
When Waivers Don't Actually Waive – Inadvertently Leaving a Retirement Plan to a Former Spouse

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William worked for a major corporation where he participated in a retirement plan. He completed a beneficiary designation form naming his wife, Liv, as beneficiary. William and Liv later divorced. As a part of the divorce, Liv signed a decree waiving all of her rights to William's retirement plans. William's retirement plan documents provided that if there was no named beneficiary, the assets would be paid to William's estate. William died ten years after the divorce without ever signing a new beneficiary designation form. The only beneficiary designation form on file with the retirement plan documents still named his (now former) wife, Liv, as beneficiary.

Who receives William's retirement plan benefits? William's estate or Liv? If you answered "Liv," you agree with all nine justices of the U.S. Supreme Court, who decided this case in January 2009. In *Kennedy v. DuPont*, the Supreme Court held that when one ex-spouse generally waives her rights to the other spouse's retirement benefits in a divorce decree it is insufficient to cancel her rights under the plan if the waiver does not follow the terms of the retirement plan.

The case arose under the Employee Retirement Income Security Act, or "ERISA," the federal law that governs many pension and retirement plans. ERISA is designed to avoid disputes and lawsuits over who receives benefits under a retirement plan by requiring the administrator of the plan to closely follow the plan's governing documents. The plan's governing documents include specific beneficiary designation forms and waivers that a participant must complete to change individuals' rights under the plan. If a plan participant does not change beneficiaries using the forms prescribed by a plan, the portion of a divorce decree purporting to change beneficiaries' rights under the plan may be of no effect.

We should note that this case was decided under federal law specific to employer-sponsored retirement plans, and that a different result would have been reached if different law (e.g., Ohio law) were applied to different types of assets (e.g., IRA accounts, life insurance, etc.).

Nonetheless, the lesson of this case is simple: Update your beneficiary designations! William's family would have received his retirement plan if he had simply filled out a new beneficiary designation form after his divorce.

Remember, estate planning is not an event—it is an ongoing process. While it is always important to keep one's estate plan, including beneficiary designations, up to date, the time during and after a divorce can be a particularly important one where a few simple steps can save much heartache and litigation later.

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This paper is not intended to be exhaustive on the subject matter nor to provide legal advice to the reader.