

Nos. A10-2219, A11-683 and A11-684

State of Minnesota
In Supreme Court

Patricia Ann Langston,

Appellant,

vs.

Wilson McShane Corporation, as Administrator for the
Twin Cities Carpenters and Joiners Pension Fund, and the
Twin Cities Carpenters and Joiners Pension Fund,

Respondents.

REPLY BRIEF OF APPELLANT

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A. Respondents Cannot Support Their Claim That The 2005 QDRO Provides For A Type Of Benefit Not Permitted By The Plan.

Respondents continue to claim that the 2005 QDRO provides for a type of benefit not permitted by the plan documents. In fact, Respondents already admitted this is not the case. Respondents, in their letter of August 18, 2005, informed Langston that the QDRO “. . . provides for payments to be made in the form of an annuity payable over the Alternate Payee’s lifetime. Normally this would be appropriate. However, benefits to the Participant are already in pay status due to Mr. Langston’s retirement.” (A.022). Accordingly, it was never the “type of benefit” that was at issue – it was only the timing of the QDRO.

Further, the payment of survivor benefits to an alternate payee is expressly provided for in the plan document. That document provides that a qualified domestic relations order may assign “. . . the interest of persons entitled to benefits under the plan.” Plan, Section 3.04, Respondents’ Appendix, p. 189. Because the plan documents do not forbid the payments sought by Langston, this Court should reverse the Court of Appeals.

B. Respondents Cannot Establish That The 2005 QDRO Provides For An Impermissible Increase In The Amount of Benefits Paid.

Respondents claim that the 2005 QDRO would require them to pay increased benefits. This is based entirely on their position that the benefits at issue irrevocably

vested in Shelly James. If this Court were to reject this conclusion (which it should) then those benefits would, as a matter of law, not have vested in Shelly James.

The actual prohibition against requiring a plan to pay increased benefits applies to situations far different than Langston's. For example, in *In re Marriage of Oddino*, 939 P.2d 1266 (Cal. 4th 1997) a former spouse sought retirement benefits at the earliest possible retirement date even though the participant/ex-husband continued to work. *Id.*, at 1269. Because the participant/husband was not yet at full retirement service, the former spouse attempted to obtain both the benefits awarded in her divorce decree and an early retirement enhancement offered by the employer/plan sponsor. *Id.*

The *Oddino* court rejected the prior spouse's claim because the plan participant/ex-husband was still working for the employer/plan sponsor. *Id.*, at 1278. Because the participant/ex-husband had not yet retired, the QDRO required the plan to pay an increased benefit above and beyond the benefit amount provided for by the plan. *Id.* The text of ERISA supports this conclusion.¹ Accordingly, while the prior

¹ Section 1056(d)(3) provides:

- (E) (i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee-
 - (I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age, [and]
 - (II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not

spouse/alternate payee was permitted to obtain retirement benefits, she was not permitted to obtain additional benefits for early retirement because the participant/ex-husband had not actually retired. *Id.* at 1279.

In this case, Respondents can identify no increased obligation other than one they have invented – that the plan would be required to continue paying Shelly James based upon its own “vesting” theory even if that theory were rejected by this Court. Because the 2005 QDRO at issue requires no such increase in payments, this Court should reject Respondents’ circular argument and reverse the Court of Appeals.

C. Respondents’ Latest Argument Is Inconsistent, Unsupported by the Evidence, And Contrary To The Law.

Respondents, in a departure from their prior position, now clam that “a joint survivor annuity vested in James upon Mr. Langston’s retirement and then his subsequent death.” Respondents’ Brief, p. 35, Emphasis added. This argument would seem to fly in the face of Respondents’ oft repeated claim (and purported reason for denial of benefits) that the benefits at issue irrevocably vested in Shelly James at Gary Langston’s retirement.

Moreover, it is unsupported by the evidence because the retirement benefits sought by Langston were awarded her in 1993 – prior to both Gary Langston’s retirement and subsequent death. These benefits could not have vested in Shelly James because they

taking into account the present value of any employer subsidy for early retirement)”

were not Gary Langston' to bestow. The 2005 QDRO does not create rights – it is simply the vehicle by which rights are exercised. Of course, even if the 2005 QDRO did create rights, it was served prior to Gary Langston's death, so Respondents' claim that the benefits at issue vested in Shelly James at Gary Langston's death does not support Respondents' argument. This Court should therefore reject Respondents' argument and reverse the Court of Appeals.

D. The Issue Of Attorney's Fees Is Properly Before This Court.

Respondents attempt to avoid an attorney fee award by claiming that the issue of fees is not before this Court. This argument, however, overlooks the fact that the only issue on which the Court of Appeals ruled, whether the survivor benefits at issue irrevocably vested in Shelly James at Gary Langston's retirement, was determinative of both Langston's benefit claim and her attorney fee claim. As such, a reversal of the Court of Appeals on this one issue would necessarily result in reinstatement of both the benefits and fees awarded by the district court. Moreover, Langston specifically asked this Court, without limitation, to review the January 9, 2012 decision of the Court of Appeals.

The Court of Appeals' resolution of the lone issue in this case was the only basis for the reversal of the district court's fee award. Specifically, the Court of Appeals held "[b]ecause we conclude that Shelly's interest in the survivor benefits had vested when Gary retired, and therefore, Patricia's DRO is not qualified, Patricia is not entitled to

attorney fees; she did not ultimately have some success on the merits of her claim.” Appellant’s Appendix, p. 170. Langston, therefore, petitioned this Court to review the only holding the Court of Appeals made in this case. Accordingly, should this Court reverse the Court of Appeals’ determination that the survivor benefits at issue vested at Gary Langston’s retirement, it would necessarily also reverse that Court’s only stated reason for reversing the district court’s award of attorney’s fees. As such, the issue of attorney’s fees is properly before this Court.

Respectfully submitted,

Dated: May 29, 2012.

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this reply brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 1,103 words. This reply brief was prepared using Microsoft Word.

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