IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE ESTATE OF SANDRA SUE BROWN, DECEASED

JOHN MICHAEL BROWN,
Intervenor/Appellant,

v.

STEPHANIE LARSON,
Personal Representative/Appellee.

No. 2 CA-CV 2020-0040
Filed February 2, 2021

Appeal from the Superior Court in Pima County
No. PB20190499
The Honorable Kenneth Lee, Judge

AFFIRMED

COUNSEL

Giordano & Heckele PLLC, Tucson
By Gerald F. Giordano Jr. and Mark W. Heckele
Counsel for Intervenor/Appellant

Law Offices of Joseph Mendoza PLLC, Tucson
By Joseph Mendoza
Counsel for Personal Representative/Appellee

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 John Michael Brown appeals from the trial court's order granting summary judgment in favor of the estate of decedent Sandra Sue Brown ("the Estate"), ordering Brown to return funds he received from decedent's ERISA retirement plan. Brown contends that the court erred in granting the Estate's motion for summary judgment, and, by implication, denying his. We affirm.

Factual and Procedural Background

¶2 We "review the facts in a light most favorable to the party against whom summary judgment was granted." *In re Estate of Podgorski*, 249 Ariz. 482, ¶ 8 (App. 2020). Brown and decedent married in 1992, and divorced in 1995. In 1993, decedent had designated Brown as the sole beneficiary of her Delta Family-Care Saving Plan ("plan"). The original dissolution decree entered in 1995 did not dispose of the interests in the plan. However, in 1996, the court entered an amended Qualified Domestic Relations Order (QDRO) addressing the division of interest in the plan. The QDRO provided that Brown was the alternate payee under the plan and was entitled to half of all contributions to the plan made between March 28, 1992 and June 20, 1995. The QDRO also stated that Brown "shall not be treated as a 'surviving spouse' of [decedent]" under the Internal Revenue Code, §§ 401(a)(11) and 417(b)-(c). The decedent did not thereafter change the beneficiary designation under the plan.

¶3 Decedent died in March 2018, and the plan assets—about $326,000—were transferred to Brown as the sole remaining designated beneficiary. According to the plan's handbook, divorce did not nullify designations because the plan was governed by the Employee Retirement Income Security Act (ERISA).[1] The decedent's plan had been funded by decedent and her employer over the years.

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[1]29 U.S.C. §§ 1001-1461.

¶4 In May 2019, the Estate, through its personal representative, filed a motion in the probate action below to recover the plan assets from Brown. Brown was mailed a copy of the motion but was not at the time a party to the probate action. The trial court granted the motion and ordered Brown to return the assets to the Estate. Brown then filed a motion to intervene to reverse the court's order. Brown and the Estate each thereafter filed a motion for summary judgment.

¶5 The Estate asserted that any interest Brown may have in the plan assets is controlled by the QDRO, not by the plan's beneficiary designation. Brown asserted that, in accord with ERISA, the terms of the plan control the distribution of plan assets and, as the sole designated beneficiary under the plan, he was entitled to the plan funds. He argued that neither the dissolution decree nor the QDRO "invalidated" his rights as plan beneficiary. He further argued that Arizona law affecting beneficiary rights, specifically A.R.S. § 14-2804, was preempted by ERISA.

¶6 The trial court granted the Estate's motion for summary judgment, determining that Brown's "interest in the Delta Plan is governed by the February 9, 1996 QDRO," and ordered Brown to return the funds he received from the plan to the personal representative. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(9).

Analysis

¶7 On appeal, Brown repeats the arguments he made below in asserting the trial court erred in granting the Estate's motion for summary judgment and denying his. We review the trial court's grant of summary judgment *de novo*. *Martin v. Schroeder*, 209 Ariz. 531, ¶ 6 (App. 2005). "[S]ummary judgment may be granted only where there is no material factual issue and the movant is entitled to judgment as a matter of law." *Whipple v. Shamrock Foods Co.*, 26 Ariz. App. 437, 439 (1976); *see also* Ariz. R. Civ. P. 56(a). Issues of statutory interpretation are also reviewed *de novo*. *See Kosman v. State*, 199 Ariz. 184, ¶ 5 (App. 2000). The issue on appeal is whether the disposition of the subject plan assets is controlled by the plan's beneficiary designation or, as the trial court determined, the QDRO.

ERISA Preemption of State Law

¶8 Neither party disputes that the plan at issue here is governed by ERISA. Although the trial court did not address ERISA preemption or any conflicting state law, Brown asserts that ERISA preempts § 14-2804(A)(1)(a) and protects his rights as sole beneficiary. The Estate does not

address § 14-2804(A)(1)(a) specifically, other than to argue that, under ERISA, the QDRO controls distribution of the plan assets.

¶9 Pursuant to the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, ERISA preempts "any and all State laws insofar as they . . . relate to any employee benefit plan," 29 U.S.C. § 1144(a), as well as state court orders related to ERISA plans, 29 U.S.C. § 1144(c)(1) (defining "state law" as "other State action having the effect of law"). "[A] state law relates to an ERISA plan 'if it has a connection with or reference to such a plan.'" *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001) (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983)). ERISA preempts state laws that "affect the internal administration of ERISA plans." *Batiza v. Superfon*, 175 Ariz. 431, 436 (App. 1992).

¶10 Under § 14-2804(A)(1)(a), a dissolution or annulment of marriage "[r]evokes any revocable . . . [d]isposition or appointment of property made by a divorced person to that person's former spouse in a governing instrument." *See also In re Estate of Lamparella*, 210 Ariz. 246, ¶ 35 (App. 2005). "Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or . . . as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment." § 14-2804(C). In *Egelhoff*, the United States Supreme Court addressed a Washington statute very much like § 14-2804. 532 U.S. at 144. That law provided, in relevant part, that, upon dissolution of a marriage, "a provision . . . that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset . . . to the decedent's former spouse is revoked." *Id.* And that any such provision "must be interpreted . . . as if the former spouse failed to survive the decedent." *Id.* The Supreme Court held that the law impermissibly related to the ERISA plan because it required administrators to "pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents." *Id.* at 147.

¶11 Section 14-2804, when applied to an ERISA plan, similarly affects the administration of that plan by altering beneficiaries, independent of the plan documents, compelling the plan administrator to ignore a contrary plan beneficiary designation. Consequently, under *Egelhoff*, § 14-2804 conflicts with, and is preempted by, ERISA. 532 U.S. at 147-48. Therefore, Brown is correct that § 14-2804 cannot invalidate the plan's beneficiary designation. *See* 29 U.S.C. § 1144(a). This does not, however, resolve the question.

Dissolution Decree and QDRO

¶12 Neither party disputes on appeal that the 1996 QDRO is a valid QDRO under ERISA. As it did below, the Estate argues that the trial court correctly determined that the QDRO issued pursuant to the dissolution decree controls the distribution of the plan assets. Brown argues that neither the dissolution decree nor the QDRO affected his right to the plan assets as beneficiary and, indeed, are irrelevant to it. Because the dissolution decree was silent as to the disposition of the plan, we address only the QDRO here.

¶13 Although ERISA preempts state laws and state court orders that affect administration of ERISA plans, such preemption does not apply to QDROs issued by state courts. 29 U.S.C. § 1144(b)(7). Indeed, QDROs were designed under ERISA to do just what state law and state court orders by themselves cannot do: a QDRO is an order "which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under [an ERISA] plan." 29 U.S.C. § 1056(d)(3)(B)(i). "The QDRO . . . provisions define the scope of a nonparticipant spouse's community property interests in pension plans consistent with ERISA." *Boggs v. Boggs*, 520 U.S. 833, 850 (1997).

¶14 Here, the 1996 QDRO assigns to Brown, as alternate payee, the right to receive a portion of decedent's benefits. The QDRO then defines Brown's interest, ordering that Brown is "entitled to receive one-half (1/2) of all contributions . . . to [decedent]'s account with the Plan from March 28, 1992, to June 20, 1995 . . . from the date of Judgment until [decedent] actually receives distribution from the Plan." That interest, established by the 1996 QDRO, may be different from the interest Brown received in the plan assets as plan beneficiary. It appears that the nature of the assets in the plan when decedent died were contributions made by decedent and her employer, which were invested for her retirement. And, although we do not decide that here, it further appears that under the QDRO, half of the contributions made to the plan during Brown and decedent's marriage, and any increases or decreases incurred from those investments, belong to Brown, but the rest of the contributions in the plan belong to decedent and thus, her estate. Whatever the ultimate disposition of the plan assets is, the trial court correctly determined that the 1996 QDRO controls Brown's interest in the plan assets. The court correctly granted the Estate's motion for summary judgment and, implicitly, correctly denied Brown's.

Attorney Fees and Costs

¶15 Brown provided notice of his intention to claim attorney fees and costs incurred on appeal, as required by Rule 21(a), Ariz. R. Civ. App. P. Because Brown did not prevail on appeal, we deny his request for attorney fees and costs incurred on appeal. *Doherty v. Leon*, 249 Ariz. 515, ¶ 24 (App. 2020) (prevailing party is entitled to costs on appeal). Brown also asks to recover his costs and attorney fees under A.R.S. §§ 14-3709 and 12-341.01. Because Brown was not the successful party, and in our discretion, we also deny these requests. The Estate did not seek an award of fees but, as the prevailing party, it is entitled to an award of its costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *Doherty*, 249 Ariz. 515, ¶ 24 (awarding prevailing party's costs upon compliance with Rule 21).

Disposition

¶16 For the foregoing reasons, the judgment of the trial court is affirmed.