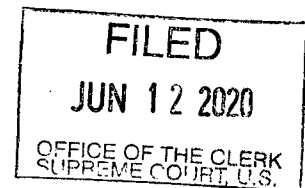


ORIGINAL

No. 20-5545



IN THE  
SUPREME COURT OF THE UNITED STATES

Mary Klebba-Shulga — PETITIONER  
(Your Name)

vs.

Jodi Shulga — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

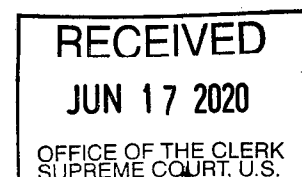
PETITION FOR WRIT OF CERTIORARI

Mary Klebba-Shulga  
(Your Name)

1652 Islandview Ct.  
(Address)

Hoffman Estates, Illinois 60169  
(City, State, Zip Code)

2246227780  
(Phone Number)



### **QUESTION(S) PRESENTED**

Do judges have the right to ignore the laws of: The Retirement Equity Act of 1984; a couple's finalized MSA and QDRO; the rules of an established Pension Code; and the unanimous decision of a Pension Board? How is it right, that after failing to include current laws and final divorce documentation, judges then order the current wife of a deceased firefighter to turn over his workman's compensation disability benefits to the ex-wife even though the ex-wife had no legal rights to these benefits?

How was it right for the Judgment/Opinion of an appellate court to publicize this document rulings when this Judgement/Opinion terribly misconstrues the facts of the case, omitting all supporting and lawful evidence defending one's entitlement as the rightful recipient to 100% of their late husband's workman's compensation disability benefits?

With this court case being so unique, actually the first of its kind, how can we leave the past unlawful judgments as they now stand, when they defy our written laws and will negatively affect millions of divorce cases across our nation past, present and future? Will not ex-wives across America take advantage of these wrongful rulings, further belittling the importance of our laws and final MSAs/QDROs as they are written?

A "constructive trust" is put into place if someone has possession of property (money, real estate, or other assets) that they should not have because they obtained it unfairly through fraud or breach of a fiduciary duty or signed contract ("unjust enrichment"). Therefore, how is it right for a judge to order a constructive trust when the current spouse lawfully obtained her late-husband's benefits?

How can we leave these past unjust rulings as they now stand, when they will negatively impact the once clearly defined recipient of survivor benefits belonging to a remarried decedent, creating tremendous confusion for all pension boards across our great nation?

## LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Attorney Dean Taradash

Attorney Paul Feinstein

Attorney Olga Allen

Attorney Brian Hurst

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- \* ☒ reported at See \* just below.; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished. \* <https://courts.illinois.gov/Opinions/AppellateCourt/2019/1stDistrict/1182028.pdf> Published on website for public knowledge and use.

The opinion of the Circuit Court of Illinois court appears at Appendix B to the petition and is

- ☒ reported at Opinion is incorporated within published judgement of appellate court.  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Jan. 29, 2020.  
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

**\*\***  
☒ An extension of time to file the petition for a writ of certiorari was granted to and including see \*\* just below (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_ **\*\* (150 day submission allowance granted due to Covid-19)**

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Retirement Equity Act of 1984**

An ex-wife whose marriage was at least one year in length is considered the surviving spouse and recipient of survivor benefits except in the case of an existing QDRO or remarriage.

### **Firefighter Pension Code IV**

Sec. 4-105d. Beneficiary. "Beneficiary": A person receiving benefits from a pension fund, including, but not limited to, retired pensioners, disabled pensioners, their surviving spouse, minor children, disabled children, and dependent parents.

(40 ILCS 5/4-114) (from Ch. 108 1/2, par. 4-114)

#### **Sec. 4-114. Pension to survivors.**

If a firefighter who is not receiving a disability pension under Section 4-110 or 4-110.1 dies (1) as a result of any illness or accident, or (2) from any cause while in receipt of a disability pension under this Article, or (3) during retirement after 20 years service, or (4) while vested for or in receipt of a pension payable under subsection (b) of Section 4-109, or (5) while a deferred pensioner, having made all required contributions, a pension shall be paid to his or her survivors, based on the monthly salary attached to the firefighter's rank on the last day of service in the fire department, as follows:

(a) To the surviving spouse.

(i) Beginning January 1, 2000, the pension of the surviving spouse of a firefighter who dies on or after January 1, 1994 as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty shall not be less than 100% of the salary attached to the rank held by the deceased firefighter on the last day of service.

### **MSA and QILDRO of Ronald Shulga and Jodi Shulga (Appendix A)**

#### **Ron and Jodi Shulga's QDRO Section III Part D**

##### **III. Monthly Retirement Benefit**

(D) Payments to the alternate payee under this Section III shall terminate

(1) upon the death of the member or the death of the alternate payee, whichever is the first to occur.

# Statement of the Case

In February 2018, I learned that a lawsuit was entered against me by Jodi Shulga, the ex-wife of my late husband, Ronald D. Shulga. Her counsel, Attorney Olga Allen, claimed that I was being "unjustly enriched" and asked Judge Naomi Schuster of the Illinois Circuit Court to consider entering a constructive trust. A constructive trust is put into place if someone has possession of property (money, real estate, or other assets) that they should not have because they obtained it unfairly through fraud or breach of a fiduciary duty or signed contract ("unjust enrichment").

Ron and I met thirty-three years ago and have since remained friends. We were engaged to be married in June 2016. The next month, Ron was diagnosed with a very aggressive form of lymphoma, his fourth battle in sixteen years. Ron applied for disability benefits from the City of Evanston Fire Department in July 2016. Ron and I married on August 30, 2016. Ron was granted these benefits on March 13, 2017. Very sadly, Ron passed away on May 11, 2017.

According to the Illinois Fire Code, the current wife is the recipient of survivor disability benefits. I was rightfully awarded 100% of Ron's workman's compensation disability benefits by the City of Evanston Fire Pension Board. There is no length of marriage requirement in order to be considered the current wife of the decedent.

According to Ron and Jodi's QDRO agreement effective October 20, 2016:

## III. Monthly Retirement Benefit

(D) Payments to the alternate payee [Jodi] under this Section III shall terminate upon the death of the member [Ron] or the death of the alternate payee [Jodi], whichever is the first to occur.

During court proceedings, the attorneys for both parties used past court cases as examples, however, in each case or example, the ex-husband was still alive. Ron's death changed Jodi's rights to his monthly benefits. Ron's death changed everything.

Furthermore, even if Ron was still alive, being that these are disability benefits, Jodi would not be entitled to 50%. Also, even if Ron and I never married following Ron and Jodi's divorce, Jodi would still not be entitled to any of Ron's disability benefits before or after Ron's passing.

In this situation, because of their length of their marriage, Jodi *would be* considered the surviving spouse and the recipient of survivor benefits "except in the case of a QDRO or remarriage", according to the Retirement Equity Act of 1984.

Unjust enrichment occurs when an individual does something illegal to obtain more money than originally agreed between the two parties, usually by means of a contract. In this case, there was no prior agreement between myself and Jodi and I did nothing illegal for it is my legal right to obtain 100% of my late husband's disability benefits.

On August 27, 2018, Judge Schuster ruled that I was being "unjustly enriched" and for Jodi to begin receiving 100% of Ron's disability benefits. She ordered that Jodi begin

receiving payments directly from the City of Evanston. However, the retirement system isn't allowed to pay out retirement benefits or disability benefits to an alternate payee [Jodi Shulga]. One week later, as agreed by the attorneys representing both parties, Judge Schuster changed her ruling to 50% entitlement to Jodi Shulga. I now forward 50% of Ron's monthly disability benefits to Jodi's attorneys on her behalf.

Included in her order, I will also have to pay Jodi arrears pending the decision of the Illinois Appellate Court. These arrears refer to 50% of the survivor benefits I received since the date of Ron's passing, May 11, 2017, through the date of Judge Schuster's ruling, August 27, 2018. A court date is now scheduled for July 2020 to determine new payment arrangements to Jodi Shulga including the arrears of over \$71,000. These arrears will be in addition to the 50% which I now pay Jodi from the monthly benefits I receive as the surviving spouse of Ron Shulga.

This case was then brought to the Illinois Appellate Court. My Appellate Attorney, Paul Feinstein, submitted a request for the Illinois Appellate Court to refrain from scheduling a hearing on specific dates for he will be out of town. Instead of receiving an approval or denial, Attorney Feinstein received Justice Delort's Judgement/Opinion on our case. The Illinois Appellate Court had agreed with the rulings of the lower court. However, upon reading Judge Delort's judgement, all laws and facts contained within Attorney Feinstein's documents defending my rights as the sole beneficiary of my late husband's worker's compensation disability benefits, were omitted. Nowhere in his judgement does Justice Delort mention section III part D of Ron and Jodi's QDRO which states:

### III. Monthly Retirement Benefits

(D) Payments to the alternate payee under this Section III shall terminate upon the death of the member [Ron] or the death of the alternate payee [Jodi], whichever is the first to occur.

Justice Delort's judgement is filled with misinformation and omits important laws and other truths. His judgement, which has since been publicized, provides the public with a false impression of the facts and will undoubtedly negatively impact numerous, if not millions of divorce cases, past, present and future.

Very sadly, Justice Delort belittles the seriousness of Ron's illness:

(Pg. 3) ¶5 Ronald was first diagnosed with non-Hodgkin's small-cell lymphoma in early 2000. On July 26, 2016, Ronald applied for a line-of-duty disability pension from the Fund, claiming that his condition prevented him from continued service as a firefighter.

As clarified within the documents submitted by Attorney Feinstein, he explained that in the year 2000, Ron was diagnosed with work-related non-Hodgkin's lymphoma following exposure to PCB. Ron battled lymphoma three more times since this first diagnosis and

endured an exhausting stem-cell transplant. In 2016, Ron's lymphoma transformed to a very aggressive form of cancer called Diffuse Large B-Cell Lymphoma or DLBCL. After learning the seriousness of this new diagnosis and the aggressive treatments in his very near future, Ron's applied for workman's compensation disability benefits the very same month, July 2016. Several months later, at the conclusion of a two-hour hearing on March 13, 2017 with the Evanston Pension Board, Ron was awarded workman's compensation disability benefits. Sadly, Ron passed away two months later. However, Judge Delort writes:

(Pg. 3) ¶7 On May 11, 2017, the Board of Trustees of the Firefighters' Pension Fund of Evanston (the Board) issued an administrative decision on Ronald's application. The Board found that, due to his illness, Ronald had to stop working for the fire department on July 4, 2016.

The Board made its decision, approving his benefits on March 13, 2017. The Board then changed the disbursement date to May 11, 2017 so that I could begin receiving these benefits as the surviving spouse.

(Pg. 4) ¶8 Mary, who was married to Ronald for only nine months, ended up receiving benefits of \$9,169.53 per month as the surviving spouse of a disabled firefighter pursuant to section 4--114 of the Code (735 ILCS 5/4-11-4 (West 2016)). By contrast, Jodi, who was married to him for nearly 25 years, received nothing, despite the MSA and the corresponding QILDRO order. Ronald had worked as an Evanston firefighter during his entire marriage to Jodi.

I was rewarded Ron's disability benefits because of, not "despite", their QDRO. Ironically, this paragraph and much of his judgement was written verbatim from the original pages of Jodi's lawsuit.

Second, if married prior to the decedent's retirement, there exists no minimum length of marriage requirement in the Illinois Fire Pension Code in order for the current wife to be entitled to her late husband's disability benefits.

Third, the judge omitted section III part D of Ron and Jodi's QDRO stating (again):

### III Monthly Retirement Benefit

(D) Payments to the alternate payee under this Section III shall terminate upon the death of the member [Ron] or the death of the alternate payee [Jodi], whichever is the first to occur.

Forth, the judge also failed to acknowledge the Retirement Equity Act of 1984. This Act clarifies that Jodi *would be* considered the surviving spouse of Ron's benefits ***except in the case of a QDRO or remarriage.***

(Pg. 3) ¶6 Ronald married Mary in August 2016. On October 20, 2016, the circuit court entered a QILDRO that, among other things, directed the Evanston Firefighters' Pension Fund (the Fund) to pay Jodi 50% of Ronald's "Monthly Retirement Benefit" that he had accrued from the date of Ronald and Jodi's marriage until the date of the divorce; The QILDRO further provided that, so long as it was in effect, Ronald was prohibited from choosing "a form of payment of the retirement benefit that has the effect of diminishing the amount of the payment to which the alternate payee is entitled," unless that alternate payee consented in writing and the consent was notarized and filed with the Fund. Both the MSA and the QILDRO are silent with respect to the allocation of any firefighter death benefits.

Judge Delort fails to clarify that Jodi was entitled to 50% of Ronald's retirement benefits *only while Ron was living*. Again, why would he leave out such a critical part of their QDRO, section III part D regarding one's death (as above), which now deceives the public by omitting these facts?

Included in this section the judge wrote: "Ronald was prohibited from choosing 'a form of payment of the retirement benefit that has the effect of diminishing the amount of the payment to which the alternate payee is entitled..." Judge Delort fails to reiterate that their QDRO was not entered until October 2016, three months after Ron had already applied for disability benefits with the City of Evanston. Also, their QDRO was not signed by Ron, but by the judge, because Ron was hospitalized at that time and very ill.

Judge Delort was incorrect to suggest, "Both the MSA and the QILDRO are silent with respect to the allocation of any firefighter death benefit" when, on page 3 section VII of their QDRO entitled "Lump Sum Death Benefits", pertains strictly death benefits (Appendix E). Please be advised that the City of Evanston does not, nor ever has paid out death benefits.

(Pg. 5) ¶14 On August 27, 2018, the circuit court held a hearing on Jodi's amended complaint...

On August 27<sup>th</sup>, a presentation of arguments limited to the presence of both party's attorneys, was heard by Judge Schuster. We were never granted a proper hearing in the circuit court nor in the Illinois Appellate Court. Our request for a rehearing by the Illinois Appellate Court was also denied (Appendix C). On the date of the rehearing denial, Judge Delort's Judgement/Opinion became public to be used as an example in other court cases nation-wide.

(Pg. 6) ¶16 On September 6, 2018, the court issued a written order finding that Mary was unjustly enriched. The court stated that it would enforce the MSA.

## Reasons for Granting the Petition

In the Judgement/Opinion of the Illinois Appellate Court, it is written that they “concur with the decision of the circuit court”, however, they do not mention the primary reason presented by the circuit court, that “in their MSA, an unwritten promise by Ron exists to take care of Jodi financially for her lifetime”. Instead, the Appellate Court Judge stated that Ron was of retirement age when he was awarded workman’s compensation disability benefits therefore entitling Jodi to 50% according to the case-law Benson and Schurtz. The Appellate Court failed to mention the fact that Jodi never applied for her 50% of Ron’s benefits when they divorced. They also excluded the fact that Jodi’s right to his benefits ended the day Ron passed away. Part III, section D of their QDRO (as below) was completely omitted by the judges of both courts.

Both the Appellate and the Circuit Court judges failed to comply with the following federal law, state law and the content of Jodi and Ron’s MSA and QDRO. The laws which both courts neglected include:

**1984 Retirement Equity Act:** The ex-wife is considered the surviving spouse *except* in the presence of QDRO or remarriage.

**Illinois Firefighter Pension Laws:** The current wife is the primary beneficiary to 100% of the decedent’s workman’s compensation disability benefits. There is no minimum length of marriage requirement.

**QDRO:** III. Monthly Retirement Benefits

Payments to the alternate payee [Jodi] shall cease upon death of the member [Ron], or death to the alternate payee, whichever occurs first.

**MSA:** (There exists no “unwritten promise by Ron to financially take care of Jodi for her lifetime” as stated by Judge Schuster of the Illinois Circuit Court).

The judges from both courts based their decision on specific case-laws, however, these case-laws did not involve spouses that had passed away. Ron’s death changed Jodi’s entitlement to his benefits. Ron’s death changed everything.

Being ordered to forward half of the monthly benefits which I receive as Ron’s surviving spouse, to his ex-wife, hurts me insurmountably both financially and spiritually, as I know that, according to the law, Jodi lost entitlement to Ron’s benefits when he died. I remember Ron telling me that should anything ever happen to him that I would receive his benefits to take care of me and the family. I know what Ron knew to be true and what he wanted for his benefits. Even if he

## **Reasons for Granting the Petition**

was still living, Jodi would have to bring Ron to court and fight to receive 50%, as these are not normal retirement benefits, but disability benefits. Even then, Jodi would still lose all rights to these benefits when he passed away according to their QDRO and the 1984 Retirement Equity Act.

To add insult to injury, the judgement of the Appellate Court has since been made public. Much of the content within this judgement is not factual. It is possible that important facts were omitted and the truth purposely misconstrued to benefit Jodi Shulga.

Without a doubt, the unjust rulings of this case will be used to benefit ex-wives across our nation both past, present and future. It is necessary that these rulings be reversed.

These unlawful rulings will also create much confusion for fire department pension Boards across America regarding the once clearly defined recipient of spousal survivor benefits. Please see the attached (following) article which was printed in the Riverside Fire Department's Quarterly, referring to these judgements.

For the foregoing reasons, the petition for a Writ of Certiorari should be granted.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mary Klebba-Shulga

Date: 06/11/2020