

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 124,116

In the Matter of the Marriage of JON HOLLIDAY,
Appellant,

and

TAMARA HOLLIDAY,
Appellee.

SYLLABUS BY THE COURT

1.

A district court's division of a retirement account in a divorce proceeding constitutes a judgment subject to dormancy under K.S.A. 2022 Supp. 60-2403 when the division order qualifies under K.S.A. 2022 Supp. 60-254(a) as a final determination of the parties' interests in the marital estate.

2.

The dormancy period under K.S.A. 2022 Supp. 60-2403(c) does not run "during any period in which the enforcement of the judgment by legal process is stayed or prohibited."

3.

K.S.A. 2022 Supp. 60-2403(c)'s tolling provision prevents a divorce decree dividing the parties' interests in a retirement account with the Kansas Public Employee Retirement System from becoming dormant until benefits become payable to the plan member.

Review of the judgment of the Court of Appeals in an unpublished opinion filed September 23, 2022. Appeal from Jackson District Court; CHRISTOPHER T. ETZEL, judge. Oral argument held May 16, 2023. Opinion filed June 30, 2023. Judgment of the Court of Appeals reversing the district court is reversed. Judgment of the district court is affirmed.

Shawna R. Miller, of Miller Law Office, LLC, of Holton, argued the cause and was on the brief for appellant.

Cecilia T. Mariani, of Topeka, argued the cause and was on the briefs for appellee.

The opinion of the court was delivered by

BILES, J.: When Jon and Tamara Holliday divorced in 2009 after 24 years of marriage the district court divided Jon's not-yet-payable retirement account with the Kansas Public Employees Retirement System equally between them. It directed Tamara to prepare a qualified domestic relations order "to effectuate this division." In 2021, as Jon readied for retirement, he asked the court to extinguish Tamara's interest in his KPERS account. He claimed her judgment from the divorce had gone dormant because she did not send a copy of it to KPERS as instructed. The district court rejected this argument, but a Court of Appeals panel agreed with it. On review to resolve the conflict, we hold K.S.A. 2020 Supp. 60-2403(c) tolled the dormancy period until Jon's benefits from his KPERS account became payable. We reverse the Court of Appeals panel that held otherwise and affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

No one disputes what happened. The 2009 divorce decree divided Jon's KPERS retirement account equally between the couple, with the valuation date tied to the divorce petition's filing. The court directed Tamara to prepare within 60 days a qualified domestic

relations order recognizing her right as an alternate payee to receive a portion of Jon's KPERS plan assets—but that did not happen. Twelve years later, as he prepared to retire, Jon moved to extinguish Tamara's judgment in his KPERS account under the dormancy statute, K.S.A. 2020 Supp. 60-2403(a)(1), which establishes circumstances under which a district judge must release a judgment of record. After receiving Jon's motion, Tamara's attorney sent the divorce decree to KPERS and opposed Jon's motion.

Kathleen Billings, a KPERS staff attorney, testified at an evidentiary hearing on Jon's motion. She described her duties as receiving and reviewing divorce decrees and QDROs, as well as helping interpret and enforce court orders for asset division. She said KPERS received the Hollidays' divorce decree on April 19, 2021, and considered it sufficient for administrative processing. She agreed the agency views a QDRO "as sort of a lien" on an account until the member retires, dies, or withdraws from the system. And she said KPERS would consider the Hollidays' division order as a "Type A" QDRO that splits the accumulated contributions in the account as of a specified effective date. To process this order, she continued, KPERS only needed to know how to split the contributions and the date of division, so that everything before that date could be allocated as ordered, and everything else would remain with the KPERS plan member.

The district court denied Jon's motion to extinguish Tamara's judgment. It observed that this circumstance differed from plans governed by the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (2018), because KPERS is a state governmental pension system controlled by Kansas law. It found the original filing of the 2009 divorce decree with the district court clerk within the time limit contemplated by the dormancy statute equivalent to filing a QDRO with KPERS. Therefore, it continued "a QDRO was timely filed and [Tamara's] rights to receive her portion of the retirement benefits has been preserved." Jon appealed.

A Court of Appeals panel took a different view. It held the judgment expired under the dormancy statute because Tamara failed to timely send KPERS a copy of the decree within the seven-year period set out in the dormancy statute. It equated this notification as being "a form of execution on that judgment." *In re Marriage of Holliday*, No. 124,116, 2022 WL 4391026, at *4 (Kan. App. 2022) (unpublished opinion) (remarking "[c]ommon sense tells us that . . . enforcement of this judgment inherently requires delivery of the divorce decree or some court order to KPERS"). We granted Tamara's petition for review.

Jurisdiction is proper. See K.S.A. 20-3018(b) (providing for petitions for review of Court of Appeals decision); K.S.A. 60-2101(b) (Supreme Court has jurisdiction to review Court of Appeals decisions upon petition for review).

ANALYSIS

This case presents two questions: (1) Was this 2009 divorce judgment a final judgment subject to the dormancy statute; and (2) if yes, when did the dormancy period commence? We start with the applicable statutes: K.S.A. 2022 Supp. 60-2403 and K.S.A. 2022 Supp. 60-254(a). Questions of law involving statutory interpretation are subject to unlimited review. *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918, 349 P.3d 469 (2015).

The dormancy statute provides in pertinent part:

"(a)(1) . . . [I]f a renewal affidavit is not filed or if execution, including any garnishment proceeding, support enforcement proceeding or proceeding in aid of execution, is not issued, within five years from the date of the entry of any judgment in any court of record in this state, . . . the judgment . . . shall become dormant, and shall cease to operate as a lien on the real estate of the judgment debtor. When a judgment

becomes and remains dormant for a period of two years, it shall be the duty of the judge to release the judgment of record when requested to do so. . . .

. . . .

"(c) The time within which action must be taken to prevent a judgment from becoming dormant does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited." K.S.A. 2022 Supp. 60-2403.

Tamara suggests the 2009 division order should not be considered a "final judgment" because KPERS had not approved it yet. But this argument has no merit. A "judgment" is defined as "the final determination of the parties' rights in an action." K.S.A. 2022 Supp. 60-254(a); see also *Honeycutt v. City of Wichita*, 251 Kan. 451, Syl. ¶ 1, 836 P.2d 1128 (1992) ("A final decision is one that finally decides and disposes of the entire merits of the controversy and reserves no further questions or directions for the future or further action of the court."); *Bandel v. Pettibone*, 211 Kan. 672, 677, 508 P.2d 487 (1973) ("It is a fundamental rule that a judgment should be complete and certain in itself, and that the form of the judgment should be such as to indicate with reasonable clearness the decision which the court has rendered, so that the parties may be able to ascertain the extent to which their rights and obligations are fixed, and so that the judgment is susceptible of enforcement in the manner provided by law."). A "court of record" under K.S.A. 2022 Supp. 60-2403(a)(1) is defined as "[a] court that is required to keep a record of its proceedings." Black's Law Dictionary 445 (11th ed. 2019); see also Kan. Const. art. 3, § 1 ("The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal."). A district court is a court of record. See *State v. Higby*, 210 Kan. 554, 558, 502 P.2d 740 (1972).

The judgment here is the 2009 divorce decree by the Jackson County District Court. It fixes the parties' rights and obligations in Jon's KPERS retirement account by evenly dividing its valuation as of a date certain—the divorce petition's filing date. And Billings testified this 2009 decree is all that is needed for KPERS to treat it as a QDRO to administratively process the account as the court contemplated. We easily conclude from this that the court's division of Jon's KPERS account constitutes a final judgment under K.S.A. 2022 Supp. 60-254(a).

Following from that, the division judgment is subject to dormancy under K.S.A. 2022 Supp. 60-2403(a)(1). See *Bank IV Wichita v. Plein*, 250 Kan. 701, 706, 830 P.2d 29 (1992) (holding judgment in divorce action awarding a lien on real estate to a party was a judgment subject to dormancy). The dormancy statute speaks of "any judgment" of any court of record in this state and does not limit its application to just monetary judgments. 250 Kan. 701, Syl. ¶ 2. And K.S.A. 60-254(a)'s language is clear that a judgment's finality does not depend on completing a subsequent ministerial task, such as KPERS's approval here. Instead, finality "depends primarily upon the intention of the court, and upon the governing statutory provisions and rules." *Roe Village, Inc. v. Board of County Commissioners*, 195 Kan. 247, 248, 403 P.2d 970 (1965). We hold the answer to our first question is Yes.

Our next question is more involved. We must decide whether this 2009 final judgment in a not-yet-payable KPERS account became dormant just because Tamara did not send a copy of it to KPERS until 2021. To decide that we look again to the dormancy statute's tolling provision. It states, "The time within which action must be taken to prevent a judgment from becoming dormant *does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.*" (Emphasis added.) K.S.A. 2022 Supp. 60-2403(c). And since all agree Tamara had no way to share in Jon's account until he retired, we need to decide whether her inability to enforce the 2009

judgment "by legal process" before Jon retired was "stayed or prohibited." If so, the statute says the dormancy period "does not run."

The panel looked at this much differently. It simply considered "whether a judgment in a divorce decree that divides a retirement account can become dormant and expire with the passage of time." *In re Marriage of Holliday*, 2022 WL 4391026, at *1. And it held that unless "some action is taken," these division judgments can erode. 2022 WL 4391026, at *2. In the panel's view, the "action" required of Tamara was "notification to KPERS of a judgment dividing a KPERS retirement account" because this notification was "*a form of execution on that judgment.*" (Emphasis added.) 2022 WL 4391026, at *4 ("With no execution, the judgment can become dormant and then subject to expiration."). Although it is true in the abstract that a judgment in a divorce decree can become dormant as explained above, we question the panel's conclusion that Tamara's judgment became permanently extinguished as to Jon's KPERS account.

The panel did not explain why mere delivery of a divorce decree to KPERS years before someone can collect any benefits is a do-or-die step in "execution" of a judgment under K.S.A. 2022 Supp. 60-2403(a)(1). And since this case turns on that missing explanation, we must explore more precisely what a "qualified domestic relations order" is under the KPERS statute, K.S.A. 74-4923(b), and what "execution" is under the dormancy statute. In doing so, we will also look at retirement plans subject to federal ERISA provisions, which differ from KPERS plans, because the *Holliday* panel relied on *In re Marriage of Larimore*, 52 Kan. App. 2d 31, 44, 362 P.3d 843 (2015), for its conclusion and that case dealt with an ERISA-governed plan.

QDROs under KPERS

The KPERS Act, K.S.A. 74-4901 et seq., offers statewide retirement plans for state and local public employees, which we call KPERS. See *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, Syl. ¶ 2, 941 P.2d 1321 (1997) ("As KPERS is a classic 'defined benefit' retirement plan, the State of Kansas and the numerous public entities whose employees are subject to the plan have an unequivocal constitutional, statutory, and contractual obligation to ensure that KPERS has sufficient funds to pay the required benefits to public employees who are participating in the plan."). And K.S.A. 74-4923(b) governs division of retirement accounts in a divorce decree. It states in pertinent part:

"Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. . . . shall not be subject to execution, garnishment or attachment, or, except as otherwise provided, any other process or claim whatsoever; and shall be unassignable *Any annuity or benefit or accumulated contributions due and owing to any person under the provisions of K.S.A. 74-4901 et seq. . . . are subject to claims of an alternate payee under a qualified domestic relations order.* As used in this subsection, the terms 'alternate payee' and 'qualified domestic relations order' shall have the meaning ascribed to them in section 414(p) of the federal internal revenue code. . . . [KPERS] shall not be a party to any action under the Kansas family law code, . . . but is subject to orders from such actions issued by the district court . . . and may also accept orders which it deems to be qualified under this subsection from courts having jurisdiction of such actions outside the state of Kansas. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed by the system pursuant to this act."
(Emphasis added.) K.S.A. 74-4923(b).

As readily seen, the statute declares a general rule that KPERS retirement benefits cannot be seized by or assigned to any other party. But it also provides an exception to this, by noting benefits are subject to an alternate payee's claim under a QDRO. And the

law requires KPERS to comply with a domestic relations order deemed to be qualified and lists elements these orders must contain to be considered qualified. The Act, however, does not provide a separate definition for QDROs; it instead refers to section 414(p) of the federal Internal Revenue Code, which provides that a QDRO "means a domestic relations 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 a plan." 26 U.S.C. § 414(p)(1)(A)(i) (2018).

In Tamara's case, a domestic relations order "means any judgment, decree, or order" relating to "marital property rights to a spouse," and "made pursuant to a State . . . domestic law." 26 U.S.C. § 414(p)(1)(B). To be qualified, a domestic relations order "must clearly specify certain facts," which are:

"(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

"(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

"(C) the number of payments or period to which such order applies, and

"(D) each plan to which such order applies." 26 U.S.C. § 414(p)(2).

In addition, a domestic relations order "may not alter amount, form, etc., of benefits." 26 U.S.C. § 414(p)(3). In other words, it "meets the requirements of this paragraph only if such order":

"(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

"(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

"(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order." 26 U.S.C. § 414(p)(3).

While Kansas law borrows ERISA's definition of QDROs, K.S.A. 74-4923(b) clarifies that under the KPERS Act, to be qualified, the domestic relations order must specify either a specific dollar amount or a specific percentage of the pension or benefit due to be distributed by the system. This state law requirement is not much different from the federal language under 26 U.S.C. § 414(p)(2)(B) ("[T]he amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee . . ."). But under the KPERS Act, the system need not split the member's account upon a determination of a QDRO. See K.S.A. 74-4923(b); KPERS, QDRO Guidelines (April 30, 2023), <https://www.kpers.org/qdro> ("When a QDRO is accepted by KPERS, the alternate payee's award is maintained, in essence, as a lien on the member's account. No separate account is maintained.").

This differs from ERISA, which provides that once a plan administrator receives a domestic relations order, it must maintain a separate account for the amounts payable to the alternate payee while the status of a domestic relations order is being determined as a QDRO. 26 U.S.C. § 414(p)(7)(A); see also 26 U.S.C. § 414(p)(8) (defining "alternate payee"). When this determination is completed, the administrator "shall pay the segregated amounts" to the alternate payee. 26 U.S.C. § 414(p)(7)(B).

Our state statute does not specify procedures for processing a domestic relations order, even though it relies on ERISA for the definition of QDROs. Turner, 2 Equitable Distribution of Property § 6:19 (4th ed. 2023), explains the federal procedures as follows: After a state court renders a domestic relations order, typically the alternate payee submits it to the plan administrator. See 26 U.S.C. § 414(g) (defining plan administrator). The plan administrator makes an initial determination of whether the order is qualified. 26 U.S.C. § 414(p)(6)(A)(ii). Usually this takes 18 months. 26 U.S.C. § 414(p)(7). If it determines the order to be qualified, the alternate payee is entitled to the segregated benefits; otherwise, "the order will then be modified by the state court judge to address the problems which caused the plan administrator to refuse to qualify it." Equitable Distribution of Property § 6:19. And if either spouse disagrees with the administrator's decision about qualified status, the issue can be tried before a judge. See 29 U.S.C. § 1132(e)(1) (2018) (state and federal courts have concurrent jurisdiction over such actions). In such cases, the plan is joined as a party. But recall that KPERS "shall not be a party to any action under the Kansas family law code." K.S.A. 74-4923(b). See Snyder, Qualified Domestic Relations Orders § 11:2 (2023) ("The general rule is that [QDRO] rules do not apply to governmental plans unless they have elected to be covered under [ERISA]."); 26 U.S.C. § 414(d) (defining governmental plan); K.S.A. 74-4903 (KPERS is a governmental plan).

Although our state law borrows the federal definitions for a QDRO and an alternate payee, other aspects of the KPERS Act simply underscore that KPERS does not operate as a plan subject to ERISA.

Execution

The next consideration is whether Tamara's notice to KPERS of her 2009 domestic relations order years before any benefits were due would have constituted "execution"

under K.S.A. 2022 Supp. 60-2403(a)(1). We hold it would not. Recall that under K.S.A. 2022 Supp. 60-2403, a party wishing to keep a judgment alive must either file a renewal affidavit or issue execution. K.S.A. 2022 Supp. 60-2401(a) defines "execution" as follows:

"A general execution is a direction to an officer to seize any nonexempt property of a judgment debtor and cause it to be sold in satisfaction of the judgment. A special execution or order of sale is a direction to an officer to effect some action with regard to specified property as the court determines necessary in adjudicating the rights of parties to an action."

The panel held the "action" required by the dormancy statute in Tamara's case was "the notification to KPERS of a judgment dividing a KPERS retirement account." *In re Marriage of Holliday*, 2022 WL 4391026, at *4. And to reach that conclusion, the panel relied on *In re Marriage of Larimore*, which dealt with an ERISA-qualified plan. See *In re Marriage of Holliday*, 2022 WL 4391026, at *2-3. But as explained above, a KPERS plan is not an apt comparison. The *Holliday* panel did not address that.

The *Larimore* panel held "[a] party may execute on a judgment in a divorce decree that divides a party's retirement accounts governed by [ERISA], by filing a [QDRO] with the retirement plan administrator." *In re Marriage of Larimore*, 52 Kan. App. 2d 31, Syl. ¶ 3. And in rejecting the alternate payee's request to apply K.S.A. 2014 Supp. 60-2403(c)'s tolling provision, the *Larimore* panel noted that "because the legal process for enforcing such a judgment—the filing of a QDRO—is not stayed or prohibited until the benefits become payable," the time started running on the date of the judgment's entry. 52 Kan. App. 2d at 44. It also noted: "Although Janice may not have been able to receive money from David's retirement accounts during the ensuing 12 years, the necessary legal process—a QDRO—for enforcing Janice's interest in the retirement accounts was fully

available to her." 52 Kan. App. 2d at 44; see also *In re Marriage of Smith*, No. 105,365, 2012 WL 1649835, at *5 (Kan. App. 2012) (unpublished opinion) (holding part of executing on a judgment was sending the QDRO to the plan administrator; noting clock starts ticking when the judgment was entered).

But as Tamara correctly points out, notification is not execution under K.S.A. 2022 Supp. 60-2401(a) since it is not a direction to an officer to seize a debtor's property and sell it to satisfy the judgment. And a renewal affidavit would have been futile until the benefits become payable. See K.S.A. 2022 Supp. 60-2403(a)(2) (defining "renewal affidavit" as "a statement under oath . . . stating the remaining balance due and unpaid on the judgment"). Also, the revivor statute would have no practical application to these circumstances pending Jon's retirement because it is "a request for the immediate issuance of an execution thereon if such motion is granted." K.S.A. 60-2404.

As discussed earlier, even if KPERS receives a domestic relations order and processes it under the KPERS Act by noting its existence in its files, as long as Jon's retirement benefits are not yet payable, nothing will happen. And when the benefits become payable, the notification simply permits Tamara to receive her share of Jon's account directly from the system. So the key effect of a QDRO here is to require KPERS to pay a portion of the member's benefits directly to the alternate payee once the member's benefits become payable—but not until then.

We express no opinion whether *In re Marriage of Larimore*, which applied the dormancy statute to a plan subject to ERISA, correctly decided the issue presented. That would be a question of first impression for our court and best left to a controversy directly on point. But we do note important administrative differences in the way KPERS handles division orders from those under ERISA qualified plans, and since the *Holliday*

panel did not address those differences in its rationale, we consider it flawed for that reason.

The Holliday panel erred.

What the above tells us is this:

- The 2009 decree recognized Tamara and Jon's marital property, specifically acknowledging Jon's KPERS account as part of the marital property and entitling Tamara to an equal share as of a specified date.
- Once a DRO is delivered, KPERS will process it, and if it contains all the necessary information, KPERS must comply with it when the time comes to pay benefits.
- Jon's retirement benefits were not payable until he retires, dies, or withdraws from KPERS. Until then, no legal process exists for Jon to receive his retirement benefits from KPERS, nor is there a legal process for Tamara to extract her share. Both parties are on the same footing.
- A QDRO is a procedural mechanism in this context that simply makes KPERS aware that it is to pay the benefits to the alternate payee directly when they become due to the plan member.

We hold the dormancy period tolled until Jon's retirements benefits became payable to him from his account. In the language of K.S.A. 2022 Supp. 60-2403(c), no legal process was available for Tamara to enforce her judgment until Jon started receiving benefits. Filing the court's division order with KPERS any earlier would have

had no effect unless the plan member was receiving benefits. The result here adheres to our holding in *Bank IV Wichita*, 250 Kan. 701, Syl. ¶ 4 ("The time within which a judgment must be enforced to prevent it from becoming dormant does not run during any period in which it is impossible to collect the judgment by legal process."). It also aligns with K.S.A. 2022 Supp. 23-2102. ("The provisions of the Kansas family law code shall be construed to secure the just, speedy, inexpensive and equitable determination of issues in all domestic relations matters.")

We reverse the Court of Appeals and affirm the district court with alternate reasoning.

Judgment of the Court of Appeals reversing the district court is reversed.
Judgment of the district court is affirmed.