

No. A09-349

State of Minnesota

In Court of Appeals

LORETTA MARIE ANGELL,

Appellant,

vs.

GORDON WILLIAM ANGELL

Respondent,

APPELLANT'S REPLY BRIEF

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CLARIFICATION OF AMOUNTS AT ISSUE

There was a lot of misunderstanding at trial as to the funds in this matter. The funds received by Appellant were all referred to at trial as "insurance proceeds". Appellant, even, in her motion for amended findings confused the issue. In fact and law, there were two distinct types of payments. Reference was made to separate payments of \$12,000, \$88,000, \$150,000 and \$250,000. The payments of \$12,000, \$88,000 and \$150,000, totaling \$250,000 were the death gratuity payments from the Defense Department under the statutory scheme explained below. The single payment of \$250,000 was the life insurance payment from Prudential Alliance paid to Appellant as the sole beneficiary. (T. p.18, l.18 to T. p.19, l.19; App. p. 9) These both were deposited in Appellant's bank account and continued to be held there, less some disbursements explained at trial. In fact the claim and argument made by the Respondent is that Appellant is holding the \$500,000 in a bank account out of state (Respondent's brief pg. 10), acknowledging that the amount received by Appellant was

There were documents referred to in the transcript as being in Exhibit 2 which addressed all of these funds except the \$88,000 payment. The \$88,000 payment was identified by the Appellant (T. p.19, l.20) as being an additional payment with the original \$12,000 to bring the total of that payment to \$100,000 which comports with federal statutes discussed below. Exhibit 2 contains documentation of the receipt by Appellant of these payments and deposit into her account at her account. However, a reading of the transcript, page 15, lines 14-22 shows that the Exhibit was to be received by stipulation, to which the Court responds "All right." but never specifically states that Exhibit 2 was received. However a fair reading of those lines would indicate that the Court intended that the exhibit be received and should be considered.

The prior federal death gratuity was in the amount of \$12,000, but was increased to \$100,000 for a service member's death as a result of active duty and also under other circumstances not applicable here. 10 U.S.C. 1475 (a)(1) requires the secretary of defense to pay the Death Gratuity to the survivor as provided under 10 U.S.C. 1477, specifically sub-section (a) in this case which states in relevant part:

1477 Death Gratuity. eligible survivors

(a) Subject to sub-section (d), a death gratuity shall be paid to the living survivor highest on the following list.

(1) His surviving spouse. [Note - not applicable as Levi had no spouse]

(2) His children, as prescribe by subsection (b), in equal shares. [Note - not applicable as Levi had no children]

(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). [Note -In the present case, Levi Angell had no spouse nor children, legitimate or illegitimate. He designated Appellant as his sole beneficiary as shown in Appellant's Appendix at page A-8.]

The amount of the death gratuity in turn is determined by 10 U.S.C. 1478 which states in part:

§1478. Death gratuity. amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be \$100,000.

In the present case this initial \$100,000 death gratuity accounts for the payment of \$12,000 and the subsequent \$88,000 payment. The \$12,000 was in the form of a check hand delivered by Sgt. Benson in the presence of the Respondent as acknowledged in his testimony. (T. pg. 77, l. 9) Respondent also testified that the check was made out to Appellant (T. pg. 78, l. 2). Appellant testified that the \$88,000 was transmitted with a payment of \$150,000. (T. p. 52, l. 20.) This \$150,000 payment is also dealt with in §1478 (d) which provides:

§1478 (d)

1. In the case of a person described in paragraph (2), a death gratuity shall be payable, subject to section 664(c) of the National Defense Authorization Act for

Fiscal Year 2006, for the death of such person that is in addition to the death gratuity payable in the case of such death under subsection (a)

2. This subsection applies in the case of a person who died during the period beginning on October 7, 2001, and ending on August 31, 2005, while a member of the armed forces on active duty and whose death did not establish eligibility for an additional death gratuity under the prior subsection (e) of this section (as added by section 1013 (b) of Public Law 109-13; 119 Stat. 247), because the person was not described in paragraph (2) of that prior subsection.

3. The amount of additional death gratuity payable under this subsection shall be \$150,000.

4. A payment pursuant to this subsection shall be paid in the same manner as provided under paragraph (4) of the prior subsection (e) of this section (as added by section 1013(b) of Public Law 109-13; 119 Stat. 247), for payments pursuant to paragraph (3)(A) of that prior subsection.

Thus the above confluence of the facts and testimony in this case and the relevant U.S. Code show that there is no question the \$88,000 combined with the \$12,000 and the \$150,000 were death gratuity payments and were made to Appellant Levi's mother and sole designated beneficiary.

REPLY TO RESPONDENT'S ISSUES ONE AND TWO

Respondent argues that the Appellant has failed to bear her burden of proof to show that the \$500,000 of payments received by her are non-marital in nature. Appellant submits the logic of her claim that these funds were non-marital under state law (as well as beyond the power of the court to order any invasion thereof) can be summarized as follows:

a) There can be no doubt that Levi intended that Appellant be sole beneficiary of these funds as shown in Appellant's Appendix p. 8. Olsen v. Olsen, 562 NW2d 797 (Minn. 1997) declared that the most important factor in determining this issue is the intent of the donor. The intent of Levi is indisputably clear that he wanted his mother to have the funds.

b) The funds were legally a gift - there was no consideration given by Appellant for the receipt of the funds and Levi received no consideration in exchange for his designating her as his sole beneficiary. The transfer of property from one party to another without consideration is the plain definition of a gift.

c) All the facts show that the gift was for Appellant only. In fact Respondent admitted Appellant was the sole beneficiary of the funds. (Trans. p.80. 1.0-12) Respondent was not designated to and did not receive any part of this gift.

d) The death gratuity is not a payment from Levi. As stated clearly by its name, it is a gratuity or gift, is not from Levi, but from the federal government, and beside the jurisdiction issue raised elsewhere, the government clearly sets out its intent concerning this money in 10 U.S.C. 1477 as to whom it shall be paid. Under these circumstances there are no provisions or circumstances under which the Respondent was entitled to receive this money.

e) There is nothing in the fact that the donor of the gift in this case is the son of the parties which legally affects the application of the conditions of §518.003, subd. 3b as set out above. The only relationship issue in the statute is that the gift is given to one of the parties, not to both.

The documentation and all facts (App.p.8) show that the death gratuity and Servicemember's Group Life Insurance the above death gratuity of \$250,000 plus the Servicemember's Group Life Insurance which Levi purchased in the amount of \$250,000 as clearly shown in Appellant's Appendix page 8 and as testified to by Appellant clearly show the nature and the amount of the funds. Appellant's Appendix page 8 also clearly shows Levi's

intent as to the disposition of these funds in the event of his death. In this form he clearly recognized his father, just as clearly has named only Appellant, his mother, as the beneficiary of both the death gratuity and the \$250,000 life insurance proceeds in the event of his death. The federal statute recognizes or authorizes the naming of only one parent in its specific language:

*10 U.S.C. 1477 (a) (3) If designated by him, any one or more of the following persons:
(A) His parents ...*

It specifically provides that the serviceman may select **one or more** of the listed persons. Parents were the first on that list. The statute clearly permits and authorizes selecting **one or more** of his parents just as he would have been able to designate one parent and not the other as a beneficiary in a will. There is no magic in the word father or mother in this setting, and arguments attempting to appeal to family emotions

The beneficiary determination statute The Respondent stipulated on the stand that Appellant was the beneficiary of these funds. (Respondent admitted that he was not challenging Appellant as Levi's sole beneficiary in his testimony. [T. pg. 80. l. 10-12])

Thus the facts clearly set out that these life insurance funds were in the nature of a gift of inheritance or bequest. And were, as found by the trial court, the non-marital property of the Appellant. It was a gift or bequest by a third party and made to one of the parties and not the other party. The intent of Levi was clear that he wanted these funds to go to his mother, the Appellant, and not the Respondent. He directed the specific award of the insurance and death gratuity to go to his mother. Such life insurance proceeds are traditionally treated as a gift or bequest where they are purchased and paid for by a third party who is the owner of the policy, and the right to collect those proceeds does not arise until the death of the insured. Whereas no

Minnesota case law specifically on point was found, this was so found in In re the Marriage of Goodwin, 606 NW2d 315 (Iowa 2000).

The death gratuity, while very comparable to life insurance because it results from the death of Levi, is probably more clearly a non-marital gift. The gift is from the United States of America to the person designated by the serviceman and is made upon the death of the serviceman. The serviceman does not pay anything for it - it is a gratuity, or gift from the government. As such it falls clearly into the definition of non-marital property under §518.003 as a gift from a third party (USA) to a party (Appellant) and not to the other party (Respondent).

REPLY TO RESPONDENT'S ISSUE THREE

Of course the trial court has authority to act under §518.58, subd. 2. Appellant asserts only that the court does not have jurisdiction to make a disposition of the death gratuity funds and the Servicemember's Group Life Insurance funds received by Appellant through legal or equitable process.

Appellant's position is quite straight forward. As to the Servicemember's Group Life Insurance proceeds to Appellant in the amount of \$250,000, the U.S. Congress authorized it, granted original jurisdiction in the district courts of the United States to resolve claims made against the U.S. founded upon the empowering legislation, and exempted it from "...the claims of creditors, and shall not be liable to attachment, levy, seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." (See 38 U.S.C and 10 U.S.C. as discussed in more detail in Appellant's Brief pp. 4-10.) As argued by the Respondent the award by the court out of non-marital property is an equitable process, not legal. If the trial court did not have jurisdiction to declare the death gratuity or Servicemember's Group Life Insurance

funds as either marital or non-marital, §518.58, subd. 2, would not have any property to be applied to, and since Appellant had virtually no non-marital property, an award would not be permitted under §519.58, subd. 2.

REPLY TO RESPONDENT'S ISSUE FOUR

In Respondent's issue four, he asserts that Appellant is raising the Federal exemption statute for the first time and as such the Appellate Court may not consider it. Appellant's issue is that the trial court erred by ordering Appellant to pay as it lacked jurisdiction under the facts of this case and also, or as additional evidence of this lack of jurisdiction, necessarily violated the prohibitions of the Federal exemptions granted to these funds.

Traditionally the question of lack of subject matter jurisdiction could be raised at any time, even years after the judgment was entered, or collaterally, in a separate proceeding. Our Supreme Court addressed this issue in Bede v. Minnesota Department of Natural Resources, 612 NW2d 862 (Minn. 2000) In this case the court determined that they would no longer allow such collateral challenges except in limited cases, but also determined that the direct challenge of jurisdiction was permissible so long as brought within the original proceedings, allowing the issue to be addressed by appeal where it had not been addressed at the trial level.

Appellant did in fact raise the issue with the trial court in her motion for amended findings or for a new trial asserting that the trial court did not have jurisdiction to order the invasion of the Appellant's funds as precluded by 10 U.S.C. §1475-1791 and the United States' Constitution Article Six. (Appellant's Appendix A-1 more specifically at 1 (c) on pages A-2 and A-3).

Even if Appellant had not raised the issue with the trial court, under Bede, (id), the

Appellant may bring a direct challenge to jurisdiction in this appeal. Further these circumstances would fall under the exception noted in Bede (id) as acting to "...substantially infringe the authority of another tribunal or agency of government."

Respondent argues that the Federal statutes cited by Appellant were not designed to keep a dead soldier's father from receiving any of the benefits and that Appellant's theory would result in the funds not being able to be used for anything and would allow the Appellant to buy a car and then demand the return of the money. Such baseless arguments do nothing to resolve this matter. In fact it was not the federal statutes that kept the Respondent from receiving any benefits, it was Levi's decision and intent to name only his mother as beneficiary to these funds. There is nothing in the exemption statutes which would require the return of money paid.

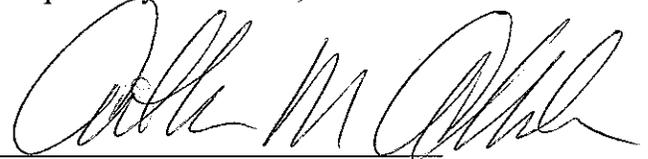
Respondent also argues that the federal statutes do not prevent the court from apportioning and awarding these funds as the result would be absurd. Likewise, if the court's award to Respondent is sustained, any attempt to enforce the judgment against the funds is absolutely prohibited under the federal exemption laws under 38 U.S.C. 1970 (g) and 10 U.S.C. 5301 (a)(1) leaving a order which would not be enforceable.

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,

A handwritten signature in black ink, appearing to read 'Arthur M. Albertson', written in a cursive style.

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