SUMMARY OF
Kennedy v. Plan Administrator for Dupont Savings and Investment Plan,
2009 WL 160440 (Jan. 26, 2009)

The U.S. Supreme Court has made the lives of plan administrators easier, made the lives of divorce lawyers harder, and resolved a couple of questions while leaving others enormously unsettled and uncertain.

The unanimous Court held that an ex-wife's waiver of any rights under her husband's savings and investment plan (SIP) in a divorce decree that was not a QDRO did not control over her ex-husband's designation of her as his beneficiary in accordance with the terms and forms of the SIP, at least as to how the plan should make out checks, if not as to who should ultimately get the money.

The Courts of Appeals and State Supreme Courts have been split for some years as to whether to recognize waivers by spouses of pension plan benefits in divorce decrees, where (as is usually the case) the decrees do not qualify as QDROs. Not unexpectedly, the Court permitted the convenience of plan administrators to trump any need to do equity, and held that when a plan has rules, procedures, and forms through which a participant may alter a beneficiary designation, the plan documents control over any attempted waiver of any interest in the pension plan by an ex-spouse in a divorce decree.

William Kennedy, participated in his employer's defined contribution savings and investment plan (SIP). In 1971, William married Liv, and in 1974 he signed a form designating her as the survivor beneficiary under the plan, without naming a contingent beneficiary to take benefits if she disclaimed her interest. The plan in question permitted a participant to both designate a survivor beneficiary, and to replace or revoke that designation. The plan required "all authorizations, designations and requests concerning the Plan to be made by employees in the manner prescribed by the plan administrator," and provided the requisite forms. The plan also provided that if there was no surviving spouse or designated beneficiary upon death, the benefits would be directed by the estate's executor or administrator.

William and Liv divorced in 1994. Their divorce decree divested Liv of her interest in the SIP. For reasons never explained, however, William did not execute the form removing Liv as the SIP beneficiary. He ***did*** change the beneficiary designation for his pension plan, naming his daughter as beneficiary, but he never altered the beneficiary under the SIP.

William died in 2001. The plan administrator relied on William's designation form and paid the benefits to Liv. The Estate sued, alleging that Liv had waived her pension plan benefits in the divorce and that the plan had thus violated ERISA by distributing the benefits to her.

The District Court entered summary judgment for the Estate, ordering the plan to pay the benefits to the Estate. However, the Fifth Circuit reversed, holding that Liv's divorce-decree waiver was an "assignment or alienation" of her interest to the Estate, which was barred by ERISA. The Estate appealed.

The Supreme Court found that the divorce decree waiver was ***not*** a prohibited "assignment or alienation," but ultimately affirmed the Fifth Circuit decision anyway.

Specifically, the Court found that the divorce decree waiver did not violate ERISA's anti-alienation or anti-assignment clauses. It also rejected the oft-recited "distinction" between "welfare plans" and "pension plans," and held that a simple waiver by a spouse of survivor benefits does not satisfy the definition of either an "assignment" or a "transfer," and thus is not barred by the antialienation provision of ERISA, or otherwise. The Court reasoned that, therefore, a waiver could be effective even though it does not satisfy the requirements to be a QDRO.

In this case, however, the Court found that the plan documents explicitly provided that the plan would pay benefits to a participant's designated beneficiary, and included straight-forward forms and procedures for any changes in the designation of the named beneficiary. William's designation of Liv as his beneficiary was made in the way required; Liv's waiver was not. The Court decided that in those circumstances, plan administrators should not be forced "to examine a multitude of external documents that might purport to affect the dispensation of benefits," and be drawn into litigation over the meaning and enforceability of purported waivers.

The Court focused on "administrative ease," and held that where a plan participant has a clear set of instructions for manifesting his intent to name or change a beneficiary, ERISA does not allow the plan to go beyond those instructions, to foster "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

Accordingly, the Court held that the plan could and should ignore Liv's divorce-decree waiver of the survivorship benefits, and "did its statutory ERISA duty by paying the benefits to Liv in conformity with the plan documents." The Court noted that a 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, and the Act provides no exemption from this duty when it comes time to pay benefits."

But the Court left unresolved significant questions, noting that its decision "leaves open any questions about a waiver's effect in circumstances in which it is consistent with plan documents." Here, the waiver was not contemplated by the terms of the SIP and had no effect. But if the plan terms ***had*** allowed for a written waiver outside of the plan's specified forms and beneficiary change procedures, the waiver would apparently have been honored, although the scope and effect of such a permitted waiver was unspecified.

The Court explicitly refused to express any view as to whether the Estate could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed, noting that various courts have distinguished the Court's prior holding in *Boggs v. Boggs*, 520 U.S. 833, 853 (1997), but not otherwise commenting on those cases.

The Court also "expressed no view regarding the ability of a participant or beneficiary to bring a cause of action under ERISA where the terms of the plan fail to conform to the requirements of

ERISA and the party seeks to recover under the terms of the statute."

One member of the panel presenting this seminar takes the quoted language as notice that if the plan terms had not conformed to ERISA in some respect, suit against the plan by an intended beneficiary apparently would have been permitted. Another panelist does not think that any conclusion can be drawn in an area in which the court "expressed no view."

The ultimate result was the declaration that even though the ex-wife's divorce decree waiver of her interest in her ex-husband's plan was "not rendered a nullity," the plan was still entitled to distribute to her the benefits designated on the beneficiary form, because the ex-husband took no steps to remove her as beneficiary or name a new beneficiary, as he was allowed and required to do under the terms of the SIP. Apparently, if the SIP had said that in the event of a divorce the designation of an ex-spouse was automatically nullified and the beneficiary was to be the participant's estate until a different beneficiary was named, that would have been the result.