CALIFORNIA Family Law Monthly

Andochick v. Byrd

The intersection of Marital Settlement Agreement retirement plan waivers and ERISA has become a crossroad of potholes, barriers and posted warning signs. The latest traffic advisory comes from the Fourth Circuit, in the *Andochick* case.

We learned in *Kennedy vs. Plan Administrator for Dupont Savings* [2009 Cal.Fam.Law Monthly 65 (March 2009)], that an ERISA plan administrator must distribute benefits to the beneficiary named in the plan documents, regardless of any state-law waiver purporting to divest that beneficiary of his/her right to the benefits. So what happens when the non-participant spouse waives retirement benefits in an MSA, but the employee-participant spouse fails to change the beneficiary designation, then dies? *Kennedy* left open the question whether, once the benefits are distributed by the plan to the named beneficiary, can the decedent's estate enforce a waiver against the designated plan beneficiary?

Along comes *Andochick*, holding that post-plan distribution actions to enforce MSA waivers are proper, and that state-law waivers are not pre-empted by ERISA.

These cases are important, as they emphasize the need for family law attorneys to advise clients, in writing, to promptly and timely change beneficiary designations pursuant to a divorce agreement or Judgment. Beneficiary designations must be changed even where the beneficiary agrees to be divested of any title, right, or interest in a retirement plan or pension plan, as the *Kennedy* and *Andochick* cases demonstrate. It is recommended that such changes be made at or as soon as possible after a divorce decree is entered. It would be prudent for counsel to advise clients in writing to remind them to change beneficiary designations in these circumstances to preclude the type of litigation seen in the above cited cases. Such careful, needed advice will avoid the treacherous crossing of ERISA and MSA waivers, and allow a smoother pathway of retirement plan benefits to the intended beneficiaries.

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