

# STATE LAW CLAIM UNDER PRENUPTIAL AGREEMENT NOT BARRED BY ERISA

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Prior to their marriage, Beulah and Jimmy executed a prenuptial agreement. Under the prenuptial agreement, Beulah and Jimmy agreed to renounce any right to any retirement account held by the other. The prenuptial agreement also provided that the agreement was not intended to restrict rights to name beneficiaries under those accounts and each party would be required to execute any necessary spousal consents or waivers. Jimmy and Beulah were married in August 2016 and later that year Jimmy dies of cancer. Jimmy appointed his brother Billy as executor of his estate. Billy was designated as the beneficiary of Jimmy's 401(k) Plan and of the pension plan under which Jimmy was a participant at the time of his death; there was no consent executed by Beulah to Billy being named as the beneficiary.

After Jimmy's death, the administrator of the 401(k) plan and the pension plan distributed the proceeds from both plans to Beulah. The administrator of the plans stated that Beulah, as the surviving spouse, was the proper beneficiary of the 401(k) plan and the pension plan under ERISA and also stated that under ERISA a prenuptial agreement could not be considered in determining who was the proper beneficiary of the 401(k) plan and pension plan.

Billy sues Beulah claiming that Beulah has converted personal property of Jimmy's estate to her own use and asked the court to enter an injunction prohibiting Beulah from transferring, spending or otherwise disposing of the 401(k) plan or the pension plan assets. The trial court issued a permanent injunction. After a period of litigation, Billy files a motion for summary judgment in his favor and requests the court to award him the almost \$500,000 in retirement benefits. Beulah filed a response claiming that she was the proper beneficiary under the terms of the plans because she never executed a consent to waiver of spousal rights, and was therefore entitled to receive and retain the proceeds of the 401(k) plan and pension plan.

The Supreme Court of the State of Alabama upheld the trial court's summary judgement in favor of Billy. The court held that while the provisions of ERISA governed what a plan administrator must do and to whom the plans must pay a benefit, ERISA did not preclude a state law action under a breach of contract theory. The court agreed that Beulah breached the prenuptial agreement which indicating that she would disclaim all rights to the retirement benefits and execute any necessary waivers. (*Moore v. Moore*, 2019 WL 62421932019)

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