STATE OF MICHIGAN

COURT OF APPEALS

CHERYL A. MACINNES also known as CHERYL A. ROWLEY, Plaintiff-Appellee, v JOE DEE MACINNES, Defendant-Appellant.	FOR PUBLICATION January 8, 2004 9:05 a.m. No. 241649 Genesee Circuit Court LC No. 94-177969-DO Updated Copy March 26, 2004

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

MURPHY, J. (*concurring*).

I agree with the majority's conclusion that we can affirm the trial court's order directing defendant to pay plaintiff an amount equal to the total insurance proceeds of $95,000. But I do not believe that the majority's analysis is entirely consistent with the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, and *Egelhoff v Egelhoff,* 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001). The majority states:

> Under the view taken by the majority of the federal circuits, "[e]ven where ERISA preempts state law with respect to determining beneficiary status under an ERISA-regulated benefits plan, ERISA does not preempt an explicit waiver of interest by a nonparticipant beneficiary of such a plan." *Melton v Melton,* 324 F3d 941, 945 (CA 7, 2003); see also *Silber v Silber,* 99 NY2d 395, 402, 404; 786 NE2d 1263 (2003); [*Metropolitan Life Ins Co v*] *Pressley,* [82 F3d 126 (CA 6, 1996)]. We concur with the majority view and resolve this case accordingly. [*Ante,* p ___.]

To the extent that the majority can be read to hold that a plan-designated or plan-named beneficiary can waive an interest in an ERISA-governed plan by way of a consent divorce judgment, so that the plan administrator is legally obligated to determine the existence of a waiver and abide by an effective waiver, without an actual change in the beneficiary status through the use of plan documents, I respectfully disagree. I would rule that the doctrine of "waiver," in the context of divorce statutes and judgments, does not permit this Court or any court to circumvent the ERISA preemption provision found in 29 USC 1144(a), as it relates to the legal obligations of a plan administrator. Nevertheless, I believe that a pertinent provision of a consent judgment of divorce retains relevance for the purpose of waiver, assuming that it

reflects an effective waiver by the plan-designated beneficiary, where there is an attempt to recover proceeds actually paid to the plan-designated beneficiary or deposited in a court or trust account by the plan administrator as part of an interpleader action, MCR 3.603.

Through this bifurcated approach, ERISA is not offended because plan administrators are able to determine beneficiary status and distribute proceeds to a beneficiary "in accordance with the documents and instruments governing the plan . . . ," 29 USC 1104(a)(1)(D), without the need to make beneficiary determinations based on the interpretation of divorce judgments. Through the bifurcated approach, a plan-designated beneficiary could remain legally bound by an explicit waiver of any interest in benefits or proceeds. To hold otherwise would create havoc for plan administrators and, in my opinion, would violate ERISA or would work an injustice by allowing a party to retreat from a voluntary relinquishment of rights.

In *Egelhoff, supra* at 143, the United States Supreme Court held that ERISA preempted a Washington statute, which provided "that the designation of a spouse as the beneficiary of a nonprobate asset is revoked automatically upon divorce." The *Egelhoff* Court stated:

> The statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents. The statute thus implicates an area of core ERISA concern. In particular, it runs counter to ERISA's commands that a plan shall "specify the basis on which payments are made to and from the plan," § 1102(b)(4), and that the fiduciary shall administer the plan "in accordance with the documents and instruments governing the plan," § 1104(a)(1)(D), making payments to a "beneficiary" who is "designated by a participant, or by the terms of [the] plan." § 1002(8). In other words, unlike generally applicable laws regulating "areas where ERISA has nothing to say," which we have upheld notwithstanding their incidental effect on ERISA plans, this statute governs the payment of benefits, a central matter of plan administration.
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> The Washington statute also has a prohibited connection with ERISA plans because it interferes with nationally uniform plan administration. One of the principal goals of ERISA is to enable employers "to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." Uniformity is impossible, however, if plans are subject to different legal obligations in different States.
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> The Washington statute at issue here poses precisely that threat. Plan administrators cannot make payments simply by identifying the beneficiary specified by the plan documents. Instead they must familiarize themselves with state statutes so that they can determine whether the named beneficiary's status has been "revoked" by operation of law. . . .
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> Requiring ERISA administrators to master the relevant laws of 50 States and to contend with [divorce] litigation would undermine the congressional goal of "minimizing the administrative and financial burden[s]" on plan

> administrators—burdens ultimately borne by the beneficiaries. [*Egelhoff, supra* at 147-150 (citations omitted).]

The Supreme Court further stated that "we have not hesitated to find state family law pre-empted when it conflicts with ERISA or relates to ERISA plans." *Id.* at 151. In *Metropolitan Life Ins Co v Johnson*, 297 F3d 558, 566 (CA 7, 2002), United States Court of Appeals for the Seventh Circuit stated that "*Egelhoff* stands for the proposition that a state law cannot invalidate an ERISA plan beneficiary designation by mandating distribution to another person."

I note that in *Egelhoff*, Mrs. Egelhoff remained the listed beneficiary of a life insurance policy and pension plan at the time of Mr. Egelhoff's death despite the entry of a divorce judgment, and life insurance proceeds were paid to Mrs. Egelhoff. Mr. Egelhoff's children by a previous marriage, the statutory heirs at law, sued, ultimately unsuccessfully, to recover the life insurance proceeds from Mrs. Egelhoff. Although unnecessary for the purpose of resolving this case, it would thus appear that any Michigan divorce statute or divorce judgment entered after trial that provides for a beneficiary different from the person(s) designated in ERISA-plan documents would not be enforceable under ERISA's preemption provision until an actual beneficiary change is made in the plan documents. *Egelhoff* did not, however, involve a situation where the plan-designated beneficiary allegedly waived a claim to benefits. The question becomes whether the doctrine of waiver can be applied in the context of the present case, and, if applicable, in what manner it should apply.

As noted above, I would hold that ERISA, as interpreted by the Supreme Court in *Egelhoff*, does not allow for the creation of a legal obligation for the plan administrator to determine beneficiary status predicated on language contained in a divorce judgment, even under a waiver theory; the plan administrator is to be solely controlled by the plan documents. But I would still apply the doctrine of waiver, if factually established, to permit recovery of proceeds paid to a plan-designated beneficiary or recovery of proceeds deposited in a court or trust account by a plan administrator as part of an interpleader action. I acknowledge that this approach does not fully adopt the Seventh Circuit's ruling in *Melton*, and, in fact, combines part of the ruling in *Melton* with the Sixth Circuit's ruling in *Pressley*. I find that this approach is mandated by *Egelhoff* and could be coined as the "limited waiver doctrine." In *Melton, supra* at 945, the Seventh Circuit stated:

> We therefore hold that ERISA preempts Illinois state law with respect to determining the rightful beneficiary of Richard's [deceased husband] ERISA-regulated group term life insurance policy. Since Richard's ERISA-regulated employee benefits plan determines beneficiary status according to the person(s) named in the plan documents, we also find that Peggy [the deceased's ex-wife] is the proper beneficiary of the insurance policy.
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> Having determined that Peggy, and not Alexandria [the deceased's minor daughter], is the beneficiary of Richard's group term life insurance policy, we still

must address Alexandria's contention that Peggy waived her interest in these benefits by the terms of her divorce agreement with Richard.[1]

Melton implicitly indicates that "waiver" can be utilized to modify the determination concerning who shall be entitled to actual receipt of benefits or proceeds; therefore, affecting a plan administrator's legal obligation to distribute proceeds, which distribution by the administrator could be made to a person not named as a beneficiary in plan documents. The plan administrator, in the face of competing claims, would either have to initiate an interpleader action or be forced to make a payment determination on the basis of an interpretation of the divorce judgment and controlling law so as to determine whether an effective waiver occurred. *Melton* and the cases relied on therein sidestep the preemption provision of 29 USC 1144(a), which expressly and necessarily relates to the preemption of state law, by turning to federal common law concerning waiver. The federal court stated that "[w]e noted in *Fox Valley* [*& Vicinity Construction Workers Pension Fund v Brown*, 897 F2d 275, 280 (CA 7, 1990) (en banc)] that ERISA is silent on the issue of what constitutes a valid waiver of interest and we therefore turned to federal common law and Illinois state law to fill the gap." *Melton, supra* at 945. The Seventh Circuit further stated:

> Essentially, when we are evaluating whether the wiaver [sic] 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. [*Id.* at 945-946 (citation omitted).]

I find that this approach and analysis requires review of a divorce judgment and a subjective determination, after contemplation of federal law and state law regarding waiver, to determine whether a waiver occurred. This burden on plan administrators conflicts with the ruling in *Egelhoff* that reflected a concern with upholding uniform administrative schemes and a need to not require plan administrators to circumnavigate the legal waters of the fifty states and individual divorce litigation within the states. Indeed, it would be an overwhelming burden to

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> Richard married Peggy Melton in 1993. During their marriage Richard named Peggy as the primary beneficiary of his employee benefits plan, which included group term life insurance benefits. Richard and Peggy divorced in May 2001. Their divorce agreement contained a blanket revocation of their interests in all financial and property rights arising "by reason of their marital relation" and "any asset assigned to a party by this agreement" including "annuities, life insurance policies," and other financial instruments. . . .
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> Although Richard and Peggy divorced six months before Richard died, Peggy was still the named beneficiary of Richard's employee group term life insurance policy. [*Melton, supra* at 943-944.]

require plan administrators to decipher divorce judgments to determine if an effective waiver had occurred as opposed to simply examining plan documents for the named beneficiary. Having to file interpleader actions, where multiple parties are making claims to plan proceeds, i.e., plan-designated beneficiaries versus alleged judgment-designated beneficiaries, would also be burdensome to plan administrators.

In *Pressley*, the insurance company filed an interpleader action in which two parties, the deceased's estate and the deceased's ex-wife, made claims on insurance benefits. The Sixth Circuit refused to apply the doctrine of waiver where the ex-wife, who was named as the beneficiary in plan documents, allegedly waived the recovery of insurance proceeds by reason of the divorce judgment. *Id.* at 127-128, 130. The federal court stated:

> Section 404(a)(1)(D) of ERISA requires that a plan administrator discharge his duties "in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C. § 1104(a)(1)(D). The Court in *McMillan* [*v Parrott*, 913 F2d 310 (CA 6, 1990)] found that section to establish a clear mandate that plan administrators follow plan documents to determine the designated beneficiary. 913 F.2d at 312. Accordingly, the Court held that the plan documents naming the decedent's [last] ex-wife as beneficiary of the plan controlled, making her the decedent's beneficiary. *Id.* [*Pressley, supra* at 130.]

I conclude that *Pressley* is correct and consistent with *Egelhoff* to the extent that it held that a plan administrator should be controlled solely by plan documents. I would, however, find that, by clearly indicating that a plan administrator is bound only by plan documents and not the language contained in divorce judgments, there is no danger for the purpose of a preemption violation in applying waiver with respect to an attempted recovery from an already-paid, plan-designated beneficiary or recovery from a court or trust account utilized in an interpleader action. Therefore, in my view *Pressley* goes too far in the name of preemption.

To summarize my analysis, the actions and obligations of a plan administrator should be solely controlled by the plan documents, and plan proceeds should be paid accordingly, without the need to determine if a waiver occurred. When multiple claims are made, the plan administrator could simply distribute proceeds pursuant to the plan documents or the administrator, if desired, could commence an interpleader action. The judgment-designated beneficiary could proceed under a waiver theory to seek recovery from a paid plan-designated beneficiary or from proceeds deposited with a court or trust account pursuant to an interpleader action. The judgment-designated beneficiary, however, could not legally force a plan administrator to make direct payment to that beneficiary contrary to the plan documents under a waiver theory,[2] nor could the judgment-designated beneficiary sue the administrator for making a distribution to a plan-designated beneficiary.

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[2] I would not preclude a judgment-designated beneficiary, proceeding under a waiver theory, from legally forcing a plan administrator to place proceeds in a court or trust account pending the
(continued…)

Because here the proceeds were distributed to defendant, the plan-designated beneficiary, I would permit a waiver argument. I find that it is a close call regarding whether defendant made an effective waiver, considering a similar factual situation in *Melton* in which the court held that there was no effective waiver. *Melton, supra* at 946. That being said, I agree with my colleagues' analysis and ultimate conclusion that defendant in fact waived his rights to the proceeds from the ERISA-governed plan.

I concur in affirming.

/s/ William B. Murphy

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outcome of a suit, which suit would necessarily include as a party the plan-designated beneficiary, where the administrator refuses to make any distribution whatsoever.