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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-207

Filed: 17 September 2019

Cumberland County, No. 91 CVD 6088

CAROLYN J. BRIDGES, Plaintiff,

v.

ALFONCIE BRIDGES, Defendant (deceased)

and

STEPHANIE DEIGH BRIDGES, Third-Party Defendant.

Appeal by third-party defendant from order entered 14 December 2018 by Judge A. Elizabeth Keever in Cumberland County District Court. Heard in the Court of Appeals 22 August 2019.

*Parker Bryan Family Law, by Ashley L. Oldham, for plaintiff-appellee.*

*Lewis, Deese, Nance & Briggs, LLP, by Renny W. Deese, for defendant-appellant.*

ARROWOOD, Judge.

# BRIDGES V. BRIDGES

## *Opinion of the Court*

Stephanie Deigh Bridges (“appellant”) appeals from summary judgment order in favor of Carolyn J. Bridges (“appellee”). For the following reasons, we affirm.

### I. Background

Appellee married Alfoncie Bridges (“defendant”) on 30 May 1974, and the two divorced on 10 November 1993. The trial court entered a judgment of property distribution on 15 September 1993 by which appellee was to receive thirty-two percent (32%) of defendant’s military retirement pension, and defendant was to maintain Survivor’s Benefit Plan (“SBP”) coverage for the benefit of appellee. Defendant has since died, and appellant is his widow.

Effective upon the death of a military retiree, the SBP pays a monthly annuity to the decedent’s beneficiary. 10 U.S.C. § 1450(a) (2018). If the retiree was required to name a former spouse as beneficiary and failed to do so, then the former spouse can submit a “deemed election” request within one year of the date of the court order in order to compel coverage. 10 U.S.C. § 1450(f)(3). These requirements are further reiterated in the property distribution judgment. In the instant case, defendant failed to designate appellee as beneficiary before his death, and appellee did not obtain a “deemed election” within the one-year period.

Appellee tried to obtain the SBP annuity payments from Defense Finance and Accounting Services (“DFAS”) and learned that appellant has been receiving the

BRIDGES V. BRIDGES

*Opinion of the Court*

payments. Appellee would have to apply to the Army Board for Correction of Military Records (“the Board”) to correct her status as the designated beneficiary.

On 21 August 2017 appellee filed a motion asking the trial court to join appellant to the property distribution judgment. The motion was granted on 5 February 2018. Among the findings of fact was that:

4. In order for the court-awarded SBP payments to be effectuated to the [appellee], she must have either: (1) a notarized affidavit from [appellant] relinquishing her rights to the benefit in favor of the [appellee], or (2) an order declaring that the [appellee] is the rightful beneficiary of the benefit and that [appellant] has no right, title, or interest in the benefit. [The Board] requires that [appellant] be joined as party before said order is entered.
5. [Appellant] has failed to provide an affidavit relinquishing her rights, and therefore an order must be entered that declares that the [appellee] is the rightful beneficiary and that [appellant] has no right, title, or interest in the benefit.

A Third-Party Complaint Motion for Enforcement and Equitable Relief was filed on 3 May 2018 alleging that appellant “is receiving the SBP annuity payments from DFAS and has refused to execute a consent to allow the payments to go to the [appellee],” and asking the trial court to find that appellant “has no right, title or interest in the former-spouse payments of [defendant’s SBP].”

Appellee filed her motion for summary judgment on 26 June 2018. The motion was granted on 14 December 2018 and found that “[appellee] is the rightful

BRIDGES V. BRIDGES

*Opinion of the Court*

beneficiary of the [SBP] annuity of the defendant as of the date of his death.” Appellant appealed.

II. Standard of Review

“Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (internal quotation marks and citations omitted).

III. Discussion

The appellant argues that summary judgment was not appropriate in this case because a factual determination was required as to why appellee failed to follow federal law requirements in receiving her designation as beneficiary of the SBP. We disagree.

Resolution of this appeal is controlled by this Court’s decision in *Ellison v. Ellison*, 242 N.C. App. 386, 776 S.E.2d 522 (2015). As in the instant case, in *Ellison*, the husband was ordered to maintain a SBP for the benefit of his former spouse, failed to designate his former spouse as beneficiary before his death, and the former spouse failed to obtain the “deemed election” within the prescribed time limit. *Id.* at 387,

BRIDGES V. BRIDGES

*Opinion of the Court*

776 S.E.2d at 523-24. Similarly, both former spouses were required to get the consent of all parties who may have an interest in the benefit or a court order finding the appellant had no right to the payment. *Id.* at 388, 776 S.E.2d at 524. Neither the widow in *Ellison* nor in the instant case were willing to give the required consent. *Id.* Appellees in both cases then filed motions to have the respective appellants joined, and both appellees were eventually granted summary judgment by the trial courts. *Id.* at 388-89, 776 S.E.2d at 524-25.

In *Ellison*, we determined that “Defendant’s focus on [appellee’s] failure to comply with the requirements of the United States Code (“the Code”) related to perfecting her interest in the SBP is misplaced.” *Id.* at 392, 776 S.E.2d at 526.

[Appellee] was not seeking, and the trial court did not attempt, to order DFAS to elect [Appellee] as the former spouse beneficiary of the SBP in contradiction to the mandates of 10 U.S.C. § 1450(f)(3). The ultimate decision of whether [Appellee] is designated the beneficiary of the SBP continues to lie with DFAS. . . . The reasons for [Appellee’s] failure to act within the time limit set in 10 U.S.C. § 1450(f)(3)(C) were irrelevant to the trial court’s ruling on summary judgment. [Appellee] will have to try and convince the Board that correction of the relevant records to include her as the former spouse beneficiary will correct an error or remove an injustice[.]

*Id.* at 393-94, 776 S.E.2d at 527-28 (internal quotations omitted). Therefore, we held:

[b]ased upon the prior order of the trial court designating [appellee] as beneficiary, and Defendant’s failure to participate in the action - and therefore failure to present any argument or evidence that she was the rightful beneficiary - we hold that there were no issues of material

BRIDGES V. BRIDGES

*Opinion of the Court*

fact in this matter, and summary judgment was properly granted in favor of [appellee].

*Id.* at 395, 776 S.E.2d at 528. In the instant case, the 1993 property distribution judgment names appellee as the intended beneficiary. Appellant also failed to present any evidence that she had a claim to the SBP annuity. Thus, under our decision in *Ellison*, summary judgment was appropriate.

The issues which appellant attempts to raise are no bar to summary judgment in this case. Appellee will still have to apply for relief to the Board. Appellee did not ask the trial court to direct specific relief from DFAS or the Board. As this Court noted in *Ellison*, “[w]e do not suggest the [summary judgment order] mandates any particular resolution of [appellee’s] application to the Board, or any further proceedings she may have with DFAS or any other federal entity.” *Id.* at 395, 776 S.E.2d at 528. The decision on whether to correct defendant’s military records to show appellee as the SBP beneficiary lies with the Board, not the trial court. The proper place for appellant to make her arguments regarding appellee’s alleged failure to timely request the designation, and regarding federal preemption is not in our courts but before the board.

For the foregoing reasons, we affirm.

AFFIRMED.

Judges BERGER and COLLINS concur.

Report per Rule 30(e).