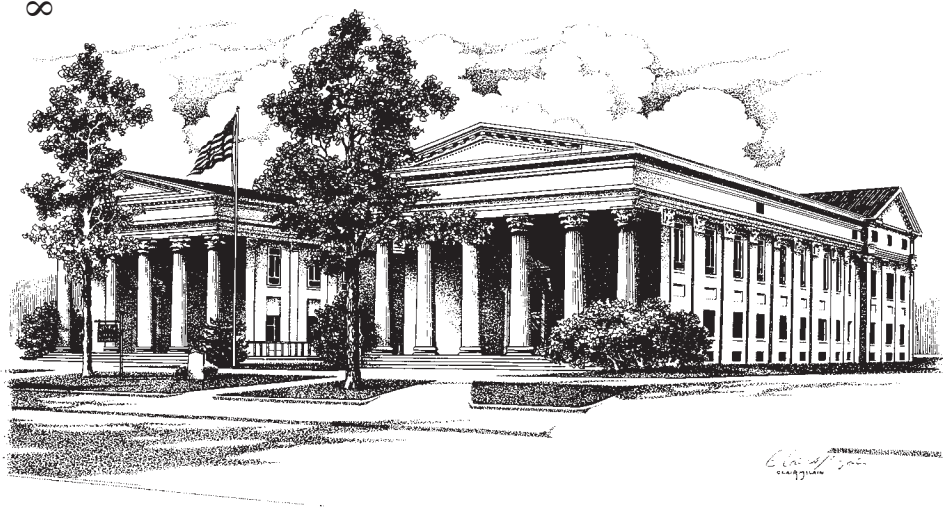


*Erie
County
Legal
Journal*

November 30, 2018

Vol. 101 No. 48



**101 ERIE 219 - 225
Gausman v. Gausman
and City of Erie Officers' and Employees' Retirement Plan**

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Megan E. Black

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Erie County Bar Association

Calendar of Events and Seminars

WEDNESDAY, DECEMBER 5, 2018

Film Grain Series: Dinner & A Movie
at the Bourbon Barrel

Sponsored by the ECBA's Women's Division
5:00 p.m.

THURSDAY, DECEMBER 6, 2018

ECBA Annual Membership Meeting & CLE
Lake Shore Country Club
Registration - 2:30 p.m.

Financial Statements 101 for Attorneys and Judges

2:45 p.m. - 3:45 p.m.

\$47 (ECBA members), \$60 (non-members)

1 hour substantive

Transfer break - 3:45 p.m. - 4:00 p.m.

Avoiding Malpractice

4:00 p.m. - 5:00 p.m.

\$47 (ECBA members), \$60 (non-members)

1 hour ethics

followed by

Social "Hour" - 5:00 p.m. - 5:30 p.m.

Business Meeting - 5:30 p.m. - 6:30 p.m.

Cocktail Party - 6:30 - 7:30 p.m.

TUESDAY, DECEMBER 11, 2018

*Basic Workers' Compensation Practice from
Claim Petition to Decision and An Overview of
Act 111, the Resuscitation of Impairment Ratings*
The Will J. & Mary B. Schaaf Education Center
12:15 p.m. - 1:15 p.m.

(11:45 p.m. registration/lunch)

\$47 (ECBA members/their non-attorney staff)

\$60 (non-members)

1 hour substantive CLE/CJE credit

TUESDAY, DECEMBER 11, 2018

Annual Senior Lawyers Division Holiday Lunch
Noon

The Erie Club

MONDAY, DECEMBER 17, 2018

ECBA Board of Directors Meeting

ECBA Headquarters

4:00 p.m.

TUESDAY, DECEMBER 25, 2018

WEDNESDAY, DECEMBER 26, 2018

Christmas Holiday

ECBA Office Closed

Erie County and Federal Courthouses Closed

TUESDAY, JANUARY 1, 2019

New Year's Day

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Erie County and Federal Courthouses Closed



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Nov. 30



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GARY GAUSMAN, Plaintiff

v.

KAREN GAUSMAN, Defendant

**CITY OF ERIE OFFICERS' AND EMPLOYEES' RETIREMENT PLAN,
Additional Defendant**

FAMILY LAW / DIVORCE / EQUITABLE DISTRIBUTION / PENSION BENEFITS

A QDRO negotiated between divorcing spouses cannot alter the amount or form of pension benefits available under the terms of a pension plan. Where there is no provision in the pension plan granting former spouse right to survivor benefits, the trial court could not order the pension plan to provide survivor benefits as part of equitable distribution. To conclude otherwise would impermissibly alter the benefit structure of the pension plan.

FAMILY LAW / DIVORCE / MUNICIPAL PENSION / SURVIVOR BENEFITS

Municipal pension provision that “former spouse” of a participant shall not be treated as “spouse” or “surviving spouse” for any purpose under the plan, permissibly excluded former spouses from entitlement to survivor benefits under the pension plan.

EQUITY / PRINCIPLES OF EQUITY

The court cannot do in equity what is not permitted by law. Although the court has broad equitable powers, when rights of a party are clearly established by defined principles of law, equity should not change or unsettle those rights.

CONSTITUTIONAL LAW / EQUAL PROTECTION /

MUNICIPAL PENSION SURVIVOR BENEFITS

Municipal pension ordinance’s exclusion of “former spouses” from the definition of “spouses” entitled to elect survivor benefits did not violate Equal Protection. The plan’s differing treatment of “spouses” and “former spouses” was reasonably related to achieving cost savings and providing for current families, therefore, it passed the applicable rational basis test.

CONSTITUTIONAL LAW / DUE PROCESS /

MUNICIPAL PENSION SURVIVOR BENEFITS

Wife’s entitlement to share in the marital value of participant’s monthly municipal pension benefit through equitable distribution did not create a property interest in survivor benefits under the plan. Accordingly, former wife was not deprived of a property interest by exclusion from the class of spouses entitled to survivor benefits under the plan.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL DIVISION – DIVORCE
NO. 10048-2014

Appearances: Melissa Pagliari, Esquire, for Plaintiff
Stacey K. Baltz, Esquire, for Defendant
John J. Estok, Esquire, for Additional Defendant

OPINION

Walsh, III, J.

March 9, 2017

This matter is before the Court on Defendant-Wife, Karen Gausman's ("Wife") *Motion for Special Relief to Approve QDRO and to Direct Approval of QDRO by City of Erie Officers and Employees Retirement Plan* ("Motion"), filed September 7, 2016. After a hearing held December 1, 2016, and upon consideration of the legal arguments set forth in the pleadings and briefs of the parties, for the reasons that follow, Wife's Motion is Denied. An appropriate Order will follow.

I. BACKGROUND

Plaintiff-Husband, Gary Gausman ("Husband") filed a *Complaint Under Divorce Code* ("Complaint") at the above term and number on January 9, 2014 seeking a decree of divorce under sections 3301(c) and 3301(d) of the Pennsylvania Divorce Code, 23 Pa.C.S.A. §§3101 et seq. Wife filed her Petition for *Ancillary Economic Relief*, seeking, among other claims, equitable distribution of the parties' marital assets, on June 22, 2015. Husband and Wife entered into a Marital Settlement Agreement ("MSA") dated December 4, 2016.

At Article IX, Paragraph 6 of the MSA, Husband and Wife agreed to share the marital portion of Husband's City of Erie Officers and Employees Retirement Plan ("Plan") pension ("Pension") equally, by deferred distribution via qualified domestic relations order prepared by a third party ("QDRO"). *Motion Exhibit 1, MSA pg. 9*. In addition, Husband and Wife agreed that Wife was entitled to a survivor benefit for her lifetime, equal to her share of the marital portion of the Pension, and certain death benefits. Thereafter, a proposed QDRO was prepared and submitted to the Plan for approval.

The Plan, through its Administrator's legal counsel, responded by letter dated May 13, 2016, that it could not approve the QDRO without seven material revisions.¹ *Motion Exhibit 3*. After Preliminary Objections filed September 28, 2016, the Plan was joined in this action by *Complaint to Add Additional Defendant* on October 17, 2016. The Plan filed its Answers to both the joinder Complaint and Wife's Motion, on November 21, 2016. Wife's Motion seeks to compel the Plan to provide the survivor and death benefits to which Husband and Wife agreed in the MSA.

Specifically, Wife's Motion pertains to the Plan's required revisions to Paragraphs 10, 11 and 12 of Wife's proposed QDRO, relative to survivor and death benefits. Below are the proposed QDRO provisions at issue, with objectionable language from Wife's proposed QDRO struck-through, and alternative text required by the Plan underlined:

Paragraph 10:

If the Participant predeceases the Alternate Payee, ~~either before or after the Participant's retirement, then the Alternate Payee shall receive the marital portion [] of the Plan's 50% survivor annuity. Such survivor annuity shall be payable to the Alternate Payee for her lifetime and irrespective of her or the Participant's marital status. If there is any~~

¹ The first two were superficial. The third, to Paragraph 9, had the result of eliminating Wife's marital interest in the Pension upon her remarriage. Wife acquiesced to this revision, which seems inconsistent with her position relative to survivor benefits - that being essentially that her marital share of the Pension is her constitutionally protected property. Why a constitutionally protected property interest should survive Husband's death, but not Wife's remarriage, is not explained.

~~cost to provide such former spouse survivor annuity for the Alternate Payee, the cost shall be deducted from the Alternate Payee's share of the Participant's monthly pension; and such cost shall not reduce the Participants portion of the pension benefit. If the Plan pays a lump sum refund of employee contributions or any other pre-retirement death benefit, the Alternate Payee shall receive 50% times the marital coverture fraction of such lump sum payment or death benefit not entitled to payment of any pre-retirement death benefit from the Plan. Alternate Payee shall only be entitled to receive the percent of the marital portion of Participant's undistributed contributions [], if any, after the death of Participant's surviving spouse, if Participant remarried and/or the death of his/her/their surviving children prior to their attaining the age eighteen (18).~~

Paragraph 11:²

~~If the Alternate Payee dies before the Participant, the Alternate Payee's share of any monthly retirement pension or lump sum payment (DROP or refund contributions) shall be paid if, as and when the Participant receives such payment, to the Alternate Payee's beneficiary as designated on a form provided by the Plan. However, if the Plan does not allow the Alternate Payee to designate a beneficiary, then the Alternate Payee's portion of the assigned benefits herein shall revert to Participant. In the event Participant dies survived by Alternate Payee, the Alternate Payee's interest in Participant's retirement benefits under the Plan shall cease.~~

Paragraph 12:

In no event shall the Alternate Payee have greater benefits or rights other than those which are available to the Participant. The Alternate Payee is not entitled to any benefit not otherwise provided by the Plan. The Alternate payee is only entitled to specific benefits offered by the Plan as provided in this Order. All other rights, privileges and options offered by the Plan not granted to Alternate Payee are reserved to the Participant. Nothing in this Order requires the Plan to provide either the Participant or the Alternate Payee with:

- a. Any type or form of benefit not otherwise provided under the Plan; or
- b. Any increases in benefits to which the Participant is not otherwise entitled.

Wife argues the Plan should be directed to accept Wife's revised proposed QDRO, *Motion Exhibit 4*, which does not incorporate the above revisions. She asserts two grounds for her position. First, that the Plan's refusal to provide survivor benefits to her as a former spouse is unconstitutional; and second, that principles of equity and fairness entitle Wife to share in survivor benefits available to current spouses under the Plan.

² In response to the Plan's May 13, 2016 letter, Wife prepared a revised proposed QDRO, *Motion Exhibit 4*. The language found in Wife's original proposed Paragraph 11, *Motion Exhibit 2*, is missing from the revised proposed QDRO, *Motion Exhibit 4*. Given the Motion indicates Wife objects to the Plan's revision of her original Paragraph 11, the omission of that language from her second proposed QDRO may be inadvertent.

II. THE PLAN

The Plan contains the following provisions material to eligibility for survivor benefits:³

145.02(hh) “Surviving Spouse” if married prior to retirement means a living individual who was legally married to the Participant and is married to the Participant at the time of the Participant’s death. If married post-retirement- a living individual who was legally married to the Participant and is married to the Participant at the time of the Participant’s death and for the twelve months immediately preceding the participant’s death.

145.02(ii): “Survivor” means the Participant’s Surviving Spouse. If there is no Surviving Spouse following the death of the Participant, or at the subsequent death of the Surviving Spouse, “Survivor” shall mean the surviving children of the deceased Participant in equal shares so long as they are under the age of eighteen (18).

145.15(f)(2): ... [A] former spouse of a Participant shall not be treated as the spouse or Surviving Spouse for any purposes under the plan. (*Emphasis supplied*).

There is no dispute that Wife, in her capacity as a former spouse (by the time the QDRO is entered), has no entitlement to survivor benefits under the plain language of the Plan ordinance. Instead, her claim derives from her marital interest in Husband’s retirement benefit, which benefit, she essentially argues, should not cease upon Husband’s death, based on principles of equity, equal protection and due process.⁴

III. DISCUSSION

A. Equity

Wife argues that it would be unfair to deny survivor benefits to Wife, on the theory that survivor benefits are available to current spouses, and necessary to protect her interest in her marital share of Husband’s pension in the event he would predecease her. In support of her argument, Wife relies primarily on a federal court Opinion and Order entered by the Honorable Maurice B. Cohill, Jr., in the case of *Sontheimer v. City of Erie / Police Pension Fund Civil Action No. 89-159E (W.D.Pa. 1991)*,⁵ and the subsequent Opinion and Order entered by the Honorable John J. Trucilla, of Erie County, Pennsylvania Court of Common Pleas, in the case of *Tate v. Tate, Erie County Docket No. 945-1992*, which gave *res judicata* effect to Judge Cohill’s 1991 decision.

Sontheimer and Tate involved spousal claims to City of Erie Police Pension Fund (“Police Pension”) benefits. *Sontheimer* was a class action suit brought by present, past, and future spouses of then current participants in the Police Pension. The spouses in that case alleged

³ City of Erie Codified Ordinances can be viewed online at: www.erie.pa.us/CityCouncil/CityOrdinances.aspx. The Plan provisions referenced herein are found at Part One of the 2015 Administrative Code, Title Seven, Article 145, §§145.01 et seq.

⁴ It appears Wife may have a remote chance of receiving a share of the marital portion of Husband’s benefit if he predeceases her prior to retirement, and if Husband’s surviving spouse, if any, and children, if any, also predecease Wife, assuming there are any undistributed contributions remaining. See *Motion Exhibit 3, pg. 2, in reference to Paragraph 10 of the proposed QDRO.*

⁵ This case was appended to Wife’s Motion. There is no indication it was ever reported. The Court could find no instance of its having been cited in any reported case.

unconstitutional deprivation of their right to the marital portion of their participant-spouse's Police Pension benefits, by virtue of the Plan's practice of denying current and survivor pension benefits to former spouses. Judge Cohill held that, "[t]he outright denial by defendants of any interest in either survivor or current pension benefits of an ex-spouse of a city employee is in violation of 42 U.S.C. §1983." *Motion Exhibit 6. Order dated September 9, 1991*. In the same Order, Judge Cohill mandated the Police Pension to "obey all court orders regarding the equitable distribution of pension benefits."

Tate involved an Erie County divorce action filed in 1992, and settled in 1994. Within three years of Judge Cohill's decision in *Sontheimer*, the parties in *Tate* agreed that Mrs. Tate would receive half of the marital portion of Mr. Tate's Police Pension benefits, and would be designated a surviving spouse for that amount, in the event of the prior death of Mr. Tate. A QDRO was prepared and presented to the Police Pension in 1994. Presumably, in light of Judge Cohill's fairly recent Order, and the fact that Mrs. Tate was a member of the successful class of plaintiffs in *Sontheimer*, the Police Pension approved the QDRO, and the same was entered as an Order of Court in early 1995. Mr. Tate retired in 2000, and Mrs. Tate began receiving her share of his benefit under the QDRO. However, when he died in 2013, her benefits were terminated on the ground that former spouses were not eligible for survivor benefits under the Police Pension plan. Judge Trucilla determined that Judge Cohill's 1991 Order was entitled to *res judicata* effect, and ordered the Police Pension to reinstate Mrs. Tate's monthly benefit for the remainder of her life.

Judge Trucilla's reliance on *Sontheimer* was an appropriate application of *res judicata* under the particular facts of that case. However, *res judicata* does not apply here, where Wife is not a member of the *Sontheimer* class of plaintiffs, and pension involved here is an entirely different entity. Though the issues are similar, this Court must decide the case *sub judice* under the law as it exists today.

The cases decided since *Sontheimer* fail to support Wife's position. Specifically, *Palladino v. Palladino*, 713 A.2d 676 (Pa. Super. 1998), which held that a right to survivor benefits acquired by the non-participant spouse during the marriage, is marital property for purposes of equitable distribution, underscores the Plan's argument in this case that such benefits are separate and distinct from the participant's retirement benefit. In *Palladino*, a survivor benefit was available to Mrs. Palladino under the express terms of the pension plan. The issue of whether Mrs. Palladino would have been entitled to those benefits by operation of law, in the absence of express plan terms, never arose.

Berrington v. Berrington, 633 A.2d 589 (Pa. 1993), is also contrary to Wife's position. For one, it concerns only the proper method for calculating the marital portion of a participant's pension benefit under a defined benefit plan, which method was superseded by §3501 of the Divorce Code, 23 Pa.C.S.A. §§ 3101, et seq. See *Smith v. Smith*, 938 A.2d 246, 252 (2007). For another, it adopts the now well-known definition of a QDRO, including the requirement that to be "qualified," the order cannot alter the amount or form of plan benefits. *Id.*, 633 A.2d 589, 591 n.3. Requiring a plan to provide survivor benefits to otherwise ineligible beneficiaries is the very definition of altering the amount and form of plan benefits.

Such was the conclusion in *Maloney v. Maloney*, 754 A.2d 36 (Pa. Cmwlth. 2000) and *Kenny v. City of Wilkes-Barre Police Pension Fund*, 2010 Pa. Cmwlth. Unpub. Lexis 45. In both cases, a QDRO was entered dividing the marital portion of the participant-spouse's

monthly retirement benefit. In both cases, the pension plans approved the QDROs, but refused to continue payments after the participants' deaths on the ground that the former spouses were not eligible for survivor benefits under the respective plans. As aptly explained in *Kenney*:

Here, the Kenney DRO divided the pension benefits that Mrs. Kenney was entitled to receive under the terms of the Pension Ordinance. To the extent that Mr. Kenney received payments from the Pension Fund, the DRO attached a portion of such payments in favor of Mrs. Kenney. For three years the Pension Fund honored the DRO granting a fixed amount of benefits to Mrs. Kenney. Although the DRO in this case awarded Mrs. Kenney a specific amount and was implemented by the Pension Fund before Mr. Kenney's death, *Maloney* is nevertheless applicable. Mrs. Kenney's right to receive pension payments from the Pension Fund was completely dependent upon Mr. Kenney's right to receive such payments under the Pension Ordinance. Once Mr. Kenney died, his right to pension payments terminated under the Pension Ordinance and the DRO became a legal nullity because the pension no longer existed. While we sympathize with Mrs. Kenney's predicament, there is no provision in the Pension Ordinance that grants an ex-spouse the right to survivor pension payments. To conclude otherwise would impermissibly alter the benefit structure of the Pension Ordinance. We, therefore, conclude that the trial court erred in ordering the Pension Fund to continue to make payments to Mrs. Kenney.

Kenney v. City of Wilkes-Barre Police Pension Fund, No. 1334 C.D. 2009, 2010 WL 9512681, at *2 (Pa. Commw. Ct. Feb. 3, 2010).

Wife attempts to distinguish *Maloney* and *Kenney* on the ground that it is unclear from the facts whether the former spouses had been designated as survivors for the purposes of survivor benefits at the time the QDROs were entered. Wife's argument fails because the former spouses were not entitled to survivor benefits at any relevant time, therefore, they could not have been designated to receive them. Also, had the plans inadvertently accepted QDROs that expressly provided survivor benefits to the former spouses contrary to plan terms, it is reasonable to presume that fact would have made its way into the Courts' Opinions.

In sum, while the Court is sympathetic to the Wife's equitable arguments, it cannot do in equity what is not permitted by law: *Aequitas legem sequitur*.

B. Equal Protection

Wife argues that the Plan's actions (refusal to provide survivor benefits to her as a former spouse) violate the equal protection clause of the Fourteenth Amendment, *U.S. Const. Amend. XIV*. The Equal Protection Clause, in pertinent part, provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." *Id.* § 1. The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly. *Curtis v. Kline*, 666 A.2d 265, 267 (Pa. 1995). However, it does not require that all persons under all circumstances enjoy identical protection under the law. *Id.* The right to equal protection under the law does not absolutely prohibit classification of individuals for the purpose of receiving different treatment, and does not require equal treatment of people having different needs. *Id.* The prohibition against treating people differently under the law does not preclude the resort to legislative classifications,

provided those classifications are reasonable rather than arbitrary and bear a reasonable relationship to the object of the legislation. *Id.* at 268. A classification, though discriminatory, is not arbitrary or in violation of the equal protection clause if any state of facts reasonably can be conceived to sustain that classification. *Id.* In undertaking its analysis, the reviewing court is free to hypothesize reasons the legislature might have had for the classification. *Id.*

Depending on the persons and interests affected, different standards of review apply. *Id.* The parties agree that only minimal scrutiny is applicable to the Plan's decision in the instant case. *Wife's Brief*, pp. 6-9; *Plan's Reply Brief*, p. 5. For purposes of Equal Protection analysis, minimal scrutiny means the action will be upheld if there is any rational basis for the classification. *Curtis*, 666 A. 2d at 268-269 (citing *Smith v. City of Philadelphia*, 516 A.2d 306 at 311 (Pa 1986)).

The Plan's denial of survivor benefits passes the rational basis test. It is not a reach to conclude that a primary purpose of the Plan is to provide for continuation of income to its employees and their current families, after years of loyal service. One can easily hypothesize that most workers, and, therefore, most employers, are less interested in protecting ex-spouses. Further, and probably more pertinent, there would be a substantial costs savings to the Plan by not providing survivor benefits to ex-spouses. As noted by other Courts and in popular literature, it is widely accepted that nearly one-half of U.S. marriages end in divorce, and subsequent marriages are even more likely to fail. *See e.g. Walters v. City of Allentown*, 818 F. Supp. 855 n.9, (E.D. Pa.), *aff'd*, 9 F.3d 1541 (3d Cir. 1993), "*The High Failure Rate of Second and Third Marriages*", <https://www.psychologytoday.com/blog/the-intelligent-divorce/201202/the-high-failure-rate-second-and-third-marriages>. Thus, Wife's argument that paying benefits to ex-spouses would cost the same as paying benefits to current spouses is unsubstantiated, and ignores the fairly reasonable conclusion that in many cases, employees will not remarry, or remain remarried until their death.

C. Due Process

Having previously determined that Wife has no property interest in the Plan's survivor benefits (see section II.A. above), it must follow that the denial of those benefits does not violate the Due Process. The Due Process Clause provides that no State shall "deprive any person of life, liberty, or property, without due process of law." *U.S. Const. Amend. XIV § I*. In order for Wife to have a claim under Due Process, she must first have a property interest in the survivor benefits, which she does not.

III. Conclusion

For all of the reasons discussed above, Wife's Motion is denied. An Order will follow.

ORDER

AND NOW, this 9th day of March, 2017, upon consideration of the "Motion for Special Relief to Approve QDRO and to Direct Approval of QDRO by City of Erie Officers and Employees Retirement Plan," filed by Defendant, Karen Gausman, on September 7, 2016, for the reasons set forth in the Opinion accompanying this Order, it is hereby ORDERED that the Motion is DENIED. Further, the Preliminary Objections filed by the Additional Defendant on September 28, 2016 are dismissed as moot.

BY THE COURT

/s/ **Joseph M. Walsh, III, Judge**

GARY GAUSMAN
v.
KAREN GAUSMAN, CITY OF ERIE OFFICERS'
AND EMPLOYEES' RETIREMENT PLAN

APPEAL OF: KAREN GAUSMAN

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 440 C.D. 2017

Argued: May 7, 2018

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COHN JUBELIRER¹

FILED: August 16, 2018

Karen Gausman (Wife) seeks to compel the City of Erie Officers' and Employees' Retirement Plan (Plan) to approve a proposed qualified domestic relations order (QDRO) that she negotiated during her divorce from Plan participant Gary Gausman (Participant). The Plan previously refused to approve the QDRO because it provided, in relevant part, that Wife would be entitled to survivor benefits upon Participant's death. The City of Erie's Pension Ordinance expressly prohibits survivor benefits to ex-spouses. Wife filed a Motion for Special Relief (Motion) asking the Court of Common Pleas of Erie County (common pleas) to order the Plan to approve the QDRO. Common pleas denied the Motion by Order dated March 9, 2017. On appeal, Wife claims common pleas erred in refusing to designate her as a surviving spouse and challenges the Plan's treatment of ex-spouses on constitutional grounds. Discerning no error or constitutional violations in common pleas' decision, we affirm.²

I. Background

Participant and Wife married in October 1991. After 22 years of marriage, Participant filed for divorce from Wife in January 2014 on the ground that the marriage was irretrievably broken. Wife sought equitable distribution of the parties' marital assets, and Participant and Wife subsequently entered into a Marital Settlement Agreement (MSA), whereby Participant and Wife agreed, *inter alia*, to equally share the marital portion of Participant's pension by deferred distribution via

¹ This matter was reassigned to this author on July 9, 2018.

² The issue before us is not whether Wife is entitled to any benefit, but whether the Plan is required to pay Wife that benefit directly based upon a privately negotiated QDRO between her and Participant. We pass no judgment on whether Wife is entitled to the equivalent of survivor benefits by some other means, such as an annuity purchased by Participant.

a QDRO.³ The MSA further provided that “Wife shall be entitled to a survivor benefit for her lifetime equal to her share of the marital portion of the benefit.” (MSA, art. IX, ¶ 6.)

In accordance with the MSA, a proposed QDRO was prepared and submitted to the Plan for approval. The Plan responded with a number of concerns that needed to be addressed before the QDRO was approved. Relevant to this appeal was the Plan’s proposed changes to Paragraph 10 of the QDRO, which were as follows:⁴

~~10. If the Participant predeceases the Alternate Payee⁵, either before or after the Participant’s retirement, then the Alternate Payee shall receive the marital portion (calculated using the fraction defined in Section 8) of the Plan’s 50% survivor annuity. Such survivor annuity shall be payable to the Alternate Payee for her lifetime and irrespective of her or the Participant’s marital status. If there is any cost to provide such former spouse survivor annuity for the Alternate Payee, the cost shall be deducted from the Alternate Payee’s share of the Participant’s monthly pension, and such cost shall not reduce the Participant’s portion of the pension benefit. If the Plan pays a lump sum refund of employee contributions or any other pre-retirement death benefit, the Alternate Payee shall receive 50% times the marital coverture fraction of such lump sum payment or death benefit not be entitled to payment of any pre-retirement death benefit from the Plan. Alternate Payee shall only be entitled to receive the percentage of the marital portion of Participant’s undistributed contributions (see Paragraph 8 for the formula to derive said percentage), if any, after the death of Participant’s surviving spouse, if Participant remarried, and/or the death of his/her/their surviving children prior to their attaining the age eighteen (18).~~

(Plan Letter dated May 13, 2016, Reproduced Record (R.R.) at 35a.)

The Plan also requested Paragraph 11 of the QDRO to be omitted. Paragraph 11 originally read:

11. If the Alternate Payee dies before the Participant, the Alternate Payee’s share of any monthly retirement pension or lump sum payment ([Deferred Retirement Option Program] or refund of contributions) shall be paid if, as and when the Participant receives such payment, to the Alternate Payee’s beneficiary as designated on the form provided by the Plan. However, if the Plan does not allow the Alternate Payee to designate a beneficiary, then the Alternate Payee’s portion of the assigned benefits herein shall revert to the Participant.

(Original Proposed QDRO, R.R. at 31a.) The Plan proposed replacing Paragraph 11 with the following language: “In the event Participant dies survived by Alternate Payee, the Alternate Payee’s interest in Participant’s retirement benefits under the Plan shall cease.” (Plan Letter dated May 13, 2016, R.R. at 35a.)

³ The MSA was ultimately approved by common pleas.

⁴ The language that the Plan wanted omitted is reflected by strikethrough and the proposed additions are underscored.

⁵ Wife is identified as “Alternate Payee” under Paragraph 4 of the QDRO.

Finally, the Plan requested the following language be added to Paragraph 12 of the QDRO:

Nothing in this Order requires the Plan to provide either the Participant or the Alternate Payee with:

- a. Any type or form of benefit not otherwise provided under the Plan; or
- b. Any increases in benefits to which the Participant is not otherwise entitled.

(*Id.*)

Wife submitted a revised QDRO, which was also rejected by the Plan. As a result of the Plan's continued refusal to approve the QDRO, Wife filed her Motion and subsequently joined the Plan as an additional defendant. The Plan originally filed preliminary objections to the Motion but subsequently filed an Answer, rendering the preliminary objections moot.

Argument on the Motion was held on December 1, 2016. Common pleas issued its Opinion and Order denying the Motion on March 9, 2017. Common pleas explained that the Pension Ordinance expressly provided that "a former spouse of a Participant shall not be treated as the spouse or Surviving Spouse for any purposes under the plan." (Common Pleas Opinion (Op.) at 4 (quoting Pension Ordinance, Article 145.15(f)(2)) (emphasis omitted).) Common pleas rejected Wife's argument that equity requires that she be entitled to survivor benefits. It also found that the Plan did not violate the principle of equal protection because the different treatment of current spouses and ex-spouses passes the rational basis test. (*Id.* at 9.) Finally, common pleas determined that Wife had no property interest in the survivor benefits and, therefore, could not prevail on due process grounds. (*Id.* at 10.)

Wife appeals from common pleas' Order, raising three issues: (1) whether common pleas erred or abused its discretion when it refused to designate Wife as a surviving spouse; (2) whether common pleas erred in denying Wife's equal protection claim by finding there was a rational basis to deny an ex-spouse survivor benefits; and (3) whether common pleas erred in concluding Wife had no property interest in the survivor benefits, and as a result, there was no due process violation.⁶

Wife first argues that common pleas erred by refusing to designate her as a surviving spouse because the survivor benefit was acquired during the couple's 22-year marriage and is, therefore, marital property.⁷ The Plan responds that a QDRO negotiated between two divorcing spouses cannot alter the amount or form of pension benefits available under the terms of the Plan. Based upon our precedent, the Plan is correct.

In *Maloney v. Maloney*, 754 A.2d 36, 38 n.3 (Pa. Cmwlth. 2000), we held that a QDRO "may not alter the amount or form of plan benefits." There, an ex-wife sought a court order directing the borough to implement a domestic relations order (DRO) entered into between ex-wife and her ex-husband, a retired police officer, which would entitle her to half of ex-husband's pension benefits. Ex-husband died before the DRO was implemented, and

⁶ Wife raises a fourth issue: whether common pleas erred in denying her Motion. This issue appears duplicative of the others. In fact, in her brief she simply incorporates her arguments related to the first three issues in the argument section for the fourth issue.

⁷ "[M]arital property" is defined, in relevant part, as "all property acquired by either party during the marriage. . . ." Section 3501(a) of the Divorce Code, 23 Pa. C.S. § 3501(a).

the borough refused to make payments to ex-wife because, under the terms of the plan, an ex-spouse was not entitled to survivor benefits. Ex-wife then brought the action against the borough seeking enforcement of the DRO. The trial court granted ex-wife relief, and the borough appealed, arguing that upon ex-husband's death, ex-wife's entitlement to benefits ceased. We reversed the trial court, holding:

The trial court . . . is altering the benefit scheme of the plan and ordering the [b]orough to pay a benefit not previously contracted for. Specifically, the trial court is ordering the [b]orough to pay survivor benefits to an ex-spouse when such benefits have not been provided for in the Ordinance.

Id. at 39.

We expressed sympathy for ex-wife's situation but noted there was no support to "allow[] a trial court, in the context of a divorce action, to alter the benefit scheme of a pension plan." *Id.* Accordingly, we held that the trial court erred in ordering survivor benefits. *Id.* at 40.

We reached a similar result in *Kenney v. City of Wilkes-Barre Police Pension Fund* (Pa. Cmwlth., No. 1334 C.D. 2009, filed February 3, 2010), slip op. at 4-5, wherein we reversed a trial court order that altered a pension plan when the pension ordinance contained no provision granting ex-spouse survivor benefits.⁸ In *Kenney*, the ex-wife and participant negotiated a QDRO that provided ex-wife with half of the participant's monthly benefit. When participant died, the plan stopped making payments to ex-wife. The trial court found the QDRO required the payments and ordered the pension fund to reinstate benefits. Citing *Maloney*, we reversed, explaining that ex-wife's entitlement to benefits was dependent upon participant's right to receive benefits. *Id.* Because participant's right to benefits ceased upon his death, we held ex-wife's right to benefits also ceased. *Id.* at 5. "To conclude otherwise would impermissibly alter the benefit structure of the [p]ension [o]rdinance." *Id.*

Here, Wife is similarly seeking benefits not otherwise provided under the Plan. The Pension Ordinance defines "[s]urviving [s]pouse" as "a living individual who was legally married to the Participant and is married to the Participant at the time of the Participant's death."⁹ (Pension Ordinance, Article 145.02(hh).) As Participant's and Wife's divorce was finalized on March 13, 2017, Wife is no longer legally married to Participant and cannot be a "surviving spouse" under the Plan. Furthermore, the Pension Ordinance provides that "a former spouse of a Participant shall not be treated as the spouse or surviving spouse for any purposes under the plan." (*Id.*, Article 145.15(f)(2).) Therefore, common pleas did not err in refusing to designate Wife as a surviving spouse when the Pension Ordinance expressly stated that ex-spouses were not surviving spouses.

Wife requests this Court to invoke its equitable power and designate her as a surviving spouse. However, although a court has broad equitable powers, "[w]hen the rights of a party

⁸ *Kenney* is an unreported panel decision of this Court, which is cited in accordance with Section 414(a) of this Court's Internal Operating Procedures, which provides that an unreported panel decision issued by this Court after January 15, 2008, may be cited "for its persuasive value, but not as binding precedent." 210 Pa. Code § 69.414(a).

⁹ This definition applies if the marriage occurred before retirement, as is the case here. If the marriage occurred post-retirement, "surviving spouse" is defined as "a living individual who was legally married to the Participant and is married to the Participant at the time of the Participant's death and for the twelve months immediately preceding the Participant's death." (Pension Ordinance, Article 145.02(hh).)

are clearly established by defined principles of law, equity should not change or unsettle those rights.” *Cent. Storage & Transfer Co. v. Kaplan*, 389 A.2d 711, 715 (Pa. Cmwlth. 1978) (quotation omitted), *aff’d*, 410 A.2d 292 (Pa. 1979). Here, the Pension Ordinance clearly establishes that ex-spouses “shall not be treated as the spouse or surviving spouse for any purposes.” (Pension Ordinance, Article 145.15(f)(2).) Therefore, as equity should follow the law, equity will not be used to unsettle those rights.

Wife also argues that the Plan’s disparate treatment of ex-spouses and current spouses violates equal protection. She contends it is irrational that a new spouse married for just one year to the plan participant would be entitled to greater benefits than an ex-spouse of 22 years. The Plan responds that rational bases exist for the distinction, including cost savings and protecting the interests of current spouses. The Plan also points out that the Third Class City Code makes provision of survivor benefits discretionary. 11 Pa. C.S. § 14343(d) (“**If council elects, by ordinance**, to make the payments, the surviving spouse. . . .”) (emphasis added). Because providing survivor benefits is discretionary, the Plan argues its decision to provide such benefits to only certain classes of individuals necessarily is rational.

The parties agree that the classification here is subject to the rational basis test, which is the most deferential standard of review. *Clifton v. Allegheny Cty.*, 969 A.2d 1197, 1211 n.19 (Pa. 2009). Whether a classification passes the rational basis test involves a two-step analysis: “[f]irst, we must determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so, we must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests.” *Curtis v. Kline*, 666 A.2d 265, 269 (Pa. 1995). “[B]ecause a presumption of constitutionality attaches to any lawfully enacted legislation, the burden is upon the party attacking a statute to rebut the presumption of constitutionality by a clear, palpable, and plain demonstration that the rational basis test is not met.” *Probst v. Dep’t of Transp., Bureau of Driver Licensing*, 849 A.2d 1135, 1144 (Pa. 2004). So long as “the classification bears some rational relationship to a legitimate government end,” it will be upheld. *City of Phila. Bd. of Pensions & Ret. v. Bordley*, 481 A.2d 690, 691 (Pa. Cmwlth. 1984). “A classification, though discriminatory, is not arbitrary or in violation of the equal protection clause if any state of facts reasonably can be conceived to sustain that classification.” *Curtis*, 666 A.2d at 268. The “[C]ourt is free to hypothesize reasons the legislature might have had for the classification.” *Id.* Importantly, even if the Court “question[s] the soundness or wisdom of the distinction,” it “cannot declare the classification void” if the classification is genuine. *Id.*

It is also important to bear in mind that “a court may not examine the application of a statute to individual members of a class as part of its equal protection analysis.” *Bordley*, 481 A.2d at 692. “The validity of a broad legislative classification is not properly judged by focusing on the portion of the class that is affected most harshly by its terms.” *Id.* Stated otherwise, equal protection is not offended because the classification “in practice . . . results in some inequality.” *Id.* at 691 (quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970)). Therefore, the length of Wife and Participant’s marriage and their agreement via a privately negotiated QDRO to modify the terms of the Plan, which otherwise does not recognize an ex-spouse as a “surviving spouse,” is of no moment. Instead, Wife’s equal protection claim must be judged on the distinction the Plan draws generally between spouses and former spouses.

With the above principles in mind, we first examine “whether the challenged statute seeks

to promote any legitimate state interest or public value.” *Curtis*, 666 A.2d at 269. We must conclude it does. Both the United States Supreme Court and the courts of this Commonwealth have found financial or fiscal concerns are legitimate state interests. In *Schweiker v. Wilson*, 450 U.S. 221 (1981), the United States Supreme Court found the exclusion of Supplemental Security Income benefits to individuals institutionalized in public mental health facilities that do not receive Medicaid funds toward their care did not violate equal protection. The Court held budgetary constraints were a legitimate governmental interest for the distinction, explaining that the “Court has granted a strong presumption of constitutionality to legislation conferring monetary benefits . . . because it believes that Congress should have discretion in deciding how to expend necessarily limited resources.” *Id.* at 238 (internal quotation and citation omitted).

Our state Supreme Court reached a similar result in *Kramer v. Workers' Compensation Appeal Board (Rite Aid Corporation)*, 883 A.2d 518 (Pa. 2005). There, a claimant challenged a provision of the Workers' Compensation Act¹⁰ (WC Act), which allowed an employer to take an offset against a claimant's workers' compensation benefits in the amount of a severance payment received by the claimant, on the grounds it violated equal protection. The Pennsylvania Supreme Court held there was no classification, but explained that even if there was a classification, the provision would withstand rational basis scrutiny. In so holding, the Court explained that “[r]easonable workers' compensation cost containment for employers, and the concomitant competitive benefit such cost containment offers for Pennsylvania businesses, unquestionably is a legitimate state concern.” *Id.* at 535.

When faced with another offset provision in the WC Act, this Court likewise held it satisfied the rational basis test. *Caputo v. Workers' Comp. Appeal Bd. (Commonwealth of Pa.)*, 34 A.3d 908 (Pa. Cmwlth. 2012). In that case, the provision allowed employers to offset workers' compensation benefits by a portion of the old age Social Security retirement benefits a claimant receives. Citing *Kramer*, we held that allowing an employer to offset workers' compensation benefits by half of a claimant's Social Security retirement benefits was reasonably related to the legitimate governmental interest of reducing an employer's workers' compensation costs.¹¹ *Id.* at 916-17.

What *Schweiker*, *Kramer*, and *Caputo* illustrate is that cost savings have been recognized as a legitimate state objective on a number of occasions. Therefore, the Plan's stated reason for denying survivor benefits to ex-spouses but not current spouses because of the savings the Plan realizes by doing so is a legitimate objective of the Plan. This is particularly so when municipalities across the Commonwealth are struggling with funding pension plans.

Having concluded that cost savings is a legitimate objective, we must consider whether the Plan's different treatment of spouses and ex-spouses “is reasonably related to accomplishing that” legitimate objective. *Curtis*, 666 A.2d at 269. Again, we hold that it is. The United States Supreme Court has addressed the differing treatment of current spouses and former spouses in the Social Security context and held the distinction did not violate equal protection because the classification was a reasonable means to accomplish the desired end. In *Mathews v. De Castro*, 429 U.S. 181 (1976), the Court held the different treatment of current spouses

¹⁰ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.4, 2501-2708.

¹¹ We also held a second governmental interest existed, which was to encourage individuals collecting Social Security retirement benefits to remain or reenter the workforce. *Caputo*, 34 A.3d at 918. Either of these bases would have been sufficient as only one rational basis is needed.

and ex-spouses for purposes of Social Security comported with the primary objective of providing workers and their families with protection against loss of earnings caused by disability or retirement. There, the Court explained that “Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married.” *Id.* at 188. Therefore, it was not irrational for Congress to treat the two classes differently.

When faced with a similar situation 10 years later, the United States Supreme Court reiterated that “it was rational for Congress to assume that divorced widowed spouses are generally less dependent upon the resources of their former spouses than are widows and widowers.” *Bowen v. Owens*, 476 U.S. 340, 348-49 (1986). In that case, there was a challenge as to the constitutionality of a Social Security provision that authorized payment of survivor’s benefits to a widowed spouse who remarried after age 60 but not to divorced widowed spouses who did the same. The Court upheld the statute, holding it satisfied the rational basis test. The Court cited *Mathews* and noted “divorce normally reduces dependency on the wage earner.” *Id.* at 350. The Court stated:

Presumably Congress concluded that remarriage sufficiently reduced that lesser dependency to the point where it could conclude that benefits no longer were appropriate. These views would be consistent with the position Congress has taken throughout . . . that divorced spouses are less dependent on the wage earner than spouses. Because divorced widowed spouses did not enter into marriage with the same level of dependency on the wage earner’s account as widows or widowers, it was rational for Congress to treat these groups differently after remarriage.

Id.

Here, the Plan’s differing treatment of spouses and ex-spouses is reasonably related to achieving cost savings and providing for current families. By not having to pay survivor benefits to ex-spouses, plans, such as the one here, can preserve their limited resources and ensure that they have the proper funding to pay participants and their current spouses. The United States Supreme Court has recognized that treating spouses and ex-spouses differently is reasonably related to achieving that objective because ex-spouses are less likely to be dependent upon their ex-spouse’s benefits. *Bowen*, 476 U.S. at 350; *Mathews*, 429 U.S. at 188. It is equally rational that the municipality here concluded that divorcees are less likely to be financially dependent upon their ex-spouses, and in seeking to conserve costs, any disparity should fall on former spouses. Accordingly, common pleas did not err in finding the classification between current spouses and ex-spouses passes the rational basis test.

Wife’s final issue is whether common pleas erred in concluding she had no property interest in the survivor benefits, and as a result, there was no due process violation. She maintains the benefits that accrued over the 22 years of marriage are a protected property interest, of which she is being deprived. She argues “[i]t is irrational and unjust to deny a former spouse a survivor’s benefit, and there is no rational basis for the [Plan’s] decision.” (Wife’s Brief at 22.) The Plan counters that pension benefits are not a protected property right and thus not entitled to substantive due process protection, and even if Wife had a protected property interest in the survivor benefits, the Plan passes the due process analysis. It also points out

Wife is still entitled to the marital portion of Participant's pension benefits, but the Plan cannot be compelled to pay Wife survivor benefits when Participant dies.

We need not resolve whether pension benefits are a protected property right, because, assuming they are, Wife's substantive due process claim fails. Like Wife's equal protection claim, the parties agree that the rational basis test applies to Wife's substantive due process claim. However, unlike equal protection where the focus of the rational basis test "is whether the law irrationally distinguishes between similarly situated classes," for substantive due process, the focus "is whether it was irrational for the law to have been passed at all." *Morris v. Pub. Sch. Employes' Ret. Sys.*, 538 A.2d 1385, 1389 (Pa. Cmwlth. 1988). "To prove that a statute is irrational and, therefore unconstitutional, the challenger must show, for substantive due process purposes, that there is no relationship between the statute and a legitimate state interest," whereas for equal protection, the challenger must show "that the different treatment of the groups is unrelated to a legitimate state interest." *Id.*; see also *Khan v. State Bd. of Auctioneer Exam'rs*, 842 A.2d 936, 946 (Pa. 2004) ("To constitute a lawful exercise of the state's police power, social and economic legislation must first be directed toward a valid state objective. To withstand a substantive due process challenge, a statute or regulation must seek to achieve a valid state objective by means that are rationally related to that objective.") (internal citations omitted). The Pennsylvania Supreme Court has summarized the substantive due process analysis as follows: "[C]ourts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end)." *Nixon v. Commonwealth*, 839 A.2d 277, 287 (Pa. 2003) (emphasis omitted). Substantive due process "protect[s] citizens from arbitrary and irrational actions of the government." *Germantown Cab Co. v. Phila. Parking Auth.*, 171 A.3d 315, 327 (Pa. Cmwlth. 2017), *petition for allowance of appeal granted*, 184 A.3d 944 (Pa. 2018). Here, the Plan's decision to deny payment of survivor benefits to ex-spouses is neither arbitrary nor irrational. Rather, it has a rational relationship to the Plan's purpose, which is maximizing benefits for its participants. Therefore, common pleas did not err in finding no substantive due process violation.

Based upon the foregoing reasons, we agree with common pleas that the Plan cannot be compelled to pay survivor benefits to Wife after Participant's death. Accordingly, we affirm common pleas' Order.

ORDER

NOW, August 16, 2018, the Order of the Court of Common Pleas of Erie County, dated March 9, 2017, is **AFFIRMED**.

BY THE COURT

/s/ **Renée Cohn Jubelirer, Judge**

GARY GAUSMAN
v.
KAREN GAUSMAN, CITY OF ERIE OFFICERS'
AND EMPLOYEES' RETIREMENT PLAN

APPEAL OF: KAREN GAUSMAN

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 440 C.D. 2017

Argued: May 7, 2018

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

DISSENTING OPINION BY
JUDGE COVEY

FILED: August 16, 2018

I agree with the Majority's conclusions that the trial court properly refused to designate Karen Gausman (Wife) as a surviving spouse for purposes of her right to survivor benefits under Gary Gausman's (Participant) Retirement Plan (Participant's Plan) and properly determined that Wife has no property interest in the Participant's Plan's survivor benefits, and therefore the denial of those benefits does not violate due process. However, I respectfully dissent from the Majority's conclusion that the trial court properly denied Wife's equal protection claim.

It is undisputed that the rational basis test applies in the instant case.

If the rational basis test applies, then the classification in question must be 'reasonable rather than arbitrary and bear a reasonable relationship to the object of the legislation. In other words, **a classification must rest upon some ground of difference which justifies the classification and have a fair and substantial relationship to the object of the legislation.**'

William Penn Sch. Dist. v. Pa. Dep't of Educ., 170 A.3d 414, 458 (Pa. 2017) (emphasis added; footnote omitted) (quoting *Commonwealth v. Albert*, 758 A.2d 1149, 1151 (Pa. 2000) (citation omitted)). Simply put, the classification must have a rational relation to the objective. Here, the City of Erie Retirement Plan maintains that the object of the legislation is saving money and the classification is former spouses versus current spouses. The City proffered no legitimate relation between the two, but rather asserted that the Plan will save money if it need not pay former spouses survivor benefits. This assertion is merely a restatement of the objective and is not a rational basis for choosing to pay one class over the other.

The Majority maintains that “[t]he United States Supreme Court has addressed the differing treatment of current spouses and former spouses in the Social Security context and held the distinction did not violate equal protection because the classification was a reasonable means to accomplish the desired end.” Majority Op. at 11. Therefore, the Majority concludes, the trial court “did not err in finding the classification between current spouses and ex-spouses passes the rational basis test.” Majority Op. at 13. However, a review of *Mathews v. De Castro*, 429 U.S. 181 (1976), and *Bowen v. Owens*, 476 U.S. 340 (1986), the cases the Majority relies on, reveals that the Majority’s conclusion is not supported by either case.

In *Mathews*, the legislation **deferred** social security disability or retirement benefits to former spouses until they reach age 62 because “[Congress] could rationally decide that the problems created for divorced women remained **less pressing** than those faced by women who continue to live with their husbands.” *Id.* at 188 (emphasis added). Thus, it was **reasonable to defer** benefits. **In the instant case**, the **benefits are** not deferred, they are **eliminated**. Clearly, less problems cannot be interpreted as no problems. Thus, the rationale that divorced women faced **less problems** than women living with their husbands, while a reasonable basis to **defer** benefits because the classification is a reasonable means to accomplish the desired end, cannot justify an outright **elimination of benefits**. Because under the *Mathews* rationale, divorced women still suffer problems, the **elimination** of survivor benefits for former spouses is not a reasonable means to accomplish cost savings. Accordingly, *Mathews* does not support the Majority’s assertion that “the classification between current spouses and ex-spouses passes the rational basis test.” Majority Op. at 13.

Similarly, in *Bowen*, the rational basis for the classification was recognizing that divorce normally reduces dependency on the wage earner. However, **the classification was not spouses versus former spouses**, but rather, a widowed spouse who remarries after age 60 versus a former spouse who remarries after age 60. Further, former spouses, whether remarried or not, had to be married to the participant for at least 10 years to receive retirement benefits. Because Congress incorporated other factors, such as age, length of marriage to the participant and remarriage, when distinguishing between widowed spouses and former spouses, the classification in *Bowen* was *not arbitrary*.¹ Consequently, the United States Supreme Court did not hold that lesser financial need and other dependence among divorced husbands and wives as compared to couples who stay married was a rational basis for a spouse versus former spouse classification. In the instant case, the only factor the City of Erie Retirement Plan took into consideration was cost savings which is its alleged objective. Length of marriage to the Participant, age of current or former spouse and remarriage are irrelevant under the Participant’s Plan. Because the City of Erie Retirement Plan classification is an arbitrary means for saving money and has no rational basis for eliminating survivor benefits for former spouses, it violates the equal protection clause. Accordingly, *Bowen* does not support the Majority’s assertion that “the classification between current spouses and ex-spouses passes the rational basis test.” Majority Op. at 13.

Remarkably, under Participant’s Plan for a current spouse who marries a participant post-retirement to be entitled to survivor benefits, the spouse must be “married to the [p]articipant at the time of the [p]articipant’s death **and for the twelve months immediately preceding**

¹ Notably, the classification in *Bowen* was eliminated prior to the Supreme Court’s decision.

the participant's death." Article 145.02(hh) (emphasis added). Clearly, there is a rational basis for distinguishing between current spouses married under twelve months at the time of a participant's death and current spouses married over twelve months at the time of a participant's death, as the durational requirement prevents false claims by spouses who perpetrate death bed marriages. See *City of Phila. Bd. of Pensions & Ret. v. Bordley*, 481 A.2d 690 (Pa. Cmwlth. 1984) (This Court ruled a similar two-year durational requirement was rationally related to the purpose of Philadelphia's Municipal Pension Ordinance.). However, relative to former spouses under Participant's Plan, **all** former spouses are disqualified from receiving survivor benefits notwithstanding the length of marriage to participant; thus, illustrating the arbitrariness of the classification in the instant case. Expressly, under Participant's Plan, "a former spouse of a Participant shall not be treated as the spouse or surviving spouse **for any purposes** under the [Participant's P]lan." Article 145.15(f) (emphasis added). Because the **only** consideration under the Participant's Plan is the fact that the spouse is no longer married to the Participant, the classification is purely arbitrary. Consequently, there is no rational basis for such a classification.

Importantly, even Counsel for the City of Erie Retirement Plan could not produce a rational basis for the classification.² Indeed, when asked at oral argument what is the rational basis for the classification, Counsel responded: "You can make one up." Oral Argument May 7, 2018. The Majority hypothesizes, as it is entitled to do under the law, that "divorcees are less likely to be financially dependent upon their ex-spouses, and in seeking to conserve costs, any disparity should fall on former spouses." Majority Op. at 13. However, the basis has to have a "fair and substantial relation" to the objective of the legislation. *William Penn Sch. Dist.*, 170 A.3d at 458 (quoting *Albert*, 758 A.2d at 1151). Here, the City of Erie Retirement Plan maintains that the objective is saving money in that the Participant's Plan saves money by only paying current spouses. Specifically, "[be]cause the survivor's benefits lasts for the widow's entire life, fifty percent of the pension benefit that's being paid to the participant[,] so only paying the benefit to current spouse protects the [Participant's P]lan." Reproduced Record at 126a. Further, since "the fairly reasonable conclusion [is] that in many cases, employees will not remarry, or remain remarried until their death[,] the Participant's Plan saves money by not paying former spouses. Trial Ct. March 9, 2017 Op. at 9. Consequently, whether "divorcees are less likely to be financially dependent upon their ex-spouses," Majority Op. at 13, is not fairly and substantially related to the cost savings objective.

In sum, the classification **must have a rational relation to the objective**. Here, the classification is former spouses versus current spouses, and the objective is cost savings. The City proffered no legitimate relation between the two, but rather asserted that the Plan will save money if it need not pay former spouses survivor benefits. This assertion is merely a restatement of the objective and is not a rational basis for choosing to pay one class over the other. "Ultimately, [the Dissent] can conceive of no rational reason why those similarly

² In its brief, the City of Erie Retirement Plan refers to its argument before the trial court, wherein it asserted the rationale for the classification was "to protect the [Participant's P]lan by lowering costs by not having to pay" and "trying to protect the participants themselves, so that **if** the participant remarries, and wants their [sic] current spouse to receive their [sic] survivor's benefit rather than the former spouse, that they [sic] feel that paying the benefit to the current spouse rather than the former spouse protects the participants of the [Participant's P]lan." Reproduced Record at 126a (emphasis added). Under the above analysis, neither of these provides a rational basis for the classification.

situated with respect to [receiving survivor benefits], should be treated unequally.” *Curtis v. Kline*, 666 A.2d 265, 270 (Pa. 1995).

Accordingly, because the trial court erred by denying Wife’s equal protection claim, determining that the City of Erie Retirement Plan’s denial of survivor benefits passes the rational basis test, and thereby refusing to designate Wife as a surviving spouse for purposes of her marital share of a survivor benefit in violation of the equal protection clause, I would reverse the trial court’s order.

BY THE COURT

/s/ Anne E. Covey Judge

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BANKRUPTCY NOTICE
OF SALE

UNITED STATES BANKRUPTCY
COURT, WESTERN DISTRICT
OF PENNSYLVANIA

In re: Brenda L. Atkin, Debtor, Case
No. 18-10915 TPA (Chapter 13)

NOTICE OF SALE

NOTICE IS GIVEN THAT Brenda
L. Atkin has filed a Motion To
Sell Property Free And Divested
Of Liens, located at 12061 Main
Street, East Springfield, PA 16411
(Erie County Inst. #2013-007199),
for \$62,500.

TERMS OF SALE ARE: The sale is
an "as is" sale; the parties will split
all transfer taxes.

A hearing and sale will be held on
said motion on December 12, 2018
at 11:30 a.m. in the Bankruptcy
Courtroom, U.S. Courthouse, 17
South Park Row, Erie, PA 16501.

The Court may entertain higher
or better offers at the hearing, at
which time any objections to the
sale will be heard, higher offers
may be received and a confirmation
hearing will be held. Any party
successfully outbidding the original
offeror will be required to pay a non-
refundable deposit in certified funds
in an amount no less than 10% of the
successful bid amount.

For more information, consult the
Court's EASI website, <http://www.pawb.uscourts.gov/easi.htm> or
contact Rebeka A. Seelinger, Esq.,
814-824-6670 or email rebeka@seelingerlaw.com.

Nov. 30

Basic Workers' Compensation Practice from Claim Petition to Decision and An Overview of Act 111, the Resuscitation of Impairment Ratings



Tuesday, December 11, 2018

The Will J. Schaaf & Mary B. Schaaf
Education Center
429 West 6th Street
Erie, PA 16507

Registration/Lunch:
11:45 a.m. - 12:15 p.m.

Seminar:
12:15 p.m. - 1:15 p.m.

Cost:
\$47 - ECBA Members
(Judges & Attorneys) and
their Non-Attorney Staff

\$60 - Non-Members

1 hour Substantive CLE/CJE

Step-by-step, our panel will walk you through the claim litigation process from injury report to decision and appeal. The discussion will resemble a flowchart, detailing what options and timeframes you have at any point during a case.

Our knowledgeable and experienced speakers will also field questions from the audience.

Moderator: John Draskovic, Esq., Workers' Compensation Section Chair, MacDonald, Illig, Jones & Britton, LLP

Speakers: Richard E. Bordonaro, Esq., Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC
Donald F. Fessler, Jr., Esq., Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC
Edwin W. Smith, Esq., Shapira, Hutzelman & Smith

Participating Bureau of Workers' Compensation Judges: Judge Carmen F. Lugo
Judge Jean S. Wright

Reservations due to the ECBA office by Tuesday, December 4, 2018

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 12993-18 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Mohammed Al-Bidhawi to Levi White.

The Court has fixed the 28th day of December, 2018 at 9:15 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Nov. 30

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 12897-18 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Amie Rose Kuehner to Ezekiel Alexander Kuehner.

The Court has fixed the 20th day of December, 2018 at 2:00 p.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Nov. 30

DISSOLUTION NOTICE

Notice is hereby given that Sherman Tool & Gage, Inc., a Pennsylvania professional corporation, initially of 1624 Cranberry Street, Erie, Pennsylvania 16502, and currently of 3414 Loveland Avenue, Erie, Pennsylvania 16506, is engaged in winding up proceedings pursuant to a voluntary dissolution so that its corporation existence shall be ended pursuant to Section 1975(b) of the Pennsylvania Business Corporation Law of 1988, incorporating the Professional Corporation Law, act of July 9, 1970, all as amended.

Any claims must be presented to the

Corporation, Sherman Tool & Gage, Inc., at 3414 Loveland Avenue, Erie, Pennsylvania 16506.

Nov. 30

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name Allegheny Beverage Company, 2177 W. Grandview Blvd, Erie, PA 16509 has been filed in the Department of State at Harrisburg, PA, File Date 10/03/2018 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is GWD Acquisition Inc., 2177 W. Grandview Blvd, Erie, PA 16509.

Nov. 30

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name I & M Snow Removal Services, 738 East 25th Street, Erie, PA 16503 has been filed in the Department of State at Harrisburg, PA, File Date 10/07/2018 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is Marilyn A Boring, 738 East 25th Street, Erie, PA 16503.

Nov. 30

INCORPORATION NOTICE

Notice is hereby given that on November 9, 2018, Articles of Incorporation - For Profit were filed with the Department of State in Harrisburg, Pennsylvania, for Landa Vision, Inc., which Corporation has been organized under the provisions of the Business Corporation Law of 1988.

Reed D. Hennon, Esquire
2910 Wilmington Road
New Castle, PA 16105

Nov. 30

LEGAL NOTICE

ATTENTION: SAMANTHA HARLEY ROMANSKI INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR FEMALE CHILD E.D.L.F. DOB: 07/12/2018

112 IN ADOPTION, 2018

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Senior Judge Shad Connelly, Courtroom B-208, City of Erie on January 4, 2019 at 1:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphan's Court Administrator
Room 204 - 205

Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742.

This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Nov. 30

LEGAL NOTICE

ATTENTION: UNKNOWN BIOLOGICAL FATHER INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR FEMALE CHILD E.D.L.F. DOB: 07/12/2018 BORN TO: SAMANTHA HARLEY ROMANSKI 112 IN ADOPTION, 2018

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Senior Judge Shad Connelly, Courtroom B-208, City of Erie on January 4, 2019 at 1:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and

your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

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Nov. 30

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY PENNSYLVANIA CIVIL DIVISION NO.: 751-2018

FIRST NATIONAL BANK OF PENNSYLVANIA, Plaintiff

vs.

STACY COCHRAN, Known Heir of the Estate of ROBERT E. PETERSON and The Unknown Heirs, Executors and/ or Administrators of the Estate of ROBERT E. PETERSON,

Defendants
Notice

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Northwestern Legal Services
1001 State Street
1200 Renaissance Center
Erie, PA 16501-1833
Toll Free (800) 665-6957

Nov. 30

LEGAL NOTICE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA CIVIL ACTION NO. 1:17-cv-00294 UNITED STATES OF AMERICA,

Plaintiff

vs.

MICHAEL E. WEBER and CATHERINE J. WEBER,

Defendants

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at and being more fully described at Erie County Deed Book Volume 1176, Page 368. SAID SALE to be held at the Erie

County Courthouse, 140 West Sixth Street, Room 209, Erie, PA 16501 at 10:00 a.m. prevailing standard time, on December 12, 2018.

ALL that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No. (28) 5-6.3-15 recorder in Erie County, Pennsylvania, commonly known as: 10314 Rose Street, Lake City, PA 16423. IDENTIFIED as Tax/Parcel No.: (28) 5-6.3-15 in the Deed Registry Office of Erie County, Pennsylvania. HAVING erected a dwelling thereon known as 10314 ROSE STREET, LAKE CITY, PA 16423. BEING the same premises conveyed to Michael E. Weber and Catherine J. Weber, dated September 22, 2004, and recorded on September 24, 2004 in the office of the Recorder of Deeds in and for Erie County, Pennsylvania. Seized and taken in execution as the property of Michael E. Weber and Catherine J. Weber at the suit of the United States of America, acting through the Under Secretary of Rural Development on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 1:17-cv-00294.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution will be made in accordance with

the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov.

Nov. 9, 16, 23, 30

**LEGAL NOTICE
IN THE UNITED STATES
DISTRICT COURT**

**FOR THE WESTERN DISTRICT
OF PENNSYLVANIA
CIVIL ACTION NO.**

**1:17-CV-00049-AJS
UNITED STATES OF AMERICA,
Plaintiff**

vs.

**WILSON & SON FARMS, A
PENNSYLVANIA PARTNERSHIP,
BRADLEY W. WILSON, LORI J.
WILSON (KARNS), GUY LEROY
AND JAMES WINSCHHEL,
Defendants**

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at and being more fully described at Erie County Deed Book Volume 601, Page 2133, and Volume 1522, Page 591.

SAID SALE to be held at the Erie County Courthouse, 140 West Sixth Street, Room 209, Erie, PA 16501 at 10:00 a.m. prevailing standard time, on December 12, 2018.

ALL that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel Nos. (49)-017-043.0-001.00, (49)-017-043.0-004.00 and (49)-020-044.0-21.00 recorded in Erie County, Pennsylvania, commonly known as: 12135 Turnpike Road, Corry, PA 16407, 18345 King Road, Corry, PA 16407 and 18358 King Road, Corry, PA 16407. IDENTIFIED as Tax/Parcel Nos.: (49)-017-043.0-001.00,

(49)-017-043.0-004.00 and (49)-020-044.0-21.00 in the Deed Registry Office of Erie County, Pennsylvania. HAVING erected a dwelling thereon known as 12135 TURNPIKE ROAD, CORRY, PA 16407, 18345 KING ROAD, CORRY, PA 16407 and 18358 KING ROAD, CORRY, PA 16407.

BEING part of the same land conveyed to Bradley W. Wilson by deed dated September 8, 1998 and recorded in Erie County Deed Book 601, Page 2133, on November 24, 1998, currently known as 12135 Turnpike Road, Corry, PA and bearing Parcel No. (49)-017-043.0-001.00.

AND being part of the same land conveyed to Wilson and Son Farms, A Partnership, consisting of Bernard W. Wilson and Bradley W. Wilson by deed of Bernard W. Wilson and Norma L. Wilson, his wife, dated January 17, 1984 and recorded in Erie County Deed Book 1522, Page 591, on January 18, 1984, currently known as 18345 King Road, Corry, PA and 18358 King Road, Corry, PA and bearing Parcel Nos. (49)-017-043.0-004.00 and (49)-020-044.0-21.00.

Seized and taken in execution as the property of Wilson & Son Farms, A Pennsylvania Partnership, Bradley W. Wilson, Lori J. Wilson (Karns), Guy Leroy and James Winschel at the suit of the United States of America, acting through the Under Secretary of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 1:17-cv-00049.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila

Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov.

Nov. 9, 16, 23, 30

Erie County Bar Association

Videoconferencing Services



Your connection to the world of communication.

WHAT IS VIDEOCONFERENCING?

Videoconferencing, sometimes called teleconferencing, brings together people at different locations around the country and around the world. Our videoconferencing site can connect with one location or with multiple locations, providing an instantaneous connection to facilitate meetings, interviews, depositions and much more.



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RATES:

Non-ECBA Members:

\$185/hour - M-F, 8:30 a.m. - 5:00 p.m.

\$235/hour - M-F, All other times; weekends

ECBA Members:

\$150/hour - M-F, 8:30 a.m. - 5:00 p.m.

\$200/hour - M-F, all other times, weekends



ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

**CAMPBELL, MARK P.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Louis J. DeSomma, Jr., 14 Pointview Road, Brentwood, PA 15227
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**CIOTOLI, DOROTHY J.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Gail B. Runyan, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**MOORE, LEILA E., a/k/a
LEILA E. PARSONS,
deceased**

Late of the Township of Lawrence Park, County of Erie, Commonwealth of Pennsylvania
Executor: Jeffrey A. McAninch, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

TRUST NOTICES

Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are required to make payment without delay to the trustees or attorneys named below:

**BECK, BERNADETTE F., a/k/a
BERNADETTE BECK,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Successor Trustee: Carolyn M. Beck, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**COVERDALE, NANCY JANE,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Successor Trustee: Rhonda Hauser, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

SECOND PUBLICATION

**EASTMAN, FAITH M., a/k/a
FAITH E. EASTMAN,
deceased**

Late of the City of Corry, Erie County, Pennsylvania
Executrix: Lisa D. Eastman, 820 E. South Street, Corry, PA 16407
Attorney: William E. Barney, Esquire, 200 N. Center St., Corry, PA 16407

**FLOOD, LOGAN P., a/k/a
LOGAN FLOOD,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Jason P. Flood, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**HARTMAN, RONALD B.,
a/k/a RONALD HARTMAN,
a/k/a RONALD BRADLEY
HARTMAN,
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania
Administratrix: Karen S. Brinton, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KARPINSKI, LOUISE P.,
deceased**

Late of the Borough of Edinboro, County of Erie and Commonwealth of Pennsylvania
Executrix: Linda A. Hedges, c/o 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

**MOIR, ROBERT G.,
deceased**

Late of the Township of Millcreek, County of Erie, and Commonwealth of Pennsylvania
Administrator: Jon Moir, c/o 300 State Street, Suite 300, Erie, PA 16507
Attorney: Thomas V. Myers, Esquire, Marsh Spaeder Baur Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

REICHARD, RITAA., a/k/a RITA AUCKER REICHARD, a/k/a RITA REICHARD, deceased

Late of the City of Erie
Executrix: Laura Wickline
Attorney: Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

SCHERRER, JOHN C., deceased

Late of the City of Erie, County of Erie, State of Pennsylvania
Executor: Virginia A. Titus, 314 East Lakeview Blvd., Erie, PA 16504
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

WAGNER, GAIL L., deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Amy Goetz, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

THIRD PUBLICATION

BADACH, MARGARET, deceased

Late of Lawrence Park Township
Executor: Gregory A. Badach, c/o 246 West 10th Street, Erie, PA 16501
Attorney: Evan E. Adair, Esq., 246 West 10th Street, Erie, PA 16501

BAKER, JACK E., deceased

Late of the City of Erie, Erie County, Pennsylvania
Executor: Ann Marie Pochedly, c/o 3209 East Avenue, Erie, PA 16504
Attorney: Cathy M. Lojewski, Esq., 3209 East Avenue, Erie, PA 16504

CARTER, JAMES F., deceased

Late of the Township of Millcreek, County of Erie, State of Pennsylvania
Executor: John C. Brydon, Esq., c/o 78 East Main Street, North East, PA 16428
Attorney: BRYDON LAW OFFICE, Attorney John C. Brydon, 78 East Main Street, North East, PA 16428

CLARIDGE, GABRIELLE H., a/k/a GAY CLARIDGE, a/k/a GABRIELLE HADDEN, a/k/a GABRIELLE HADDEN CLARIDGE, deceased

Late of Millcreek Township, Erie County, Commonwealth of Pennsylvania
Executor: Scott Roberts, c/o Thomas C. Hoffman II, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Thomas C. Hoffman II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

CONTI, ANNA MARIE, deceased

Late of the Township of Millcreek
Executor: Christian John Pellicano
Attorney: Steven E. George, Esquire, George Estate and Family Law, 305 West 6th Street, Erie, PA 16507

DiCARA, SUSAN J., a/k/a SUSAN JANE DiCARA, deceased

Late of the Township of Summit, County of Erie, Commonwealth of Pennsylvania
Executor: Martha Hilbert, c/o Thomas J. Buseck, Esq., MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459
Attorney: Thomas J. Buseck, Esq., MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

DILLEN, HERBERT C., deceased

Late of Greenfield Township, Erie County, Erie, PA
Administratrix: Patte Lee Dillen, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox, McLaughlin, Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

FLAUGH, RICHARD, deceased

Late of Mill Creek Twp., Erie County, PA
Administrator: Charles A. J. Halpin, III, c/o Land Title Building, 100 S. Broad St., Ste. 1830, Phila., PA 19110
Attorney: Charles A. J. Halpin, III, Esquire, Land Title Building, 100 S. Broad St., Ste. 1830, Phila, PA 19110

HOLLAND, TIMOTHY M., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administrator: David E. Holland, 821 Dutch Road, Fairview, PA 16415
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**KOZLOWSKI, JOHN J.,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Executor: Roberta M. Kozlowski, 1301 Morrison Drive, Erie, PA 16505
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**PELLETIER, ELIZABETH A.,
a/k/a BETTY PELLETIER,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Michael P. Pelletier, P.O. Box 8002, Erie, PA 16505
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**SLAYTON, THOMAS A., SR.,
a/k/a THOMAS A. SLAYTON,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Administrator: Peter W. Bailey, c/o 3210 West 32nd Street, Erie, Pennsylvania 16506-2702
Attorney: Peter W. Bailey, Esquire, 3210 West 32nd Street, Erie, Pennsylvania 16506-2702

**SMITH, LUCINDA M., a/k/a
LUCINDA SMITH,
deceased**

Late of Erie County, Pennsylvania
Executor: Sandra E. Hultberg, 7750 Bargain Road, Erie, PA 16509
Attorney: William T. Morton, Esquire, 2225 Colonial Ave., Suite 206, Erie, PA 16506

**SWOGER, RUTHE T., a/k/a
RUTHE SWOGER,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrices: J. Christine Craig, 941 Orr Ave., Kitanning, PA 16201 and Cindi Ruf, 930 West 25th Street, Erie, PA 16502
Attorney: Michael Harmon, Esq., 305 West 6th Street, Erie, PA 16507

**URBANIAC, RITA ANN, a/k/a
RITAA. URBANIAC,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Gerald T. Urbaniak
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

**WHITNEY, BETTY L., a/k/a
BETTY WHITNEY,
deceased**

Late of the Township of Harborcreek, County of Erie, State of Pennsylvania
Executrix: Karen R. Altimus, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

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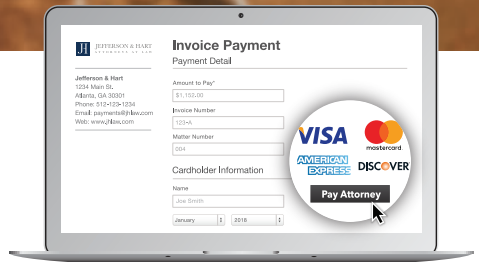
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