

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001028-MR

LINDA DARLENE WEIAND

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 1991-CI-1103

BOARD OF TRUSTEES OF KENTUCKY
RETIREMENT SYSTEMS;
STEVEN JOSEPH WAND;
AND A.B. CHANDLER, III,
ATTORNEY GENERAL OF KENTUCKY

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: KNOPF, KNOX, AND SCHRODER, JUDGES.

KNOPF, JUDGE: This is an appeal from a declaratory judgment finding that the former version of KRS 61.542(2)(b) terminates a former spouse's status as beneficiary of a state employee's pension if the divorce decree is entered after the member is in pay status. The trial court further found that the statutory scheme does not violate the former spouse's equal protection or due process rights and that the retirement system is not estopped from enforcing the statute. Finding no error, we affirm.

Steven J. Wand (Steven) retired from the Louisville Police Department on April 1, 1988. Prior to his retirement, he chose the "Survivorship 100%" retirement benefits option. This plan provided him with a monthly benefit for his life, and upon his death, his beneficiary would continue to receive that same amount of monthly benefits. Steven chose his wife, the appellant, Linda Darlene Wand (Darlene), as his beneficiary. He entered pay status in April 1988.

Darlene filed for divorce in July 1988, and the couple entered into a marital settlement agreement in February 1989. The agreement provided that Darlene would receive 31.182% of each pension benefit payment which Steven received from the Kentucky Employee's Retirement System (KERS), and that Darlene would remain the named beneficiary under the survivorship option of the plan. Darlene submitted a qualified domestic relations order (QDRO) to KERS, but KERS rejected it based upon KRS 61.542(2)¹, which stated in pertinent part:

When the first retirement allowance payment is issued by the State Treasurer and subsequent thereto:

. . . .

(b) A member shall not have the right to change his beneficiary after the first benefit payment has been issued by the State Treasurer. The estate of the retired member becomes the beneficiary if . . . the retired member had designated a spouse and they were divorced on the date of the retired member's death.

Darlene filed a declaratory judgment action in the Franklin Circuit Court, arguing that KERS' interpretation of the

¹ Now KRS 61.542(5)(b).

statute was erroneous and in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The trial court initially dismissed the action, finding that Darlene had not stated an actual and present controversy. On appeal, this Court reversed, concluding that Darlene presented a justiciable claim. Wand v. Board of Trustees of Kentucky Retirement Systems, Ky. App., 936 S.W.2d 778 (1997).

On remand, the trial court considered the merits of Darlene's claim on cross-motions for summary judgment. The trial court concluded that: (1) KERS is not estopped from denying Darlene's status as Steven's beneficiary; (2) KERS' interpretation of KRS 61.542(2)(b) is consistent with the legislature's intent; (3) KRS 61.542(2)(b) does not violate Darlene's equal protection rights; and (4) KRS 61.542(2)(b) does not violate Darlene's due process rights. This appeal followed.

Darlene first argues that KERS should be estopped from denying her beneficiary status. Darlene contends that the summary plan description promulgated by KERS does not clearly inform members that divorce after the member goes into pay status will void a prior designation of a spouse without leave to re-designate the spouse as beneficiary.

The trial court concluded that the doctrine of equitable estoppel is not available against a state agency, such as KERS, except in unique circumstances where the court finds exceptional and extraordinary equities involved. Urban Renewal and Community Development Agency of Louisville v. International Harvester Co., Ky., 455 S.W.2d 69 (1970). Darlene first contends that KERS should not be considered a state agency. We disagree.

KERS is listed as a state agency under the control of the Finance and Administration Cabinet. KRS 12.020 II(8)(o). We do not find the test for determining whether an agency possesses sovereign immunity to be applicable in this circumstance.²

Darlene next asserts that there are "exceptional equities" which support the application of equitable estoppel against KERS. KRS 61.540(2) requires KERS to prepare a summary plan description, "written in a manner that can be understood by the average member or beneficiary, and sufficiently accurate and comprehensive to reasonably apprise them of the rights and obligations." Among other things, the summary plan description must contain "a reasonable list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits." KRS 61.540(3)(f). Darlene contends that the summary plan description fails to set out that a divorce after the member is in pay status will void the designation of a spouse as beneficiary without leave to re-designate the spouse. As a result of KERS' failure to specifically list this circumstance for her disqualification, Darlene contends that KERS should be equitably estopped from denying that she remains as the designated beneficiary of Steven's pension.

We agree with the trial court that equitable estoppel is inappropriate in this case. First, the summary plan

² KRS 61.645(2)(a) provides that KERS has the status of a corporation, with the power to sue and be sued in its corporate name. The broad grant of authority meets the test for an explicit waiver of sovereign immunity as set out in Withers v. University of Kentucky, Ky., 939 S.W.2d 340 (1997). However, the waiver of sovereign immunity does not otherwise alter KERS status as a state agency.

description clearly states that a "final divorce decree voids a spouse's designation as beneficiary unless the member designates the former spouse as beneficiary again after the decree is issued." Summary Plan Description, "Member Responsibilities", p. 5. Later in the same document, the Summary Plan Description states, "[o]nce the first retirement check has been drawn by the State Treasurer, the member cannot change his or her named beneficiary." Id., "Retirement Options", pp. 19-20. These descriptions closely track the language, respectively, of KRS 61.542(1)(a)³ and KRS 61.542(2)(b).

Although these descriptions do not directly reference each other, we conclude that they were sufficient to put Darlene on notice that the divorce would alter her status as Steven's beneficiary. Consequently, we find that KERS made no false representation or concealment of material facts which would have induced Darlene to act in reliance thereon. See, Electric & Water Plant Board of City of Frankfort v. Suburban Acres Development, Inc., Ky., 513 S.W.2d 489 (1974). Moreover, we do not believe that the doctrine of equitable estoppel could be applied to require KERS to administer its plan in a manner contrary to law. Therefore, we find no equities, exceptional or otherwise, to support the application of the doctrine of equitable estoppel in this case.

In Hughes v. Scholl, Ky., 900 S.W.2d 606 (1995), our Supreme Court held that divorce alone does not affect a designation of a spouse as beneficiary under a life insurance

³ Now KRS 61.542(1)(c)1.

policy. Id. at 608. However, the Supreme Court also noted that this rule shall hold true "[u]nless and until the Kentucky General Assembly legislates a different result." Id. Therefore, the central issue in this case is whether KERS has correctly interpreted KRS 61.542(2)(b), to void a designation of a spouse as beneficiary after a divorce when the member is in pay status.

As a preliminary matter, we note that the Employee Retirement Income Security Act of 1974 (ERISA), preempts state laws which "relate to" employee benefits plans. 29 U.S.C. § 1144(a). However, if state law affects ERISA-covered plans in "too tenuous, remote, or peripheral a manner," the state law does not "relate to" the plan and therefore is not preempted. Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 100 n. 21, 77 L. Ed. 2d 490, 503 n. 21, 103 S. Ct. 2890 (1983). Furthermore, the ERISA preemption is limited with regard to areas which are traditionally left to state regulation. See, De Buono v. NYSA-ILA Medical and Clinical Services. Fund, 520 U.S. 806, 138 L. Ed. 2d 21, 29, 117 S. Ct. 1747 (1997).

A state law "relates to" an ERISA plan where it "acts immediately and exclusively upon ERISA plans, . . . or where the existence of ERISA plans is essential to the law's operation." California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc., 519 U.S. 316, 325, 136 L. Ed. 2d 791, 799, 117 S. Ct. 832 (1997). The test for determining whether a state statute had a connection with ERISA such that application of the state law would frustrate ERISA's purposes is:

- (1) whether the state law regulates the types of benefits of ERISA employee welfare benefit plans;
- (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law;
- (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans; and
- (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee.

Emard v. Hughes Aircraft Co., 153 F.3d 949, 958 (9th Cir. 1998); (quoting Operating Engineers Health and Welfare Trust Fund v. JWJ Contracting Co., 135 F.3d 671, 678 (9th Cir. 1998)).

KRS 61.542(2)(b) does not impose any improper requirements upon an ERISA regulated plan, nor does it affect the administration of the plan. Instead, it affects merely the ultimate ownership of distributed benefits. ERISA does not preempt application of state laws which merely re-designate the beneficiary under an ERISA plan, because such laws do not do "major damage" to a "clear and substantial" federal interest. Estate of Egelhoff v. Egelhoff, 93 Wash. App. 314, 968 P.2d 924, 930 (1998). Accordingly, KRS 61.542(2) is not preempted by ERISA.

Darlene contends that the statute should be narrowly construed to terminate a divorced spouse as beneficiary only when the divorce occurred between the time the member notifies KERS of his intent to retire and the time the member receives his first retirement check. As noted by the trial court, this interpretation involves an extremely unlikely circumstance.

Furthermore, the interpretation is not consistent with the express language of the statute.

KRS 61.542 specifically draws a distinction between the time prior to the issuance of the first retirement allowance and the time subsequent to the issuance of the first retirement allowance. The statute does not base any distinction upon the time when the member notifies KERS of his intent to retire. Thus, KRS 61.542(1)(a) states that a final divorce decree terminates an ex-spouse's status as beneficiary. The member may re-designate the ex-spouse as beneficiary, but only prior to the issuance of the first retirement payment. After the issuance of the first retirement payment, the estate of the member becomes the beneficiary if the retired member had designated a spouse as beneficiary and they were divorced on the date of the retired member's death. KRS 61.542(2)(b) does not contain a provision allowing re-designation of a former spouse. The plain language of KRS 61.542 supports KERS' interpretation of the statute.

Darlene further argues that the 1996 amendments to KRS 61.542 support her interpretation of the statute. KRS 61.542(5)(b) still provides that after the first retirement allowance is issued by the State Treasurer, the estate of the retired member becomes the beneficiary if the member had designated a spouse as beneficiary and they were divorced on the date of the retired member's death. The only difference is that the current statute explicitly states that "an ex-spouse who was named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary . . . if they are remarried as of the date of the retired member's death."

Contrary to Darlene's interpretation, the amendment indicates that the divestiture of beneficiary status occurs upon entry of the divorce decree, rather than on the date of the member's death. Under the current statute as well as under the former statute, Darlene's status as a beneficiary was terminated upon her divorce from Steven.

Darlene next raises a pair of constitutional challenges to the validity of KRS 61.542(2)(b). First, she argues that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause expresses a fundamental principle: "the State must govern impartially". New York City Transit Authority v. Beazer, 440 U.S. 568, 587, 59 L. Ed. 2d 587, 604, 99 S. Ct. 1355 (1979). It further "directs that all persons similarly circumstanced shall be treated alike." Plyler v. Doe, 457 U.S. 202, 72 L. Ed. 2d 786, 798, 102 S. Ct. 2382 (1982). Legislative enactments are subject to the "strict scrutiny", "heightened scrutiny", or "rational basis" standards of review, depending upon the importance of the constitutional interest affected by the statute. Cleburne v. Cleburne Living Center, 473 U.S. 432, 439-442, 87 L. Ed. 2d 313, 320-321, 105 S. Ct. 3249 (1985).

Darlene argues that KRS 61.542 should be considered under the "strict scrutiny" standard because the classification is based upon divorce. We disagree. First, while the right to marry is regarded as a fundamental right, Loving v. Virginia, 388 U.S. 1, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967), there is no recognized substantive constitutional right to divorce. Moreover, the statute does not affect any party's right to

divorce. Rather, KRS 61.542 merely specifies how divorce will affect a member's designation of a spouse as beneficiary. The economic aspects of divorce are an appropriate area for state legislation.

It is well established that any challenge to the constitutionality of an act of the General Assembly must "necessarily begin with the strong presumption in favor of constitutionality and should so hold if possible." Brooks v. Island Creek Coal Co., Ky. App., 678 S.W.2d 791, 792 (1984); Edwards v. Louisville Ladder, Ky. App., 957 S.W.2d 290, 295 (1997). Statutes involving the regulation of economic matters or matters of social welfare are typically reviewed under the lowest level of equal protection scrutiny, the "rational relation" test. According to that test, when a statute does not burden a suspect class or a fundamental interest, we must uphold the statute "unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate state purposes that we can only conclude that the legislature's actions were irrational." Pennell v. City of San Jose, 485 U.S. 1, 14, 99 L. Ed. 2d 1, 16, 108 S. Ct. 849 (1988). On a rational basis review, those attacking the rationality of the legislative classification have the burden "to negative every conceivable basis which might support it." FCC v. Beach Communications, Inc., 508 U.S. 307, 315, 124 L. Ed. 2d 211, 222, 113 S. Ct. 2096 (1993); quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364, 35 L. Ed. 2d 351, 93 S. Ct. 1001 (1973). See also, McDonald v. Board of Election Commissioners., 394 U.S. 802,

808-809, 22 L. Ed. 2d 739, 745, 89 S. Ct. 1404 (1969); Kentucky Association of Chiropractors, Inc. v. Jefferson County Medical Society, Ky., 549 S.W.2d 817 (1977).

Darlene argues that KRS 61.542(2)(b) is not rationally related to any legitimate state interest. However, the trial court found to the contrary:

The rationale for this particular classification is clear. The statute is designed to prevent a retired member's ex-spouse from receiving his retirement benefits after the member dies, as the member has no other means of changing his beneficiary after he enters pay status, and it is likely that he no longer desires to support an ex-spouse.

The rational basis behind KRS 61.542(2)(b) is not to foster "vindictive and illogical behavior by one spouse against his or her former spouse." Rather, the statute attempts to set out a consistent basis for dealing with the effect of a change in marital status on a beneficiary designation after the member has attained pay status. We agree with Darlene that there may be situations (such as her own) in which a retired member may wish to keep his or her ex-spouse as a beneficiary. Furthermore, given the actuarial assumptions built into the Survivorship 100% option which Steven chose, we fail to see how KERS would be adversely affected if Steven were allowed to re-designate Darlene as his beneficiary.

Nonetheless, the rational basis review in equal protection analysis is not a "license for courts to judge the wisdom, fairness or logic of the legislative choices." Heller v. Doe, 509 U.S. 312, 319, 125 L. Ed. 2d 257, 270, 113 S. Ct. 2637 (1993); quoting, FCC v. Beach Communications, supra at 508, 124

L. Ed. 2d at 221. Moreover, even if the assumptions underlying a legislative enactment are erroneous, they will survive a rational basis scrutiny if they are arguably valid. Heller v. Doe, 509 U.S. at 333, 125 L.Ed.2d at 279. Although the assumptions underlying KRS 61.542(2)(b) may not be correct in all cases, we conclude that they are sufficient to support the statute's constitutionality on equal protection grounds.

Lastly, Darlene argues that KRS 61.542(2)(b) violates her rights under the Fifth and Fourteenth Amendments to the United States Constitution, insofar as it deprives her of a property right without due process of law. The trial court held that Darlene has no property interest in Steven's benefits, and therefore, there was no violation of due process. Darlene contends that the trial court ignored this Court's prior ruling in finding that she has no property interest as beneficiary of Steven's pension.

In the previous appeal, this Court held that Darlene's right to receive benefits as Steven's beneficiary was vested according to the terms of the retirement benefits policy. Thus, Darlene had standing to bring a declaratory judgment action in order to determine her rights under the policy. Wand v. Board of Trustees, 936 S.W.2d at 779. However, this Court also held that Darlene's right may be subject to divestment, upon resolution of the terms of the policy. This Court's prior ruling was limited to whether Darlene had presented a justiciable controversy on which to base her declaratory judgment action. We did not reach the merits of any of Darlene's arguments.

To have a property interest protected by procedural due process a person must have a legitimate claim or entitlement to it. Applicants for Retail Package Liquor Licenses in Floyd County v. Gulley, Ky. App., 674 S.W.2d 22, 26-27 (1984). As pointed out by the trial court, any property rights Darlene may have are created and defined by the statutory scheme which governs KERS. KRS 61.542(2)(b) is a part of that statutory scheme. Based upon the plain language of the statute, the divorce decree terminated Steven's prior designation of Darlene as beneficiary. Consequently, the due process analysis does not apply. Board of Regents v. Roth, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 270 (1972).

In conclusion, we note that enforcement of the plain language of KRS 61.542(2)(b) does not leave Darlene without a remedy. First, Darlene is entitled to obtain enforcement of the portion of her property settlement agreement which entitles her to receive 31.182% of Steven's monthly pension allowance during his lifetime. Steven's designation of Darlene as the alternate payee on the QDRO is completely separate from his designation of Darlene as his beneficiary. KERS may not refuse to enforce this portion of a properly submitted QDRO. *See generally*, Louise E. Graham & James E. Keller, 15 Kentucky Practice Domestic Relations Law, (2d ed., 1997) §§ 15.33 - 15.35, pp. 548-552. Furthermore, Darlene may have grounds to seek modification of the property settlement agreement. In any case, given the current statutory regime, Darlene's best hope for a remedy is against Steven, and not against KERS.

Accordingly, the judgment of the Franklin Circuit Court is affirmed.

SCHRODER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

SCHRODER, JUDGE, DISSENTING. I have a real problem with this case. Prior to retirement, the parties chose the "Survivorship 100%" retirement benefits payout. At retirement, the beneficiary and the benefits payable become etched in stone, with actuaries based on the age and death of both. The retirees had bargained for and received less retirement benefits monthly in exchange for 100% survivorship benefits. I believe that the retirees' benefits become vested and the divorce should have no effect on the survivorship benefits. The bargain was to continue retirement benefits until death, not divorce. The policy provision which terminates benefits based on divorce is against public policy, and does not reasonably relate to the purpose of retirement benefits - to provide benefits during retirement, not during marriage.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

J. Baxter Schilling
Louisville, Kentucky

BRIEF FOR APPELLEE
KENTUCKY EMPLOYEE RETIREMENT
SYSTEMS:

Robert W. Kellerman
Lizbeth Ann Tully
Stoll, Keenon & Park, LLP
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Robert W. Kellerman
Frankfort, Kentucky

No Briefs For Appellees
Steven J. Wand
and
Attorney General of Kentucky

