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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Beulah Jean James Moore

v.

Billy Edward Moore, individually and as executor of the
Estate of Jimmy Lee Moore, deceased

Appeal from Elmore Circuit Court
(CV-17-900319)

SHAW, Justice.

The defendant below, Beulah Jean James Moore ("Beulah"), appeals from a summary judgment entered in favor of the plaintiff, Billy Edward Moore ("Billy"), individually and as

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executor of the estate of his brother and Beulah's husband, Jimmy Lee Moore ("Jimmy"), deceased, in an action filed by Billy seeking the enforcement of a prenuptial agreement. We affirm.

Facts and Procedural History

Before marrying Beulah, Jimmy had been employed by the NCR Corporation through which he obtained a 401(k) retirement plan ("the 401(k) plan") managed by Fidelity Investments Institutional Operations Company, Inc. ("Fidelity"). In addition to the 401(k) plan, Jimmy also had a pension-benefit plan called the "NCR Pension Plan PensionPlus Benefit" ("the pension plan"). Before he married Beulah, Jimmy had named Billy as the beneficiary of both the 401(k) plan and the pension plan. In July 2016, before marrying Beulah, Jimmy executed a will that did not provide for Beulah in which he stated that he intended to provide for Beulah "outside" the will and that he intended to leave his estate, including his real and personal property, to his brother, Billy.

A few days after Jimmy executed his will, Beulah and Jimmy executed a prenuptial agreement. That agreement included a financial statement that specified Jimmy's assets, which

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included, among other things, the proceeds of the 401(k) plan and the pension plan. Under the terms of the prenuptial agreement, Jimmy and Beulah agreed that the separate property they each brought into the marriage would remain separate. They also agreed that neither of them would "claim, demand, assert any right to, take or receive any part of the property of the other as described on Schedules 1 and 2," which the parties do not dispute included the 401(k) plan and the pension plan. Additionally, under section 4.4 of the prenuptial agreement, which is discussed more fully below, Beulah and Jimmy renounced any right to any retirement account held by the other. That section further provided that it was not intended to restrict the rights of an account owner to "direct" account-benefit distributions to a beneficiary and that, in order to effectuate such a designation, each would be required to execute any necessary "spousal consents or waivers."

In August 2016, Beulah and Jimmy married. Later that year, Jimmy died of cancer. According to Billy, as of March 2017, Fidelity's records indicated that he was still the designated beneficiary of the 401(k) plan. He also asserts

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that documentation related to the pension plan showed that he was still the beneficiary of that plan as well.

At some point after Jimmy's death, the NCR plan administrator distributed the proceeds from both the 401(k) plan and the pension plan--totaling over \$500,000--to Beulah. In October 2017, concerned that Beulah was not entitled to those funds and that she was improperly retaining them, Billy, both individually and as executor of Jimmy's estate, filed the underlying action, alleging that Beulah had breached the prenuptial agreement. Billy sought both damages and injunctive relief. The trial court issued a temporary restraining order prohibiting Beulah from spending or distributing the funds she had received; it also ordered Beulah to interplead those funds.

In November 2017, Beulah received a letter from the plan administrator for the 401(k) plan and the pension plan. That letter stated that Beulah, as the surviving spouse, was the beneficiary of the 401(k) plan and the pension plan under the Employee Retirement and Income Security Act ("ERISA"). The letter further stated that, under ERISA, a prenuptial agreement could not be considered in determining who was the

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proper beneficiary of the 401(k) plan and the pension plan.

Billy subsequently amended the complaint to allege that, in addition to taking possession of the proceeds of the 401(k) plan and the pension plan, Beulah had also converted personal property of Jimmy's estate to her own use. He also asked the trial court to enter a permanent injunction prohibiting Beulah from transferring, spending, or otherwise disposing of any of the proceeds of the 401(k) plan or the pension plan. The trial court issued the permanent injunction.

In November 2018, following several months of litigation, Billy filed a motion for a summary judgment. In his motion, Billy argued that Beulah had breached the prenuptial agreement by taking possession of and/or claiming the proceeds of both the 401(k) plan and the pension plan. He also argued that ERISA did not prevent him from suing Beulah on the theory of breach of contract once those funds had been distributed. Finally, Billy asked the trial court to enter a summary judgment in his favor and for the court to award him \$568,099.52, plus interest and costs.

Beulah filed a response to Billy's motion and also filed a cross-motion for a summary judgment. In her response and

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cross-motion, Beulah did not contest that she had received the proceeds from the 401(k) plan and the pension plan. She argued, however, that she was the proper beneficiary and that, under ERISA, the prenuptial agreement did not constitute a valid waiver of her entitlement to those benefits. Although she acknowledged that, under section 4.4 of the prenuptial agreement, she had "renounced" her claim to Jimmy's retirement benefits, she argued that it required that "spousal consents or waivers" be executed in order for that waiver to take effect and for Billy to be a proper beneficiary. Because she never executed such a consent or waiver, Beulah argued, she was entitled to receive and retain the proceeds of the 401(k) plan and the pension plan and, thus, was entitled to a summary judgment in her favor as a matter of law.

Billy argued in response that ERISA did not bar or preempt his breach-of-contract claim against Beulah based on a breach of the prenuptial agreement because, he said, the claimed damages are proceeds that have already been distributed. Specifically, he noted several appellate-court decisions that have held that ERISA does not preempt a claim for funds that have already been distributed from an ERISA-

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governed plan. As a result, Billy argued, he was entitled to a summary judgment in his favor.

The trial court entered a summary judgment in favor of Billy and ordered Beulah to pay the requested amount plus prejudgment interest. The trial court also denied Beulah's cross-motion for a summary judgment. Beulah appeals.

Standard of Review

"This Court reviews a summary judgment de novo. Turner v. Westhampton Court, L.L.C., 903 So. 2d 82, 87 (Ala. 2004). We seek to determine whether the movant has made a prima facie showing that there exists no genuine issue of material fact and has demonstrated that the movant is entitled to a judgment as a matter of law. Turner, supra. In reviewing a summary judgment, this Court reviews the evidence in the light most favorable to the nonmovant. Turner, supra. Once the movant makes a prima facie showing that he is entitled to a summary judgment, the burden shifts to the nonmovant to produce "substantial evidence" creating a genuine issue of material fact. Ala. Code 1975, § 12-21-12; Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). "Substantial evidence" is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989).'

"Muller v. Seeds, 919 So. 2d 1174, 1176-77 (Ala.

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2005). As is true with regard to a trial court's rulings on questions of law in the context of a bench trial, we review de novo questions of law arising in the context of a summary judgment."

Van Hoof v. Van Hoof, 997 So. 2d 278, 286 (Ala. 2007).

Discussion

The issue on appeal is whether Beulah breached the prenuptial agreement by retaining the funds from the 401(k) plan and the pension plan after those funds were distributed to her. Beulah contends that she did not waive her right to receive or to retain those proceeds under the prenuptial agreement because, she says, she was never asked to execute a valid spousal waiver under ERISA, see 29 U.S.C. § 1055(c)(2)(A), and the language in the prenuptial agreement is insufficient to constitute a waiver of her "statutory rights" to those funds. Although Billy does not challenge the fact that the plan administrator had a statutory duty under ERISA to distribute those funds to Beulah, he argues that, once those funds were distributed to her, the lack of a valid ERISA spousal waiver had no bearing on whether he could recover those funds through a breach-of-contract action. According to Billy, the language of the prenuptial agreement makes clear that Beulah had no right to make any claim on the 401(k) plan

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and the pension plan and that she expressly renounced her right to those accounts in section 4.4 of the agreement. As a result, Billy contends, Beulah's retention of the funds in those accounts when she clearly renounced any claim to them under the language of the prenuptial agreement constitutes a breach of that agreement and, thus, a summary judgment was properly entered in his favor.

The applicable statutory provision of ERISA is 29 U.S.C. § 1055, which provides that "a qualified preretirement survivor annuity shall be provided to the surviving spouse" of a vested plan participant. 29 U.S.C. § 1055(a)(2). That section further provides that a plan participant "may elect at any time during the applicable election period to waive the ... qualified preretirement survivor annuity form of benefit."¹ 29 U.S.C. § 1055(c)(1)(A)(i). Such an election takes effect only if:

"(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits

¹It appears that the parties agree that 29 U.S.C. § 1055 applies in the present case. The issue whether the 401(k) plan and the pension plan are "annuities" under that Code section is not argued.

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designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public"

29 U.S.C. § 1055(c) (2) (A).

Although Alabama courts have not addressed a spouse's waiver of benefits distributed under ERISA, other courts have done so. Those courts have examined the language of waivers to determine the intent of the parties and whether the strict statutory requirements under ERISA, quoted above, were met. See, e.g., MidAmerican Pension & Emp. Benefits Plans Admin. Comm. v. Cox, 720 F.3d 715, 720 (8th Cir. 2013) (holding that a prenuptial agreement was ineffective to waive a widow's right to the distribution of the funds in her deceased husband's 401(k) retirement plan); Melton v. Melton, 324 F.3d 941, 945 (7th Cir. 2003) (holding that a divorce decree between a deceased employee and his former wife was not sufficiently explicit to operate as a waiver by the former wife of proceeds of an ERISA-regulated life-insurance policy); and Clift v. Clift, 210 F.3d 268, 272 (5th Cir. 2000) (holding that the language in a divorce decree, providing that the ex-wife was thereby divested "of all right, title, interest, and

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claim in and to [a]ny and all policies of life insurance ... insuring the life of [her ex-husband]," was sufficiently explicit to prevent the ex-wife from collecting proceeds under policy that insured her ex-husband's life).

In MidAmerican, a plan participant designated his parents as beneficiaries at a time when he was unmarried. 720 F.3d at 716. He later remarried his ex-wife, and they executed a prenuptial agreement explicitly stating that the parties waived any interest in the other's retirement plans. In the prenuptial agreement, each spouse agreed to consent in writing to a waiver or change of benefits as required by ERISA. 720 F.3d at 717. The couple subsequently separated and began divorce proceedings; the husband, however, died before the divorce was finalized. The wife refused to sign a waiver as required by the prenuptial agreement, and the plan administrator filed an interpleader action to determine whether the wife or the husband's parents were entitled to the funds.

The district court entered a summary judgment in favor of the widow, and the United States Court of Appeals for the Eighth Circuit affirmed. Specifically, the Court of Appeals

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held that the prenuptial agreement was ineffective to waive the widow's right to the distribution of the funds in her deceased husband's 401(k) plan because certain sections in the prenuptial agreement contemplated the future execution of a waiver or consent to change the designated beneficiary. 720 F.3d at 719-20. The court further held that, "[i]n light of this promise to execute a waiver and in the absence of the fulfillment of this promise, [the wife] could not have meaningfully acknowledged the effect of any waiver of her spousal rights in the antenuptial agreement." 720 F.3d at 719. Finally, the Court of Appeals held that the agreement did not conform to the statutory consent requirements, which must be strictly applied, and that, therefore, the participant's "designation of his [p]arents as beneficiaries ... must yield to [the widow's] rights as surviving spouse." 720 F.3d at 720.²

In the present case, section 4.4 of the prenuptial agreement specifically addresses the ownership of the 401(k) plan and the pension plan. In the first clause of section 4.4,

²MidAmerican did not address the issue, discussed below, whether a post-distribution action under state common law may be maintained to seek those funds.

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Beulah and Jimmy agreed to "renounce" their rights to make any claim against any portion of the other's retirement plans:

"Each of [Jimmy] and [Beulah], in executing this Agreement, renounces the right to make any claim upon death or dissolution of the marriage against any portion of an individual retirement account ('IRA') or a profit sharing, retirement, or other deferred compensation plan (including employee elective deferrals made to any such plan) in which the other party is a participant, whether such benefit accrues or has accrued before or during the marriage of the parties."

The second clause of that section provided that the above clause

"is not intended to restrict in any way the rights [of] the owner of the IRA or other plan account to direct such distribution of benefits provided under any such plan upon the owner's death by validly executed beneficiary designation, and each party shall execute such spousal consents or waivers, if any, as may be required to effect the desired beneficiary designation of the account owner."

(Emphasis added.)

As was the case in MidAmerican, nothing in the record before us indicates that Beulah either executed a spousal waiver or provided written consent as required by 29 U.S.C. § 1055(c)(2)(A). Additionally, like the prenuptial agreement in MidAmerican, section 4.4 of the prenuptial agreement in the present case does not comply with the requirements of 29

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U.S.C. § 1055(c)(2)(A) and, thus, cannot act as a valid waiver under that code section. Finally, section 4.4, like the prenuptial agreement in MidAmerican, appears to contemplate the future execution of a spousal waiver, and, here, because such an execution has not occurred, Beulah could not have "meaningfully acknowledged the effect of any waiver of her spousal rights in the [prenuptial] agreement." 720 F.3d at 719. Under these circumstances, there was no valid waiver by Beulah under 29 U.S.C. § 1055(c)(2)(A) of her surviving spousal rights. Thus, the funds were properly distributed to her by the plan administrator.

The lack of a valid ERISA waiver, however, affects only to whom the plan administrator must distribute the funds in an ERISA-governed retirement account; the lack of a valid ERISA waiver does not bar a suit under state common-law theories after the distribution is made. In Estate of Kensinger v. URL Pharma, Inc., 674 F.3d 131, 134 (3d Cir. 2012), the United States Court of Appeals for the Third Circuit considered whether an estate, through state-law claims, can attempt to recover funds that had been distributed to a surviving spouse under ERISA. In Kensinger, the decedent's ex-wife was named as

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the beneficiary in his ERISA-governed pension plan, but the ex-wife had waived her right to the pension as part of a settlement incorporated into the parties' divorce decree. The parties agreed that, notwithstanding the settlement, the plan administrator was obligated to pay the pension proceeds to the ex-wife. The Court of Appeals held that, after the plan administrator distributed the funds to the ex-wife, the estate could attempt to recover the funds by directly suing the ex-wife to enforce the divorce settlement. Specifically, the Court of Appeals stated that, "to the extent that ERISA is concerned with the expeditious payment of plan proceeds to beneficiaries, permitting suits against beneficiaries after benefits have been paid does not implicate any concern of expeditious payment or undermine any core objective of ERISA." 674 F.3d at 137. Accordingly, it concluded that a post-distribution breach-of-contract action against the ex-wife was not barred by ERISA. Other appellate courts have adopted similar holdings. See, e.g., Metlife Life & Annuity Co. of Connecticut v. Akpele, 886 F.3d 998, 1007 (11th Cir. 2018) (holding that a party may sue a plan beneficiary for retirement-plan benefits but only after the plan beneficiary

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has received the benefits); Alcorn v. Appleton, 308 Ga. App. 663, 665, 708 S.E.2d 390, 392 (2011) (holding that a decedent's estate could bring a post-distribution suit alleging breach of contract against the decedent's ex-wife to enforce her waiver of benefits); Kickham Hanley P.C. v. Kodak Ret. Income Plan, 558 F.3d 204, 211 (2d Cir. 2009) (recognizing that a party may bring an action to recover plan benefits once those benefits have been distributed); DaimlerChrysler Corp. v. Cox, 447 F.3d 967, 974 (6th Cir. 2006) (same); Hoult v. Hoult, 373 F.3d 47, 54-55 (1st Cir. 2004) (same); Trucking Emps. of N. Jersey Welfare Fund v. Colville, 16 F.3d 52, 55 (3d Cir. 1994) (same). Therefore, ERISA presents no bar to Billy's breach-of-contract action against Beulah.

Beulah contends that the trial court erred in entering a summary judgment in favor of Billy based on his breach-of-contract claim. In support of her argument, Beulah contends that the second clause in section 4.4 demonstrates the intent to solidify her status as the beneficiary of the 401(k) plan and the pension plan and that additional action was required for any waiver of those benefits to occur, i.e., the execution

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of "spousal consents or waivers." According to Beulah, because she did not execute any "spousal consents or waivers" as purportedly required by the language of both the prenuptial agreement and ERISA, she did not waive her rights to the proceeds of the 401(k) plan and the pension plan and, thus, is entitled to retain those proceeds.

Beulah's argument, however, assumes that the waiver requirements under ERISA trump the contractual obligations of the parties to the prenuptial agreement. As shown in Kensinger, supra, ERISA has no bearing on an estate's post-distribution breach-of-contract action against a spouse regarding the proper ownership of distributed benefits; under ERISA, the obligation is on the plan administrator to pay the pension proceeds. See Kensinger, 674 F.3d at 136 ("[W]hen [the employer] pays the benefits to [the wife], as it must, she will 'get what's coming' under the plan. If, after distribution, her right to these funds is challenged because of her common law waiver, that challenge will be litigated as an ordinary contract dispute."); see also Sweebe v. Sweebe, 474 Mich. 151, 156, 712 N.W.2d 708, 712 (2006) ("Once the proceeds are distributed, the consensual terms of a prior

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contractual agreement may prevent the named beneficiary from retaining those proceeds.").

Beulah's argument that the language of section 4.4 discussing "spousal consents or waivers" grants her the proceeds of the 401(k) plan and the pension plan unless a spousal waiver is executed is also unavailing. The prenuptial agreement makes clear that Jimmy and Beulah agreed that the separate property each brought into the marriage--including the 401(k) plan and the pension plan--would remain separate. Jimmy and Beulah further agreed that neither of them would "claim, demand, assert any right to, take or receive any part of the property of the other as described on Schedules 1 and 2," which included the 401(k) plan and the pension plan. The first clause of section 4.4 itself indicates that the parties renounced any rights to the other's retirement accounts. The second clause of section 4.4 simply allows the owner of "an IRA or other plan account" to "direct" the "distribution of benefits" to one through a "beneficiary designation." Here, that person is Billy, who was the designated beneficiary before Jimmy married Beulah. As a result, the clause directed that Beulah was required to ("shall") execute the necessary

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"spousal consents or waivers" in order to effectuate that designation by the "account owner," who was Jimmy. Put simply, under this clause, Jimmy was permitted to name Billy as the designated beneficiary of the 401(k) plan and the pension plan, which he had done before he married Beulah, who had, in turn, renounced her claim to the plans. This meant that Beulah was required to execute a "spousal consent or waiver" to effectuate what Jimmy had done.

The fact that such a waiver was never executed does not negate the first clause in which the parties renounced their right to the plans in the first place. Instead, it ensures that the parties execute any requisite documents in order to effectuate a beneficiary designation, presumably to comply with § 1055(a)(2) or any other similar requirement. Nothing in section 4.4 suggests that the failure to execute a spousal consent or waiver changes the parties' clear intent throughout the entire prenuptial agreement to renounce claims to the other's property; instead, the purpose of the requirement is to ensure that the parties' desires to retain control over the distribution of their accounts through a beneficiary designation is accomplished.

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Under those circumstances, Beulah breached the prenuptial agreement by retaining the benefits from the 401(k) plan and the pension plan. Viewing the evidence in the light most favorable to Beulah, as we must, we conclude that no genuine issue of material fact exists in this case; thus, the trial court properly entered a summary judgment in favor of Billy.

Conclusion

For the foregoing reasons, we conclude that the summary judgment in favor of Billy is due to be affirmed.

AFFIRMED.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.