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State of Minnesota

In Supreme Court

LORETTA MARIE ANGELL,

Respondent,

vs.

GORDON WILLIAM ANGELL

Appellant,

RESPONDENT'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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RESPONDENT'S STATEMENT OF LEGAL ISSUE

DO FEDERAL STATUTES WHICH GRANT, FUND, REGULATE AND PROVIDE FOR FEDERAL EXECUTIVE MANAGEMENT OF DEATH GRATUITY BENEFITS AND SERVICE-MEMBERS' LIFE INSURANCE, TOGETHER WITH DECISIONS BY THE UNITED STATES SUPREME COURT SUPPORTING THEIR PREEMPTION BAR A STATE COURT FROM AWARDING, UNDER MINN. STAT. §518.18 SUBD. 2, A PARTY IN A DISSOLUTION OF MARRIAGE, A PORTION OF THE OTHER PARTY'S SOLE NON-MARITAL PROPERTY CONSISTING U.S. ARMED SERVICE DEATH GRATUITY BENEFITS AND SERVICE MEMBER'S GROUP LIFE INSURANCE?

The Minnesota Court of Appeals answered in the affirmative.

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. App. pg. 1) . This Judgment was entered in the District Court, Carlton County, and found that the parties' deceased son Levi's Death Gratuity payment of $100,000 was owned equally by the parties and that this son's Servicemembers' Group Life Insurance (hereafter SGLI) benefits were Respondent's sole non-marital property.

The Respondent was awarded custody of the parties' minor child. No child support was ordered. Both parties waived maintenance as neither was capable of providing for the other's support. Because of the Appellant's lack of assets and income the Court ordered the Respondent to pay to Appellant the amount of $100,000 out of her non-marital assets pursuant to Minnesota Statute §518.58, Subd. 2. The only non-marital assets owned by Respondent capable of satisfying this award were the funds she held as proceeds of the SGLI and death gratuity payments.

The Respondent 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 Respondent's non-marital to Appellant specifically asserting that the trial court had no jurisdiction being preempted by federal law. (App. App. pg. A-10, A-11) The Respondent's motion

1) was granted and the Trial Court found that the Death Gratuity payment was Respondent'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 Appellant the Court amended the decree sua sponte to increase the amount ordered paid by the Respondent to the Appellant to $150,000.

Respondent'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 to the Appellate Court was served by Respondent on February 20, 2009. Respondent raised the issue as the failure of the trial to grant her motion challenging the jurisdiction of the trial court to grant a property division of her veteran's beneficiary proceeds. The Appellant counter-appealed on the basis that:

1.) Respondent failed to meet her burden of proof that the death benefits were her non-marital property;

2.) That life insurance proceeds are marital property;

3.) That the trial court has authority to award non-marital property to prevent an unfair hardship;

4.) That the Federal preemption was being raised for the first time on appeal, but, in any event, does apply to this situation.

The Appellate Court filed its decision on December 29, 2009, ruling that:

> 1.) Life insurance and death gratuity benefits received during marriage by only one spouse who is found to be the decedent's sole beneficiary are non-marital property under Minnesota Statute §518.003;
>
> 2.) That federal antiattachment statutes that protect military death benefits paid to a beneficiary from attachment, levy, or seizure preempt Minnesota Statute § 518.58, Subd. 2 to he extent that the subdivision authorizes district courts to award the beneficiary's spouse a portion of those benefits as divisible nonmarital property.

This decision overturned the trial court's decision that the Respondent was entitled to $150,000 from the SGLI and death gratuity funds received by Respondent finding that 38 U.S.C. 1970 (g) and 38 U.S.C 5301(a)(1) preempted Minnesota Statute §518.58 Subd. 2.

Appellant, in his appeal to the Supreme Court, framed his issue on appeal as follows:

> Do anti-attachment provision in federal statues creating Servicemember's Group Life Insurance and death gratuity benefits prevent a Minnesota court from applying Minnesota's unfair hardship law in a dissolution action that orders a beneficiary to support her husband after dissolution from non-marital funds?

Although not specifically framed as an issue, under the Legal Issues heading, the Appellant included:

> The District Court was not presented with this issue. The Minnesota Court of Appeals determined that Respondent was the designated

beneficiary of the policy and that the antiattachment provisions applied in this case.

STATEMENT OF FACTS

The parties, Loretta Marie Angell hereafter Respondent and Gordon William Angell hereafter Appellant were married February 14, 1981, and their marriage was dissolved by the decree herein. (App. App. pg. 1) 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. App. pg. A-4) Levi had named Respondent his sole beneficiary (App. p.1) and as a result of his death Respondent 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. These funds were never commingled and Appellant was never a named beneficiary or owner of any part of these funds.

ARGUMENT

FEDERAL STATUTES WHICH GRANT, FUND, REGULATE AND PROVIDE FOR FEDERAL EXECUTIVE MANAGEMENT OF DEATH GRATUITY BENEFITS AND SERVICE-MEMBERS' LIFE INSURANCE, TOGETHER WITH DECISIONS BY THE UNITED STATES SUPREME COURT SUPPORTING THEIR PREEMPTION BAR A STATE COURT FROM AWARDING, UNDER MINN. STAT. §518.18 SUBD. 2, A PARTY IN A DISSOLUTION OF MARRIAGE, A PORTION OF THE OTHER PARTY'S SOLE NON-MARITAL PROPERTY CONSISTING U.S. ARMED SERVICE DEATH GRATUITY BENEFITS AND SERVICE MEMBER'S GROUP LIFE INSURANCE.

I. §518.58 SUBD. 2 IS PREEMPTED BY 38 U.S.C. 1970 (G) & 38 U.S.C 5301(A)(1).

A. COMPARING APPLES AND ORANGES.

i. APPLES=PREEMPTION: Appellant is attempting to force the present case into a category of cases to which it is not a member, i.e. comparing apples to oranges. The cases which Appellant claims as legal precedent for his claim of non-preemption of the death gratuity and SGLI benefits received by Respondent have specific common characteristics: 1) The service member is not dead, but rather is the rightful recipient (i.e. owner) of a benefit based on or given in lieu of wages such as disability payments or retirement payments from the U.S. government. 2) This payments are regular periodic payments, not a lump sum settlement. 3) The service member is the obligor of a legal obligation for support or alimony payments under a state law or judgment. 4) The claim is made against the service member obligor to enforce that legal obligation.

The Apple type of case is where a veteran is receiving regular payments such as disability or retirement benefits and a claim is made by a party against the service member to part of those payments. Such cases include the cases identified in the Appellate Court decision in this case, and the briefs filed, including *Rose v. Rose*, 481 U.S. 619, 107 S. CT. 2029 (1987), *Schlaefer v. Schlaefer*, 112 F. 2nd 177, (U.S. Ct. of Appeals D.C. 1940), and a number of additional cases cited by Appellant which add numbers but not any legal significance.

In these cases the regular monthly payments received are considered compensation for a loss of earning power as a result of the disability. These payments as well as retirement are paid under different statutes than are death gratuity and SGLI payments. This law has determined that the payments are not solely for the veteran, but also for his family. In these cases, the claimant is owed a legal duty of child support or maintenance. Finally the federal government has a strong policy interest in the continued support of dependants, whether spouse or child, by an obligor having a legal duty to support. It has promulgated comprehensive laws for the enforcement of child support and maintenance and provides funding to states to carry out this enforcement. In this type of case there is no preemption because there is no conflict in either statute or policy between the federal and state laws as discussed below.

ii. **ORANGES=NON-PREEMPTION.** This group of cases is distinct from the APPLE cases above and is the category into which the Respondent's case falls. The characteristics of these cases are: 1) The service member was killed in action in the service of the U.S. government. 2) As a result of the service member's death, a named beneficiary receives death gratuity and SGLI payments. 3) The beneficiary, not the service member or his/her estate, is the owner of the proceeds. 4) The proceeds are lump sums and not periodic payments. 5) The claim is made by a third party against the non-service member beneficiary for the lump sum payment(s). 6) The beneficiary does not owe a legal duty of support to the claimant.

Significant examples of these cases include the cases identified in the Appellate Court decision in this case, and the briefs filed including *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S. CT. 802 (1979), *Ridgeway v. Ridgeway*, 454 U.S. 46, 102 S. CT.49 (1981), *Wissner v. Wissner*, 338 U.S. 655, 70 S. CT. 398 (1950). The present case has all the characteristics of the Orange category cases.

These cases obviously only occur where the service member is dead. As such he no longer has a duty of support, although his estate can be required to provide support. The appellant is not seeking payment based on a theory that his son, Levi, the deceased service member, had such an obligation as in the Orange cases discussed. The Appellant is simply a creditor of the Respondent seeking

payment of the $150,000 judgment rendered in his favor by the trial court. Try as he may to characterize this award as something else, it is clear that the award is a property division and not some kind of implied "family support" obligation.

The service member had purchased SGLI and designated a beneficiary as to both the SGLI and death gratuity. Similar to ordinary life insurance this is property, the title to which passes by law upon the death of the service member. The service member has no interest in the proceeds and the nature of the proceeds is that of a grant of title to property, not income, to the beneficiary. The issue of legal duty does not affect the preemption in these cases. The basis of the claim is usually that the service member had some sort of real or perceived duty to the claimant who is seeking the proceeds from which to satisfy that duty.

In the cases which arise in this group, as in this case, the service member has designated a beneficiary other than might be considered "normal", i.e. a mother instead of a wife, a mother only instead of both the mother and the father, the second wife instead of the first wife as ordered in a court order, the natural father instead of the step-father who raised him et.c.. Whether or not the service member has a legal duty of child support of maintenance is not determinative in these cases.

Presumably by far the great majority of named beneficiaries are the "normal" ones, and of course the designation of the beneficiary is not disputed.

The ones in this group are being litigated because they are not "normal" dispositions and the party disappointed by the designation litigates the designation. The claim is made not against the service member, but rather against the named beneficiary. Finally, the nature of the benefits is as a sum certain of money - in other words, a property interest, and not the right to a series of future payments out of income to substitute for a legal duty of support. A beneficiary, upon the failure of the army or the life insurance company to pay the proceeds has the right to sue the company for the proceeds, whereas there is no right to make a claim against an insurance company for future payments.

B. RESPONDENT HAS/HAD NO LEGAL DUTY TO SUPPORT.

Central to Appellant's claim, either under waiver of 42 U.S.C. 659 or by statutory interpretation is the requirement that Respondent have a legal duty to support Appellant. Appellant has incorporated this fallacy into his Statement of Issues, which is inherently necessary for the success of his argument. In it he states "Do antiattachment provisions in federal statutes... prevent a Minnesota court from applying Minnesota's unfair hardship law in a dissolution action that **orders a beneficiary to support her husband** after dissolution from non-marital funds?" (Emphasis added) This is a false characterization as the decree never ordered Respondent to support Appellant.

In the decree dated September 28, 2009, findings of fact numbers 26, 27 &

28 (App. App. pg. A-4 & A-5) determined that the beneficiary funds were Respondent's property . The trial court, in its Memorandum attached to its January 28, 2009, order (App. App. pg. A-21) states "This Court awarded a portion of Petitioner's non-marital **property** to the Respondent..." (Emphasis added) In fact a distribution from Minnesota Statute §518.58, Subd. 2 is permitted only from non-marital property and the statutory provision is entitled "Award of non-marital property". The order amending the decree dated January 21, 2009, made reference only to the funds being Respondent's non-marital property and the award being from her non-marital property.

Quite simply, there is **no** order requiring Respondent to support Appellant. This lack of a legal duty to support is doubly clear in that there was a specific waiver of any claim of maintenance by both parties at trial. (App. App. pg. A-3 #19) (Trans. pp 5, 8 & 10) Under Minnesota Statute §518C.101(c) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support. There clearly is no such duty of support here. As discussed in Lanier, Id., the law imposes a duty of a spouse to support another spouse, so long as they are married. Such an obligation ends upon their divorce. The concept of maintenance or, formerly alimony, was to substitute a legal duty of support to provide a substitute for the marital obligation of spousal support where a party is

in need and the other party has sufficient earnings to provide for him/herself and to contribute to the needs of the other. In this case the parties waived maintenance because of the lack of ability for either party to contribute to the other. (Trans. pg 5) The Appellant had about $600 in income and expense and the Respondent, who had custody of a teenage boy, was off work on disability with job earnings of $1,100 and expense of $2,000+ per month. (App. App. pg. 3)

The Appellant seeks to create a legal mythical duty of "family support" which he claims is something created because Minnesota Statute §518.58, Subd. 2 gives the court authority to look at the needs of a party, weigh his/her hardship and equitably grant a property right in the non-marital property of the other party. He reasons that since this is an equitable transfer to meet the needs of a party it is transformed from a property division, as it is clearly referred to and defined in the statute, into what he terms "family support" (and repeats that reference some 30 time in his brief). In essence it becomes a common law maintenence, where, in Minnesota, the common law has not existed for many years.

It is a term which is not applicable in the law and which he uses to avoid the reality that Appellant waived all claim of spousal support by waiving, in his counsel's presence and in open court his right to claim any support from the Respondent . (Trans. pp 3, 10) Minnesota law has child support, spousal maintenance or just maintenance, and occasionally spousal support. It does not

have a legal duty known as "family support", and one cannot be created out of inferences and assumptions in order to meet a part of the test used in federal preemption veteran disability cases. Finally this is an issue which was not presented to the trial court, nor to the appellate court, and should not be raised here.

C. FEDERAL WAIVER OF PREEMPTION. Appellant argues that the U.S. Supreme Court suggests in Wissner, Id. that the provisions of 38 U.S.C. 1970 (g) and 38 U.S.C 5301(a)(1) should be limited saying "... it would be appropriate for an exception to apply in cases involving family support obligations." (App. Brief pg. 20) He argues this to advance his theory that by implication family support negates the preemption of §518.58 Subd. 2.

This is a wasted argument as congress has already waived any preemption of federal law for child support and maintenance owed by a service member employee in 42 U.S.C. 659 (a). However this provides for withholding from an obligor's U.S. government wages, including the armed services, for child support and for alimony as provided under state law. 42 U.S.C. 659 (i) 3 (A) provides

> "The term 'alimony', ...when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse...". It further provides in 3 (B) as exceptions:
>
> (i) any child support; or
>
> (ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with

> any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

It clearly was the intent of Congress was that the anti-attachment provisions remain effective as to **property** divisions as the U.S. Supreme Court had determined in Wissneer, Id., Ridgeway, Id. and Hisquierdo, Id. as they had the opportunity to include such payments in the waiver but did not.

II. **PRESENTATION TO THE TRIAL COURT.** Appellant appears to also forward an argument that Respondent did not present the issue of preemption to the trial court. This is an issue of jurisdiction. The trial court is without power or authority to order an invasion of death gratuity or SGLI benefits, "...since our decision in M'cCulloch v. Maryland, 17 U.S. (4 Wheat) 316, 427. 4 L.Ed. 579 (1819), it has been settled that state law that conflicts with federal law is 'without effect'. Maryland v. Louisianna, 451 U.S. 725, 736, 101 S. Ct. 2114 , 2118, 68 L.Ed. 576 (1981)." Cipollone v. Leggitt Group, Inc., 505 U.S. 504, 120 L. Ed. 2nd 407. The issue of jurisdiction may be asserted at any point in the litigation and the presentation of the issue in a post trial motion is permitted. Respondent definitely presented the issue of lack of jurisdiction to the trial court. (App. App. pp. A-10, A-11)

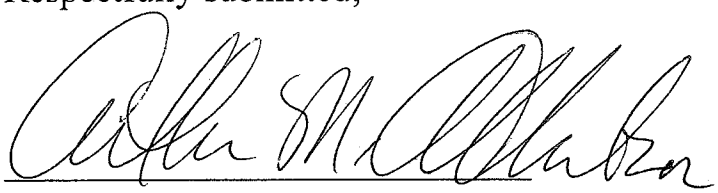
III. CLAIM THAT LEVI DID NOT INTEND THAT RESPONDENT SHOULD BE HIS SOLE BENIFICIARY. Although not raised as an issue,

Appellant also appears to argue the lack of intent of the service member Levi Angell to grant sole beneficiary status to Respondent. This was argued without success to the Appellate Court which discussed and found against Appellant's claim based upon clear case law including Whitaker v. 3M Co., 764 N.W.2d 631, 640 (Minn. App. 2009) and Lanier v. Traub, 934 F.2d 287, 289 (11th Cir. 1991). Angell v. Angell, 777 N.W.2d 32 (Minn. App. 2009) It is absolutely clear that Levi named Respondent as his sole beneficiary. (App. pg. 1)

CONCLUSION

Based upon the facts and law, the Respondent owed no duty of support to the Appellant and the award of $150,000 by the trial court to the Appellant was a property division out of Respondent's non-marital property from the death gratuity and SGLI benefits received by her. As such the award was preempted by federal law and the trial court had no jurisdiction to make such an award. This issue was presented to the trial court and is properly before the court now. The designation by Levi Angell of Respondent as his sole beneficiary is not subject to litigation in this court at this time. Respondent is the sole beneficiary of Levi Angell's death gratuity and SGLI benefits and these benefits are her non-marital property.

Respectfully submitted;



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