

RICHIE L. ALLEN, Plaintiff/Petitioner vs. SHARON A. ALLEN, Executrix of the Estate of GORDON M. ALLEN, Defendant	: IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA : : : NO. 92-20,212 : : CIVIL ACTION – LAW – IN DIVORCE : : : MOTION FOR RECONSIDERATION
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Petitioner obtained divorce from the decedent in bifurcated proceedings; decedent remarried but died prior to determination of equitable distribution claims with petitioner. In equitable distribution proceeding decedent’s pension was awarded to decedent’s widow as surviving spouse and designated beneficiary. Petitioner filed for reconsideration, arguing that she was entitled to the surviving spouse designation under 29 U.S.C. §1056(a)(3)(F), Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, *et seq.* No QDRO had been prepared.

HELD: Denied. ERISA affords former spouse no substantive rights; without a properly prepared QDRO Petitioner could not claim any portion of decedent’s pension.

OPINION and ORDER

The matter presently before the Court concerns the Motion for Reconsideration filed by Petitioner Richie L. Allen (hereinafter “Petitioner”) January 26, 2000. This Court previously determined Exceptions and Cross-Exceptions filed by Petitioner and Sharon A. Allen, Executrix of the Estate of Gordon M. Allen (hereinafter “Respondent”), by Opinion and Order filed January 20, 2000.¹ In the instant Motion, Petitioner asks this Court to review the issue of the decedent’s pension and upon reconsideration, to award Petitioner the marital portion of the pension benefits.

Petitioner and the decedent were divorced by decree entered November 13, 1992. No further action was taken regarding equitable distribution of the marital property until February 27, 1998, when Mr. Allen filed a Motion for Appointment of the Master to determine claims for alimony pendente lite and equitable distribution. Unfortunately, Mr. Allen died April 24, 1998, prior to hearing. Subsequent proceedings culminated in the filing of a Master's Report July 1, 1999, to which both parties filed the Exceptions and Cross-Exceptions brought before this Court.

The pension issue was considered in pages 6-9 of our Opinion. We determined that, as Mr. Allen had died after the bifurcation decree in this case but prior to equitable distribution, Petitioner was no longer a "surviving spouse" for purposes of pension benefits under Section 205 of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, 29 U.S.C. §1001, *et seq.*

Petitioner attached to her Motion as Exhibit B a copy of 26 U.S.C. 414(p)(5), which considers treatment of a former spouse as a surviving spouse for purposes of determining survivor benefits under the Internal Revenue Code. Exhibit "B" is referenced in paragraph 5 of Petitioner's Motion, obviously in support of her position that she, and not Respondent, should be considered the surviving spouse for purposes of distribution of the pension benefits. However, after the heading, subsection (5) begins "To the extent provided in any qualified domestic relations order..." There is no qualified domestic relations order in this case.

In her brief and at oral argument, Petitioner further relied upon 29 U.S.C. 1056(d)(3)(F) for the proposition that the Employee Retirement Income Security Act of 1974

¹ Petitioner's supporting brief was filed March 1, 2000. No brief was filed by Respondent. Oral argument was

(ERISA), 88 Stat. 832, as amended by the Retirement Equity Act of 1984, 29 U.S.C. §1001, *et seq.*, “actually provides for [Petitioner] to receive pension survivor annuity benefits pursuant to a qualified domestic relations order.” Petitioner’s Brief (unnumbered) p. 2. We disagree.

29 U.S.C. 1056(d)(3)(F) provides as follows:

- (F) To the extent provided in any qualified domestic relations order-
- (i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and
 - (ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.²

Once again, Petitioner fails to acknowledge the language “to the extent provided in any qualified domestic relations order.” The fact that there is no qualified domestic relations order (“QDRO”) in this case simply cannot be overlooked.

ERISA prohibits the alienation or assignment of pension benefits to protect the interests of plan participants and their beneficiaries by minimizing the dissipation of the funds. *Critchell v. Critchell*, 746 A.2d 282 (D.C. 2000). In *Critchell*, the Court opined that “ERISA provides only one mechanism to vindicate the rights of a former spouse at the time of divorce, the QDRO procedure set forth in 29 U.S.C. §1056(d)(3).” *Id.* at 285.

In another federal opinion, *Riordan v. Commonwealth Edison Co.*, 953 F.Supp. 952 (N.D.Ill. 1996), *affirmed* 128 F.3d 549 (1997), a decedent’s pension plan benefits were paid by the benefit plan administrator to the decedent’s widow. However, a prior designation

heard March 21, 2000.

² 29 U.S.C. §1055(f) states that a pension plan may require that the participant and spouse must be married for a one year period to be eligible for a qualified joint and survivor annuity.

executed by the decedent had named his prior spouse as an “irrevocable” beneficiary, pursuant to separation and divorce decrees. The decedent’s former spouse sued to claim the benefits. The Court found that, absent a properly prepared QDRO directing him to keep his ex-spouse as his beneficiary, and notwithstanding a separation decree and a divorce decree which both indicated she was the intended beneficiary, the ex-spouse was not entitled to the decedent’s pension. Once decedent had remarried and changed his beneficiary, the plan administrator was bound by ERISA to distribute the funds to the beneficiary as designated. To allow otherwise, the Court wrote, would render the strict requirements of the QDRO exception to the ERISA preemption of state law.

Instantly, Petitioner attempts to claim decedent’s pension benefits without reliance upon *any* decree or order, let alone a properly prepared QDRO. Petitioner then asks this Court to utilize the QDRO provisions of ERISA, which provide only a narrow exception to the anti-alienation intent to ERISA, to effectuate an alienation of benefits *without* a QDRO. Such a position is clearly untenable.

Moreover, “a divorced spouse, unlike a current spouse, is not protected by the explicit terms of the statute...” *Critchell* at 286 (citations omitted). “ERISA does not create or afford a former spouse any substantive rights, and a divorcing spouse’s right to a property interest in pension benefits arises only by operation of state marital property law.” *Id.* at 286-287. Instantly, as previously determined by this Court, Pennsylvania state marital property law provides Petitioner no right to the pension benefits of the decedent. Accordingly, the Motion for Reconsideration must be denied.

ORDER

AND NOW, this 12th day of May 2000, the Motion for Reconsideration filed January 26, 2000, is HEREBY DENIED.

BY THE COURT:

William S. Kieser, Judge