

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Delscia Blevins (n.k.a. Berry),	:	
Plaintiff-Appellee/ Cross-Appellant,	:	
	:	
v.	:	No. 12AP-554
	:	(C.P.C. No. 89 DR-09-2530)
[Estate of Thomas Blevins and Carol Blevins],	:	(REGULAR CALENDAR)
	:	
Defendants-Appellants/ Cross-Appellees.	:	

D E C I S I O N

Rendered on March 14, 2013

Collins & Slagle Co., LPA, Philip M. Collins and Ehren W. Slagle, for appellee/cross appellant.

Michael T. Gunner, for appellant/cross appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

TYACK, J.

{¶ 1} The estate of Thomas Blevins and his wife at the time of his death, are appealing from the post-decree rulings of the Franklin County Court of Common Pleas, Division of Domestic Relations, with respect to his pension plan. The estate assigns three errors for our consideration:

[I.] The Trial Court was preempted from attempting to divide an ERISA Qualified Pension Plan by any means other than a Qualified Domestic Relations Order.

[II.] The Trial Court had no jurisdiction to impose a constructive trust upon Appellant's pension benefits which are controlled by statute.

[III.] The Trial Court erred in imposing a constructive trust on the facts of this case.

{¶ 2} Delscia Blevins (n.k.a. Berry) has filed a cross-appeal asserting that she is entitled to more money than awarded by the trial court. Her cross-assignments of error are:

[I.] THE TRIAL COURT ERRED IN CALCULATING THE AMOUNT DUE DELSCIA BERRY CONTRARY TO THE PARTIES' STIPULATION AND ONLY EVIDENCE BEFORE THE TRIAL COURT.

[II.] THE TRIAL COURT ERRED IN LIMITING THE LIQUIDATION OF THE ARREARAGE VIA PROSPECTIVE PAYMENTS OF \$400 PER MONTH.

{¶ 3} Thomas Blevins and Delscia Berry were divorced in 1990. The agreed decree of divorce included a requirement that a qualified domestic relations order ("QDRO") be prepared to allocate to Delscia a part of the benefits from the General Motors Hourly Rate Employees Pension Plan in which Thomas Blevins was a participant.

{¶ 4} A draft of a QDRO was prepared and forwarded to the pension plan, but the draft was rejected by the plan. Shortly thereafter, Thomas Blevins married Carol.

{¶ 5} Over ten years later, Thomas retired and began drawing his pension. Since no QDRO had been accepted by the plan, Delscia did not begin receiving payments upon the retirement occurring. All payments initially went to Thomas and he forwarded no funds to his ex-wife.

{¶ 6} Delscia filed suit to attempt to receive the payments agreed upon in her divorce decree. The case started in domestic relations court and then was removed to federal court. The federal court ultimately sent the case back to domestic relations court, after dismissing the plan from the lawsuit because, in the federal court's view, the issues

were governed by the Employee Retirement and Security Act of 1974, commonly known as ERISA. Since Delscia had never succeeded in getting a satisfactory QDRO submitted to the plan, she was not viewed by the federal court as having a direct legal interest in the plan.

{¶ 7} Later, Delscia attempted to have a constructive trust imposed on the funds Carol Blevins was receiving from the plan. The domestic relations court ultimately granted some relief. Delscia asserts the relief was less than required. Carol Blevins asserts no relief was appropriate.

{¶ 8} Thomas Blevins died in January 2009. Before his death, the problems of the failure to submit a QDRO acceptable to the plan had been raised in the domestic relations court and Thomas Blevins had signed a QDRO which was accepted by the domestic relations court in which he agreed that if he received any benefits above and beyond those indicated in the QDRO, the "extra" funds would be held in constructive trust for Delscia. Based upon this agreed court entry, the funds received between Thomas' retirement June 1, 2006 and the death of Thomas in January 2009 should have been held in constructive trust. Since Thomas did not arrange for that to happen, his estate would be obligated to pay that sum to Delscia. Those funds would not be the debt of Carol Blevins, but of the estate of Thomas Blevins through the supervision of the appropriate probate court.

{¶ 9} Carol Blevins was not a party to that QDRO, which, although accepted by the domestic relations court, was rejected by the plan administrator. Thus, Carol Blevins is not directly obligated under that agreement dating from a time when Thomas was still living and was receiving the retirement benefits directly. The value of the sum received was indicated in expert testimony before the trial court as being \$24,942.24 (\$18,315.94 + \$6,626.30). However, the sum included funds for both Thomas and Delscia and included an increase in the value of the fund due to wages earned by Thomas after the divorce. The actual computation is complicated further by the fact that Thomas chose the surviving spouse option when he retired. Had the QDRO been properly executed and accepted by the plan, the surviving spouse option would have applied only to the part of the plan still viewed as belonging to Thomas.

{¶ 10} Counsel for Delscia asserts in the brief on her behalf that Delscia is entitled to surviving spouse benefits for periods of time after the death of Thomas. We do not know what Delscia would have done with her portion of the retirement fund had her portion been properly allocated to her via a QDRO. Trying to turn her portion into a lump sum payable now is problematic, if not impossible. The trial court did not err in failing to do so.

{¶ 11} The first assignment of error asserted on behalf of Delscia via cross-appeal is overruled.

{¶ 12} The second assignment of error on behalf of Delscia attacks the amount of the funds being paid via regular payments to liquidate the debt allegedly owed to Delscia. This issue is a matter of the trial court's discretion. We cannot find that the trial court's discretion was abused in attempting to solve the problem generated by the inaction of Thomas and Delscia. There are simply no sufficient assets to allow for an immediate payment of all the funds Delscia might deserve. Periodic payments which she controls was and is a reasonable solution.

{¶ 13} The second assignment of error on cross appeal is also overruled.

{¶ 14} The remaining issues are all legal issues involving the interplay of ERISA and the doctrine of constructive trusts. As noted earlier, our analysis starts with the payments received by Carol Blevins after the death of Thomas. Any funds received by Thomas while still alive or by his estate after his death are matters for the probate court to address. The trial court recognized this and started a remedy for payments made after the death of Thomas.

{¶ 15} Upon marrying Thomas, Carol knew or should have known that Thomas did not own all of his retirement benefits from his employment while he was married to Delscia. Carol cannot be held responsible for the action and inaction of Thomas while he was alive. However, the retirement benefits paid to Carol directly are greater than the sum earned during Carol's relatively brief marriage to Thomas. The sum which should have been paid to Delscia after the death of Thomas can appropriately be awarded to Delscia and separated off via the use of the doctrine of constructive trusts. The trial court properly addressed this issue.

{¶ 16} The trial court's orders are not orders directly to the retirement plan, which would be barred by ERISA. Instead, the orders are orders to the beneficiary of a retirement plan when the beneficiary knew or should have known she was receiving funds to which she was not entitled. The trial court did not place a constructive trust on the plan itself, but placed a constructive trust on funds after they were received by a third party. This is an appropriate use of the doctrine of constructive trusts.

{¶ 17} Because the trial court made no order to the plan, ERISA does not bar the orders entered here. The first assignment of error is overruled.

{¶ 18} The trial court had jurisdiction to enforce, as best it could, its previous orders with regard to the division of property. The orders it generated to address the problem created by the failure of Thomas and Delscia to forward an acceptable QDRO to the plan were reasonable. The trial court did not attempt to adjudicate matters within the jurisdiction of a probate court with respect to the debts of Thomas Blevins and the debts attributable to his estate. The jurisdiction of the domestic relations court was properly exercised.

{¶ 19} The second assignment of error is overruled.

{¶ 20} As implicit in the discussion above, imposing a constructive trust on the post-mortem payments from the plan was the best option available to the domestic relations court. The facts and basic equity supported this remedy.

{¶ 21} The third assignment of error is overruled.

{¶ 22} Having overruled appellants' three assignments of error and Delscia's two cross-assignments of error, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

KLATT, P.J., and BROWN, J., concur.
