



No. A09-349

State of Minnesota

In Court of Appeals

LORETTA MARIE ANGELL,

Appellant,

vs.

GORDON WILLIAM ANGELL

Respondent,

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE

The marriage of the parties was dissolved by a Judgment and Decree entered on the 11th day of September, 2008 (App. p.12) This Judgment was entered in the District Court, Carlton County and found that the parties' deceased son Levi's Death Gratuity payment was owned separately and equally by the parties and that his son's Servicemembers' Group Life Insurance benefits were Appellant's sole non-marital property. Because of the Respondent's lack of assets and income the Court ordered the Appellant to pay to Respondent the amount of \$100,000 out of her non-marital assets.

The Appellant moved to amend the decree as to 1) the Court's findings that Death Gratuity payments were held equally by the parties and 2) to delete the provision granting the award of \$100,000 from Appellant's non-marital to Respondent. (App. p.1) The Appellant's motion 1) was granted and the Trial Court found that the Death Gratuity payment was Appellant's non-marital property, but motion 2) was denied without comment as to the claim of lack of jurisdiction under the supremacy clause. Further, and without motion by the Respondent, the Court amended the decree sua sponte to increase the amount ordered paid by the Appellant to the Respondent to \$150,000. (App. p. 9)

Appellant's motions were heard on November 6th, 2008 by Carlton County District Court, Honorable Robert E. Macauley presiding. The Order was filed January 21, 2009, (App. p.), and notice of the same was served on January 28, 2009. Notice of Appeal was served by Appellant on February 20, 2009.

STATEMENT OF FACTS

The parties, Loretta Marie Angell hereafter Appellant and Gordon William Angell hereafter Respondent were married February 14, 1981, and their marriage was dissolved by the decree herein. (App. p.12) The parties had several children only one of whom, Levi Tuddy Angell, is of relevance to this appeal.

Levi Angell was killed in the service of the armed forces of the United States on April 8, 2004. (App. p.24) Levi had named Appellant his sole beneficiary (App. p.8) and as a result of his death Appellant ultimately received \$250,000 in Death Gratuity payments and \$250,352.66 as proceeds of Levi's Servicemembers' Group Life Insurance benefits as his sole beneficiary. (App. p.4, 8) & (App. p.10)

After the Appellant's post-trial motion the trial Court determined that both the Death Gratuity payment and the Servicemembers' Group Life Insurance benefits were Appellant's non-marital property (App p.10) . Additionally the trial Court ordered payment by Appellant to Respondent the amount of \$150,000 out of her non-marital benefits, increasing the original amount of \$100,000 sua sponte. (App. p.9)

LEGAL ISSUES

(1) Did the Court err in ordering the payment to Respondent of \$150,000 necessarily out of Appellant's non-marital property which consisted of armed services Death Gratuity payment and Servicemembers' Group Life Insurance benefits paid to her as her son's sole beneficiary.

(2) Did the Court err in amending the amount ordered paid to the Respondent from the Appellant's non-marital property from \$100,000 to \$150,000.

STANDARD OF REVIEW

A trial court property division "...will not be overturned except for abuse of discretion. We will affirm the trial court's division of property if it had an acceptable basis in fact and principle even though we might take a different approach." Antone v. Antone, 645 N.W.2d 96 , 100 (Minn.2002). "The district court abuses its discretion in dividing property if its findings of fact are 'against logic and the facts on [the] record.'" Rutten v. Ruten, 347 N.W.2d 47 at 50.

ARGUMENT

(1) Did the Court err in ordering the payment to Respondent of \$150,000 necessarily out of Appellant's non-marital property which consisted of armed services Death Gratuity payment and Servicemembers' Group Life Insurance benefits paid to her as her son's sole beneficiary.

The Appellant submits that the answer is in the affirmative.

Except for four unimproved, rural lots of undetermined (App. p.17) but nominal value, the Appellant has no non-marital property other than the Death Gratuity payment and Servicemembers' Group Life Insurance benefits which were in the total amount of \$500,000+. Since the Trial Court was aware that Appellant had no other resources to pay the ordered payment of \$150,000 based on it's findings (App. p.17) the only source the Appellant had to pay the amount ordered was the amount received as a result of the Servicemember's Group Life Insurance benefits and the Death Gratuity payment. Therefore the ordered payment of \$150,000 is an attempt to transfer a portion of these funds from the Appellant's, Group Life Insurance benefits and his Death Gratuity payment, to Respondent by use of application of M.S. §518.58, Subd. 2. (App. p.11)

SERVICEMEMBER'S GROUP LIFE INSURANCE BENEFITS

As the sole designated beneficiary (App. p.8), the Appellant received Servicemember's Group Life Insurance benefits under 38 U.S.C. §1970 which provides in part:

§ 1970. Beneficiaries; payment of insurance (a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence: First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death:

(1) in the uniformed services if insured under Servicemembers' Group Life Insurance,.

In order to obtain any portion of the Servicemember's Group Life Insurance benefits the Respondent was required to make his claim under which further provides in 38 U.S.C. 1970:

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if such person had predeceased the member or former member, and any such payment shall be a bar to recovery by any other person.

Further 38 U.S.C. 1975 provides that:

“The district courts of United States shall have the original jurisdiction of any civil action or claim against the United States founded upon this subchapter.”

This provision excludes any other court from having jurisdiction over a civil action regarding Servicemember’s Group Life Insurance benefits. The Trial Court had no jurisdiction to allocate the Servicemember’s Group Life Insurance benefits funds held by Appellant either under law or equity.

This exclusion of jurisdiction is further shown by the fact that Servicemembers’ Group Life Insurance benefits are clearly exempted from any act or judgment by any court under 38 U.S.C. 1970 which states:

(g) Any payments due or to become due under Servicemembers’ Group Life Insurance or Veterans’ Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary...

It is clear that it was the intent of congress to prohibit any type of transfer by judicial action such as is attempted by the present Judgment and Decree 38 U.S.C. 1970 Subd. (g) is not just a simple exemption from creditor provision as is typically found in debtor protection statutes as it additionally prohibits any “...attachment, levy, or seizure...” and includes “...any legal or equitable process whatever...” (Emphasis added)

The extensive protection of these benefits by Congress in this area is very broad and encompassing. In 38 U.S.C 5301 the Congress provided in part as follows:

§ 5301. Nonassignability and exempt status of benefits

(a)

(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit ~~check and has also executed a power of attorney giving the attorney-in-fact~~ authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(3)

(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such

benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

A review of this statute, especially part 3 (A.) shows how all-encompassing §5301 is. The provisions for non-assignment or transfer go so far as to include a provision prohibiting a joint holder of an account from being able to withdraw these funds from such an account. The action by the Trial Court was nothing more than a forced assignment in equity of a portion of the Death Gratuity payment and Servicemember's Group Life Insurance benefits which were granted to the Appellant contrary to these federal Statutes

Also the action by the Trial Court to award Respondent \$150,000 payable by the Appellant, necessarily out of her non-marital Servicemember's Group Life Insurance benefits and Death Gratuity payment, under M.S. §518.58 Subd. 2 is certainly an

“equitable process” and is prohibited by 38 U.S.C. §1970 Subd (g) and 38 U.S.C. 5301. This is in addition to the Trial Court acting without jurisdiction under 38 U.S.C. §1975

DEATH GRATUITY PAYMENT

The above comments apply equally to the Death Gratuity payment received by Appellant. It does not appear that there is a specific exemption statute under 10 U.S.C, but it is clear that the more broad provisions of 38 U.S.C 5301 apply equally to the Servicemember’s Group Life Insurance benefits and the Death Gratuity payment provisions as follows.

The provisions of the 38 U.S.C 5301 by its own terms apply to any benefits program administered by the Secretary and provides:

§ 5301 (a) (1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Also by its terms, the Death Gratuity payment program under 10 U.S.C 1475 is such a program administered by the Secretary. (Emphasis added)

10 U.S.C. 1475 provides the duties of the Secretary (of Defense) include the payment of Death Gratuity payments as stated in part:

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death

of--

- (1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

Appellant received the Death Gratuity payment as Levi's named beneficiary under 10 U.S.C. 1477 which determines to whom the Death Gratuity payment is to be paid, and provides in part:

(a) Subject to subsection (d), a death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list:

- (1) His surviving spouse.
- (2) His children, as prescribed by subsection (b), in equal shares.
- (3) If designated by him, any one or more of the following persons:
 - A. His parents or persons in loco parentis, as prescribed by subsection (c)
 - B. His brothers.
 - C. His sisters.

~~(4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares.~~

- (5) His brothers and sisters in equal shares.

Since the Death Gratuity is a payment administered by the Secretary 38 U.S.C. 5301 applies to the Death Gratuity payment received by the appellant the same as it applies to the Servicemember's Group Life Insurance benefits and the same arguments apply. The Trial Court's Order requires a transfer from Appellant's Death Gratuity payment and Servicemember's Group Life Insurance benefits contrary to the cited federal statutes and

is prohibited by the United States Constitution, Article Six which states in part:

“This constitution and the Laws of the United States which shall be made ,
under the Authority of the United States, shall be the Law of the Land; and
the Judges in every State shall be bound thereby ...”

(2) Did the Court err in amending the amount ordered paid to the Respondent from the Appellant’s non-marital property from \$100,000 to \$150,000.

As noted in the statement of fact, the Trial Court, in its order filed January 21, 2009, (App. p.9) modified its decree and increased the amount payable from the Appellant to the Respondent by \$50,000. This was done without any motion by the Respondent for such relief and was done without any notice or opportunity for the Appellant to be heard on such an increase. The increase was not insignificant and effectively denied Appellant of her due process rights. A such the Trial Court erred in so doing.

CONCLUSION

1. The Court erred in ordering the payment to Respondent of \$150,000 necessarily out of Appellant’s non-marital property which consisted of armed services Death Gratuity payment and Servicemembers’ Group Life Insurance benefits paid to her as her son’s sole beneficiary.

2. The Court erred in amending the amount ordered paid to the Respondent from the Appellant’s non-marital property from \$100,000 to \$150,000.

Respectfully Submitted,

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