STATE OF MICHIGAN

COURT OF APPEALS

MARTHA THOMAS,

Plaintiff-Appellant,

v

CITY OF DETROIT RETIREMENT SYSTEM,

Defendant-Appellee,

and

ESTATE OF CHARLES EDWARD THOMAS,
Deceased,

Defendant-Appellee.

FOR PUBLICATION
May 22, 2001
9:05 a.m.

No. 217729
Wayne Circuit Court
LC No. 97-738619-NZ

Before: Doctoroff, P.J., and Cavanagh and Meter, JJ.

METER, J.

Plaintiff appeals by right from the trial court's grant of summary disposition to defendants under MCR 2.116(I)(2). We affirm.

Decedent Charles Edward Thomas was a former employee of the city of Detroit who died in 1997. While employed by the city, he participated in an "annuity savings fund" ("the fund") under the direction of defendant City of Detroit Retirement System. Plaintiff, the decedent's former wife, whom he divorced in 1992, was the decedent's designated beneficiary for the fund at the time of his death. After the Retirement System refused to pay plaintiff the benefits accrued in the fund, she filed suit. The trial court subsequently granted summary disposition to defendants, finding that plaintiff was precluded from receiving the fund's proceeds under the following provision from the 1992 divorce judgment:

> PENSION
>
> IT IS FURTHER ORDERED AND ADJUDGED that each party shall keep and retain, as their exclusive property, free and clear of any claim by the

other, any pension benefits to which they are now entitled or may be in the future.[1]

Plaintiff contends that the fund at issue here was not covered by the divorce judgment as a "pension" and that because she was the named beneficiary of the fund at the time of the decedent's death, she is entitled to the proceeds from the fund. We disagree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Black's Law Dictionary (7th ed, 1999), p 1155, defines "pension" as "[a] fixed sum paid regularly to a person (or to a person's beneficiaries), esp. by an employer as a retirement benefit." The same dictionary defines "annuity" as "[a]n obligation to pay a stated sum, [usually] monthly or annually, to a stated recipient." *Id*. at 88. These definitions indicate a substantial similarity between a pension and an annuity fund. Moreover, the dictionary lists "defined contribution plan" (similar to the annuity fund at issue here) as a type of "pension plan." *Id*. at 1155. Further, the change of beneficiary form in which the deceased designated plaintiff as the beneficiary of the fund stated "I . . . direct . . . the Retirement System . . . to pay the accumulated contributions standing to my credit in event of my death *before my retirement* to [plaintiff]" (emphasis added). This is evidence that the annuity fund at issue here operated as a type of pension.

In addition, MCL 552.101; MSA 25.131 states:

> (4) Each judgment of divorce . . . shall determine all rights of the husband and wife in and to all of the following:
>
> (a) Any pension, annuity, or retirement benefits.
>
> (b) Any accumulated contributions in any pension, annuity, or retirement system.

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[1] At a later hearing, the court stated that the fund at issue was also covered under the following provision of the divorce judgment:

> STATUTORY INSURANCE PROVISION
>
> IT IS FURTHER ORDERED AND ADJUDGED that any rights of either party in any policy or contract of life, endowment or annuity insurance of the other as beneficiary are hereby extinguished, unless specifically preserved by this Judgment.

In light of our disposition of this case, we need not decide whether the fund ultimately fell within this additional provision. However, it appears to us that the fund was not in fact covered by this provision, as this provision dealt solely with insurance. We emphasize that no parties to this appeal argue that this provision was applicable.

> (c) Any right or contingent right in and to unvested pension, annuity, or retirement benefits.

This language mandates that a divorce judgment address any annuities. In spite of this mandate, the divorce judgment at issue here did not separately address the instant annuity fund but instead stated that "each party shall keep and retain, as their exclusive property, free and clear of any claim by the other, any pension benefits to which they are . . . entitled . . . ." The failure to specifically address annuities (other than annuity insurance, see n 1) in the divorce judgment despite the existence of the instant annuity fund is further evidence that the divorce judgment, in referring to a "pension," was intended to encompass the annuity fund at issue. Accordingly, we hold that the trial court did not err in determining that the fund at issue here was covered by the "pension" provision of the divorce judgment.[2]

Plaintiff suggests that even if the fund is considered a "pension" under the divorce judgment, she nonetheless is entitled to the proceeds of the fund under *Daugherty v Wickes*, 9 Mich App 305; 156 NW2d 581 (1967). In *Daugherty*, the deceased's former wife, whom he had divorced, was the named beneficiary of his profit-sharing plan at the time of his death. *Id*. at 310. The Court held that the profit-sharing plan was covered by a divorce decree stating that neither party "shall hereafter have any right, title or interest to the proceeds of any . . . contract . . . of retirement" held by the other. *Id*. at 310, 312. The Court held that the former wife was nevertheless entitled to the proceeds of the plan because the decree simply vested complete ownership of the plan in the deceased and left him free to dispose of those proceeds in any manner he saw fit. *Id*. at 313. The Court concluded that the deceased was free to leave his former wife as the beneficiary of the plan after the divorce and that she was therefore entitled to the proceeds upon his death. *Id*.

While we agree that *Daugherty* supports plaintiff's argument in the instant case, we are not strictly bound to follow *Daugherty*, a 1967 case, under MCR 7.215(H)(1). We do not believe that *Daugherty* was correctly decided. The *Daugherty* Court stated the following in reaching its decision:

> [Under the divorce decree,] . . . the profit-sharing plan became Emil Hildebrandt's property to do with as he pleased. He could have changed beneficiaries free and clear of any claim by his former spouse. However, the decree left him free to give his profit-sharing benefits to Mary Ann if he so desired. The point is that he took no step to give his profit-sharing benefits to anyone else. We agree that pursuant to the divorce decree, the profit-sharing plan became Hildebrandt's sole property. The issue is what did he do with this property after the divorce.
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> Notice for a moment the effect of the appellee's . . . argument upon a man who wants his divorced wife to have the benefits of his profit-sharing plan. Should a divorce decree like the one before us have the effect of frustrating such

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[2] We emphasize that this particular holding is strictly limited to the facts of this case.

> an intention? Of course not. How, then, would he accomplish such an objective after divorce? Should our judge-made law require that the divorced man execute a new beneficiary provision keeping his former wife as the named beneficiary? One can hardly think of anything more offensive to common sense than a requirement that he must execute another beneficiary provision in order to retain the same beneficiary. [*Daugherty, supra* at 313.]

This reasoning is unpersuasive. We believe that language in a divorce decree awarding someone the proceeds of a fund "free and clear" of any claim by his spouse – such as the language in the instant divorce judgment – operates to void a designation listing the spouse as the beneficiary. To hold otherwise would be to contravene the clear language of the decree and thereby frustrate the expressed intent of the parties who signed it.

The divorce decree at issue in *Daugherty* stated that "neither the plaintiff . . . nor the defendant . . . shall hereafter have any right, title or interest to the proceeds of any . . . contract of . . . retirement . . . [held by the other] in which either was heretofore named or designated as beneficiary. . . ." *Id*. at 310. Similarly, the divorce judgment at issue in the instant case stated that "each party shall keep and retain, as their exclusive property, free and clear of any claim by the other, any pension benefits to which they are now entitled or may be in the future." These phrases clearly divested the surviving, divorced spouses of any interest in the deceased spouse's retirement or pension benefits. Should the parties in a particular case decide to keep each other as beneficiaries in spite of their divorce, they need merely to specify as much in the divorce decree. The concerns of the *Daugherty* Court as expressed in the above excerpt are simply unfounded.[3]

This holding finds support in *Mohamed v Kerr*, 53 F 3d 911, 912-913, 915-916 (CA 8, 1995) (divorce decree awarding each party "full right, title, interest and equity [in various retirement and insurance policies]. . . free and clear of any claim by the other party" operated to terminate any beneficiary interests or rights, "notwithstanding that they [were] not expressly mentioned"), and *Clift v Clift*, 210 F 3d 268, 272 (CA 5, 2000) (divorce decree stating that the wife was "divested of all right, title, interest, and claim in and to" a life insurance policy prevented her from claiming proceeds after the husband's death, even though she remained the designated beneficiary). As stated in *Clift*, "[h]ad [the wife claiming the benefits] intended to retain her beneficiary interest, she should have demanded that the divorce decree so provide." *Id*. We acknowledge that *Mohamed* and *Clift* do not constitute binding authority on this Court and that other federal cases reach somewhat contradictory conclusions. See, e.g., *Lyman Lumber Co v Hill*, 877 F 2d 692, 693-694 (CA 8, 1989). Nonetheless, we view *Mohamed* and *Clift* as persuasive authority for our decision.

Because the divorce decree at issue in this case awarded the deceased his pension benefits "as [his] exclusive property, free and clear of any claim by [plaintiff]," plaintiff was not entitled

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[3] Indeed, we note that requiring the decedent in this case to have executed a new beneficiary provision divesting plaintiff of the fund's proceeds, notwithstanding the clear and unequivocal language of the divorce judgment, would be imposing an unnecessary burden.

to the proceeds of the fund after his death, even though she remained as the named beneficiary of the fund.

Plaintiff additionally argues that the trial court erred by allowing the estate of Charles Edward Thomas to intervene. We decline to review this argument because it is inadequately briefed. See *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998).

Affirmed.

/s/ Patrick M. Meter
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh