

## COA Opinion: A default divorce judgment can waive rights to retirement plan distributions

27. June 2011 By Nicole Mazzocco

In *Estate of Reed v Reed*, No. 297528, the Michigan Court of Appeals affirmed the trial court's order that Mae Lynn Reed turn over the proceeds she received from the retirement account of her ex-husband, Daren Reed (decedent), to his Estate, holding that the couple's default divorce judgment waived Ms. Reed's rights to the decedent's retirement accounts.

The dispute arose out of a default divorce judgment following five years of marriage. After the decedent filed for divorce, Ms. Reed failed to respond to numerous pleadings obligating her to respond. Eventually the trial court entered a default divorce judgment containing language awarding each party their own retirement accounts with distribution upon death payable to their respective children. The judgment also asked each party to change their accounts' beneficiary designations to make clear that their ex-spouse had no claim to the funds. When the decedent died, he had not made such a change and Ms. Reed remained a named beneficiary. Accordingly, his employer's 401(k) plan administrator dispersed nearly \$150,000 to Ms. Reed leading to the decedent's adult children bringing suit seeking to have the proceeds returned to the Estate.

Ms. Reed argued that, since she remained a named beneficiary on the decedent's retirement plan, the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, preempted state waiver law and required distribution of funds to her. The Michigan Court of Appeals relied on two prior Michigan court opinions to reject Ms. Reed's claim. In *MacInnes v MacInnes*, 260 Mich App 280, 285-287, 677 NW2d 889 (2004), the same court had held that "ERISA does not preempt an explicit waiver" and that "because ERISA is silent on what constitutes a valid waiver of interest, the courts must turn to federal common law and state law to fill the gap." Similarly, the Michigan Supreme Court held in a divorce dispute that whether an ex-spouse retains an interest in a retirement account is an "issue . . . governed exclusively by Michigan law." *Sweebe v Sweebe*, 474 Mich 151, 155, 712 NW2d 708 (2006). As such, the ERISA rules regarding named beneficiaries did not preempt Michigan waiver law.

The Michigan Court of Appeals then decided that Ms. Reed had waived her rights to the decedent's retirement account by the default divorce judgment. While Ms. Reed never expressly consented to the judgment, her lack of action bound her to the divorce decree. The opinion details repeated missed opportunities—proposed judgment of divorce, affidavit, default, entry of default, notice of hearing, or even a post-judgment request to set aside the judgment—when Ms. Reed choose not to act. Such a course of conduct indicates an intention to agree to the judgment through an implied waiver to the decree. On appeal, a default judgment would only be set aside upon clear showing of abuse. Since no abuse was present, the Michigan Court of Appeals held that Ms. Reed waiver of the decedent's retirement accounts was valid and enforceable, thus affirming the trial court's order to return the funds to the decedent's Estate.