

Reversed and Rendered and Opinion filed May 17, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-00822-CV

JEAN HEGGY, Appellant

V.

**AMERICAN TRADING EMPLOYEE RETIREMENT ACCOUNT PLAN,
CATHERINE GLAZE HEGGY AND RICHARD H. HEGGY, Appellees**

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 95-61451**

OPINION

This is an appeal from a summary judgment granted in favor of appellee, Catherine Glaze Heggy ("Catherine"). The underlying suit involves an interpleader action filed by American Trading Employee Retirement Account Plan ("American") to determine entitlement to the pension benefits of deceased Robert Heggy ("Robert"). Arguing that unresolved fact issues remain, appellant, Jean Heggy ("Jean"), contests the trial court's order that all sums held

by American be paid to Catherine.¹ We will reverse.

Background

Robert and Jean Heggy purportedly entered into a common law marriage on March 15, 1979. In April of 1984, Robert became employed by American. During his tenure, Robert participated in American's employee retirement plan and accrued over \$144,000 in benefits. On December 6, 1991, Robert and Jean were ceremonially married while vacationing in Las Vegas. A few months later, around February 10, 1992, Robert retired from American. Robert's marriage to Jean ended in divorce on July 26, 1994. The following year, Robert married Catherine. Robert's second marriage ended when he died on October 31, 1995.

While still employed with American, Robert named Jean as his beneficiary for any sums remaining in his retirement account at his death. After marrying Catherine, however, Robert failed to remove Jean as beneficiary. Upon Robert's death, Jean filed pleadings against American to recover her interest as the named beneficiary. Jean's pleading's alternatively sought to recover her community property interest which Robert allegedly concealed during their divorce. Catherine responded by filing a motion for summary judgment seeking, as Robert's surviving spouse, all remaining account benefits. Jean now appeals the trial court's summary judgment in favor of Catherine.

Standard

A defendant moving for summary judgment has the burden of establishing that no genuine issue of material fact exists as to one or more essential elements of the plaintiff's cause of action and that the defendant is entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). If the defendant meets this burden, the plaintiff must then raise a genuine issue of material fact on the targeted element or elements of the plaintiff's cause of action. *Gonzalez v. City of Harlingen*, 814 S.W.2d

¹ Catherine Heggy did not file an appellee's brief.

109, 112 (Tex.App.--Corpus Christi 1991, writ denied). In reviewing a summary judgment, an appellate court accepts as true all evidence supporting the non-movant. *Nixon*, 690 S.W.2d at 549. All inferences are indulged in favor of the non-movant, and all doubts are resolved in his favor. *Id.* Where, as here, the trial court does not state the grounds for granting the motion, and several grounds are provided, the reviewing court must determine if any of the grounds would support the judgment. *Rogers v. Ricane Enterprises., Inc.*, 772 S.W.2d 76, 79 (Tex.1989). Finally, because the propriety of summary judgment is a question of law, we review the trial court's decision *de novo*. *Natividad v. Alexis, Inc.*, 875 S.W.2d 695, 699 (Tex.1994).

Plan Beneficiary

One of the grounds raised in Catherine's motion for summary judgment is her contention that Jean, while designated as plan beneficiary, has no right to Richard's pension benefits because she contractually waived any right to such benefits in the divorce decree. In pertinent part, Robert and Jean's divorce decree provides:

[Robert] is awarded the following as [his] sole and separate property, and [Jean] is hereby divested of all right, title, interest, and claim in and to such property:

....

4. Any and all sums of cash in the possession of or subject to the sole control of [Robert], including money on account in banks, savings institutions, or other financial institutions, which accounts stand in [Robert's] sole name or from which [Robert] has the sole right to withdraw funds or which are subject to [Robert's] sole control including the Nations Bank account in name of [Robert].

Relying on this language, Catherine argues that Robert's designation of Jean as plan beneficiary must yield to the terms of the divorce decree.

In addressing this ground, we begin by noting that Robert's American Employee Retirement Plan qualifies as an "employee pension benefit plan" as defined by ERISA. 29 U.S.C.A. § 1002(2)(A) (West 1999). Section 1144 of ERISA provides that its provisions supersede any and all state laws "insofar as they relate to any employee benefit plan." *Id.* at §

1144(a). A law “relates to” an employee benefit plan “if it has a connection with or reference to such a plan.” *Brandon v. Traveler’s Ins. Co.*, 18 F.3d 1321, 1325 (5th Cir. 1994) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983)). Regarding designation of beneficiaries under an ERISA plan, federal and state courts consistently hold that ERISA preempts application of state law. *See Brandon*, 18 F.3d at 1325; *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990); *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991); *Emmens v. Johnson*, 923 S.W2d 705, 707 (Tex. App.—Houston [1st Dist.] 1996, writ ref’d).

Having found that state law does not control, we proceed to the second step in the determination of a party’s rights in an ERISA plan and ascertain the law applicable to this dispute. We must identify the applicable provisions of ERISA or, finding no answer there, consider applicable federal common law. *Brandon*, 18 F.3d at 1325; *McMillan*, 913 F.2d at 311. Here, federal and state courts differ on the issue of whether the provisions of ERISA or federal common law controls designation of beneficiaries for plan benefits. *McMillan*, 913 F.2d at 311.

The Sixth Circuit has concluded that ERISA exclusively controls the designation of beneficiaries for plan benefits. *McMillan*, 913 F.2d at 311-312. In *McMillan*, the plan participant designated his wife as plan beneficiary of his retirement accounts. *Id.* at 311. Later, when the two divorced, each signed a property settlement agreement relinquishing any and all claims against the other. *Id.* The participant subsequently remarried and, without removing his ex-wife’s name as beneficiary, died. *Id.* The trial court later granted the widow’s claim, under federal law, for one-half of the benefits, despite the ex-wife being named as the designated beneficiary for the plan. *Id.* Disagreeing, the appellate court reversed judgment and awarded all benefits to the ex-wife as designated beneficiary. *Id.* at 312. In doing so, the *McMillan* court cited ERISA’s mandate that “a [plan] fiduciary shall discharge his duties with respect to a plan solely . . . in accordance with the documents and instruments governing the plan” *Id.* at 312; 29 U.S.C.A § 1104(a)(1)(D) (West 1999). In reaching its holding, the

McMillan court opined that this approach fulfills the Congressional intent “that ERISA plans be uniform in their interpretation, simple in their application”, and “allow parties to be certain of their rights and obligations.” *McMillan*, 913 F.2d at 312.

In an alternative approach, the Fifth, Seventh, and Eighth Circuits, rely on federal common law in order to resolve the question of how beneficiaries under an ERISA plan are designated. *See Brandon*, 18 F.3d at 1326; *Fox Valley & Vicinity Constr. Workers’ Pension Fund v. Brown*, 897 F.2d 275, 281-82 (7th Cir. 1990); *Lyman Lumber Co. v. Hill*, 877 F.2d 692, 693 (8th Cir. 1989). In *Brandon*, the court faced a situation similar to *McMillan*. The plan participant, Richard Brandon, designated his wife as primary beneficiary on a group life insurance policy taken out by his employer. *Brandon*, 18 F.3d at 1322. When the two divorced, the court issued a decree divesting the wife of any claim to her husband’s employment benefits. *Id.* at 1323. Richard Brandon, however, never removed his ex-wife’s name as primary beneficiary. *Id.* Upon Richard’s death, a dispute arose between Gary Brandon, the contingent beneficiary on the policy, and the deceased’s ex-wife, concerning entitlement to insurance proceeds. *Id.* The trial court subsequently rendered judgment for Gary Brandon, holding that the language in the divorce decree took precedence over the plan documents designating Richard’s ex-wife as primary plan beneficiary. *Id.*

The *Brandon* court drew guidance from Texas Family Code section 9.301 and fashioned a federal common law rule wherein named ERISA beneficiaries may waive, in a divorce decree, their designation of beneficiaries in an ERISA plan. *Brandon*, 18 F.3d at 1326-1327. As justification for resorting to federal common law, the *Brandon* court cited the “long and venerable history” of federal respect for state domestic relations law. *Id.* at 1326.

In reaching our decision, we note that we have the option of drawing upon precedents of federal circuit courts; however, we are obligated to follow only the Texas and United States Supreme Courts. *Penrod Drilling Corp. v. Williams*, 868 S.W.2d 294, 296 (Tex. 1993);

Mohamed v. Exxon Corp., 796 S.W.2d 751, 753-54 (Tex. App.—Houston [14th Dist.] 1990, writ denied). We believe that the approach taken in *McMillan* comports with the Congressional intent that ERISA plans be interpreted uniformly and simple in their application. *McMillan*, 913 F.2d at 312. Like the *McMillan* court, we believe that such a holding allows parties to be certain of their rights and obligations. *Id.* Indeed, it is for this reason that ERISA plans are to be administered according to their controlling documents. *Id.* Moreover, if the designation on file controls, plan administrators and courts need only look to plan documents to determine the beneficiary, thus avoiding needless and expensive litigation as has occurred in the case before us.²

Following the approach taken in *McMillan*, we hold that ERISA section 1104(a)(1)(D) exclusively controls the designation of plan beneficiaries. Accordingly, Jean's purported waiver of Roberts's pension benefits, as provided in the divorce decree, is not effective.

Construction of Plan Provisions

Having found that the trial court's grant of summary judgment is not supported by Catherine's waiver argument, we turn to a second ground raised in Catherine's motion. Here Catherine argues that Jean is not entitled to the remaining benefits in Richard's retirement account pursuant to the terms governing the account. Specifically, it is her contention that Robert's designation of Jean as beneficiary occurred prior to their divorce; therefore, plan Article 11.3 nullifies this designation. Citing plan Article 12.6(a), appellee then contends that she is the beneficiary to Robert's remaining pension benefits.³

² We recognize that our holding today conflicts with prior holdings of our sister courts on the same issue. *Emmens v. Johnson*, 923 S.W.2d 705, 712 (Tex. App.—Houston [1st Dist.] 1996, writ denied) (following *Brandon*, with slight modification, and adopting federal common law in the designation of beneficiary issue); *Weaver v. Keen*, No. 10-99-00305-CV, slip op. at 11, 2001 WL 25718, at *6 (adopting the holding in *Emmens*). However, because we feel that these holdings do not properly acknowledge the purposes and scope of ERISA legislation, we respectfully decline to follow them.

³ Article 12.6 provides, in part, that:
[W]ith respect to the rights of surviving spouses, a Participant may . . . designate the Beneficiary to

Article XI of the plan, entitled “Pre-Retirement Survivor Annuity,” applies to “a Participant who is no longer in the employ of an Employer, but who is eligible to receive a deferred vested benefit . . . [and who] should die survived by a spouse prior to the date payment of his deferred vested pension commences” Article 11.3 provides, in pertinent part, that “[a] married Participant’s designation of a Beneficiary other than his surviving spouse is not valid unless . . . the Participant’s surviving spouse has consented in writing to such designation, such consent acknowledges the effect of the designation”

Section 19.3 of the plan provides that “the Plan Administrator shall have the following powers, authority, duties, and discretion: (a) to construe and interpret the provisions of the plan” Where a plan expressly grants the plan administrator discretionary authority to construe its provisions, the administrator’s decision is reviewed under an arbitrary and capricious standard. *Gorman v. Life Ins. Co. of North America*, 811 S.W. 2d 542, 548 (Tex. 1991) (citing *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). Barbara Goemmer, the plan administrator for Robert’s retirement account, established in her affidavit that the applicable plan provision governing benefit payments in this case was Section 10.4(b). Goemmer based this decision on the fact that Robert had elected a ten-year payout immediately after his divorce from Jean became final. Therefore, under the plain language of the plan, Article XI does not apply because Robert elected his benefit payout prior to the time he married Catherine. Accordingly, we find that Goemmer did not act in an arbitrary and capricious manner and that Robert’s previous designation of Jean as beneficiary remained effective.

Because the remaining summary judgment grounds raised in the motion are based on state law which is preempted by ERISA, we find that Catherine failed to establish entitlement

receive death benefits under this plan If no such designation is on file at the time of the Participant’s death, or if all primary and contingent beneficiaries . . . predecease Participant, then the Participant shall be conclusively deemed to have designated the following Beneficiaries with priority in the order named: (a) the participant’s surviving spouse

to plan benefits as a matter of law. Pursuant to our holding on the designated beneficiary issue, we reverse the judgment of the trial court and render judgment that Jean receive all benefits remaining at the time of Robert's death.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed May 17, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

Publish — TEX. R. APP. P. 47.3(b).