

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHERYL A. MACINNES, also known as  
CHERYL A. ROWLEY,

Plaintiff-Appellee,

v

JOE DEE MACINNES,

Defendant-Appellant.

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FOR PUBLICATION  
January 8, 2004  
9:05 a.m.

No. 241649  
Genesee Circuit Court  
LC No. 94-177969-DO

Updated Copy  
March 26, 2004

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

NEFF, J.

Defendant appeals by delayed leave a postjudgment enforcement order of the trial court in a divorce action directing him to pay to plaintiff \$95,000 in life insurance proceeds he received upon the death of his former wife, Cheryl Rowley, where she failed to change the beneficiary designation on her life insurance policy after the couple's divorce. The decedent's estate was substituted for the original plaintiff by the court pursuant to MCR 2.202. The court concluded that the provision in the consent judgment of divorce that released all rights of either party to the proceeds of any life insurance policy on the life of the other waived defendant's right to Rowley's life insurance proceeds. We affirm.

I

Defendant and Rowley divorced on November 1, 1995, after a nine-year marriage. The consent judgment of divorce provided "that . . . all rights of either party in and to the proceeds of any policy or contract of life insurance . . . upon the life of the other in which said party was named or designated as beneficiary . . . shall hereupon become and be payable to the estate of the owner of said policy, or such named beneficiary as shall hereafter be affirmatively designated." Rowley died on November 1, 2000. At the time of her death, she participated in a Delphi Automotive Life and Disability Benefits Program administered by Metropolitan Life Insurance Company, an employee welfare benefit plan regulated by the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.* The deceased had participated in this program before the couple's divorce and had designated defendant as her beneficiary. She had not

changed the beneficiary designation after the divorce and before her death. Metropolitan Life paid the insurance proceeds of approximately \$95,000<sup>1</sup> to defendant.<sup>2</sup> The trial court granted plaintiff's motion to enforce the judgment of divorce and ordered defendant to pay plaintiff an amount equal to the insurance proceeds.

## II

The construction and application of a statute involve questions of law. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000); *Atchison v Atchison*, 256 Mich App 531, 534-535; 664 NW2d 249 (2003). Similarly, the question of what constitutes a waiver is a question of law. *Leibel v Gen Motors Corp*, 250 Mich App 229, 240; 646 NW2d 179 (2002). A settlement agreement, such as a stipulation and property settlement in a divorce, is construed as a contract. Interpretation of unambiguous and unequivocal contract language is a question of law. *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). This Court reviews de novo questions of law. *Burba, supra*.

## III

Defendant argues that he is entitled to the \$95,000 proceeds from Rowley's life insurance policy because the provisions of ERISA preempt the provision of the divorce judgment, purporting to alter the beneficiary to an insurance plan governed by ERISA, and because the provision in the divorce judgment is not binding as a contract between Rowley and him. Accordingly, he contends, the trial court erred in circumventing the preemption issue and concluding that the terms of the divorce judgment constituted a contract under which defendant waived his rights as a beneficiary.

### A. Preemption

Defendant relies principally on *Egelhoff v Egelhoff*, 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001), in arguing that the life insurance provision in the divorce judgment is preempted by ERISA. We find *Egelhoff* inapposite to the ultimate issue in this case.

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<sup>1</sup> The order directed defendant to pay an amount equal to the total insurance proceeds, including \$61,000 from the basic life portion, \$30,500 from the extra accident portion, and \$3,500 interest.

<sup>2</sup> For this reason, the concurring opinion analysis is obiter dictum because it is not essential to the resolution of this case. *Dressel v Ameribank*, 468 Mich 557, 568 n 8; 664 NW2d 151 (2003); *Terra Energy, Ltd v Michigan*, 241 Mich App 393, 400; 616 NW2d 691 (2000). The facts presented are that defendant, the plan-designated beneficiary, received payment of the life insurance proceeds. The proceeds were thereafter placed in escrow. The question whether waiver may be applied in other factual circumstances is therefore not before us.

In *Egelhoff*, the United States Supreme Court held that a state of Washington statute, which provided that the designation of a spouse as the beneficiary of a nonprobate asset is revoked automatically upon divorce, was expressly preempted by ERISA to the extent that it applies to ERISA plans. "ERISA's pre-emption section, 29 USC § 1144(a), states that ERISA 'shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' covered by ERISA." *Egelhoff, supra* at 146. The Court concluded that the Washington statute "related to" an ERISA plan, i.e., had an impermissible connection with ERISA, because it governed the payment of benefits and it interfered with nationally uniform plan administration—both areas of core ERISA concern. The Court observed that the Washington statute bound "ERISA plan administrators to a particular choice of rules for determining beneficiary status," and, consequently, plan "administrators were required to pay benefits to the beneficiaries chosen by state law, rather than those identified in the plan documents." *Id.* at 147. The statute therefore ran "counter to ERISA's commands that a plan shall 'specify the basis on which payments are made to and from the plan,' § 1102(b)(4), and that the fiduciary shall administer the plan 'in accordance with the documents and instruments governing the plan,' § 1104(a)(1)(D), making payments to a 'beneficiary' who is 'designated by a participant, or by the terms of [the] plan. § 1002(8)." *Egelhoff, supra* at 147.

In finding that the Washington statute was preempted, the Court reasoned that the statute frustrated ERISA's goal of uniform administration because plan administrators must familiarize themselves with state statutes to determine whether the named beneficiary's status was revoked by operation of law. The problem could be exacerbated by choice-of-law issues when an employer was located in one state, the plan participant in another state, and the former spouse in, perhaps, a third state. The Court recognized that all state laws created the potential for a lack of uniformity, but that differing state regulations affecting claim processing and payment of benefits under an ERISA plan were the exact burdens ERISA's preemption was intended to avoid. *Id.* at 149-150.

We find the *Egelhoff* analysis inapposite because in this case the ultimate issue is not whether a state statute is preempted. To the extent that defendant contends that the provision in the divorce judgment is indirectly preempted because MCL 552.101(2) and (3) require that all divorce judgments contain a provision determining the rights of the divorcing spouse to the proceeds of any life insurance policy owned by the other spouse, we disagree.

The circumstances of this case convince us that the issue presented is most appropriately resolved under principles of waiver rather than preemption. See *Metropolitan Life Ins Co v Pressley*, 82 F3d 126, 129 (CA 6, 1996) ("[a]lthough [federal courts of appeal] agree that ERISA preempts state law regarding the designation of beneficiaries, [they] are split concerning the manner in which the beneficiary is then determined"). Under the view taken by the majority of the federal circuits, "[e]ven where ERISA preempts state law with respect to determining

beneficiary status under an ERISA-regulated benefits plan, ERISA does not preempt an explicit waiver of interest by a nonparticipant beneficiary of such a plan." *Melton v Melton*, 324 F3d 941, 945 (CA 7, 2003); see also *Silber v Silber*, 99 NY2d 395, 402, 404; 786 NE2d 1263 (2003); *Pressley, supra*. We concur with the majority view and resolve this case accordingly.<sup>3</sup>

## B. Waiver

A majority of federal circuit courts of appeal have concluded that waivers of beneficiary rights are possible under ERISA-governed plans.<sup>4</sup> *Silber, supra* at 402. The majority view reasons that, because "ERISA is silent on the issue of what constitutes a valid waiver of interest," the courts must turn to federal common law and state law to fill the gap. *Melton, supra* at 945; see also *Silber, supra* at 404. Circuits following the majority view have examined whether there is proof of a specific termination of the rights in question or, stated differently, whether a waiver by a designated beneficiary of an ERISA-regulated benefits plan was explicit, voluntary, and made in good faith. *Melton, supra* at 945. "Essentially, when we are evaluating whether the waiver is effective in a given case, we are more concerned with whether a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question than with any magic language contained in the waiver itself." *Id.* at 945-946, citing, e.g., *Clift v Clift*, 210 F3d 268, 271 (CA 5, 2000). Michigan courts have defined "waiver" as the voluntary and intentional relinquishment of a known right. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 69; 642 NW2d 663 (2002); *People v Carines*, 460 Mich 750, 762 n 7; 597 NW2d 130 (1999).

In this case, the provision at issue in the divorce judgment stated:

### LIFE INSURANCE

It is further ordered and adjudged, that except as otherwise provided, all rights of either party in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the other in which said party was named or designated as beneficiary, or to which said party became entitled by

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<sup>3</sup> State courts are bound by the holdings of federal courts on a federal question on which there is no conflict among federal appellate courts. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001). However, if there is no United States Supreme Court decision concerning the interpretation at issue and a conflict exists among the federal circuit courts of appeal, the state court is free to choose the view it determines most appropriate. *Schueler v Weintrob*, 360 Mich 621, 634; 105 NW2d 42 (1960)

<sup>4</sup> The United States Court of Appeals for the Sixth Circuit is not among the majority and, instead, has adopted the minority "plan document" approach, which does not permit an alteration of beneficiaries. Consequently, under the minority view, common-law doctrines such as waiver may not be used to override a beneficiary designation. *Silber, supra* at 403.

assignment or change of beneficiary during the marriage or in anticipation thereof, whether such contract or policy was heretofore or shall hereafter be written or become effective, shall hereupon become and be payable to the estate of the owner of said policy, or such named beneficiary as shall hereafter be affirmatively designated.

Defendant does not argue that he did not knowingly and voluntarily agree to the above provision in the consent judgment of divorce. Rather, he argues that the provision does not waive his rights to the insurance proceeds, but acts only to substitute the estate as the insurance beneficiary and therefore should not be given effect because it is in conflict with the preemption goals of ERISA. Moreover, the provision imposes no duty on him to pay over the life insurance proceeds. We disagree.

Having concurred with the majority view in the federal circuits and concluded that giving effect to the above provision does not compromise the purpose and goals of ERISA, *Melton, supra* at 945, we hold that defendant waived his rights to the life insurance proceeds at issue and thus is not entitled to retain them. The above provision is all-inclusive with regard to defendant's relinquishment of his right to life insurance proceeds from policies owned by his former wife: "[E]xcept as otherwise provided, all rights . . . to the proceeds of any policy . . . of life insurance . . . shall hereupon become and be payable to the estate of the owner of said policy . . ." (Emphasis added.) This language is explicit in its intent to divest defendant of his interest in life insurance proceeds from policies owned by Rowley. *Thomas v Detroit Retirement Sys*, 246 Mich App 155, 160-161; 631 NW2d 349 (2001); *Massachusetts Indemnity, supra* at 268; see also *Clift, supra* (no "magic words" necessary for effective waiver). In our view, giving effect to the waiver best serves the ends of justice where a divorcing couple's intent is clear. *Silber, supra* at 403-404.

We find no merit in defendant's argument that the trial court erroneously viewed the consent judgment of divorce as a contract. As the trial court recognized, a divorce judgment entered by consent is in the nature of a contract, and a settlement agreement, i.e., a stipulation and property settlement, is a contract:

Included in the judgment of divorce was a stipulation and property settlement containing a provision, entitled "Insurance Waiver". . . .

\* \* \*

Judgments entered pursuant to the agreement of the parties are of the nature of a contract, rather than a judicial order entered against one party. Furthermore, a settlement agreement, which is what the stipulation and property settlement is, is a contract and is to be construed and applied as such. [*Massachusetts Indemnity, supra* at 267-268 (citations omitted).]

In this case, the consent judgment of divorce stated that the parties agreed and stipulated to the judgment of divorce, which included the provision on life insurance. Defendant's argument that he is not required to pay plaintiff the life insurance proceeds because neither party signed the judgment of divorce—because although the parties consented to entry of the document, they are not bound in the absence of their signatures under the ordinary rules of contract—borders on the frivolous.

We affirm the trial court's order directing defendant to pay plaintiff an amount equal to the total insurance proceeds of \$95,000. Defendant has waived any issue concerning the lack of record support for the \$95,000 amount because he stipulated to placing \$95,064.74 in escrow pending appeal and he admits that the correct amount was placed into escrow. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997).

Affirmed.

Fort Hood, P.J., concurred.

/s/ Janet T. Neff

/s/ Karen M. Fort Hood