

RENDERED: JUNE 26, 2020; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-00011-MR

CATHY SATTERFIELD

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT,
FAMILY DIVISION
v. HONORABLE DENISE BROWN, JUDGE
ACTION NO. 97-FC-002472

CHARLES SATTERFIELD

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND K. THOMPSON, JUDGES.

MAZE, JUDGE: The single issue in this appeal is whether the doctrine of equitable estoppel precludes appellee Charles Satterfield from invoking the fifteen-year statute of limitation set out in KRS¹ 413.090(1) to bar appellant Cathy

¹ Kentucky Revised Statutes.

Satterfield's right to the portion of Charles's pension she was awarded in the decree dissolving their marriage. Because we are convinced that application of the statute unjustly enriches Charles under the facts of this case, we reverse the decision of the Jefferson Family Court and remand the case for further proceedings.

The facts of this case are neither complex nor in dispute. In the 1998 decree dissolving the parties' marriage, the trial court entered the following order:

3. The parties shall equally divide [Charles's] Earth Grains retirement pension up through February 18, 1997. [Charles] shall execute a Qualified Domestic Relations Order [(QDRO)] within thirty (30) days of the entry of the Order.

Although Charles did not execute the QDRO as required by the decree, Cathy did not become aware of that fact until almost twenty years later when she hired an attorney to look into the execution of the QDRO. Upon becoming aware that Charles had failed to execute the QDRO, Cathy's attorney prepared the document and moved the family court to enter the tendered QDRO into the record. Charles's attorney objected, citing the fifteen-year statute of limitations set out in KRS 413.090(1) and arguing that a QDRO could not be executed outside the statutory period. After considering memoranda in support of the parties' respective positions, the family court entered an order denying Cathy's motion on the basis

that the attempted execution fell outside the statutory period. This appeal followed.

We begin our discussion by reiterating the following definition of a QDRO:

A QDRO is a “judgment, decree, or order” “made pursuant to a State domestic relations law” that “relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant[.]” 29 U.S.C.^[2] § 1056(d)(3)(B)(ii)(I). Such an order “creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan [.]” § 1056(d)(3)(B)(i)(I).

Smith v. Rice, 139 S.W.3d 539, 542 (Ky. App. 2004). The “plan” referenced in *Smith* is one which qualifies under the Employee Retirement Income Security Act (ERISA):

In order to qualify as an ERISA pension plan, a pension plan must “provide that benefits provided under the plan may not be assigned or alienated.” 29 U.S.C. § 1056(d)(1). Accordingly, “alienation or assignment of benefits is generally prohibited under [an ERISA] pension plan.”

Id. (quoting *Hogle v. Hogle*, 732 N.E.2d 1278, 1279 (Ind. Ct. App. 2000)). The *Smith* Court also explained that the 1984 Retirement Equity Act amended ERISA to create “a limited exception for a state domestic relations order [which] is a

² United States Code.

‘qualified domestic relations order.’” *Id.* (citation omitted). With this explanation of QDROs in mind, we turn to the arguments advanced for reversal.

To support her contention that the decision of the family court is erroneous, Cathy argues: 1) that the statute of limitations does not commence to run until there has been an attempt to execute the judgment; 2) that when a judgment is to be paid in installments, the statute begins to run anew from the date each installment becomes due and payable; 3) that federal ERISA law supersedes state law imposing a statute of limitation; 4) that the decree of dissolution established a constructive trust for her benefit and named Charles as the fiduciary of that trust; and 5) that Charles’s failure to act as required under the decree impermissibly deprived Cathy of her court-ordered share of his retirement benefits; in other words, that Charles was unjustly enriched by his failure to abide by the dictates of the decree. We are convinced that Cathy’s final argument is dispositive.

Initially, we note that the theory of unjust enrichment is an equitable doctrine, and the application of that doctrine to the facts of a particular case is a question of law. *Daniels v. CDB Bell, LLC*, 300 S.W.3d 204, 210 (Ky. App. 2009). Thus, we conduct a *de novo* review to determine whether the family court’s application of the statute of limitations in this case causes Charles to be unjustly enriched. *Dodson v. Key*, 508 S.W.2d 586 (Ky. 1974).

In *Bailey v. Bailey*, 399 S.W.3d 797 (Ky. App. 2013), this Court concluded that, as a matter of equity, one spouse should not be permitted to “alienate the other from his or her share of retirement benefits[.]” *Id.* at 803. Similar to the situation in *Bailey*, Cathy’s entitlement to a portion of Charles’s pension was fixed at the time of the decree, but she had no immediate right to receive those benefits. Thus, the order requiring Charles to execute a QDRO was intended to protect Cathy’s right to receive her share of his pension proceeds when they became due and payable. Failure to execute the QDRO as ordered not only frustrated the intent of the dissolution decree by depriving Cathy of her share of the pension, but also permitted Charles to be unjustly enriched by his retention of Cathy’s share. To remedy this inequitable result, we must consider whether the doctrine of equitable estoppel precludes Charles’s invocation of the defense of limitations.

Persuasive in this regard is the decision of the Supreme Court of Kentucky in *Munday v. Mayfair Diagnostic Laboratory*, 831 S.W.2d 912 (Ky. 1992), holding that the doctrine of equitable estoppel will operate to bar an inequitable application of a statute of limitation:

Our decisions construing the statute and applying equitable estoppel appear to require “some act or conduct which in point of fact misleads or deceives plaintiff and obstructs or prevents him from instituting his suit while he may do so.” [*Adams v. Ison*, 249 S.W.2d 791, 792 (Ky. 1952).] In *Second National Bank and Trust Co. v.*

First Security National Bank and Trust Co., Ky., 398 S.W.2d 50 (1966), we held that fraudulent conduct or concealment could not be assumed in the absence of evidence to support it.

Ordinarily, proof of fraud requires a showing of an affirmative act by the party charged. An exception to this general rule may be found in a party's silence when the law imposes a duty to speak or disclose.

Id. at 914. We are convinced that the principles underpinning *Munday* require that Charles be estopped from asserting the defense of statute of limitations in this case. Charles's failure to execute the QDRO as required under the decree is sufficiently akin to "silence when the law imposes a duty" to act as to fall within the rationale of *Munday*. Given Charles's failure to abide by the terms of the dissolution decree, equity demands that he be estopped from invoking the statute to bar Cathy's attempt to remedy the result of his failure to act.

Citing *Union Central Life Insurance Co. v. Glasscock*, 270 Ky. 750, 110 S.W.2d 681 (1937), and 66 AM. JUR. 2D *Restitution and Implied Contracts* § 1 *et seq.* (1973), this Court has described the doctrine of unjust enrichment as "a basis of restitution to prevent one person from keeping money or benefits belonging to another." *Haeberle v. St. Paul Fire & Marine Ins. Co.*, 769 S.W.2d 64, 67 (Ky. App. 1989) (citations omitted). So it is in this case. Charles's assertion of the limitations defense precludes Cathy's attempt to remedy his failure to execute the QDRO, which, in turn, results in his retention of the retirement

benefits awarded Cathy under the decree. Equity will not countenance the result dictated by application of KRS 413.090(1) in this case. We thus conclude that Charles is equitably estopped from asserting that defense to preclude Cathy from belatedly filing a QDRO to obtain her court-ordered share of his pension.

Finally, we briefly address Charles's contention that Cathy simply waited too long to enforce the judgment. While not specifically denominated laches, Charles argues that Cathy could have avoided application of the statute of limitation by taking action to enforce the judgment at any time within the last twenty years. We are convinced that the facts of this case do not support a claim of laches. In *Denison v. McCann*, 303 Ky. 195, 197-98, 197 S.W.2d 248, 249 (1946), the former Court of Appeals explained the proper operation of the doctrine of laches:

“Laches” in its general definition is laxness; an unreasonable delay in asserting a right. In its legal significance, it is not merely delay, but delay that results in injury or works a disadvantage to the adverse party. Thus there are two elements to be considered. As to what is unreasonable delay is a question always dependent on the facts in the particular case. Where the resulting harm or disadvantage is great, a relative brief period of delay may constitute a defense while a similar period under other circumstances may not. What is the equity of the case is the controlling question. Courts of chancery will not become active except on the call of conscience, good faith, and reasonable diligence. The doctrine of laches is, in part, based on the injustice that might or will result from the enforcement of a neglected right.

(Citations omitted.) Here, we perceive no unreasonable delay or possible prejudice to Charles. Cathy had no reason to inquire into Charles's execution of the QDRO until such time as payment from the pension plan could be anticipated. Charles can demonstrate no prejudice from Cathy's attempt to remedy his failure to comply with a clear order of the court nor in her receipt of funds to which she is plainly entitled under the decree. Laches is no impediment to Cathy's assertion of the right to her share of Charles's pension at what we deem to be the appropriate time.

Accordingly, the judgment of the Jefferson Family Court is reversed and the case remanded for entry of an order granting Cathy's motion to file the tendered QDRO.

ALL CONCUR.

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