, enforcing fiduciary standards, and ensuring the financial stability of employee benefit plan assets. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc).

Respondents' motion seeks to have the Washington Supreme Court disregard the clear dictates of ERISA and instead look to federal common law to determine the appropriate beneficiary under an ERISA pension plan. Because this Court's decision is likely to have a significant impact on the development of the law in this important area, the Secretary, as *amicus curiae*, respectfully submits this brief to bring these important interests to the Court's attention.

STATEMENT OF THE CASE

On March 21, 2001, the Supreme Court of the United States found that ERISA preempted a Washington statute that purported to

revoke the designation of a beneficiary made pursuant to the terms of an ERISA plan and remanded the case to the Washington Supreme Court for "further proceedings not inconsistent with [that] opinion." Egelhoff v. Egelhoff, ___ U.S. ___, 121 S. Ct. 1322, 1330, 149 L.Ed.2d 264 (2001). On March 28, 2001, Respondents filed a Motion for Further Determination Upon Remand in the Washington Supreme Court asserting that still pending before the Court is the issue of whether, by entering into a property settlement agreement, Petitioner waived her rights to the pension benefits. The motion seeks the Court's resolution of this issue. The Court requested further briefing on the merits of the waiver issue, and on June 13, 2001, granted the Secretary's request to file a brief as *amicus curiae*.

For clarity of presentation, the parties to this action are referred to throughout the brief in the following manner. The Respondents, the children of Mr. Egelhoff and his first wife, are referred to as the "children", and the Petitioner, Mr. Egelhoff's second wife, is referred to as "Mrs. Egelhoff". The death benefits at issue are provided pursuant to the Boeing Voluntary Investment Plan, which is hereinafter referred to as the "Pension Plan."

ARGUMENT

I. ERISA and the Pension Plan Documents Determine Mrs. Egelhoff's Entitlement to Benefits

ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90, 103 S. Ct. 2890, 2896, 77 L.Ed.2d 490 (1983). The statute governs, with breadth and detail, the rights of pension plan participants and beneficiaries, as well as the obligations of the plan with respect to the payment of benefits. Shaw, 463 U.S. at 90 (ERISA's main purpose is to protect plan participants and beneficiaries). It is the very detail with which Congress addressed the protections of participants and beneficiaries' rights to receive benefits under ERISA that precludes resort to federal common law regarding entitlement to benefits in this matter. For example, Congress has articulated that all ERISA plans be administered "in accordance with the documents and instruments governing the plan," 29 U.S.C. § 1104(a)(1)(D); that the beneficiary of an ERISA plan is the "person designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. § 1002(8); and that benefits under ERISA pension plans are not to be "assigned or alienated" away from participants and their beneficiaries, 29 U.S.C. § 1056(d)(1).

Moreover, ERISA's anti-alienation provision specifies that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). The anti-alienation provision was intended to ensure that the participant in, or beneficiary of, a retirement plan actually receives the benefits to which he or she is entitled. See H.R. Rep. No. 807, 93d Cong., 2d Sess. 68 (1974). Congress intended that provision "to safeguard a stream of income for pensioners (and their dependents)" and to ensure that pension benefits are not diverted to others. Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 376, 110 S. Ct. 680, 687, 107 L.Ed.2d 782 (1990). See also Boggs v. Boggs, 520 U.S. 833, 851, 177 S. Ct. 1754, 1765, 138 L.Ed.2d 45 (1997). The anti-alienation provision ensures that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended.

There are two limited exceptions to ERISA's anti-alienation provision, but neither supports the children's waiver argument. In the Qualified Domestic Relations Order ("QDRO") provisions, ERISA requires a plan to pay a participant's pension benefits to an alternate payee in accordance with a state "domestic relations order" if the order meets the detailed requirements that ERISA prescribes for QDROs. 29 U.S.C. § 1056(d)(3)(A). If a domestic relations order fails to meet these specific requirements, the

plan may not honor the order's directives without violating ERISA's anti-alienation prohibitions. See Boggs, 520 U.S. at 848, 117 S. Ct. at 1764; S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984).

The other exception is found in ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4), which provides that ERISA's anti-alienation prohibition does not apply to offsets imposed on a participant's benefits as a result of that participant's commission of a fiduciary breach, as long as such offset is made pursuant to a criminal conviction, court order, or settlement. See Herman v. Enhance Memory Products, Inc., No. CIV99-7029CAS (RNBX), 2000 WL 33236601 (C.D. Cal. Oct. 2, 2000) (court ordered forfeiture of defendant's plan benefit would be offset against any losses to the plan resulting from defendant's fiduciary breach).

The children note that spouses are allowed to waive their right to their portion of a joint and survivor annuity, pursuant to ERISA § 206(c)(1)(A), 29 U.S.C. § 1056(c)(1)(A). While this provision may arguably be considered an additional exception to ERISA's anti-alienation prohibition, the detail with which that provision sets forth the particular manner of waiver, and the fact that ERISA is devoid of other provisions regarding a beneficiary's ability to waive his benefits, further supports the premise that waiver of pension benefits is generally impermissible under the statute. Contrary to the children's

arguments, ERISA is not silent on the issue of waiver but rather the Act simply directs plans to pay benefits to the beneficiaries designated by the plan.

Mr. Egelhoff designated Mrs. Egelhoff as the beneficiary for the death benefit payable under his employer's Pension Plan. In accordance with ERISA, that plan provides that the participant designates the beneficiary, and likewise, provides procedures for participants to change those designations. In fact, the Pension Plan unambiguously provides that the plan administrator will only recognize beneficiary designations and changes filed with the Pension Plan, in accordance with the plan's procedures, and that divorce decrees are not sufficient to effectuate a change.

Specifically, the Pension Plan's Summary Plan Description states:

The VIP office will only recognize beneficiary designations and changes that are filed on the official VIP beneficiary designation form and received before your death. You may not designate or change a beneficiary by using other documents such as **divorce decrees**, prenuptial agreements, wills or trusts.

Boeing Voluntary Investment Plan, 1993 Edition, pp. 5-11

(emphasis added) (copy attached). By virtue of this specific language in the Pension Plan, Mr. Egelhoff was on notice that the only way he could change Mrs. Egelhoff's status as a beneficiary was to change his beneficiary designation on file with the plan administrator. Mr. Egelhoff did not remove Mrs. Egelhoff as the beneficiary, and in accordance with ERISA and the Pension Plan,

the plan administrator must pay those death benefits to her as directed by ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

II. The Court Should Not Develop a Federal Common Law Which Would Supplant the Participant's Right to Designate a Beneficiary

Congress intended that fiduciaries, in determining who is entitled to benefits under an ERISA plan, look only to ERISA itself, the governing plan documents, and the participant's beneficiary designation. While it is appropriate for courts to look to federal common law to understand ERISA's purposes, and otherwise fill in gaps, here there is no such gap. Congress sought to establish uniform "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans," by, *inter alia*, directing that fiduciaries act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with [ERISA]." 29 U.S.C. § 1001(b), 29 U.S.C. § 1104(a)(1)(D). Those areas in which Congress sought "to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans," include the designation of beneficiaries and the payment of benefits under such plans. New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, 514 U.S. 645, 657, 115 S. Ct. 1671, 1677-78, 131 L.Ed.2d 695 (1995).

ERISA includes special provisions to secure interests in pension benefits of surviving spouses, divorced spouses, and beneficiaries. ERISA does not, however, contain similar provisions recognizing a right to plan benefits for the participant's heirs who are not named as beneficiaries or who are not surviving spouses. Boggs, 520 U.S. at 847, 117 S. Ct. at 1763. The anti-alienation provision ensures that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended. Furthermore, no party alleges that either of the two limited exceptions to the Act's anti-alienation provision -- a divorce decree meeting ERISA's QDRO requirements,¹ or a forfeiture of benefits as a consequence of a fiduciary's breach -- apply. Accordingly, the Washington Supreme Court may not alienate Mrs. Egelhoff's benefit by reference to federal common law without violating the terms of the Pension Plan and ERISA itself.

In light of the fact that ERISA and the Pension Plan provide the answer regarding this issue, it is not appropriate to look to federal common law. "The authority of courts to develop a 'federal common law' under ERISA . . . is not the authority to

¹ Moreover, the Secretary does not believe that a QDRO would have been the appropriate vehicle through which Mr. Egelhoff could have divested Mrs. Egelhoff of her beneficiary status under the Pension Plan. In order to accomplish this, Mr. Egelhoff simply had to change his beneficiary designation. QDROs were not intended to divest ex-spouses of benefits but rather to give them benefits. Boggs, 520 U.S. at 847, 117 S. Ct. at 1763.

revise the text of the statute." Mertens v. Hewitt Assocs., 508 U.S. 248, 259, 113 S. Ct. 2063, 2070, 124 L.Ed.2d 161 (1993). Where the ERISA plan document specifically addresses the issue and resorting to federal common law would conflict with ERISA and the plan, federal common law can neither be developed nor applied. Bill Gray Enters., Inc. Employee Health & Welfare Plan v. Gourley, 248 F.3d 206, 220, n.13 (3d Cir. 2001) (it is inappropriate to apply federal common law when the terms of the ERISA plan are clear and unambiguous). Moreover, ERISA requires that "straightforward plan language . . . be given its natural meaning." Ryan v. Federal Express Corp., 78 F.3d 123, 126 (3d Cir. 1996) (power of federal courts to create federal common law was not broad enough to override plan's specific subrogation language).

Although federal common law may supplant ERISA in some instances, there is no occasion to use it in order to determine the beneficiary under the Pension Plan. As previously discussed, the legislative history of ERISA directs that courts develop a body of federal common law to assist the courts with issues involving the rights and obligations under ERISA plans. 120 Cong. Rec. 29942 (1974). See also Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 110, 109 S. Ct. 948, 954, 103 L.Ed.2d 80 (1989) ("[C]ourts are to develop a federal common law of rights and obligations under ERISA regulated plans."). For example, in

Auto Owners Ins. Co. v. Thorn Apple Valley Inc., 31 F.3d 371 (6th Cir. 1994), *cert. denied*, 513 U.S. 1184, 115 S. Ct. 1177, 130 L.Ed.2d 1129 (1995) the Sixth Circuit was faced with interpreting competing coordination of benefits clauses to determine whether an ERISA welfare plan would be required to reimburse a no-fault automobile insurer for medical expenses paid on behalf of a plan's participant. After finding that ERISA did not specifically address coordination of benefits provisions and that the applicable state law was preempted, the court fashioned a federal common law rule to assist it in making a decision.

In sum, where neither ERISA nor the plan explicitly address an issue, resort to federal common law is appropriate. See Chemung Canal Trust Co. v. Sovran Bank/Maryland, 939 F.2d 12, 16 (2d Cir. 1991), *cert. denied*, 505 U.S. 1212, 112 S. Ct. 3014, 120 L.Ed.2d 887 (1992) (finding that Congress intended the federal courts to look to principles of traditional trust law when developing equitable remedies under ERISA). However, unlike these cases, both ERISA and the Pension Plan explicitly address the issue at hand: Mrs. Egelhoff remained designated as the beneficiary of the death benefit payable by the Pension Plan and is entitled to those benefits.

As explained above, ERISA's provisions, including the anti-alienation provision, protect the beneficiary's right to receive benefits from the plan. Boggs, 520 U.S. at 852, 117 S. Ct. at

1766 ("Besides the anti-alienation provision, Congress has enacted other protective measures to guarantee that retirement funds are there when a plan's participants and beneficiaries expect them."). Among the protective measures are a number of carefully focused provisions requiring that pension benefits be paid, in specific circumstances, to particular individuals, i.e., surviving spouses or named beneficiaries. Id. at 845, 117 S. Ct. at 1762.

Resort to federal common law to create exceptions to those statutory rules would be in derogation of ERISA. See Estate of MacAnally v. Levin, 20 P.3d 1197 (Colo. Ct. App. 2000), cert. denied, Apr. 16, 2001 (where Colorado statute directly conflicted with ERISA's express provisions, it was inappropriate to apply federal common law to otherwise fulfill goals of the statute); Metropolitan Life Ins. Co. v. Pressley, 82 F.3d 126, 130 (6th Cir. 1996), cert. denied, 520 U.S. 1263, 177 S. Ct. 2431, 138 L.Ed.2d 193 (1997) (resort to federal common law was unnecessary since ERISA supplied the answer as to the appropriate beneficiary); Krishna v. Colgate Palmolive Co., 7 F.3d 11, 15-16 (2d Cir. 1993) (declining to create a federal common law rule to resolve competing claims for benefits under an ERISA plan); see generally Guidry, 493 U.S. at 376, 110 S. Ct. at 687 ("[C]ourts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the

statutory text."). Accordingly, while we do not rule out resort to background legal principles to resolve claims for ERISA benefits that arise in truly unusual circumstances unlikely to have been contemplated by Congress or the drafters of ERISA plans, this case presents no such circumstance.²

Finally, although the Supreme Court's decision in Egelhoff did not specifically address the issue of Mrs. Egelhoff's alleged waiver, the Court's reading of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), is sufficiently expansive to dispose of the issue of resorting to federal common law. The Court's opinion focused on the fact that in accordance with ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), plan administrators should only have to look to the plan documents to determine the appropriate beneficiary, and that any statute requiring that the benefit be paid to anyone else conflicts with ERISA and was therefore preempted. Egelhoff, 121 S. Ct. at 1328-29. "[W]e are called upon merely to interpret ERISA[, a]nd under the text of ERISA, the fiduciary 'shall' administer the plan 'in accordance with the [plan] documents and instruments governing the plan.'" (internal citations omitted.) Id. at 1329 n.4. Moreover, the Court found

² Furthermore, the Secretary does not believe that the divorce decree's language is inconsistent with Mrs. Egelhoff's designation as beneficiary. Had Mr. Egelhoff survived to retirement, he would have received 100% of the Pension Plan proceeds, as the divorce decree directs.

that the payment of benefits is a central matter of plan administration, and as such, ERISA required compliance with § 1104(a)(1)(D). Id. at 1327.

Noting that the Supreme Court's decision in Egelhoff did not specifically address the waiver issue, two courts have resorted to federal common law to determine the correct beneficiary under a plan.³ For example, Weaver, et al. v. Keen, 43 S.W.3d 537 (Tex. App. 2001), involves a dispute between a former spouse who is the designated beneficiary and the decedent's estate. The court reversed the trial court's award of benefits to the ex-spouse, citing Manning v. Hayes, 212 F.3d 866, 871 (5th Cir. 2000), *cert. denied*, ___ U.S. ___, 121 S. Ct. 1401, 149 L.Ed.2d 345 (2001) ("With respect to a former spouse's claim as a designated beneficiary, this Court has specifically held that the former spouse may waive his or her beneficiary status in a subsequent divorce decree or agreement, provided the waiver is

³ The Secretary recognizes that some courts created these federal common law rules before the Supreme Court's decision in Egelhoff, and finds these decisions unpersuasive and misguided for all the reasons discussed above. See, e.g., Altobelli v. International Business Machines Corp., 77 F.3d 78, 79 (4th Cir. 1996) (federal common law may be developed to address the issue of whether a marital settlement agreement effectuated a waiver benefits); Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown, 897 F.2d 275, 281 (7th Cir.), *cert. denied*, 498 U.S. 820, 111 S. Ct. 67, 112 L.Ed.2d 41 (1990) (federal common law may be created to determine whether a beneficiary waived the benefit). Likewise, the Secretary contends that the decision in Estate of Gardner v. Gardner, 13 P.3d 655 (Wash. Ct. App. 2000) is equally misguided to the extent it provides that Washington law controls and allows for a designated beneficiary under an ERISA plan to waive benefits.

explicit, voluntary and made in good faith."). On rehearing, the court further determined that the Supreme Court's decision in Egelhoff did not affect its analysis, apparently relying, at least in part, on the fact that five days after Egelhoff was decided, the Supreme Court denied the petition for certiorari in Manning.⁴ But see Heggy v. American Trading Employee Retirement Account Plan, No. 14-99-00822-CV, 2001 WL 521007, at *3 (Tex. App. May 17, 2001) (declining to apply federal common law and finding that ERISA § 404(a)(1)(D) exclusively controls the designation of plan beneficiaries). Similarly, the Ninth Circuit recently remanded to the district court the issue of whether its prior decision in Emard v. Hughes Aircraft Co., 153 F.3d 949 (9th Cir. 1998), cert. denied sub nom., Stencel v. Emard, 525 U.S. 1112, 119 S. Ct. 903, 142 L.Ed.2d 902 (1999), where the court held that ERISA did not preempt California's constructive trust provisions as they related to life insurance proceeds, survived Egelhoff. TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691 (9th Cir. 2001) (district court will decide if surviving spouse's claims regarding husband's intent to change beneficiary designation form from mother to her is valid under California common law). Notwithstanding these decisions, and even though

⁴ Such a reliance is misplaced, because "the denial of [a] petition [for certiorari] does not constitute a ruling on the merits." Excel Communications v. AT & T, 528 U.S. 946, 120 S. Ct. 368, 145 L.Ed.2d 284 (1999).

the Supreme Court's opinion in Egelhoff did not discuss the applicability of waiver and resort to federal common law, the Court's expansive reading of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires this Court to uphold Mr. Egelhoff's designation of Mrs. Egelhoff as beneficiary under the Pension Plan.

CONCLUSION

For the foregoing reasons, the Court should deny Respondents' Motion for Further Determination Upon Remand From the United States Supreme Court.

Dated: June 26, 2001

Respectfully submitted,

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