[Cite as *Dailey v. Lohr*, 2002-Ohio-1532.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ESTATE OF THOMAS A. DAILEY, et al.,	)	CASE NO. 00 CA 27
PLAINTIFFS-APPELLEES,	)	
- VS -	)	OPINION
SHELBY KAY LOHR,	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Appeal from Mahoning County Common Pleas Court, Case No. 98 CV 378.
JUDGMENT:	Reversed. Judgment for Appellant.
APPEARANCES:	
For Plaintiffs-Appellees:	Attorney John P. Laczko 4800 Market Street, Suite C Youngstown, OH 44512
For Defendant-Appellant:	Attorney William G. Simon 101 East Main Street Ravenna, OH 44266

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: March 20, 2002

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, and the Appellant's brief. Defendant-Appellant Shelby Kay Lohr (hereinafter "Lohr") appeals the decision of the Mahoning County Court of Common Pleas granting the motion of Plaintiff-Appellee Estate of Thomas A. Dailey (hereinafter "the Dailey Estate") for summary judgment awarding the proceeds of Dailey's life insurance policy to his heirs rather than the policy's named beneficiary. For the following reasons, the decision of the trial court is reversed and the proceeds are ordered paid to Lohr as the policy's named beneficiary.

{¶2} Decedent Thomas Dailey was employed at the General Motors Lordstown, Ohio facility. As of September 24, 1985, he had named Shelby Lohr as the beneficiary of his life insurance policy through General Motors. Dailey and Lohr married each other on September 16, 1986, however, their marriage was terminated with a Separation Agreement (hereinafter "Agreement") that became incorporated into a Dissolution Decree (hereinafter "Decree") on December 18, 1991.

{¶3} Dailey died on October 4, 1996 and his estate administrator is the Plaintiff-Appellee in this case. Dailey's Metropolitan Life Insurance policy (hereinafter "Met Life") was part of his benefit plan while working for General Motors and falls within the scope of the Employee Retirement Income Security Act (hereinafter "ERISA"). The policy coverage amount of $42,500

was payable to the beneficiary at Dailey's death.

{¶4} The issue in this case is whether the death benefit proceeds of Dailey's insurance plan are payable to Lohr, the named beneficiary in the policy itself, or whether the language in the Decree purporting to relinquish Lohr's interest in Dailey's life insurance policies is valid. It is undisputed that the Met Life policy named Lohr as the beneficiary in the policy instrument and that Dailey never changed this beneficiary designation. On April 10, 1993, Dailey did, however change his personal savings plan by removing Lohr as beneficiary and designating his two children, Thomas A. Dailey, Jr., and Heather R. Evans as beneficiaries.

{¶5} The Dailey Estate first brought suit in the Mahoning County Court of Common Pleas against Met Life and Lohr for declaratory judgment that decedent's life insurance proceeds were to go to his children rather than to Lohr. Met Life successfully removed the case to federal district court by invoking ERISA's relevant pre-emption provisions. The Dailey Estate dismissed the case without prejudice.

{¶6} The Dailey Estate then brought the instant suit against Lohr as sole defendant in the Mahoning County Court of Common Pleas alleging breach of contract and unjust enrichment. The Dailey Estate specifically contends Lohr breached the terms of the Agreement and that she was unjustly enriched by accepting decedent's life insurance proceeds. At a pre-trial conference on November 17, 1999, the parties made cross-motions for summary judgment and on January 4, 2000, the trial court entered judgment in favor of the Dailey Estate which is the basis of this appeal. As Appellee failed to file a brief, pursuant to App.R. 18(c) we may accept Appellant's statement of facts and issues as correct

and reverse the judgment if Appellant's brief reasonably appears to sustain such action.

{¶7} Lohr's sole assignment of error alleges:

{¶8} "The trial court erred by upholding language in a state divorce decree without an accompanying Qualified domestic relations order that purported to award life insurance proceeds to a person other than the named beneficiary of a group benefit policy governed by E.R.I.S.A."

{¶9} The trial court decided this case upon a motion for summary judgment pursuant to Civ.R. 56(C), which shall be granted if: 1) no issue of material fact remains to be litigated; 2) the moving party is entitled to judgment as a matter of law; and, 3) the evidence demonstrates that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party opposing the motion. *Davis v. Loopco Industries, Inc.* (1993), 66 Ohio St.3d 64, 609 N.E.2d 144. The trial court found there were no genuine issues of material fact and granted judgment as a matter of law in favor of Dailey's Estate.

{¶10} When reviewing the trial court's grant of summary judgment, the appellate court uses the same standard as the trial court. *Parenti v. Goodyear Tire & Rubber Co.* (1990), 66 Ohio App.3d 826, 829, 586 N.E.2d 1121, 1123. The review of the instant appeal is therefore *de novo*. *Doe v. Shaffer* (2000), 90 Ohio St.3d 388, 390, 738 N.E.2d 1243, 1245, citing *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241, 245.

{¶11} State courts are competent to decide whether or not ERISA preempts state law claims. *NGS Am., Inc. v. Jefferson* (C.A.6, 2000), 218 F.3d 519, 526-527. Accordingly, the trial court considered the federal preemption provisions of ERISA as well as

ERISA's narrow exception for a Qualified Domestic Relations Order (hereinafter "QDRO") which permits the application of state domestic relations law.

> **{¶12} "One of the principal goals of ERISA is to enable employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing claims and disbursement of benefits.'" *Egelhoff v. Egelhoff* (2001), 532 U.S. 141, 148, 121 S.Ct. 1322, 1328, 149 L.Ed. 264, 272, citing *Fort Halifax Packing Co. v. Coyne*, (1987), 482 U.S. 1,9, 96 L.Ed. 2d 1, 107 S.Ct. 2211.**

{¶13} The scope of ERISA has been established by both statute and case law. The federal statutory preemption of ERISA claims in the instant case is rooted in 29 U.S.C. section 1144(a), which states:

> **{¶14} "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975."**

{¶15} The designation of beneficiaries in connection with an ERISA plan is generally considered to be a matter within ERISA's pre-emption of state law. *Metropolitan Life Ins. Co. v. Pressley* (C.A.6, 1996), 82 F.3d 126, 129. Therefore, the litigation surrounding Dailey's designation of Lohr as the beneficiary under the Met Life policy in the instant case is the type of issue that would usually be federally preempted and not decided under state law.

{¶16} However, despite the broad preemptive sweep of ERISA there is an express statutory exception for a QDRO that awards

proceeds to someone other than the named beneficiary. U.S.C. §1056(d)(3).

{¶17} To qualify for the statutory exception, the QDRO at issue must include the following four essential elements:

{¶18} "(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order;

{¶19} (ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, to the manner in which such amount or percentage is to be determined;

{¶20} (iii) the number of payments or period to which such order applies, and;

{¶21} (iv) each plan to which such order applies. 29. U.S.C. §1056(d)(3)" *Metropolitan Life v. Marsh* (C.A.6, 1997), 119 F.3d. 415, 421-422.

{¶22} Concluding the QDRO in the instant case satisfied the criteria to meet the exception, the trial court issued judgment as a matter of law in favor of the Dailey Estate. The trial court reasoned the percentage to be paid to the beneficiary pursuant to element(ii) and the number of payments to be made to the beneficiary under element (iii), were easily ascertained because Dailey's policy was to be paid in a lump sum to a single beneficiary. The trial court also used the Decree's express reference to decedent's employment at General Motors, coupled with the Decree's other language stating neither party has any interest in the other party's death benefit or term life insurance to reasonably conclude that the Met Life policy was covered by the domestic relations order, satisfying element(iv).

{¶23} However, the first element of the QDRO exception was not

explicitly met in the instant case. Although Dailey's name and address are expressly included in the domestic relations order, the name and address of the alternate payee(s) are not. This is problematic.

> {¶24} "The most vital omission of the provision in this case is that of an alternate payee. A QDRO is defined as one that 'recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan. Section 1056(d)(3)(B)(i). Hence, by its nature, a QDRO must include an alternate payee. Thus, the requirement of [Sec.]1056(d)(3)(C)(i) - that the QDRO must include "the name and mailing address of each alternate payee covered by the order" -is likely the most essential requirement of subsection(C)." *O'Neil v. O'Neil*, (E.D. Michigan 2001) 136 F.Supp.2d 690, 694.

{¶25} Relying upon its finding that a QDRO existed, the trial court gave effect to the Agreement that had been incorporated into the decree under Ohio law. The trial court then relied upon *Phillips v. Pelton* (1984), 10 Ohio St.3d 52, 53, 461 N.E.2d 305, 306 for the proposition that Ohio law gives effect to an agreement in which a party disclaims an interest in an insurance policy after a divorce. While this correctly states the *Phillips* decision, it is a misapplication of the law by not adhering to the federal ERISA standards.

{¶26} Contrary to the trial court's determination, Lohr argues persuasively that the Agreement, which was incorporated into the decree, is not an adequate QDRO to invoke the preemption exception. This argument is dispositive of the case as ERISA plan administrators are bound to follow the instruments governing the plan even when the former spouse is named a beneficiary. *McMillan v. Parrott* (C.A.6, 1990), 913 F.2d 310.

{¶27} In *Marsh,* the court did not require strict compliance with section 1056(d)(3)(B)(i) to uphold the preemption exception for a decree that "substantially complied" with the statute. *Marsh*, *supra* at 422. The trial court here relied heavily upon *Marsh* in reaching its conclusion, citing *Marsh* for the proposition that the policy of carrying out the intent of the parties may justify exempting certain decrees from ERISA's pre-emption, even though the decrees do not literally satisfy the requirements of section 1056(d)(3)(B)(i).

{¶28} Plain and unambiguous statutory language leaves no need to resort to other rules of construction or interpretation. *State ex rel. Stanton v. Zangerle* (1927), 117 Ohio St. 436. The trial court conceded the *Marsh* decision was not based upon strict compliance, specifically noting "Candidly, it seems that the Court in *Marsh* went to significant lengths to insure that equity and the intent of the parties was carried out." Despite the trial court's reading into the *Marsh* court's motives, *Marsh* is distinguishable from the situation at bar. The *Marsh* court clearly stated it was basing its decision upon the fact that the divorce decree at issue was written before ERISA was amended in 1984. *Marsh, supra* at 422. The decree in the instant case was entered on December 18, 1991, well after the amendment to ERISA.

{¶29} Further, unlike the fact pattern in *Marsh*, the facts in the case at bar mirrors those in *O'Neil,* which lead to that court's determination that because there was no alternate payee listed and the resultant dilemma in trying to determine one, the named beneficiary must receive the proceeds.

{¶30} "In this case, the insurance provision does not provide any means whatsoever for identifying an

alternate payee. The *Marsh* court held that, as long as the order contains information that would permit identification of the alternate payee's address, the order will substantially comply even if the address was not specified. *Marsh* at 422. Following that logic, the Court would perhaps be permitted to find substantial compliance with Sec. 1056(d)(3)(C)(i) if an alternate payee were adequately described, even though not named. Here, no alternate payee is described in the Judgment. Consequently, the Judgment cannot be considered a QDRO." *O'Neil* at 694.

{¶31} The *O'Neil* court did allude to the possibility of an estate being the alternate payee.

{¶32} "Perhaps it could be deduced from the insurance provision that [decedent] intended to have his estate serve as the alternate payee of his Met Life insurance proceeds. Nonetheless, in order to qualify for a QDRO, the Judgment must have at least substantially complied with Sec. 1156(d)(3). It does not." *O'Neil* at 694.

{¶33} In *O'Neil*, as the case at bar, neither the estate nor anyone else was designated as alternate payee. Following the decision in *O'Neil* we are precluded from expanding the *Marsh* ruling to decrees issued after the amendments to ERISA in order to find a QDRO where an alternate payee is not listed.

{¶34} This court has considered a somewhat similar ERISA situation in *Robinson v. Rodi* (August 26, 1998), Columbiana App. No. 96 CO 58, unreported, holding the ex-spouse's waiver in the divorce settlement in that case was sufficient to relinquish the

rights to the benefits of the insurance policy, despite still being designated the named beneficiary. However, there are significant differences between this case and *Robinson,* which make it distinguishable from the case at bar. First, the separation agreement at issue in *Robinson* was entered into in 1979, prior to the 1984 ERISA amendments. Secondly, the central issue in the case at bar is whether there is an adequate QDRO, which *Robinson* did not address.

{¶35} Our analysis here is supported by decisions from within the Sixth Circuit which lead us to hold the divorce decree at issue is inadequate to prevent federal preemption by ERISA, and does not constitute a valid waiver. The Sixth Circuit gave its clearest interpretation of ERISA as it applies to these circumstances in *Central States Southeast & Southwest Areas Pensions v. Howell* (C.A.6, 2000) 227 F.3d 672.

{¶36} "We have explicitly and repeatedly held that state court divorce decrees purporting to affect the benefits payable from an ERISA plan are preempted. See *McMillan v. Parrot*, 913 F.2d 310, 311 (6th Cir., 1990); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, (6th Cir., 1996)(decedent Alvin Pressley); *Czarski v. Bonk*, 1997 U.S. App. Lexis 23188, No. 96-1444, 1997 WL 535773 (6th Cir., Nov. 4, 1997); *Hendon v. E.I. DuPont de Nemours and Co.*, 1998 U.S. App. Lexis 7573, No. 96-6233, 1998 WL 199824 (6th Cir., Apr 13, 1998). In each of the cited cases, however, the surviving spouse had waived the right to receive benefits from the policies as part of a divorce settlement, but the deceased spouse had failed to change the beneficiary card. In each case, we held that the ERISA plan administrator must pay the ex-spouse the insurance proceeds despite the waiver in the divorce settlement. Under these circumstances, the law of this Circuit is clear - the beneficiary card controls whom the plan administrator must pay. See *McMillan*, 913 F.2d at 311-312 ("The clear statutory command, together with the plan provisions, answer the

question; the documents control, and those name [the ex-spouse].")" *Id.* at 676-677.

{¶37} The District Court for the Western Division of Michigan, following *Central States*, also clearly and succinctly decided the same issue we face at bar, finding;

> **{¶38} "Because the judgment of divorce is not a QDRO, the provisions of the judgment of divorce purporting to extinquish [the ex-spouse's] rights to [decedent's] life insurance policy are pre-empted by ERISA. ERISA requires the Plan to follow plan documents to determine the designated beneficiary. *Smurr v. Reliance Standard Insurance Co.*, 2001 U.S. Dist. Lexis 15100."**

{¶39} Following *Central States* and *Smurr,* we hold the instant waiver is invalid. As the assignment of error is meritorious, Lohr is entitled to the policy proceeds as the designated beneficiary. The decision of the trial court is reversed.

Donofrio, J., concurs.

Waite, J., concurs.