

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of EARNEST L.
DAWSON, Deceased.

LILLIE M. DAWSON,

Petitioner–Appellee,

UNPUBLISHED
July 2, 1996

v

No. 183288
LC No. 89-837266

CITY OF DETROIT, DETROIT BOARD OF
TRUSTEES, and DETROIT RETIREMENT
SYSTEM,

Respondents–Appellants.

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Respondents appeal by leave granted the order which awarded petitioner the accumulated contributions left standing in Earnest Dawson’s annuity fund. We reverse.

Earnest Dawson (decedent) was employed as a bus driver for the City of Detroit. On February 9, 1968, decedent executed and filed with his employer a nomination of beneficiary form designating his then wife, Maria Dawson, as the beneficiary of both his death benefits and contributions to his annuity savings fund. Decedent designated his children, Russell and Rose Maria, as contingent beneficiaries of his death benefits.

On December 9, 1983, decedent and Maria were divorced. The judgment of divorce included a statutory insurance clause which extinguished the rights of either party as beneficiary to any policy or contract of life, endowment, or annuity insurance of the other. The judgment also contained a provision pertaining to personal property, awarding each party those personal items he or she then possessed.

The divorce judgment lacked a specific clause addressing either decedent's city pension benefits or the accumulated contributions in his annuity fund.

On December 29, 1983, decedent married petitioner, Lillie Dawson. In May of 1985, decedent changed the beneficiary on his life insurance policy from Maria to petitioner and Sarena, the daughter of decedent and petitioner. Decedent did not change Maria as the beneficiary of his annuity savings fund.

Decedent died on September 24, 1989. The board of trustees paid the life insurance proceeds to petitioner and Sarena and the death benefits to Russell and Rose Maria. There were no monthly pension payments because decedent's pension had not vested before his death.

On October 26, 1989, the board of trustees sent a letter to Maria advising her that she was the designated beneficiary of decedent's annuity fund. After Maria applied for the annuity proceeds, the board of trustees determined that the insurance clause in the divorce judgment did not terminate Maria's rights and approved payment of \$12,399.10 to Maria. Approximately one year later, petitioner sent a letter to the board of trustees claiming entitlement to the annuity fund proceeds. The board of trustees refused her claim.

On November 20, 1991, petitioner filed with the probate court a petition for writ of mandamus and order to show cause why the board of trustees should not turn the funds over to decedent's estate. After oral arguments, the court determined that petitioner was entitled to receive the entire annuity fund. The court held that the board of trustees' decision to award Maria the annuity proceeds without giving notice to petitioner was arbitrary, capricious, and an abuse of discretion. The court reprimanded the board of trustees for not conducting a thorough investigation of the facts and placing the monies in escrow before awarding the funds to Maria.

We hold that the probate court abused its discretion in ordering respondents to pay petitioner the money contained in decedent's annuity fund. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). The board of trustees' decision to pay the proceeds from the annuity fund to Maria was neither arbitrary, capricious, nor an abuse of discretion. *Hay v Highland Park*, 134 Mich App 624, 631; 351 NW2d 622 (1984); *Law Dep't Union v Flint*, 64 Mich App 359, 370; 235 NW 2d 783 (1975).

The rules of statutory construction apply to city charters. Where the language of a charter is clear, there is no need for interpretation. The charter must be applied as written. *In re Storm*, 204 Mich App 323, 327; 514 NW2d 538 (1994). Title IX, Chapter VI, Article VI, Part D, § 1(b) of the 1918 Charter of the City of Detroit, as amended and as continued by Article II, § 11-102 of the 1974 Charter of the City of Detroit, states:

Except as otherwise provided in this chapter, upon death of a member his accumulated contributions standing to his credit in the Annuity Savings Fund, at the time

of his death, shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board of trustees. In any event there be no such designated person or persons surviving the said deceased member, his said accumulated contributions shall be paid to his estate.

The city charter unambiguously states that upon the death of one of its members, the board of trustees shall pay the accumulated contributions in the decedent's annuity savings fund to the person decedent nominated by written designation. Here, decedent designated Maria on the nomination form as beneficiary of his annuity fund. Decedent had an opportunity to change the beneficiary at any time, including in May of 1985, when he changed the beneficiary on his life insurance policy from Maria to petitioner and Sarena. Because the designated beneficiary was clearly stated, the board of trustees was obligated to pay Maria, the designated beneficiary, the accumulated contributions left standing to decedent's credit in his annuity fund. *In Re Storm, supra* at 327.

Respondent's assertion that the judgment of divorce voided the action taken by the board of trustees is without merit. A judgment of divorce determines a wife's rights in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary. MCL 552.101(2); MSA 25.131(2). The purpose behind this statute is to affect the interest of the wife in the insurance policy and, thus, cure the situation where a divorced wife could inadvertently receive the proceeds of a forgotten policy. *Starbuck v City Bank & Trust Co*, 384 Mich 295, 299; 181 NW2d 904 (1970); *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 269; 520 NW2d 708 (1994); *Daugherty v Wickes Corp*, 9 Mich App 305, 314; 156 NW2d 581 (1967).

The Legislature amended MCL 552.101; MSA 25.131 in 1985 and added a provision which requires a judgment of divorce to address the issue of pensions, annuities, and retirement benefits. The amendment to this statute reflects an intent on the part of the Legislature to cure the situation like that in the case of life insurance where an individual would inadvertently receive the proceeds of a forgotten policy. See *Starbuck, supra* at 299; *Massachusetts Indemnity, supra* at 269. However, the amendment was enacted two years after the divorce decree was entered into between decedent and Maria. There is no indication from the statute that it should or could apply retroactively since no such clause was included in the divorce decree. The inference can be made that the amendment of the statute in 1985 to cover the type of accumulated contributions involved in this case suggests that the funds were not within the intended scope of the statute at the time of the 1983 divorce. That is, the accumulated contributions left standing in decedent's annuity fund is not "life insurance, endowment or annuity upon the life of the husband" within the meaning of the statute. *Daugherty, supra* at 311-312. Hence, under this provision of the divorce judgment, Maria's right to the annuity fund monies was not extinguished.

Lastly, we reject petitioner's claim that she is entitled to the funds under the personal property provision of the divorce judgment. The divorce decree did in fact extinguish Maria's right to decedent's

personal property. However, the property settlement clause of the divorce decree vested decedent with control and possession of the annuity fund, free and clear of the claims of petitioner. Accordingly, the accumulated contribution became the deceased's property to do with as he pleased. See *Daugherty, supra* at 312-313. Decedent's failure to change his beneficiary indicates that he intended to give the proceeds to Maria. *Id.* at 314-315.

Reversed. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky