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**Marc J. Soss, JD, LL.M**

mjs@fl-estateplanning.com  
www.fl-estateplanning.com



## **Kennedy v. Plan Administrator for DuPont Savings and Investment Plan**

### **Who is Beneficiary of Divorced Decedent's Retirement Plan?**

#### **EXECUTIVE SUMMARY:**

It is not often that the U.S. Supreme Court becomes involved in an Employee Retirement Income Security Act of 1974 (ERISA) matter. But in the case of *Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan.*, decided on January 26, 2009, the Supreme Court addressed application of Section 1104 of Section 29 U. S. C. with regard to the obligations of the administrator of an ERISA plan and the documents and instruments governing it.

In reaching its unanimous opinion, the Supreme Court concluded that a savings and investment plan (SIP) specifically designated its beneficiaries and provided a way to disclaim an interest in the SIP account, which was not exercised. The Court held that, as a result, ERISA provided no exception to the plan administrator's duty to act in accordance with plan documents. The Court concluded that the plan administrator did its ERISA duty under Section 1104 by paying the SIP benefits to the designated beneficiary in conformity with the plan documents.

## **FACTS:**

### **CASE HISTORY**

In *Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan*, the decedent, William Kennedy, was an employee of E. I. Du-Pont de Nemours & Company and participant in its savings and investment plan (SIP).

In 1971, William married Liv Kennedy. In 1974, William designated Liv as the beneficiary of his SIP and named no other contingent beneficiary to take if she disclaimed her interest. William and Liv subsequently divorced in 1994.

Under the terms of the divorce decree, Liv divested all of her right, title, interest, and claim in and to "[a]ny and all sums . . . the proceeds [from], and any other rights related to any . . . retirement plan, pension plan, or like benefit program existing by reason of [William's] past or present or future employment." However, William never executed a new document removing Liv as the SIP beneficiary.

On William's death, Kari Kennedy, William's daughter and the executrix of his estate, requested the SIP funds be distributed to William's estate. But in reliance on William's beneficiary designation form, the SIP plan administrator distributed the funds to Liv.

## **COMMENT:**

### **GOVERNING LAW**

ERISA obligates a plan administrator to manage ERISA plans "in accordance with the documents and instruments governing" them (29 U. S. C. §1001).

### **NO EXCEPTIONS:**

ERISA provides no exception to the administrator's *duty* to act in accordance with plan documents (29 U. S. C. §1102). The plan

administrator is obliged to act in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA. ERISA provides no exemption from this duty when it comes time to pay benefits (29 U. S. C. §1104).

### **EMPLOYER CAN ESTABLISH POLICY:**

§1132 of Section 29 U. S. C. further allows an employer to establish a written policy with standard procedures for the processing of claims and disbursement of benefits (*Egelhoff v. Egelhoff*, 532 U. S. 141). The written policy will provide plan participants with instructions for making his or her beneficiary designation clear, avoid enquiries into expressions of intent, and allow plan administrators to avoid the necessity of examining numerous documents and potential litigation.

The estate commenced a lawsuit and alleged that:

- 1) Liv had waived her SIP benefits in her divorce; and
- 2) the SIP plan administrator violated ERISA by paying the funds to the designated beneficiary.

The estate took the position that:

- 1) William's beneficiary designation form should *not* control because it is not one of the documents and instruments governing the plan under §1104(a)(1)(D); and
- 2) the beneficiary designation form was not treated as a plan document by the plan administrator.

### **THE DISTRICT COURT DECISION:**

The District Court, in reliance upon *Manning v. Hayes*, 212 F. 3d 866 (CA5 2000), held "that a beneficiary can waive his rights to the proceeds of an ERISA plan ... provided that the waiver is explicit, voluntary, and made in good faith," and entered summary judgment in favor of the estate. The court ordered the SIP funds be distributed to the estate. The District Court viewed Liv's waiver as an assignment or alienation which

transferred the SIP benefits to the designated contingent beneficiary (the estate).

Liv appealed the ruling to the Fifth Circuit Court of Appeals.

### **COURT OF APPEALS DECISION:**

On appeal, the Court of Appeals reversed the District Court and held that:

- 1) Liv had not attempted to direct her interest in the SIP funds to the estate or any other potential beneficiary;
- 2) Liv's waiver did not constitute an assignment or alienation rendered void under §1056; and
- 3) the SIP administrator did its ERISA duty by paying the funds to Liv in conformity with the plan documents.

The matter was then certified to the Supreme Court.

### **THE SUPREME COURT DECISION:**

Justice Souter, in delivering the unanimous opinion of the Supreme Court, addressed the facts which reflected that:

- 1) under the terms of the SIP Liv was William's designated beneficiary;
- 2) the plan provided a simple way for William to change the beneficiary designation (which William did *not*) and
- 3) the plan provided a method for Liv to disclaim her interest in the SIP account (which she did not utilize).

In reaching its ruling, the Justices determined that:

- 1) Liv's waiver was not nullified by §1056's express terms;
- 2) the plan administrator properly disregarded the waiver and did exactly what §1104(a)(1)(D) required; and
- 3) any other conclusion would require a plan administrator "to examine a multitude of external documents that might purport to affect the dispensation of benefits," (*Altobelli v. IBM Corp.*, 77 F. 3d 78 (CA4 1996)) and be drawn into litigation over the meaning and enforceability

of purported waivers.

**PLANNING LESSONS:**

This case serves as a very expensive reminder of the urgency for a client who has suffered through a divorce (and who hasn't) or major life changing event to review and if appropriate change the designated beneficiary of his or her retirement account(s) and life insurance policies as quickly as possible. Even if the interim designated beneficiary is his or her estate, the end result might be better than if it was an unwanted ex-spouse or former life companion.