Seventh Circuit Court of Appeals Holds that ERISA Does Not Pre-empt State Slayer Statutes

February 7, 2018

Anka Miscevic had a history of mental illness. While her husband Zelkjo was sleeping, she stabbed him in the chest and hit him over the head with a baseball bat, killing him. An Illinois state court found Anka not guilty by reason of insanity. The U.S. Court of Appeals for the Seventh Circuit, the first federal appellate court to address ERISA pre-emption of any state slayer statute, held that Illinois?ÃÃs slayer statute was not pre-empted by ERISA. At the time of his death, Zeijko was a participant in a union pension fund. If a participant were married at the time of his or her death, the fund would pay a pre-retirement death benefit to the surviving spouse. If a participant were not married but had a minor child, the fund would pay a minor child benefit until the child turns 21. Both Anka and her minor child filed competing claims for Zeijko?ÃÃs death benefit. If Illinois?ÃÃs state slayer statute were held to apply to Zeijko?ÃÃs death, Anka would be precluded from benefiting from Zeijko?ÃÃs death. In that case, Anka would be treated as having predeceased Zeijko for purposes of applying the pension?ÃÃs survivor benefit rules. In holding that Illinois?ÃÃs slayer statue was not pre-empted by ERISA, the Seventh Circuit found that ?ÃÂ£slayer laws are an aspect of family law, a traditional area of state regulation?ÃÂ¥ and that the principle underlying slayer laws is well established in the law. In addition, the court found that, as a matter of Illinois state law, the Illinois slayer statute would apply to Anka even though she was found not guilty by reason of insanity. *Laborers' Pension Fund v. Miscevic*, No. 17-2022, (7th Cir. Jan. 29, 2018). .

© 2026 Haynes and Boone, LLP