[J-92A-2018 AND J-92B-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

IN RE: ESTATE OF MICHAEL J. EASTERDAY, DECEASED APPEAL OF: MATTHEW M. EASTERDAY	No. 15 MAP 2018 Appeal from the Order of the Superior Court at Nos. 2911 & 2946 EDA 2016 and 2911 EDA 2016 dated October 3, 2017 Affirming the March 22, 2016 Order of Montgomery County Court of Common Pleas, Orphans' Court, entered at No. 46-2014-x3615 ARGUED: December 4, 2018
IN RE: ESTATE OF MICHAEL J. EASTERDAY, DECEASED CROSS APPEAL OF: COLLEEN A. EASTERDAY	No. 16 MAP 2018 Appeal from the Order of the Superior Court at No. 2946 EDA 2016 and 2911 EDA 2016 dated October 3, 2017 Affirming the March 22, 2016 Order of Montgomery County Court of Common Pleas, Orphans' Court, entered at No. 46-2014-x3615 ARGUED: December 4, 2018

OPINION

JUSTICE DONOHUE DECIDED: June 18, 2019

In these cross-appeals, we consider two issues of first impression. The first issue involves the impact of a pending divorce action on a spouse's entitlement to life insurance benefits, and specifically the interplay between provisions of the Divorce Code, 23 Pa.C.S. §§ 3301-3904, the Probate, Estates, and Fiduciaries Code, 20 Pa.C.S. § 101-8815 ("PEF Code"), and Rule of Civil Procedure 1920.42(b). The second issue asks whether ERISA[1] preempts a state law claim to enforce a contractual waiver to receive pension benefits by the named beneficiary. For the reasons detailed herein, we affirm the decision of the Superior Court with regard to both issues.

Michael J. Easterday ("Decedent") and Colleen A. Easterday ("Easterday") married in 2004. Prior to marriage, Decedent worked for Federal Express and became a participant in a pension plan established by this former employer. He also purchased a $250,000 life insurance policy. Decedent designated Easterday the beneficiary of both during their marriage. The parties separated on July 12, 2013. On August 13, 2013, Easterday filed for a divorce in Lancaster County under section 3301(c) of the Divorce Code, which provides for a divorce by mutual consent of the parties. She and Decedent subsequently settled their economic claims in a property settlement agreement ("PSA") executed

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[1] Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001-1461.

on December 5, 2013. Critical to our inquiry here, the PSA included the following provision:

> Husband and Wife shall each retain 100% of their respective stocks, pensions, retirement benefits, profit sharing plans, deferred compensation plans, etc. and shall execute whatever documents necessary to effectuate this agreement.

Property Settlement Agreement, 12/5/2013, ¶ 11. The PSA further provided that its terms were to remain in effect unless the parties modified or terminated the agreement in writing.[2] *Id.* ¶ 14.

Section 3301(c), permits the entry of a divorce decree where three conditions are met: at least ninety days have elapsed since the filing of the divorce complaint; the parties allege that their marriage is irretrievably broken; and the parties file affidavits consenting to the divorce (hereinafter "affidavits of consent"). *See* 23 Pa.C.S. § 3301(c). Pursuant to Rule of Civil Procedure 1920.42(b)(2), these affidavits of consent must be filed within thirty days of execution in order to be valid. Pa.R.C.P. 1920.42(b)(2).

Easterday's attorney prepared the affidavits of consent for both parties to sign.[3]Decedent signed his affidavit on November 30, 2013 and returned it to Easterday. Easterday held Decedent's affidavit until mid-January, at which time she executed her affidavit

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[2] Decedent was already receiving his pension benefits at the time the parties executed the PSA.

[3] Decedent was unrepresented in the divorce proceedings.

and returned them both to her attorney. On January 14, 2014, Easterday's counsel sent the affidavits to the prothonotary. Shortly thereafter, the prothonotary returned Decedent's affidavit of consent to Easterday's counsel, explaining that it was invalid because it was not filed within thirty days of the date of execution. In a letter dated February 6, 2014, Easterday's counsel asked Decedent to execute another affidavit of consent and return it for filing.

Decedent did not return a signed affidavit before he died, intestate, on September 21, 2014. Three days later, Easterday withdrew the divorce action. On October 4, 2014, Easterday applied for the proceeds of Decedent's $250,000 life insurance policy, in which she was named the beneficiary, and in December of the same year, she began to receive Decedent's pension benefits.

In the interim, on November 17, 2014, Decedent's son and executor of his estate, Matthew Easterday, filed a petition in orphans' court to compel Easterday to turn over the life insurance proceeds and all pension benefits. It was the Estate's position that the designation of Easterday as life insurance beneficiary was nullified pursuant to section 6111.2 of the PEF Code, which provides that where a spouse is named as the beneficiary and the policy holder dies during the course of divorce proceedings, the designation of the spouse is ineffective if grounds for divorce have been established. *See* 20 Pa.C.S. § 6111.2.[4] With regard to

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[4] Section 6111.2 of the PEF Code provides:

§ 6111.2. Effect of divorce or pending divorce on designation of beneficiaries

the pension benefits, the Estate argued that Easterday waived her right thereto in the parties' PSA.

(a) Applicability. -- This section is applicable if an individual:

(1) is domiciled in this Commonwealth;

(2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either:

(i) at the time of the individual's death is divorced from the spouse; or

(ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) **and grounds have been established as provided in 23 Pa.C.S. § 3323(g)**.

(b) General rule. -- Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order;

(3) a written contract between the individual and the spouse or former spouse; or

(4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.

20 Pa.C.S. § 6111.2 (a), (b) (emphasis added).

In response, Easterday claimed that her waiver in the PSA to the receipt of Decedent's pension benefits was not valid because Decedent never took any steps to remove her as the named beneficiary. She also argued that because Decedent did not file a valid affidavit of consent, section 6111.2 of the PEF Code did not divest her of her rights as a surviving spouse. Easterday argued that Decedent did not take either of these actions because they were in the midst of reconciling at the time of his death.[5]

After a hearing, the orphans' court found that section 6111.2 was not implicated because Easterday withdrew the divorce complaint after Decedent's death, thereby nullifying the only basis for the matter to proceed under the Divorce Code. Orphans' Court Opinion, 3/22/2016, at 5-6. The orphans' court relied on *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014). In that case, the Superior Court ruled that section 3323(d.1) of the Divorce Code (which provides that parties' economic rights shall be determined under the Divorce Code where a party to a divorce action dies before the divorce decree is issued but after grounds for divorce have been established) is not mandatory in its application. As such, it concluded that the surviving spouse may still elect to discontinue the action, as provided by Rule of Civil Procedure 229, and proceed under the

[5] To support this claim, Easterday offered into evidence copies of text messages, emails, and other correspondence between Decedent and Easterday which, in her view, evidenced Decedent's desire that they reconcile and that she receive his pension and life insurance proceeds.

PEF Code. *See Tosi*, 85 A.3d at 588-89. It therefore refused to apply section 6111.2. Nonetheless, the orphans' court determined that the parties' PSA controlled the disposition of the pension and insurance proceeds. The trial court reasoned that because Easterday waived her right to Decedent's pension benefits in the PSA, she was not entitled to them. Orphans' Court Opinion, 3/22/2016, at 7-8. It further concluded that because the PSA was silent as to Decedent's insurance policy and Decedent never removed Easterday as the named beneficiary thereto, Easterday was entitled to those proceeds. *Id.* Both parties appealed.

The Estate challenged the orphans' court's reliance on *Tosi* and its resultant conclusion that section 6111.2 of the PEF Code did not apply in the present case. The Superior Court agreed, explaining that after *Tosi* was decided, this Court promulgated Rule of Civil Procedure 1920.17(d) and specifically disapproved of *Tosi.* Rule 1920.17(d) provides that when a party dies during the pendency of a divorce action and grounds for divorce have been established but no decree has issued, "neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code." Pa.R.C.P. No. 1920.17(d). The note to this rule expressly addresses the *Tosi* decision, providing that "[t]o the extent that *Tosi* [] holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of

the defendant after grounds for divorce have been established, it is superseded." Pa.R.C.P. 1920.17(d), Note.

The Superior Court acknowledged that Rule 1920.17 and the Note thereto conclusively establish this Court's "disapproval of the broad effect of *Tosi*, which effectively gave any surviving spouse the unilateral power to determine whether the assets . . . would be distributed under the Divorce Code or the PEF Code[.]" *In re Estate of Easterday*, 171 A.3d 911, 915 (Pa. Super. 2017). Although this Court addressed only section 3323(d.1) of the Divorce Code in the Note to Rule 1920.17(d), the Superior Court concluded that our adoption of this rule signaled a "clear indication that [this] Court would look with similar disfavor" on an interpretation of section 6111.2 of the PEF Code that would allow a surviving spouse to unilaterally determine the manner of asset distribution. *Id.*

With the orphans' court's reliance on *Tosi* conclusively rejected, the Superior Court considered whether section 6111.2 invalidates Easterday's designation as beneficiary of the insurance policy. It decided that the answer turned on whether grounds for divorce had been established, as section 6111.2 only applies under such circumstances. *Id.* at 915-16.

Section 3323(g) of the Divorce Code defines "grounds for divorce." Relevant to the present dispute, it provides that grounds for a divorce under section 3301(c) are established where both parties have filed their affidavits of consent. 23 Pa.C.S. § 3323(g)(2). The Superior Court then recognized that Rule 1920.42(b)

provides that for a divorce under section 3301(c), affidavits of consent must be filed (1) at least ninety days after the filing and service of the divorce complaint and (2) within thirty days of execution of their execution. *Easterday*, 171 A.3d at 916. Because Decedent's affidavit was executed more than thirty days after its execution, Easterday argued that it was invalid pursuant to Rule 1920.42(b)(2). *Id.* Consequently, she contended, grounds for divorce per section 3323(g) were never established and section 6111.2 of the PEF Code could not apply. *Id.*

The Estate, conversely, argued that compliance with Rule 1920.42(b) is necessary only for the issuance of a divorce decree by mutual consent. *Id.* Because neither section 3323(g) nor section 6111.2 of the PEF Code relate to the issuance of a divorce decree, the Estate claimed, the "time limitations" contained in Rule 1920.42(b) do not apply for their purposes (i.e., the manner of distribution of assets when a party to a divorce dies prior to the entry of a divorce decree). *Id.* Even if the court were to find that the thirty-day requirement applied, the Estate argued that strict compliance therewith should not be required. *Id.* Claiming that in another instance, the Superior Court found untimely affidavits of consent sufficient to establish grounds for divorce under section 3323(g) for purposes of a request for bifurcation, the Estate urged the Superior Court to likewise find that the technical violation of this procedural rule did not invalidate Decedent's affidavit of consent for purposes of determining the

applicability of section 6111.2 of the PEF Code.[6] *Id.* (citing *Bonawits v. Bonawits*, 907 A.2d 611 (Pa. Super. 2006)).

The Superior Court disagreed with the Estate. It began from the premise that because the legislature has declared the protection and preservation of the family unit is to be of "paramount public concern," the General Assembly prohibited the possibility of a default judgment in the context of divorce. *Id.* In keeping with this "seriousness with which the dissolution of marriage is to be treated," the Superior Court reasoned that Rule 1920.42(b)(2)'s requirement that affidavits of consent be filed within thirty days of execution ensures that the parties demonstrate a present intent to be divorced. *Id.* at 917. For this reason, the court concluded, stale affidavits are not accepted for the entry of a decree. *Id.*

The Superior Court further concluded that where a death occurs during a divorce action, the question of whether grounds for divorce have been established is vital because it determines whether the parties' economic claims will proceed under the Divorce Code or the PEF Code.[7] In light of the "added significance" that

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[6] The Estate further argued that Easterday was judicially estopped from claiming that Decedent's affidavit of consent was invalid because she relied upon its validity when she file a praecipe to transmit the record. *Easterday*, 171 A.3d at 916. The Estate does not advance this argument in its appeal before this Court.

[7] This is because section 3323(d.1) effectively treats grounds for divorce as the equivalent of a divorce decree where the death

the establishment of grounds for divorce acquires in the case of the death of a party, "it is reasonable to conclude that the legislature intended to require compliance with the same procedural requirements precedent to the entry of a divorce decree. Consequently, . . . a 'stale' affidavit of consent is insufficient to establish grounds under section 3323(g)." *Id.*

The Superior Court was not swayed by the Estate's claim that strict compliance with Rule 1920.42(b)(2)'s thirty-day requirement should not be required in situations such as this, where establishment of grounds for divorce is necessary for a purpose other than the entry of a divorce decree. Conceding that this argument might be persuasive under other facts, the Superior Court found that because Decedent never remedied his defective affidavit, and in fact, never filed an affidavit before his death, "waiving this requirement would not effectuate justice[.]" *Id.* It noted that as Decedent did not file an affidavit of consent in the months between the time of Easterday's counsel's letter in February of 2014 and his death in September of the same year, "it is far from clear that, at the time of his death, Decedent possessed a present intent to divorce, such that we should excuse the staleness of his affidavit of consent and conclude that grounds were established." *Id.* at 918. This determination foreclosed the applicability of section 6111.2, and so the Superior Court found that

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of a party renders the entry of such decree impossible. *Easterday*, 171 A.3d at 917.

the insurance proceeds were properly awarded to Easterday, as she was the named beneficiary thereof. *Id.*

Having resolved the Estate's claim, the Superior Court turned to the issue raised in Easterday's cross-appeal: whether the orphans' court erred in finding that the Estate is entitled to the pension benefits. Finding no error in the orphans' court's determination, the Superior Court acknowledged that property settlement agreements are subject to the law governing contracts; must be interpreted as written; and only where a term is ambiguous may a court consider extrinsic evidence to aid in resolving the ambiguity. *Id.* at 919 (citing *Mazurek v. Russell*, 96 A.3d 372, 378 (Pa. Super. 2014)). The court found the PSA's waiver of pension benefits unambiguous and valid. *Id.*

The Superior Court rejected Easterday's claim that ERISA preempts state contract law in so far as it relates to Decedent's pension benefits. Easterday relied on *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001), in which the United States Supreme Court found preempted a state statute that provided for the automatic revocation, upon divorce, of the designation of a spouse as beneficiary. The Superior Court explained that the paramount goal underlying ERISA is the uniform and efficient administration of benefit plans, and for that reason state statutes that interfere with this goal are preempted. *Easterday*, 171 A.2d at 920. However, the Superior Court also recognized that subsequent cases have established that preemption is limited to furthering this goal (i.e., streamlining the administration of benefit plans), such that preemption

does not extend to state law contract claims to recover benefits after their payment to the named beneficiary by a plan administrator. *Id.* (discussing *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 555 U.S. 285 (2009), and *Estate of Kensinger v. URL Pharma*, 674 F.3d 131 (3d. Cir. 2012)).

Both parties filed petitions for allowance of appeal. We granted review of the following issue presented by the Estate:

> Did the Superior Court decision deviate from well-established principles of statutory construction when the lower court held that the General Assembly intended to incorporate the thirty-day procedural requirement of Pa.R.C.P. 1920.42, with regard to the filing of affidavits of consent in divorce actions, into 20 Pa.C.S. § 6111.2, where the language of section is clear and unambiguous and does not contain such time limitation?

Supreme Court Order, 4/17/2018. On cross-appeal, we granted review of the following issue presented by Easterday:

> Under an employee benefit plan governed by [ERISA], after a plan administrator distributes funds to the named beneficiary in accordance with the plan documents, can an estate attempt to recover those funds directly from the beneficiary pursuant to a contractual waiver of those benefits contained in a property settlement agreement?

Id.

We first turn our attention to the Estate's appeal. It contends that the Superior Court erred by relying upon the rule-based timing requirements for the filing of affidavits of consent when deciding that section 6111.2 of the PEF Code did not apply to invalidate Decedent's designation of Easterday as the beneficiary of his life insurance policy. We begin with a review of the relevant statutory provisions and related rules.

On April 3, 1980, the General Assembly enacted the Divorce Code, which included, for the first time, provisions permitting the entry of no-fault divorces. Section 3301(c)(1) of the Divorce Code states:

> **§ 3301. Grounds for divorce**
>
> (c) Mutual consent. --
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> > (1) The court may grant a divorce where it is alleged that the marriage is irretrievably broken and [ninety] days have elapsed from the date of commencement of an action under this part and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

23 Pa.C.S. § 3301(c)(1). On July 1, 1980, this Court promulgated new procedural rules to implement the Divorce Code. Included in these new rules was Rule 1920.42, which authorizes the trial court to enter a divorce decree pursuant to sections 3301(c) and (d)(1) of the Divorce Code without need for further proceedings when certain filing and notice requirements have been met by the parties. *See* Pa.R.C.P. 1920.42. Subsection

(b)(2) of that rule provides that the affidavit referenced in section 3301(c) "must have been executed . . . within thirty days or more after both filing and service of the complaint." Pa.R.C.P. 1920.42(b)(2).

In 2004, the General Assembly enacted section 3323 of the Divorce Code specifically addressing the scenario when one spouse dies during the course of divorce proceedings. Section 3323 provides, in relevant part, as follows:

> **(d.1) Death of a party**. -- in the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties' economic rights and obligations arising under the marriage shall be determined under this part rather than under [the PEF Code].
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> * * *
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> **(g) Grounds established**. -- For purposes of subsections (c.1) and (d.1), grounds are established as follows:
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> * * *
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> (2) In the case of an action for divorce under section 3301(c), both parties have filed affidavits of consent or, if the presumption in section 3301(c)(2) is established, one party has filed an affidavit of consent.

23 Pa.C.S. § 3323(d.1),(g)(2).[8]

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[8] Prior to 2004, it had long been the law of this Commonwealth that if a party dies while a divorce action was pending, the

As discussed, Decedent's affidavit of consent was executed more than thirty days prior to the date it was submitted for filing (and rejected). The Superior Court ruled that because the local Prothonotary rejected the filing of Decedent's affidavit of consent due to a lack of compliance with Rule 1920.42(b)(2)'s thirty-day validity requirement, grounds for divorce had not been established in accordance with section 3323(g)(2) of the Divorce Code at the time of Decedent's death. Because the Decedent's affidavit of consent was not filed, section 6111.2 of the PEF Code did not invalidate Easterday's designation as the beneficiary of Decedent's life insurance policy.

The Estate builds its argument on the principle that where the terms of a statute are clear and free from ambiguity, "the letter of it is not to be disregarded under the pretext of pursuing its spirit[,]" and that courts may not add language to a statute "which the Legislature may well have omitted by design and

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divorce abated and the economic claims that would have been adjudicated under the Divorce Code were subject to PEF Code and the laws governing probate and intestate succession. *See Drumheller v. Marcello*, 532 A.2d 807, 808 (Pa. 1987) ("An action in divorce is personal to the parties and, upon the death of either party, the action necessarily dies."); *Haviland v. Haviland*, 481 A.2d 1355, 1356-57 (Pa. Super. 1984) (holding rule that divorce action abated upon death of husband was not changed by divorce code). This created the possibility that although spouses may be in the process of dividing their marital estate, a surviving spouse could receive an unintended windfall (to the detriment of the deceased spouse's estate and natural objects of his or her bounty) by not only laying claim to all marital property but also exercising the right to the elective share of one-third of decedent's non-marital property. See 20 Pa.C.S. § 2203.

intent[.]" Estate's Brief at 14 (citing 1 Pa.C.S. § 1921(b) and *Pennsylvania Human Relations Comm'n v. Mars Cmty. Boys Baseball Ass'n*, 410 A.2d 1246 (Pa. 1980)). The Estate argues that by its clear and unambiguous terms, section 3323(g) contains no requirement that an affidavit of consent must be filed within thirty days of execution in order to establish grounds for divorce under section 3301(c); as such, it concludes that the Superior Court erred by reading that requirement into Rule 1920.42(b)(2). In other words, the Estate claims that the Superior Court, by requiring compliance with Rule 1920.42(b)(2), impermissibly altered section 3323(g)(2)'s clear definition of grounds for a divorce under section 3301(c). Estate's Brief at 14-16. If the General Assembly had intended grounds for a section 3301(c) divorce as defined in section 3323(g)(2) to include Rule 1920.42(b)(2)'s requirement, the Estate argues, the General Assembly explicitly would have included the same a requirement in the text of section 3323(g)(2) or, alternatively, employed language indicating that the affidavits must be filed "in accordance with law" or "as provided by rule." *Id.* at 18-19. Echoing the argument it made before the Superior Court, the Estate claims that while the Rules of Civil Procedure applicable to divorce actions require that affidavits of consent be filed within thirty days of execution for the issuance of a divorce decree without a hearing, the Rules do not similarly impose any timing requirement on affidavits for the purpose of establishing grounds for divorce. *Id.* at 18.

Easterday responds that there was no error in the Superior Court's analysis resulting in its conclusion that section 6111.2 of the PEF Code does not apply in this case, as the relevant statutory provisions and Rule 1920.42(b)(2) are clear. Easterday's Brief at 19-20.

As discussed above, section 3323(d.1) and (g) were enacted specifically to alleviate an inequity that could arise when a party died during the course of a divorce action. In practical effect, sections 3323(d.1) and (g) ensure that where the parties have met the necessary requirements for the issuance of a divorce decree prior to a party's death, the death will not remove the adjudication of economic claims from the divorce action. For that reason, it is unsurprising that the requirements of section 3323(g)(2) are identical to the requirements for a divorce pursuant to section 3301(c), which defines the criteria for a divorce upon the mutual consent of the parties. Section 3323(g)(2) is, in essence, no more than a restatement of section 3301(c), as both require that the parties have filed affidavits of consent.

Marriage and divorce are traditionally regulated by the states. 27A C.J.S. *Divorce* § 22 (2019). Accordingly, the various state legislatures have the authority to prescribe the available grounds for divorce and are cabined only by constitutional limitations. *Id.* Our General Assembly exercised its authority in this regard when it enacted the Divorce Code in 1980. This sweeping reform brought no-fault divorce to the Commonwealth, which for the first time allowed for dissolution of a marriage "in a manner that recognizes the prior existence of the family as both an economic and

a social unit, and that emphasizes the future welfare of each member of the family, instead of in a manner that identifies and punishes guilty parties." *Gordon v. Gordon*, 439 A.2d 683, 693 (Pa. Super. 1981). In furtherance of that goal, the General Assembly enacted section 3301(c), a provision that allowed parties to obtain a divorce by mutual consent where the following minimal criteria are met: (1) there is an allegation that the marriage is irretrievably broken and (2) the parties file of [sic] affidavits of consent no sooner than ninety days after the filing of the complaint. 23 Pa.C.S. § 3301(c).

With the enactment of a new statutory scheme like the Divorce Code, a need arises for procedural rules to implement the new laws. This Court has exclusive authority to promulgate rules that govern the procedure in the courts of this Commonwealth. *Payne v. Commonwealth Dep't of Corr.*, 871 A.2d 795, 800-01 (Pa. 2005). This authority emanates from Article 5, Section 10 of our Constitution, which provides that

> [t]he Supreme Court shall **have the power to prescribe general rules governing practice, procedure and the conduct of all courts**, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, . . . and the administration of all courts and supervision of all officers of the Judicial Branch. . . . All laws shall be suspended to the

> extent that they are inconsistent with rules prescribed under these provisions.

Pa. Const. art. V, § 10 (emphasis added). It is thus clear that while the General Assembly alone has the authority to create laws, this Court alone has the authority to prescribe the procedures by which those laws are enforced though the judiciary. As we have previously emphasized, the General Assembly creates and defines rights, and this Court then establishes the mechanisms by which those rights are implemented and vindicated. *Payne*, 871 A.2d at 801.

When the General Assembly enacted a new Divorce Code in 1980, we exercised our rulemaking authority, drafting a new set of rules to allow for the implementation of the Divorce Code's provisions. *Jakstys v. Jakstys*, 474 A.2d 45, 48 (Pa. Super. 1984); *see also* Rules of Civil Procedure, Preface to Rules 1920.1-1920.92, Explanatory Cmt. We crafted the terms of this rule to further the General Assembly's laudable goal of providing parties that mutually consent to a divorce with a "detour around the . . . delay, conflict, discord, and mounting legal fees" that can often accompany proceedings in an adversarial judicial system. *Perlberger v. Perlberger*, 626 A.2d 1186, 1195 (Pa. Super. 1993).[9] Among these new rules was Rule 1920.42(b)(2), providing that affidavits of consent must

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[9] The Estate does not challenge our authority to enact Rule 1920.42(b), nor does it challenge the content thereof as an improper exercise of this Court's authority to promulgate procedural rules. As set forth above, the Estate challenges only the Superior Court's application of the Rule in its particular circumstances.

be filed within thirty days of execution in order to trigger the procedure by which the court would enter a divorce decree by mutual consent without a hearing or further proceedings. *See Rueckert v. Rueckert*, 20 Pa. D. & C.3d 191, 193 (Pa. Com. Pl. 1981) (explaining that consent affidavits required for divorce "are limited by Pa.R.C.P. 1920.42 in that they must have been executed within [thirty] days of their filing").[10] By requiring that an affidavit of consent be executed within thirty days of its filing, Rule 1920.42(b)(2) provides, in essence, a "validity requirement" – ensuring that the affiants' acknowledgement of consent to divorce reflect their current intentions.

In the decades since our promulgation of Rule 1920.42(b), the General Assembly has amended various provisions of the Divorce Code on multiple occasions, but at no time has it amended any provision in a manner that would either eliminate or in any respect alter this Court's inclusion of a timing requirement for the signing of an affidavit of consent (i.e., within thirty days of filing) to effectuate a no-fault divorce under section 3301(c). The Superior Court has ruled on multiple occasions that "[t]he procedural requirements imposed by the Rules of Civil Procedure must be satisfied in order to endow the court with the authority to enter the

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[10] At the time of its initial enactment in 1980, the thirty-day filing requirement for an affidavit of consent to be valid was found in subsection (a)(2)(ii) of the Rule. *See* 10 Pa. Bul. 2967, 2969 (July 12, 1980). In 1983, the substance of the Rule was reorganized and the thirty-day validity requirement was recast into subsection (b)(2), where it has remained. *See* 13 Pa. Bul. 677, 679 (Feb. 12, 1983).

decree in divorce." *Lazaric v. Lazaric*, 818 A.2d 523, 525 (Pa. Super. 2003); *Creach v. Creach*, 522 A.2d 1133, 1136 (Pa. Super. 1987). We presume that when enacting legislation, the General Assembly is aware of the existing law. *Commonwealth v. Ramos*, 83 A.3d 86, 91 (Pa. 2013); *White Deer Twp. v. Napp*, 985 A.2d 745, 762 (Pa. 2009); *Commonwealth v. McClintic*, 909 A.2d 1241, 1251-52 (Pa. 2006); *Knox v. Bd. of Sch. Dir. of Susquenita Sch. Dist.*, 888 A.2d 640, 652 (Pa. 2005). Thus, here we presume that the General Assembly was aware of Rule 1920.42(b)'s thirty-day validity requirement when it enacted section 3323(g)(2) in 2004 requiring the filing of affidavits of consent to establish grounds for a mutual consent divorce. At the time of section 3323(g)(2)'s enactment, Rule 1920.42(b)(2)'s validity requirement had been in effect for nearly twenty-five years. Section 3323(g)(2) is substantively identical to section 3301(c), with only minor discrepancies in phrasing, and, as discussed above, the aim of section 3323(g)(2) is virtually identical to the aim of section 3301(c) – to ascertain the certainty of the parties' present intent to divorce at the time of the death of a spouse – as reflected by the fact that both spouses have executed affidavits of consent within thirty days of their filing.

Thus, it is significant, and in fact dispositive here, that when enacting section 3323(g)(2), the General Assembly offered no indication that it intended to eliminate or alter Rule 1920.42(b)(2)'s thirty-day validity requirement with respect to application of section 3323(d.1)'s instructions when a spouse dies during the

course of divorce proceedings. The General Assembly included no language in section 3323(g)(2) to signal an end to the necessity of compliance with Rule 1920.42(b)(2), clearly reflecting the General Assembly's intent that for purposes of application of section 3323(d.1) upon the death of a spouse, the decedent's affidavit of consent reflected a present consent to divorce at the time of his or her death. Section 3323(g)(2) merely provides that grounds for divorce are established when affidavits of consent are "filed," without any suggestion that the existing procedural rules for such filings were to be eliminated or altered in any respect. Rule 1920.42(b)(2)'s validity requirement is equally important to the granting of a section 3301(c) mutual consent divorce and to the determination of economic rights and obligations under section 3323(d.1) when a spouse dies during the course of divorce proceedings, as both circumstances require the filing of affidavits of consent reflecting the present intentions of the parties to divorce. In this regard, we further note that the General Assembly has not effectuated any amendment to section 3323(g)(2) since its enactment fifteen years ago.

Accordingly, we find no merit in the Estate's contention that the Superior Court "read into" section 3323(g)(2) a timing requirement that the General Assembly did not intend. Rather, the Superior Court merely applied section 3323(g)(2) in accordance with its express terms and our accompanying long-standing procedural rule. In this case, the lack of compliance with section 3323(g)(2) is clear, as no affidavit of

consent for Decedent was ever filed with the lower court. The Prothonotary, upon receipt of an affidavit of consent signed by Decedent, refused to file it and instead, without objection by either party, returned it to Easterday's counsel based upon its failure to comply with Rule 1920.42(b)(2)'s thirty-day requirement. As such, grounds for divorce were not established prior to Decedent's death and thus, section 6111.2 of the PEF Code did not operate to revoke Easterday's designation at [sic] the beneficiary of Decedent's life insurance policy.

We now turn to Easterday's cross-appeal. As discussed, the PSA provided, inter alia, that Easterday would waive her right to participate in Decedent's pension benefits. We consider whether the Estate's action to recover the pension benefits paid to Easterday is preempted by ERISA. Easterday argues that ERISA must preempt enforcement of the PSA through the application of state contract law. In her view, to find otherwise would conflict with the underlying intent of ERISA; namely, to ensure that a surviving spouse receive the financial security that he or she was guaranteed by the designation as beneficiary. Easterday's Brief at 29; Easterday's Second Brief at 19-20. Citing *In re Estate of Paul J. Sauers*, 32 A.3d 1241 (Pa. 2011), Easterday points out that this Court declared statutes that removed ex-spouses as beneficiaries of ERISA-governed plans to be preempted by the federal law. Easterday's Brief at 27. She argues, without much

development, that it "logically follows" that state contract law is preempted as well. *Id.*[11]

The Estate responds that preemption is limited to laws that conflict with ERISA's control over employee benefit plans, and that a waiver of benefits made in a private agreement in no way conflicts with the administration of such plans. Estate's Second Brief at 12-13. The Estate draws our attention to the Third Circuit's decision in *Estate of Kensinger*, which concluded that such a waiver may be made in a contract and that preemption is not implicated with the application of state contract law. *Id.* at 13, 16-17.

ERISA protects against "the mismanagement of funds accumulated to finance employee benefits and the failure to pay employees benefits from accumulated funds." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016). Congress sought not only to protect these funds but also to reduce administrative and financial burdens attendant to employee benefit plans. *Kennedy*, 555 U.S. at 303.

Section 1144(a) of ERISA provides that the federal law "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" described therein. 29 U.S.C.A. § 1144(a). Despite the potential breadth of section 1144(a), the United States Supreme Court has held that the term "relate to" as used therein is not without limits.

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[11] Easterday expounds that in *Estate of Sauers*, this Court followed the high Court's decision in *Egelhoff v. Egelhoff*, 532 U.S. 151 (2001). We discuss these cases infra.

Gobeille, 136 S.Ct. at 943. Rather, whether a state law "relates to" a qualified employee benefit plan depends upon whether the state law impinges upon the objectives of ERISA, as well as its effect, if any, on ERISA-qualified plans. *Egelhoff*, 532 U.S. at 147; *In re Estate of Sauers*, 32 A.3d at 1250.

In *Egelhoff*, the husband died after divorce but before removing his ex-wife as the beneficiary of his life insurance policy and pension plan. His estate sued the ex-wife in state court, arguing that a Washington state law nearly identical to section 6111.2 of our PEF Code, discussed above, nullified her beneficiary status. *Egelhoff*, 532 U.S. at 144-45. Although the state courts roundly rejected the ex-spouse's preemption argument, the United States Supreme Court agreed with her. It explained (as discussed above) that whether a state law is preempted by ERISA depends on whether the state law intrudes on ERISA's core objectives and the extent of any effect the state law has on ERISA-governed plans. *Id.* at 147.

Applying this standard, the Supreme Court concluded that the state law at issue (the section 6111.2 cognate) related to ERISA plans for purposes of preemption because it required administrators to pay benefits to the beneficiaries chosen by state law rather than to those identified in the plan documents. *Id.* Thus, the state law ran contrary to various ERISA provisions, such as those requiring "that the fiduciary shall administer the plan 'in accordance with the documents and instruments governing the plan,' [by] making payments to a 'beneficiary' who is 'designated

by a participant, or by the terms of the plan.'" *Id.* (quoting 29 U.S.C. §§ 1002(8), 1104(a)(1)(D)). In a similar manner, the Supreme Court found another impermissible connection with ERISA plans, in that the law thwarted the core objective of nationally uniform plan administration scheme. "Uniformity is impossible," the Court reasoned, "if plans are subject to different legal obligations in different states." *Id.* at 148. For these reasons, it found the state law preempted.[12]

The high Court reaffirmed the core objectives of ERISA just a few years later in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 555 U.S. 285 (2009). There, the wife waived her right to the decedent's savings and investment plan ("SIP") pursuant to the terms of their divorce decree. Although the husband could have removed her as the named beneficiary, he failed to do so before he died. Upon the husband's death, the plan administrator paid the balance of the SIP account to the wife in conformity with the plan documents. His estate sued the plan administrator, arguing that the wife waived her right to the SIP funds. Although initially successful in the trial court, the Fifth Circuit reversed. The Supreme Court affirmed, but for reasons other than those relied on by the intermediate court.[13] Citing ERISA's requirements

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[12] In *Estate of Sauers*, this Court examined *Egelhoff* and concluded that section 6111.2 was preempted by ERISA. *Estate of Sauers*, 32 A.3d 1241, 1257 (Pa. 2011). *Egelhoff* does not address the issue presently before us concerning preemption of a common law claim to proceeds post distribution.

[13] The Fifth Circuit concluded that the wife's waiver was an impermissible alienation of her interest in the SIP proceeds, in

that all plans be established and maintained by a written instrument, and that plan administrators act strictly in accordance with the terms of the plan as written, the Supreme Court reiterated ERISA's paramount goal of establishing a uniform administrative scheme, with standardized procedures for the submission and processing of claims. *Id.* at 300-01 (discussing 29 U.S.C. §§ 1102(a)(1), 1102(b)(4), 1132(a)(1)(B)). Promoting "an uncomplicated rule" requiring adherence to plan documents serves ERISA's goals of "simple administration, avoiding double liability, and ensuring that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Id.* at 301 (quoting *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown,* 897 F.2d 275, 283 (C.A.7 1990) (Easterbrook, J., dissenting)). Thus, the wife's waiver impacted administration of the SIP because it "was . . . standing in the way of making payments simply by identifying the beneficiary specified in plan documents[.]" *Id.* at 303. Accordingly, the Court concluded that it was preempted and therefore ineffective. *Id.*

Notably for our purposes, the Court recognized the limits of its decision and left open the question of whether a party could seek to recover proceeds from a named beneficiary under state law after distribution by the plan administrator. *Id.* at 299 n.10. Only three years later, the Third Circuit entertained this very

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violation of ERISA's anti-alienation provision. *Kennedy*, 555 U.S. at 290. This provision is not at issue in the appeal presently before us, nor was it determinative in the high Court's ultimate disposition in *Kennedy*. *See id.* at 299-300.

question. William and Adele Kensinger were married when William designated Adele as the beneficiary of his employer-sponsored 401(k) plan. *Estate of Kensinger*, 674 F.3d at 132. The parties eventually divorced, and as part of their property settlement agreement, the Kensingers mutually agreed to waive any rights to the other's retirement and deferred savings accounts, including the aforementioned 401(k). *Id.* at 132-33. William died nine months after the divorce proceedings concluded, without having changed the beneficiary designation for his 401(k) account. A dispute arose as to who was entitled to the account's proceeds, and William's estate eventually filed an action against Adele and the plan administrator, seeking a declaration as to its rights to the account's proceeds.[14]

Adele moved for summary judgment based on *Kennedy.* Agreeing that it was bound by *Kennedy*, the district court found that the plan administrator was required to distribute the funds in 401(k) account to Adele, but further concluded that the estate could not attempt to recover the proceeds from her, as doing so would violate ERISA's objective of ensuring that "the named beneficiaries *actually* receive the benefits[.]" *Id.* at 134 (emphasis in the original).

The Third Circuit reversed. It disagreed with the the district court's conclusion that an objective of ERISA is to ensure that the named beneficiary retains

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[14] Although originally filed in state court, the plan administrator removed the case to federal district court. It was later dismissed from the action by agreement of the parties. *Estate of Kensinger*, 674 F.3d at 133, n.1.

the benefits. *Id.* at 136-37. The Third Circuit explained that contrary to the district court's reading, *Kennedy* emphasized two central underlying objectives as the basis for its decision: (1) the establishment of uniform and efficient plan administration, and (2) protection against double liability for administrators. *Id.* at 135. Neither of these concerns, it concluded, are implicated in a dispute between Adele, the named beneficiary, and the estate, because an action between the estate and Adele "would in no way complicate . . . administration of the plan." *Id.* at 136.

It rebuffed the district court's reliance on the statement in *Kennedy* that ERISA ensures that "beneficiaries get what's coming quickly" as support for its conclusion that ERISA "aims to provide certainty regarding the final distribution of ERISA benefits to beneficiaries[,]" such that "the possibility of a post-distribution action against a beneficiary would . . . undermine this 'core objective' of the statute." *Id.* To the contrary, the Third Circuit reasoned, this statement must be considered in the context in which it arose. *Id.* at 136. Both *Kennedy* and the case upon which it relied, *Fox Valley*, involved claims against plan administers [sic] who had yet to distribute benefits. It found this distinction to be critical because "when read with that in mind, the goal of ensuring that beneficiaries 'get what's coming quickly' " is understood as referring to "the expeditious distribution of funds from plan administrators, not to some sort of rule providing continued shelter from contractual liability to beneficiaries who have already received plan proceeds." *Id.* Thus, "to the

extent that ERISA is concerned with the expeditious payment of plan proceeds[,]" this concern extends only to the prompt payment of benefits to the named beneficiary. *Id.* at 136-37. Accordingly, the Third Circuit concluded, ERISA's concerns extend only so far as ensuring that Adele receive benefits and cease to exist after that point. *Id.* For that reason, William's estate could seek to recover the 401(k) account proceeds through a state law claim, as such a claim does not implicate or undermine any of ERISA's core objectives. *Id.* at 137.

We agree with the Third Circuit.[15] ERISA's focus is on the administration of employee benefit **plans**, not on the benefits, per se. As this Court previously recognized,

> ERISA does not foreclose state legislation and regulation that manages only employee benefits; rather, ERISA solely governs the broader notion of employee benefit plans. According to the Supreme Court of the United States, an "employee benefit plan" is characterized by the "ongoing, predictable nature of [an] obligation therefore creating the need for an administrative scheme to process claims and pay out benefits, whether those benefits are received by beneficiaries in a lump sum or on a periodic basis." [*Fort Halifax Packing Co. v. Coyne,* 482 U.S. 1,] 15 n. 9 [1987]. Contrarily,

[15] We are not bound by the decisions of inferior federal courts as to issues of preemption, but may look to them as persuasive authority. *Miller v. Se. Pennsylvania Transp. Auth.*, 103 A.3d 1225, 1236 (Pa. 2014).

> when a state statute does not require, establish, or regulate an ongoing payment program, the concerns of ERISA are not implicated, as generally only the employee benefits are at issue. *Id.*

Estate of Sauers, 32 A.3d at 1250-51.

Property settlement agreements are contracts and as such are construed in accordance with the principles of our Commonwealth's contract law. *Kripp v. Kripp,* 849 A.2d 1159, 1163 (Pa. 2004). A common law contract claim will be preempted only if it "relates to" a qualified employee benefit plan. *Egelhoff*, 532 U.S. at 146. We determine whether such a relation exists by examining whether the state law impinges on the objectives of ERISA and its effect on ERISA-qualified plans. *Id.* at 147; *In re Estate of Sauers*, 32 A.3d at 1250. It is clear that none of the articulated objectives, as discussed above, are implicated when an estate attempts to recover benefits that have already been distributed because at that juncture, the plan administrator is no longer part of the equation. Once the plan administrator makes payment in accordance with the plan documents, it satisfies ERISA's goals of regulating employee benefit plans and the administration thereof, protecting the plan administrator from double liability, and ensuring that the named beneficiary receives her benefits in a prompt manner. *Kennedy*, 555 U.S. at 301; *Kensinger*, 674 F.3d at 136-37. There is no indication that in drafting ERISA, Congress was concerned with the named beneficiary's right to retain the benefits. To the contrary, this consideration is wholly beyond the

scope of ERISA because it is beyond the scope of plan administration. *See Estate of Sauers*, 32 A.3d at 1250-51. We therefore hold that section 1144(a) of ERISA does not preempt a state law breach of contract claim to recover funds that were paid pursuant to an ERISA-qualified employee benefit plan.[16]

The Superior Court's judgment is affirmed.[17]

Chief Justice Saylor and Justices Baer, Todd, Dougherty and Mundy join the opinion.

Justice Wecht files a concurring and dissenting opinion.

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[16] We join a growing number of states in arriving at this conclusion. *See, e.g.*, *In re Christie*, 152 A.D.3d 765, 767 (N.Y. App. Div. 2017); *Walsh v. Montes*, 388 P.3d 262, 266 (N.M. Ct. App. 2016); *Hennig v. Didyk*, 438 S.W.3d 177, 183-84 (Tex. App. 2014); *Appleton v. Alcorn*, 728 S.E.2d 549, 552 (Ga. 2012); *Sweebe v. Sweebe*, 712 N.W.2d 708, 712 (Mich. 2006).

[17] Easterday expends significant effort arguing against the lower courts' rulings that the waiver contained in the Easterdays' PSA controls. *See* Appellee's Brief at 22-26 (arguing that the PSA waiver provision does not control because Decedent did not change the beneficiary designation and Decedent in fact wanted Easterday to remain the beneficiary); Appellee's Second Brief at 15-20 (same). This argument is beyond the scope of the issue we accepted for review, which was limited to considering the question of preemption. *See In re Estate of Easterday*, 184 A.3d 542 (Pa. 2018) (per curiam).

J-A08021-17

2017 PA Super 315

IN RE: ESTATE OF MICHAEL J. EASTERDAY, DECEASED	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: COLLEEN A. EASTERDAY	No. 2911 EDA 2016

Appeal from the Order Entered March 22, 2016
In the Court of Common Pleas of Montgomery County
Orphans' Court at No(s): 46-2014-X3615

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IN RE: ESTATE OF MICHAEL J. EASTERDAY, DECEASED	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: MATTHEW M. EASTERDAY	No. 2946 EDA 2016

Appeal from the Order Entered March 22, 2016
In the Court of Common Pleas of Montgomery County
Orphans' Court at No(s): 46-2014-X3615

BEFORE: PANELLA, J., LAZARUS, J., and STEVENS, P.J.E.*

OPINION BY LAZARUS, J.: **FILED OCTOBER 03, 2017**

These are cross-appeals from the order entered in the Court of Common Pleas of Montgomery County, Orphans' Court Division, adjudicating the rights of the parties with respect to pension and insurance benefits

* Former Justice specially assigned to the Superior Court.

payable as a result of the death of Michael Easterday ("Decedent"). Upon review, we affirm.

Decedent died intestate on September 21, 2014. He was survived by two sons, Christopher and Matthew, a daughter, Amanda E. Easterday Melvin, and his second wife, Colleen A. Easterday. Matthew was granted letters of administration on the Decedent's estate. Just over one year prior to the Decedent's death, on August 13, 2013, Colleen initiated divorce proceedings against the Decedent in Lancaster County. Colleen was represented in the divorce action by David R. Dautrich, Esquire. Decedent did not retain counsel. The parties executed a postnuptial agreement ("PNA") on December 5, 2013, wherein they agreed, *inter alia*, to waive any rights in and to the pension and retirement plans of the other, including any right the parties may have as a surviving spouse or beneficiary thereof. The agreement provided that it was to remain in full force and effect regardless of reconciliation, a change in marital status or the entry of a final divorce decree, absent modification or termination of the agreement by the parties' written mutual consent. The parties never terminated or modified the agreement.

In November 2013, Attorney Dautrich's office prepared an affidavit of consent to divorce for Decedent's signature and gave the document to Colleen to give to Decedent to sign. Decedent signed the affidavit on November 30, 2013 and returned it to Colleen by hand. Colleen retained the affidavit in her possession for a period of time before returning it to her counsel for filing on or before January 14, 2014. Attorney Dautrich

was aware that Decedent's affidavit was dated more than thirty days earlier. Nevertheless, he instructed his staff to mail both parties' affidavits of consent to the Lancaster County Prothonotary for filing, which was done on January 14, 2014. The affidavits were time-stamped by the court on January 16, 2014. On January 24, 2014, Colleen filed a *praecipe* for divorce finalization and a *praecipe* to transmit the record. Decedent died before the decree was entered. At the time of Decedent's death, Colleen remained the named beneficiary of Decedent's pension and life insurance policy. Three days after Decedent's death, Colleen withdrew the divorce action.

On November 17, 2014, Matthew Easterday, as administrator of the Decedent's estate ("Estate"), filed a petition seeking to compel Colleen to preserve and turn over to the estate the life insurance proceeds and pension benefits she had received. The Estate argued that: (1) the parties' PNA controlled the disposition of the pension proceeds and required that distribution be made to the estate regardless of the beneficiary designation; and (2) Decedent's designation of Colleen as beneficiary of his insurance policy became ineffective under 20 Pa.C.S.A. § 6111.2.

In her answer and new matter, Colleen asserted that: (1) the PNA did not control the distribution of the pension proceeds because the parties never changed beneficiary designations; (2) section 6111.2 does not apply because the Decedent's affidavit of consent was stale and invalid; and (3) the parties were in the process of reconciling prior to Decedent's death and Decedent

intended that Colleen should remain the beneficiary of both his pension and insurance policies.

After a hearing held on October 20, 2015, and following the submission by the parties of memoranda of law, the Honorable Stanley Ott issued an order granting the Estate's petition in part and denying it in part. Specifically, the court concluded that the Estate was entitled to the Decedent's pension benefits pursuant to the PNA, but Colleen was entitled to the insurance proceeds, which were not addressed in the PNA. Both parties filed exceptions, which, after oral argument before the Orphans' Court sitting en banc, were deemed denied by operation of law pursuant to Pa.O.C.R. 7.1(f). These timely consolidated appeals followed.

The Estate raises the following issues on appeal:

> 1. Whether the Orphans' Court committed an error of law by holding that the Superior Court's decision in ***Tosi v. Kizis***, 8[5] A.3d 585 ([Pa. Super.] 2014), *appeal den'd*, 626 Pa. 700, 97 A.3d 745, applies in the present case, and that ***Tosi*** required the Orphans' Court to consider the merits of the Estate's [p]etition under the legal fiction that there were no divorce proceedings pending at the time of Decedent's death, despite the factual reality that there was a divorce action filed by Colleen A. Easterday against the Decedent and which was pending in Lancaster County at the time of the Decedent's death.
>
> 2. Whether the Orphans' Court committed an error of law by not ruling that 20 Pa.C.S.

> § 6111.2 applies to this case to invalidate Decedent's designation of Colleen A. Easterday as beneficiary of Decedent's American General Life Insurance Policy because Decedent died domiciled in Pennsylvania during the course of divorce proceedings, no decree of divorce had been entered, but grounds for divorce had been established pursuant to 20 Pa.C.S.A. § 3323(g) prior to Decedent's death.

Appellant's Brief of Estate, at 6-7.

In her consolidated appeal, Colleen raises the following issue for our review:

> Did the Decedent make a deliberate and conscious choice that his wife was to be the irrevocable beneficiary of his Fed-Ex pension plan and that she was to receive those benefits after his death, even though a post-nuptial agreement contained a waiver signed by her regarding the Fed-Ex ERISA pension?

Appellant's Brief of Colleen Easterday, at 4.

We begin by noting our scope and standard of review of a decision of an Orphans' Court. The findings of a judge of the Orphans' Court, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support. ***In re Estate of Talerico***, 137 A.3d 577, 580-81 (Pa. Super. 2016), quoting ***In re Jerome Markowitz Trust***, 71 A.3d 289, 297-98 (Pa. Super. 2013). An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the

law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused. ***Id.*** When the Orphans' Court arrives at a legal conclusion based on statutory interpretation, our standard of review is *de novo* and our scope of review is plenary. ***Id.***, quoting ***In re Estate of Fuller***, 87 A.3d 330, 333 (Pa. Super. 2014) (citation omitted).

We begin with the claims raised by the Estate challenging the lower court's award of the life insurance proceeds to Colleen. The Orphans' Court concluded that, because Colleen withdrew the divorce action after Decedent died, the proper course was to proceed as if the action had never been filed and award the proceeds in accordance with the policy's beneficiary designation. The court found the provision of the Probate, Estates and Fiduciaries ("PEF") Code regarding the effect of a pending divorce on beneficiary designations, section 6111.2, to be inapplicable.[1] The court concluded that this result was compelled by this Court's holding in ***Tosi v. Kizis***, 85 A.3d 585 (Pa. Super. 2014).[2] The

[1] Section 6111.2 provides that, where a domiciliary of the Commonwealth designates his spouse as beneficiary of a life insurance policy and dies (1) during the course of divorce proceedings in which (2) no decree of divorce has been entered and (3) grounds have been established as provided in 23 Pa.C.S.A. § 3323(g), the spousal designation becomes ineffective for all purposes and must be construed as if the spouse or former spouse had predeceased the individual. 20 Pa.C.S.A. § 6111.2.

[2] In ***Tosi***, Husband died during the pendency of divorce proceedings. At the time of Husband's death, both he and Wife had filed affidavits of consent, thus establishing grounds for divorce

Estate argues that the Orphans' Court erred in applying ***Tosi*** and, consequently, in failing to apply section 6111.2. The Estate asserts that the holding in ***Tosi*** is a narrow one, limited to situations in which a party to a divorce action files a discontinuance seeking to avoid the application of equitable distribution rules after the death of the other party. Because neither Michael Easterday nor his estate ever sought equitable distribution under the Divorce Code, the Estate claims that this matter is outside the scope of the holding in ***Tosi***. Rather, the Estate asserts, the disposition of the insurance proceeds is governed by section 6111.2, the application of which, it claims, is fixed as of the date of a decedent's death.

To the extent the decision of the Orphans' Court in this matter was grounded in the rationale of ***Tosi***, it is unsound. In ***Tosi***, Husband died during the pendency

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under section 3323. Four months after Husband's death, Wife filed a *praecipe* to discontinue the divorce action pursuant to Pa.R.C.P. 229. The trial court denied Husband's estate's petition to strike the discontinuance. On appeal, the estate asserted that, once the parties both filed affidavits of consent, section 3323(d.1) of the Divorce Code mandated that the parties' economic claims be resolved pursuant to the Divorce Code and that the court erred in allowing Wife to discontinue the action.

In affirming the trial court, this Court concluded that Wife's power to discontinue the action under Rule 229 was not preempted by section 3323(d.1). Rather, the Court found that "the language of [section 3323(d.1)] merely provides that in the event of [the] death of one of the parties in a divorce action, the action **may** continue and the economic claims shall be determined under equitable distribution principles rather than under the elective share provisions of the [PEF] Code." ***Tosi***, 85 A.3d at 589 (emphasis added).

of divorce proceedings. At the time of Husband's death, both he and Wife had filed affidavits of consent, thus establishing grounds for divorce under section 3323. Four months after Husband's death, Wife filed a *praecipe* to discontinue the divorce action pursuant to Pa.R.C.P. 229. The trial court denied Husband's estate's petition to strike the discontinuance, and the estate appealed. On appeal, the estate asserted that, once the parties both filed affidavits of consent, section 3323(d.1) of the Divorce Code mandated that the parties' economic claims be resolved pursuant to the Divorce Code and that the court erred in allowing Wife to discontinue the action.

In affirming the trial court, this Court concluded that Wife's power to discontinue the action under Rule 229 was not preempted by section 3323(d.1). Rather, the Court found that "the language of [section 3323(d.1)] merely provides that in the event of [the] death of one of the parties in a divorce action, the action **may** continue and the economic claims shall be determined under equitable distribution principles rather than under the elective share provisions of the [PEF] Code." ***Tosi***, 85 A.3d at 589 (emphasis added).

In deciding this matter, the Orphans' Court concluded that, as Colleen had withdrawn the divorce action subsequent to Decedent's death, the holding in ***Tosi*** required him to proceed as though no divorce had ever been filed, which resulted in Colleen being entitled to the insurance proceeds as named beneficiary. Because the court proceeded under the fiction that the

divorce action had never been filed, section 6111.2 did not apply to invalidate the beneficiary designation.

However, prior to the court's decision in this matter, on May 6, 2015, our Supreme Court adopted Rule of Civil Procedure 1920.17, effective July 1, 2015. Rule 1920.17 provides, in relevant part, as follows:

> (d) In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code[.]

Pa.R.C.P. 1920.17(d). The note to Rule 1920.17 specifically provides that "[t]o the extent that ***Tosi*** [] holds that 23 Pa.C.S. 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded." Pa. R.C.P. 1920.17(d), note.[3]

In adopting Rule 1920.17, the Court signaled its disapproval of the broad effect of ***Tosi***, which effectively granted any surviving spouse the unilateral power to determine whether the assets of the deceased spouse would be distributed under the Divorce Code or

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[3] We note that neither the Orphans' Court nor either of the parties acknowledged the adoption or impact of Rule 1920.17.

the PEF Code, based solely on the self-interest of the surviving spouse, where grounds for divorce had been established. New Rule 1920.17 addresses this inequity by requiring that, where grounds have been established, a discontinuance may only be granted if the personal representative of the deceased spouse consents.

The Supreme Court superseded ***Tosi*** specifically as it applied to section 3323(d.1) of the Divorce Code, and did not address the possible application of its rationale to section 6111.2 of the PEF Code.[4] However, we believe that the Court's adoption of Rule 1920.17 provides a clear indication that the Court would look with similar disfavor upon an interpretation of section 6111.2 that would grant a surviving spouse/plaintiff the power to negate the intent of the statute – to protect a divorcing spouse from inadvertently providing a windfall to his or her surviving ex-spouse simply by neglecting to change a beneficiary designation – by discontinuing the divorce action after grounds have been established. Thus, we decline to apply ***Tosi*** to the instant matter and hold that the Orphans' Court erred by doing so.

Having concluded that ***Tosi*** is not dispositive, we must determine whether section 6111.2 applies to invalidate Decedent's designation of Colleen as beneficiary of his insurance policy. To that end, the key inquiry in this matter becomes whether or not grounds have, in fact, been established pursuant to 23 Pa.C.S.A.

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[4] Section 6111.2 was not at issue in ***Tosi***.

§ 3323(g), such that the disposition of the insurance proceeds is determined under section 6111.2.

Section 3323(g) provides that where, as here, the parties are proceeding under section 3301(c) of the Divorce Code – the "no fault" provision – grounds are established where both parties have filed affidavits of consent. Pursuant to Pa.R.C.P. 1920.42(b), affidavits of consent must be filed (1) ninety days or more after filing and service of the complaint and (2) within thirty days of the date the consents are executed. In this case, the Decedent's affidavit was filed more than thirty days after it was executed, in violation of Rule 1920.42. As a result, Colleen asserts, the Decedent's affidavit was invalid[5] and grounds were never established under section 3323(g). Accordingly, she argues, section 6111.2 does not apply.

The Estate, on the other hand, argues that, while strict compliance with the time limitations under Rule 1920.42(b) may be necessary to obtain a final decree of divorce, "section 3323(g), to which [s]ection 6111.2 refers, clearly contains no such time limitation." Appellant's Brief of Estate, at 31. The Estate asserts that neither section 3323(g) nor section 6111.2 imposes a time limit on the filing of the affidavits, nor do they explicitly incorporate the limits set forth in Rule 1920.42(b). As such, Decedent's otherwise untimely affidavit was sufficient, under the facts of this case, to

[5] The Orphans' Court found the issue of the validity of Decedent's affidavit of consent to be a "red herring" in light of its determination that ***Tosi*** was dispositive and, thus, did not make a determination on the issue.

establish grounds and require the application of section 6111.2.

Alternatively, assuming, *arguendo*, that the thirty-day limitation applies, the Estate asserts that this Court "has viewed untimely affidavits as valid to establish grounds for divorce under section 3323(g) . . . for various purposes, including a request to bifurcate a divorce claim from economic claims." ***Id.*** at 33, citing ***Bonawits v. Bonawits***, 907 A.2d 611 (Pa. Super. 2006). Accordingly, strict compliance with the thirty-day time limit is not necessary to establish grounds for divorce under sections 3323 and 6111.2, and "a minor technical violation of a procedural rule should not invalidate an affidavit of consent filed by a party." ***Id.*** at 34.

Finally, the Estate argues that Colleen is judicially estopped from arguing that Decedent's affidavit was invalid because it was "disingenuous and directly contrary to the position she took in the [d]ivorce [a]ction." ***Id.*** at 35. Specifically, the Estate points to Colleen's *praecipe* to transmit, wherein she requested the divorce court to enter a decree of divorce based, in part, on the fact that both parties had filed their affidavits of consent. Only now that it is in her interest that the affidavit be deemed invalid, the Estate asserts, does Colleen argue the opposite position.

We first address the Estate's contention that the time limitation for the filing of affidavits of compliance as set forth in Rule 1920.42 is inapplicable and, thus, Decedent's affidavit, although untimely under the

rule, was sufficient to establish grounds under section 3323(g). For the following reasons, we disagree.

The legislature has declared that "[t]he family is the basic unit in society and the protection and preservation of the family is of paramount public concern." 23 Pa.C.S.A. § 3102(a). In light of the various policy considerations favoring the protection of the family unit, the Rules of Civil Procedure preclude the entry of default judgments in the divorce context. ***See*** Pa. R.C.P. 1920.41. In keeping with these policy considerations and the seriousness with which the dissolution of marriage is to be treated, Rule 1920.42(b) requires that the parties' affidavits of consent demonstrate a present intent to finalize a divorce by mandating that they be executed within thirty days of filing. Under the rule, stale affidavits may not form the basis for the entry of a final decree.

Where one party dies during the pendency of a divorce action, the establishment of grounds takes on added significance, as it will be the determinative factor in whether the parties' economic issues are settled under the Divorce Code or the PEF Code. In effect, section 3323(d.1) treats the establishment of grounds as the functional equivalent to the entry of a final decree, where the death of one party renders such finality impossible.[6] Given the added significance the establishment

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[6] Pennsylvania courts have long held that an action in divorce abates upon the death of either party and the death of a party prior to the entry of a final decree precludes the finalization of a divorce. ***See Taper v. Taper***, 939 A.2d 969, 973 (Pa. Super. 2007) (no statutory authority allows for entry of posthumous

of grounds acquires under such circumstances, it is reasonable to conclude that the legislature intended to require compliance with the same procedural requirements precedent to the entry of a divorce decree. Consequently, we conclude that a "stale" affidavit of consent is insufficient to establish grounds under section 3323(g).

The Estate also argues that, even if the Rule 1920.42 time limit applies, we should not require strict compliance with it, because doing so would elevate form over substance. While, under other facts, this argument might be persuasive, under the present circumstances, we find that waiving the requirement

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decree of divorce). However, in 2005, the legislature amended section 3323 of the Divorce Code to provide for the continuation of the action for economic purposes where one party dies prior to the entry of a final decree, but after grounds have been established. Under those circumstances, section 3323(d.1) directs a determination of the parties' economic rights under principles of equitable distribution rather than under the provisions of the PEF Code. ***See*** 23 Pa.C.S.A. § 3323(d.1). Under the prior version of the statute, the death of one spouse prior to the entry of a final decree resulted in the abatement of the action, leaving the surviving spouse to exercise his or her elective rights under the PEF Code. The 2005 amendment demonstrates a recognition on the part of the legislature that the prior state of affairs "ma[de] it difficult to advise clients on whether to bifurcate divorce proceedings, because of the difficulties often involved in predicting whether equitable distribution would provide a more favorable result than the elective share procedure." ***Id.***, cmt. In enacting section 3323(d.1), the legislature provided certainty, as well as a mechanism to effectuate the parties' presumed intent which, but for the death of one of them, would have resulted in the entry of a final decree and a determination of their economic rights through equitable distribution.

would not effectuate justice where the Decedent had an opportunity to rectify the untimely affidavit but, for whatever reason, chose not to do so. The following facts, stipulated to by the parties, are relevant to this determination.

Diane Carroll, an employee at the law firm of Colleen's attorney, was contacted by judicial staff in the Lancaster County Court of Common Pleas, who advised her that the Decedent's affidavit of consent was stale and that he was required to sign and submit a new affidavit. Thereafter, on February 6, 2014, Carroll prepared and mailed a letter to the Decedent, explaining that his original affidavit had been rejected as untimely and requesting that he sign and return a new affidavit, which Carroll enclosed for his signature. The day after she mailed that letter, Carroll spoke to the Decedent, explained the situation and told him that he would have to sign a new affidavit of consent. In the ensuing 7½ months leading up to the Decedent's death on September 21, 2014, Decedent failed to file the new affidavit or return it to Colleen's counsel for filing.

From these stipulated facts, it is far from clear that, at the time of his death, Decedent possessed a present intent to divorce, such that we should excuse the staleness of his affidavit of consent and conclude that grounds were established. If anything, Decedent's inaction, after having explicitly been advised of the necessity to re-execute his invalid affidavit of consent, evidences an intent to delay the proceedings, if not terminate them. Accordingly, we decline the Estate's invitation to overlook the affidavit's untimeliness.

Finally, the Estate argues that Colleen is judicially estopped from asserting the invalidity of Decedent's affidavit because she previously took a contrary position in the divorce action. Generally, under the doctrine of judicial estoppel, "a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was successfully maintained." ***In re Adoption of S.A.J.***, 838 A.2d 616, 620 (Pa. 2003) (citation omitted). This argument may be quickly dispensed with by noting that, although Colleen's counsel did file with the prothonotary a *praecipe* to transmit the record on January 24, 2014, the document candidly noted that Decedent's affidavit had been executed on November 30, 2013, more than thirty days earlier. When this fact was brought to counsel's attention by the court, counsel made no argument that the affidavit's untimeliness should be excused. Rather, counsel prepared a new affidavit for Decedent's signature, mailed it to him, and contacted him to request that he re-execute the document. On these facts, it is readily apparent that the doctrine of judicial estoppel is inapplicable, most notably because, even assuming Colleen could be deemed to have previously taken a contrary position as to the affidavit's validity, that contention was not "successfully maintained."

Based on the foregoing, we conclude that grounds for divorce were not established pursuant to section 3323(g). Consequently, section 6111.2 does not apply to invalidate Decedent's beneficiary designation and the Orphans' Court did not err in awarding the proceeds of

the Decedent's insurance policy to Colleen as the named beneficiary.[7]

We now turn to Colleen's sole appellate claim. The Orphans' Court ruled that the PNA entered into by the parties barred Colleen from retaining Decedent's benefits under his FedEx pension plan and awarded them to the Estate. Colleen asserts that, despite the terms of the PNA, Decedent made a deliberate and conscious choice to give his Fed-Ex pension to Colleen after he died by making an irrevocable election that Colleen was to be the designated survivor beneficiary. Colleen cites the fact that she and the Decedent "remained in close contact, and that she assisted him with routine activities of daily living and was his constant and sole caretaker, up until the day that she found him dead[.]" Appellant's Brief of Colleen Easterday, at 6-7. Finally, Colleen asserts that the Employee Retirement Income Security Act ("ERISA") preempts Pennsylvania state law, specifically section 6111.2 of the PEF Code, as well as the terms of the parties' PNA. Thus, she argues, she is entitled to retain the pension benefits.

In response, the Estate asserts that the PNA – which was executed *after* the Decedent signed the pension beneficiary designation – clearly and unambiguously sets forth the parties' waiver of their rights to each other's pension benefits and that a written modification

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[7] Although our analysis differs from that employed by the Orphans' Court in reaching its decision, we may affirm the lower court's ruling on any basis. ***See Blumenstock v. Gibson***, 811 A.2d 1029, 1033 (Pa. Super. 2002) (appellate court not limited by trial court's rationale and may affirm on any basis).

to the contrary was never executed by the parties. Moreover, the Estate asserts that the Decedent's alleged intent to "gift" to Colleen his benefits is irrelevant, as Colleen affirmatively waived her right to retain the benefits, regardless of whether or not Decedent wanted her to have them. Furthermore, the Estate argues that any alleged reconciliation between the parties is similarly irrelevant, as the PNA specifically provides that it remains in full force and effect despite any reconciliation between the parties. Finally, while conceding that, under ERISA, the Decedent's plan administrators are precluded from disbursing his pension benefits to anyone other than Colleen as named beneficiary, the Estate asserts that ERISA does not invalidate or preempt Colleen's state law waiver of her right to retain the pension proceeds once they are distributed to her.

We begin our analysis by noting that a property settlement agreement is subject to the law governing contracts, and is to be reviewed as any other contract. ***Mazurek v. Russell***, 96 A.3d 372, 378 (Pa. Super. 2014). Because contract interpretation is a question of law, our standard of review is *de novo* and our scope of our review is plenary. ***Id.*** When a contract is free from ambiguity, the court must interpret the contract as written. ***Id.*** Only where the contract terms are ambiguous may the court receive extrinsic evidence to resolve the ambiguity. ***Id.***

Under Pennsylvania law, spouses may waive their rights to each other's pension benefits via a property settlement agreement, where such waiver is specific.

Layne v. Layne, 659 A.2d 1048 (Pa. Super. 1995). In the instant matter, the parties' agreement provides as follows:

> 11. PENSIONS, 401(K) and IRA: Husband and Wife shall each retain 100% of their respective stocks, pensions, retirement benefits, profit sharing plans, deferred compensation plans, etc. and shall execute whatever documents necessary to effectuate this agreement.

Post Nuptial Agreement, 12/5/13, at ¶ 11.

> 1. Husband and Wife agree that any and all Pension, Profit Sharing or Deferred Compensation Plan of which Husband is a Participant, shall remain the sole property of Husband.
>
> . . .
>
> 5A. Wife hereby [w]aives any joint or survivor annuity benefits[.]

Id. at Exhibit "B" ¶¶ 1 & 5A.

The language of the parties' agreement was clear and unequivocal regarding Colleen's waiver of her rights to Decedent's pension. In fact, Colleen does not dispute that, in executing the PNA, she effected a waiver of those rights. ***See*** Appellant's Brief of Colleen Easterday, at 10 ("This is true even though [Decedent's] wife, Colleen Easterday, signed a waiver giving up any right that she may have had in his pension."). Because the PNA is clear and unambiguous on its face, extrinsic evidence is inadmissible. Accordingly, Colleen's

attempt to alter the terms of the written agreement with extrinsic evidence regarding Decedent's "actual intent" and the parties' alleged reconciliation must fail.[8]

Colleen's argument that her state law waiver is superseded by ERISA is similarly meritless. In support of this claim, Colleen relies on the decision of the United States Supreme Court in ***Egelhoff v. Egelhoff ex rel. Breiner***, 532 U.S. 141 (2001). There, the Court held that statutes, such as section 6111.2 of the PEF Code, that provide for automatic revocation, upon divorce, of any designation of a spouse as beneficiary of non-probate assets was preempted, as they applied to plans governed by ERISA, because such statutes directly conflict with the ERISA requirement that plans be administered, and benefits be paid, in accordance with plan documents. Colleen's reliance is misplaced and her argument meritless.

In enacting ERISA, one of Congress' chief policy goals was to ensure national uniformity, certainty, and efficiency in the administration and distribution of covered benefit plans. ***See id.*** (principal goal of ERISA to enable employers to establish uniform administrative

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[8] In any event, the Agreement clearly and unambiguously states that it is to remain in effect regardless of any reconciliation by the parties. ***See*** Post Nuptial Agreement, 12/5/13, at ¶ 1 ("[I]t is the intent of the parties that any cohabitation or reconciliation of the parties shall not render this Agreement null and void, but rather, this Agreement shall remain in full force and effect until specifically modified/revoked by subsequent addendum or agreement."). The parties never modified or revoked the PNA.

scheme, providing set of standard procedures to guide processing of claims and disbursement of benefits). Thus, individual state statutes are preempted to the extent they conflict with ERISA's requirement that plans be administered, and benefits be paid, in accordance with plan documents.

In 2009, on facts similar to the matter *sub judice*, the Supreme Court decided ***Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan***, 555 U.S. 285 (2009). There, a participant in an ERISA pension plan designated his wife as his sole beneficiary. The couple subsequently divorced, and the wife waived her interest in her husband's pension plan. However, the husband died without amending the pension plan documents to replace his ex-wife as the designated beneficiary. The husband's estate claimed a right to the plan proceeds, citing the ex-wife's waiver. The plan administrator, however, relied on the husband's designation form and paid the funds to the ex-wife. The husband's estate then sued the plan administrator to recover the benefits. The Supreme Court held that ERISA precluded the plan administrator from distributing the benefits to anyone but the named beneficiary, regardless of the existence of a valid waiver.

The Court left open, however, the question of whether the estate could recover the benefits from the ex-wife *after* she received them from the plan administrator. This question was subsequently answered in the affirmative by the United States Court of Appeals for the Third Circuit in ***Estate of Kensinger v. URL Pharma***, 674 F.3d 131 (3d Cir. 2012), in which the

Court held, under facts nearly identical to ***Kennedy***, that ERISA does not bar an estate from attempting to recover pension funds distributed to an ex-wife who had executed a waiver of rights to those funds.

Similarly, here, ERISA presents no bar to the Estate's recovery of pension funds distributed to Colleen. Colleen's waiver was clear and unequivocal and is binding. The Estate is entitled, under principles of state contract law, to enforce the bargain entered into between Colleen and the Decedent. Accordingly, the Orphans' Court did not err in ordering that Colleen turn over to the Estate all sums received to date as beneficiary of Decedent's FedEx pension plan, as well as all remaining proceeds thereof that she is entitled to receive under the plan documents.

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn
Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/3/2017

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO. 2014-X3615

* * * * *

ESTATE OF MICHAEL J. EASTERDAY, DECEASED

* * * * *

MEMORANDUM OPINION AND ORDER

OTT, S.J. **March 22, 2016**

Michael J. Easterday died intestate on September 21, 2014. His son, Matthew M. Easterday (hereinafter "the petitioner") was appointed administrator of his estate. The decedent was also survived by another son, Christopher, a daughter, Amanda E. Easterday Melvin, and his second wife, Colleen A. Easterday (hereinafter "the respondent.") Counsel for the petitioner filed two petitions – one styled as an "emergency petition" on November 14, 2014 and the other on November 17, 2014 – raising the same issues[1]. The latter petition set forth the following uncontested facts. The respondent initiated divorce proceedings against the decedent in Lancaster County on August 13, 2013, and the parties executed a postnuptial agreement on December 5, 2013, wherein they agreed, *inter alia*, to waive any rights in and to the pension and retirement plan

[1] Because the substance of the first petition was subsumed in the second, we refer herein only to the second for simplicity's sake.

benefits of the other, including any right the parties may have as a surviving spouse or beneficiary thereof. The agreement provided it was to remain in full force and effect regardless of reconciliation, a change in marital status or the entry of a final divorce decree, absent a termination by the parties' written mutual consent. The parties filed affidavits pursuant to Section 3301 of the Divorce Code, consenting to the entry of a divorce decree on January 24, 2014. On the same day, the respondent also filed a copy of the parties' agreement and a praecipe to transmit the record to a Family Court judge. The decedent died before the decree was entered.

The instant petition seeks to compel the respondent to preserve and turn over certain personal property and life insurance and pension/retirement benefits alleged to be in her possession.

The respondent's answer and new matter to the petition alleged that the parties' divorce was inactive; that they were in the process of reconciling at the time of the decedent's death; that their postnuptial agreement did not waive any rights because the parties never changed beneficiary designations; that the decedent's affidavit of consent was invalid under Pa R.C.P. 1920.42(b)(2) because it was not filed within 30 days of its execution; that the decedent did not file a second, valid consent form because the couple had reconciled; that the respondent was entitled to death benefits and certain items of the decedent's personalty; and that the Lancaster County divorce complaint was withdrawn

on September 24, 2014, and marked "closed" on the Court docket.

The petitioner's reply to the respondent's new matter denied, *inter alia*, that there was any reconciliation between the couple and that same would have any effect on the parties' rights and obligations under their postnuptial agreement.

After the pleadings were closed, there was a lengthy period of discovery. The matter proceeded to hearing on October 20, 2015, at which time the following evidence was produced. At the outset, counsel agreed to the admission of a 61-paragraph stipulation of facts. (Exh P-1.) After counsel for the petitioner asked for and received the Court's agreement to take judicial notice of the admissions in the respondent's pleading, the petitioner rested.

The respondent was then called to the stand. She testified that she and the decedent were married for almost ten years at the time of his death. She stated they were living together in June of 2013 in Terre Hill, Pennsylvania, in the house she owned prior to their marriage. She stated the decedent was working as a security guard and his job required that he be away from home at times. In June of 2013, the decedent entered an alcohol treatment center for a 28-day stay. He returned to the Terre Hill house thereafter. He continued to drink. The witness testified that, on July 12, 2013, she and the decedent, who had been drinking, had an argument and he threatened to kill himself in front of her. (N.T. 23.) She testified she ran from the

house, left in her car and called the police. The decedent was taken to the hospital and then to another treatment center. After he left the treatment center, he stayed at his sister's house for approximately one month. He went from his sister's home to a job in Hazleton, Pennsylvania. The witness testified she and the decedent stayed in touch almost daily during his time in Hazleton through phone calls, emails and text messages, (N.T. 27-28.) The decedent went from Hazelton to North Wales, Pennsylvania, and then took an apartment in Hatfield, Pennsylvania. The witness identified a binder containing 500+ pages of copies of snapshots of the parties' text messages taken from the decedent's cell phone between March 2, 2014, and September 21, 2014, (Exh R-1.) The Court admitted the exhibit conditionally, pending a determination as to the relevance of the evidence proferred. (N.T. 37.)

The witness testified that she filed for divorce in August of 2013 but stayed in contact with the decedent on a daily basis. She suggested she initiated the divorce to "make him . . . wake up so he would understand he was destroying his life and everything that he said he loved and cared for." (N.T. 40.) She stated further: "I wanted Michael to get healthy. I was desperate. I took a drastic action. I thought I had nothing else left." (N.T. 41.) She identified a bracelet the decedent gave her for Mothers' Day in 2014. She stated Michael wore his wedding ring until he died. She stated she never wanted a divorce, (N.T. 47.)

The respondent was then cross examined by counsel for the petitioner. She stated she was represented

in the divorce proceedings by attorney Dautrich and the decedent was unrepresented. She acknowledged that, after the decedent's "stale" affidavit was returned to her counsel, her attorney sent him a second form to execute. (N.T. 51.) She agreed that she and the decedent did not live together or file any joint tax returns after the incident when he threatened to kill himself. (N.T. 52-53.) When asked why she signed the affidavit of consent if she did not want a divorce, she stated:

> I was following through. You don't do something when you're trying to enact [*sic*] a specific reaction. If I said, "Michael, oh well, hey, don't worry about it, I don't want a divorce anyway, I just want you to quit drinking," what do you think would have happened? I did what I thought was best for him and the situation. . . . Yes, I signed those papers, and, yes he did, but the purpose was not for a divorce.

(N.T. 55.)

During redirect by her counsel, the respondent identified an email from the decedent to her in September of 2013 which read, in part: "I don't know anymore [*sic*] how to tell you or beg you that I want you as part if [*sic*] my life! What do I need to do! And I lied about my pension! I could've taken you off but I won't because I love you? And I'm losing about $200.00 a month by keeping you on but u don't care!" (Exh. R-5.) She identified a second email to her dated May 4, 2014, in which the decedent said "The only reason we remain husband and wife is because I didn't want a divorce

and didn't submit the paper work in time. I was hopeful we could work things out." (Exh. R-6.) In another email to the respondent dated February 7, 2014, the decedent indicated he wanted her to receive the proceeds from his pension and life insurance policy. (Exh. R-7.)

DISCUSSION

The issue of whether or not grounds for the parties' divorce were established (in view of the untimely filing of the decedent's affidavit of consent) is a red herring in this matter because of the holding in Tozi v. Kizis, 85 A.3d 585 (Pa. Super. 2014), *appeal den'd*, 626 Pa. 700, 97 A.3d 745 (Table 2014). There, the wife/plaintiff in a divorce action filed a praecipe to discontinue the case several months after the husband/defendant died. The administrator of the personal representative's estate sought to strike the discontinuance. The trial court looked at Pa. R.C.P. 229 and Section 3323(d.1) of the Divorce Code, The rule provides:

> (a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.
>
> * * *
>
> (c) The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense or prejudice.

The statute provides:

> [i]n the event one party dies during the course of divorce proceedings, no decree of divorce has been entered and grounds have been established as provided in subsection (g), the parties' economic rights and obligations arising under the marriage shall be determined under this part rather than under Title 20 (relating to decedents, estates and fiduciaries).

In Tozi, the decedent's personal representative argued that the statute mandated that the divorce continue. The trial court held that the wife's power to discontinue the divorce under the rule trumped the statutory provision that seemingly would prevent such an action. On appeal, the Superior Court found no abuse of discretion by the trial court, holding in essence that, despite the apparently mandatory language in Section 3323(d.1) – rights and obligations "shall be determined under the Divorce Code" – the plaintiff had the choice of whether or not to continue with the divorce. The Superior Court noted that, in the trial court proceeding, counsel for the personal representative did not offer any evidence of the factors set forth in Pa. R.C.P. 229(c) as possible grounds for striking a discontinuance ("unreasonable inconvenience, vexation, harassment, expense or prejudice") because he was so certain that Section 3323(d.1) would apply[2]. In the instant matter, there is nothing in the record regarding an effort to

[2] While several legal blogs and websites have questioned the soundness of the Superior Court's reasoning, we are, of course, constrained to follow its dictate.

strike the discontinuance in Chester County. Therefore, it appears our only course is to proceed as if there never was a divorce action filed.

Having concluded that we are bound by the Superior Court's holding in Tozi, there is no need to analyze the provisions of the PEF Code governing the effect of a pending divorce on conveyances[3] and beneficiary designations.[4]

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[3] Section 6111.1 (Modification by Divorce or Pending Divorce) provides:

> Any provision in a conveyance which was revocable by a conveyor at the time of the conveyor's death and which was to take effect at or after the conveyor's death in favor of or relating to the conveyor's spouse shall become ineffective for all purposes unless it appears in the governing instrument that the provision was intended to survive a divorce, if the conveyor."
>
> (1) is divorced from such spouse after making the conveyance; or
>
> (2) dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa. C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa. C.S. § 3323(g).

[4] Section 6111.2 (Effect of Divorce or Pending Divorce on Designation of Beneficiaries) provides:

> (a) Applicability. – This section is applicable if an individual:
>
> (1) is domiciled in this Commonwealth;
>
> (2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either: (i) at the time of the individual's death is divorced from the spouse; or (ii) dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa. C.S. §3323 (relating to decree of court) and grounds have been established as provided in 23 Pa. C.S. § 3323(g).

(b) General rule. – Any designation described in subsection (a)(2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order;

(3) a written contract between the individual and the spouse or former spouse; or

(4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.

(c) Liability,—

(1) Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.

(2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

(c) Liability.—

(1) Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.

There remains only the issue of the parties' post nuptial agreement. As noted above, the agreement was to remain in effect even if a final decree in divorce was not entered. The agreement, in paragraph 11, specified that the parties' would "retain 100% of their respective stock, pension, retirement benefits, profit sharing plans, deferred compensation plans, etc." The agreement is silent as to its effect on any insurance policy beneficiary designations. This leads us to the Solomon-like resolution that the respondent has no right to or interest in the decedent's pension, however, she is the proper beneficiary of the decedent's life insurance policy. In light of the foregoing, the following Order is appropriate.

ORDER

AND NOW, this 22nd day of March, 2016, after hearing and consideration of memoranda of counsel, the petition filed on behalf of Matthew M. Easterday is GRANTED in part and DENIED in part. The respondent, Colleen Easterday, is hereby DIRECTED to turn over to the petitioner all sums she has received to date as beneficiary of the decedent's FedEx Corporation Employees' Pension Plan pension plan [sic]; and the petitioner is authorized to receive the balance due on the Fed Ex pension for administration in accordance with the laws of intestate succession. The petitioner's

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(2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

request that the respondent turnover of [sic] the proceeds of American General Life Insurance Company Contract Number YMD0016824 is DENIED.

Exceptions to this order may be filed within twenty (20) days from the entry hereof. An appeal from this otrder [sic] may be taken to the appropriate appellate court within thirty (30) days from the entry hereof. *See* Pa. O.C. Rule 7.1, as amended and Pa. R.A.P. 902 and 903.

BY THE COURT:

/s/ [Illegible]
S.J.

Copies of the above
mailed 3/22/16 to:

Robert J. Dougher, Esquire, for the petitioner
Michael Righi, Esquire, for the petitioner
David R, Dautrich, Esquire, for the respondent
Michael Dautrich, Esquire, for the respondent

/s/ [Illegible]