



Ex-Husband Fails in Attempt to Use Texas Law to Impose Constructive Trust on Former Spouse's Survivor Annuity

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A former husband's attempt to use Texas law to deprive his first wife of a survivor annuity under his pension plan has been firmly rejected by the U. S. Court of Appeals for the District of Columbia.

Vanderkam v. Vanderkam, No. 13-5163 (D. C. Cir. January 20, 2015), held that ERISA preempted the plan participant's use of Texas family law to seek a constructive trust upon any benefits his first wife would receive upon his death. This decision upholds ERISA's protection of a spouse's vested annuity, but expressly leaves open the question of what ERISA might require if a participant tries to use state law to obtain an interest in plan benefits after they have been distributed to the beneficiary.

The Background. John Vanderkam (?John?) was employed by Huff Corporation and was a participant in Huff's pension plan. John married the defendant, Melissa Vanderkam (?Melissa?), in 1984 and designated her as the beneficiary of a 100-percent joint and survivor annuity under the pension plan, to be paid upon his death. John retired in 1994, at which time the survivor annuity vested in Melissa, and John began receiving monthly retirement benefits. However, in March 2002 John and Melissa divorced in Texas and agreed to a final divorce decree awarding John all "benefits existing by reason of [John's] past, present or future employment." To protect the rights of spouses under ERISA-regulated pension plans, ERISA generally bars any alienation or waiver of a spouse's survivor annuity. A statutory exception permits a waiver by the spouse of rights in the annuity, but that waiver must be in writing that satisfies the content and timing rules of ERISA section 205. Melissa did not sign such a written waiver as part of the 2002 divorce.

A year after his divorce, John remarried and sought to designate his second wife as his survivor annuity beneficiary. He asked the Texas court to modify the original divorce decree, creating a qualified domestic relations order (QDRO) under ERISA section 206(d) that would satisfy ERISA and name his second wife as the beneficiary. Melissa opposed this request, arguing that she had agreed to the 2002 divorce decree because she believed the survivor annuity was hers, not a part of John's benefits. The Texas court rejected her arguments and entered a purported QDRO satisfying ERISA and divesting Melissa of all ownership interests in John's retirement benefits, including the survivor annuity.

However, the matter did not end there. In 2005 Huff Corporation terminated its pension plan, and, because the plan had insufficient assets to pay the promised benefits, the Pension Benefit Guaranty Corporation (PBGC) had to step in and become the plan's statutory trustee. Reviewing John's file, PBGC concluded that the Texas QDRO was invalid and, in addition, that John had not obtained Melissa's valid written waiver of her rights in the annuity as required by ERISA section 205. PBGC notified John accordingly and told him that Melissa, not John's second wife, had the right to the survivor annuity. Failing in an appeal to the PBGC, John filed suit in the federal district court for the District of Columbia (where PBGC is headquartered). The court added Melissa as a necessary party, PBGC was dismissed, and John then demanded, in part, a declaratory judgment that under Texas statutory family law, he had equitable rights in the survivor annuity payments once Melissa received any of those payments (after John's death), and that she had a fiduciary obligation under that state law to hold such payments in a constructive trust from which they could then be paid to his second wife. The district court ruled for Melissa and denied the constructive trust. John then appealed to the D. C. Circuit.

The Court's Ruling. The D. C. Circuit held that ERISA preempted John's attempt to use state law to gain equitable title to Melissa's survivor annuity. The court was heavily influenced by three key points that John conceded on the appeal: (1) the survivor annuity had vested in Melissa once John retired in 1994, (2) there was no valid waiver of her rights to the annuity in the 2002 divorce decree, and (3) the subsequent Texas court order was not a valid QDRO. Weighing those points, the pertinent ERISA statutory provisions and U. S. Supreme Court precedent, the D. C. Court readily found that John could not use the Texas law to seize a benefit that federal law had vested in Melissa.

The Court noted first that ERISA section 514(a) preempts any and all state laws relating to ERISA-regulated benefit plans (with those exceptions, of course, recognized in ERISA section 514(b), which are not pertinent here). The D. C. Circuit then followed the Supreme Court's decision, *Boggs v. Boggs*, 520 U. S. 833 (1997), which construed the preemption inquiry in a survivor annuity case to be the simple question of whether a state law conflicted with ERISA's provisions or operated to frustrate its objectives. Recognizing the intent of Congress to protect the interests of both employees and their beneficiaries, particularly spouses, the D. C. Circuit found that John's attempted use of the Texas statute to impose a trust on the annuity benefits Melissa would actually receive was in direct conflict with ERISA's prohibition of a waiver of a spouse's annuity benefits without spousal consent. The parties had acknowledged that Melissa did not give that consent here. Thus, ERISA preempted the requested application of that Texas law in this instance, though family law is a traditional area of state authority. The Court rejected John's attempt to distinguish between Melissa's right to *receive* her annuity benefits and her right to *retain* those benefits. The court held that ERISA clearly expects that the

spouse will not only have a right to receive the annuity benefits, but to also use them. The constructive trust John demanded would frustrate that statutory objective.

The *Vanderkam* court was careful to limit its ruling to a participant's attempt to use state law to obtain an equitable interest in plan benefits *before* they had been distributed, in the absence of a qualified domestic relations order and compliance with ERISA's strict waiver provisions for survivor annuities. The court withheld any opinion about what a participant might be entitled to do under state law *after* the benefits were distributed to the beneficiary.

The Significant Lessons. *Vanderkam* is a practical application of ERISA's statutory protections for survivor annuities, and its holding is not surprising in the light of those provisions, *Boggs v. Boggs*, and the absence of a valid QDRO and written waiver by the first wife. The case illustrates the questions that must be discussed and actions that must be taken at the time the spouses separate or divorce.

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