IN THE MATTER OF THE ESTATE OF MICHAEL D. JONES, DECEASED	:	SUPREME COURT OF NEW JERSEY M-897 September Term 2023 DOCKET NO.: 088877

SUPPLEMENTAL BRIEF OF PETITIONER, SHONTELL A. JONES

Thomas A. Whelihan, Esquire
Identification No.: 001811991

THE WHELIHAN LAW FIRM LLC
1999 Marlton Pike East
Suite Four
Cherry Hill, New Jersey 08003
T:(856)452-5177; F (856)452-5178
E-mail: tawlaw@comcast.net
Attorney for Shontell A. Jones, Petitioner

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PRELIMINARY STATEMENT

Petitioner incorporates by reference the Preliminary Statements contained within Petitioner's Brief in Support for Certification and the Brief filed on behalf of Plaintiff/Respondent, Shontell A. Jones, in the Appellate Division.

STATEMENT OF FACTS

Petitioner incorporates by reference the facts set forth in the Statement of the Matter Involved section of Petitioner's Brief in Support for Certification and the Procedural History and Counter Statement of Material Facts sections of the Brief filed on behalf of Plaintiff/Respondent, Shontell A. Jones, in the Appellate Division.

ARGUMENT

In addition and as a supplement to the legal arguments set forth in the Errors Complained of and Comments With Respect to the Appellate Division Opinion section of Petitioner's Brief in Support for Certification, Petitioner respectfully proffers the following arguments in response to the Supplemental Brief filed on behalf of Respondent, Jeanine Jones, and in support of Petitioner's contention that the Appellate Division erred in its decision.

A. The Court should interpret N.J.S.A. 3B:3-14 in a manner that is consistent with the pertinent case law and sound policy reasons underlying the Legislature's enactment of the statute.

In New Jersey, "divorce automatically revokes a disposition of property made by a divorced individual to his former spouse in a governing instrument." Fox v. Lincoln Financial Group, 439 N.J. Super. 380, 389 (App. Div. 2015)(citing N.J.S.A. 3B:3-14.) Under N.J.S.A. 3B:1-1, "governing instrument" is defined as "a deed, will, trust, insurance or annuity policy, account with the designation 'pay on death' (POD) or 'transfer on death' (TOD), security registered in beneficiary form with the designation 'pay on death' (POD) or 'transfer on death' (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type." Under N.J.S.A. 3B:3-14 (b)(2), a "governing instrument" encompasses "a governing instrument executed by the divorced individual before the divorce or annulment."

Jeanine contends that the Court should construe N.J.S.A. 3B:3-14 to include Treasury regulations related to the savings bonds at issue in this case as within the definition of "governing instrument." She reasons that to do so would avoid "a constitutional problem." Jeanine's theory is that the statute's automatic revocation provisions would not apply because the express terms of the governing instrument - the federal regulations - provide otherwise. See Supplemental Brief of Jeanine Jones at page 10.

The Court should reject Jeanine's argument. First, the federal regulations at issue in this case do not address what happens when a divorced bond owner dies before removing his ex-spouse as the beneficiary of his savings bonds. Thus, even if the federal regulations were considered to be incorporated into the governing instrument, those regulations do not expressly provide for an outcome that is contrary to what is prescribed by New Jersey's statute.

Additionally, Jeanine's reading of N.J.S.A. 3B:3-14 distorts the statute's meaning and purpose. The statute comes into play in the post-divorce setting where a governing instrument identifies the ex-spouse of the decedent as the beneficiary of "revocable dispositions or appointment of property made by a divorced individual to his former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse." N.J.S.A. 3B:3-14(1)(a). The statute addresses instances where the governing instrument expressly provides that the asset at issue passes to the ex-spouse. By way of example, bank and brokerage accounts and securities registered by the decedent prior to his divorce in POD and TOD form to his ex-spouse are governing instruments. By Jeanine's logic the provisions of N.J.S.A. 3B:3-14 would be inoperable in the event the decedent passed away prior to completing the paperwork to amend the beneficiary designation forms related to those accounts

because the governing instruments expressly stated that those assets are to be transferred to the ex-spouse. This is the precise situation New Jersey's statute is intended to address.

Relying on "intuition and common experience'" this Court, in Vasconi v. Guardian Life Ins. Co., 124 N.J. 338, 345 (1991), acknowledged that "'in the vast majority of cases [a] property owner's failure to revoke his will or will substitute subsequent to a divorce is due to neglect, and that to find an implied revocation usually gives effect to the owner's real intentions.'" (citation omitted.) Recognizing that "it would be unfair and unjust for the former wife to retain this property," the Court held that when divorcing parties enter into a marital settlement agreement that settles all questions regarding their respective interests relative to the distribution of marital assets, the agreement presumptively revokes the designation of the former spouse as a beneficiary of any life insurance policies. Id at 347.

The provisions of N.J.S.A. 3B:3-14 are similarly based on our instinctive knowledge and common understanding that the typical divorcee would not want to transfer wealth to an ex-spouse upon death. The statute is intended to prevent the inequities that would result by permitting a former spouse to be enriched as the result of a divorced individual forgetting to remove his ex-spouse as beneficiary of nonprobate assets. See Griffinger, Cullum, Butler, *N.J. Estate & Trust Litigation*, §7-

2:1.1, at 316 (2024 Ed.)("The purpose of N.J.S.A. 3B:3-14 is to prevent unjust results when a divorced individual dies without having removed his former spouse as beneficiary on an insurance policy.")

Applying a "revocation-on-divorce" statute substantially similar to N.J.S.A. 3B:3-14 to a POD beneficiary designation of a life insurance policy in the context of a divorce, the Supreme Court in Sveen v. Melin, 138 S. Ct. 1815, 1819 (2018), discussed the evolution and policy considerations underlying such statutes:

> Over time, many States extended their revocation-on-divorce statutes from wills to "will substitutes[ ]" . . . In doing so, States followed the lead of the Uniform Probate Code, a model statute amended in 1990 to include a provision revoking on divorce not just testamentary bequests but also beneficiary designations to a former spouse. The new section, the drafters wrote, aimed to "unify the law of probate and nonprobate transfers." The underlying idea was that the typical decedent would no more want his former spouse to benefit from his pension plan or life insurance than to inherit under his will. A wealth transfer was a wealth transfer - and a former spouse (as compared with, say, a current spouse or child) was not likely to be its desired recipient. So a decedent's failure to change his beneficiary probably resulted from "inattention," not "intention". Agreeing with that assumption, 26 States have by now adopted revocation-on-divorce laws substantially similar to the Code's. Sveen at 1819 (citations omitted).

The Court should reject Jeanine's argument that the statute's automatic revocation provision should not apply because the governing instrument - according to Jeanine, the federal regulations - provide otherwise. Since its amendment in 2005, New Jersey courts have interpreted the automatic revocation provision of N.J.S.A.

3B:3-14 as the Legislature intended, to apply, for example, to wills and insurance policies, governing instruments which include provisions related to the designation and removal of beneficiaries containing express terms which mandate outcomes contrary to that which is set forth in the statute. In so doing, our courts have not construed the statute's "except" clause in the manner Jeanine urges upon this Court. See eg., Lewis v. Harris, 188 N.J. 415, 449 (2006)(a bequest in a will is automatically revoked under N.J.S.A. 3B:3-14 following a divorce); Fox v. Lincoln Financial Group, 439 N.J. Super. 380, 389 (App. Div. 2015)("divorce automatically revokes a disposition of property made by a divorced individual to his former spouse in a governing instrument which, by definition, includes an insurance policy") ; Hadfield v. Prudential Ins. Co., 408 N.J. Super. 48 (App. Div. 2009)(same).

Accordingly, N.J.S.A. 3B:3-14 should be read in the circumstances of this case in a manner that is consistent with New Jersey precedent and the sound policy reasons underlying the Legislature's enactment of the statute. The Court should determine that the provisions of N.J.S.A. 3B:3-14 removed Jeanine as the beneficiary of the savings bonds after she and Michael divorced.

B. N.J.S.A. 3B:3-14 is not preempted by federal law governing the ownership of savings bonds.

The Appellate Court erred in holding that N.J.S.A. 3B:3-14 is preempted by

federal law governing the ownership of savings bonds because it failed to properly consider and apply pertinent federal case law.

There are two general categories of instances in which federal law may preempt state law. The first involves matters with respect to which Congress enacts legislation that expressly preempts state law. Within the second category are two subcategories of implied preemption: field preemption and conflict or obstacle preemption. See Arizona v. United States, 567 U.S. 387, 399 (2012); Transcon. Gas Pipe Line Co., LLC v. Pa. Env't Hearng Bd., 2024 U.S. App. LEXIS 16531, 12 (3rd Cir. 2024). "But these categories 'are not rigidly distinct'. . . And at least one feature unites them: Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to a 'a constitutional text or a federal statute' that does the displacing or conflicts with state law." Va. Uranium, Inc. v. Warren, 587 U.S. 761, 767 (2019).

The federal regulations relating to the savings bonds do not expressly preempt the provisions of N.J.S.A. 3B:3-14. Transcon. Gas Pipe Line Co., LLC, 2024 U.S. App. LEXIS 16531, 12 ("Express preemption requires an explicit statement of federal law that announces and defines the scope of displaced state regulation.")(citations omitted).

The federal regulations contain no provisions governing what happens when,

through inattention, not intention, a decedent neglects to change the beneficiary designation on his savings bonds to remove his former spouse following the couple's divorce. The issue in this case is whether N.J.S.A. 3B:3-14 is preempted by implication. Field preemption occurs when "[t]he intent to displace state law altogether can be inferred from a framework of regulation 'so pervasive [ ] that Congress left no room for the States to supplement it' or where there is a 'federal interest [ ] so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." Arizona, 567 U.S. at 399. (citations omitted). Under conflict or obstacle preemption, state laws that interfere, conflict with or pose "an obstacle" to federal objectives may be preempted. Id.

When considering field preemption, "a court must 'proceed cautiously, finding preemption only where detailed examination convinces it that a matter falls within the preempted field.'" Transcon. Gas Pipe Line Co., LLC, 2024 U.S. LEXIS, 16531 at 23 (citations omitted). A court must not conclude too quickly that state law is preempted simply because of the extensive nature of federal regulation in a particular field. N.Y. State Dep't of Social Servs. v. Dublino, 413 U.S. 405, 415 (1973)("We reject, to begin with, the contention that preemption is to be inferred merely from the comprehensive character" of the federal regulations.) Further, "matters left unaddressed in such a scheme are presumably left subject to the disposition provided

by state law." O'Melveny & Myers v. FDIC, 512 U.S. 79, 85 (1994)(citations omitted).

The Appellate Court acted hastily in determining that N.J.S.A. 3B:3-14 is preempted by federal law. As set forth above, the federal regulations related to the savings bonds at issue do not address the circumstances of this particular case in which Michael neglected to change the beneficiary designation on his savings bonds prior to his death to remove Jeanine following the couple's divorce in 2018. This represents a void in the federal regulations. There is room for New Jersey to supplement the federal framework and to address the scenario presented by the specific facts of this case. The federal regulations do not displace New Jersey's statute. As such, the distribution of the savings bonds following Michael's death are "left subject to the disposition" provided under N.J.S.A. 3B:3-14. See O'Melveny & Myers, 512 U.S. 79, 85.

A state law may be impliedly preempted under conflict or obstacle preemption when it "conflict[s] with federal law. Arizona v. United States, 567 U.S. 387, 399. "This includes cases where 'compliance with both federal and state regulations is a physical impossibility . . . and those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Id (citations omitted). "What is a sufficient obstacle is a

matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 373 (2000).

Once again, the pertinent federal regulations do not address the circumstances presented by Michael's failure to change the beneficiary designation on his savings bonds prior to his death to remove Jeanine following the couple's divorce. As such, New Jersey's statute does not conflict with a federal regulation. The focus of N.J.S.A. 3B:3-14 is to prevent the inequities that would result by permitting a former spouse to be enriched as the result of a divorced individual forgetting to remove his ex-spouse as beneficiary of nonprobate assets. See Griffinger, Cullum, Butler, *N.J. Estate & Trust Litigation*, §7-2:1.1, at 316 (2024 Ed.) The statute applies to a broad range of nonprobate assets and is not directed solely to federal savings bonds. It is not designed to and does not undercut any specific federal regulation related to savings bonds. And it does not conflict with the ministerial provisions of the federal regulations related to the payment or reissuance of savings bonds. Specifically, 31 C.F.R. 353.22 provides:

> § 353.22 Payment or reissue pursuant to judgment.
>
> (a) Divorce. The Department of the Treasury **will recognize a divorce decree** that ratifies or confirms a property settlement agreement disposing of bonds or that otherwise settles the interests of the parties

> in a bond. Reissue of a savings bond **may** be made to eliminate the name of one spouse as owner, coowner, or beneficiary or to substitute the name of one spouse for that of the other spouse as owner, coowner, or beneficiary pursuant to the decree. * * * [(Emphasis added.)]

The plain language of this regulation merely states that the Department of Treasury "will recognize" a divorce settlement agreement incorporated into a final judgment of divorce and that the savings bond may be reissued to eliminate the former spouse as a beneficiary. It does not require that the bond be reissued. The purpose and effect of N.J.S.A. 3B:3-14 and its presumptive revocation of an ex-spouse as beneficiary of the savings bond does not conflict with this regulation.

In this instance, Michael failed to file the minimal paperwork required by the federal regulations. As a result, N.J.S.A. 3B:3-14 filled a void in the federal regulations and supplied a default rule revoking Jeanine as the beneficiary of the bonds. This does no more than what a divorce court or Michael himself could have done. The only outcome of the application of N.J.S.A. 3B:3-14 in this instance is that the proceeds from the savings bond are redirected to the original owner's contingent beneficiaries or his estate. Cf., Sveen, 138 S. Ct. 1815, 1822.

The revocation provisions of N.J.S.A. 3B:3-14 do not stand as an obstacle to any purpose or objective of Congress. Savings bonds are issued by the U.S. Department of Treasury to raise money from the public in order to fund government

projects and other operations necessary to manage the economy. By selling bonds, the government is essentially receiving a loan from the purchaser. The government agrees to pay back the loan, with interest, at some predetermined date in the future. See https://www.treasurydirect.gov/savings-bonds (last visited July 11, 2024)("When you buy a U.S. savings bond, you lend money to the U.S. government. In turn, the government agrees to pay that much money back later - plus additional money (interest).") New Jersey's law does not stand as an impermissible obstacle to the accomplishment and execution of the purposes and objectives underlying the issuance of savings bonds.

The Appellate Court also disregarded the well-established presumption against federal preemption in fields of law traditionally occupied by the states when it determined that N.J.S.A. 3B:3-14, part of New Jersey's Probate Code, is preempted by federal regulations. See Arizona, 567 U.S. 387, 400 ("In preemption analysis, courts should assume" that state law is not superseded "'unless that was the clear and manifest purpose of Congress'")(citations omitted). This is particularly true in probate matters. See Witco Corp. v. Beekhuis, 38 F.3d 682, 687 (3rd Cir. 1994)("Since probate matters traditionally have been nearly the exclusive concern of the states, there is a presumption against preemption of state law.")(CERCLA does not preempt Delaware state non-claim statutes that govern the administration of decedent's

estates.); City of Las Cruces v. The Lofts at Alameda, LLC, 647 F. Supp. 3d. 1096,1110 (D. N.M. 2022)("Absent clear congressional intent to the contrary, federal preemption of state law is not favored. This is especially true in areas of law traditionally occupied by the states. Probate law . . . is one of those areas.")(citations omitted).

In addition to the authorities discussed above, the Appellate Court overlooked the Supreme Court's opinion in Sveen. As set forth in Petitioner's Brief in Support for Certification, Petitioner believes that the Appellate Division should have applied that opinion to this case because the issue and facts are nearly identical to Sveen and support application of N.J.S.A. 3B:3-14 to the savings bonds.

Jeanine contends that her receipt of the proceeds from redeeming the savings bonds was the result of her ownership of the bonds and not as the result of any transfer from Michael. Insofar as the savings bonds had a POD or TOD designation attached to them the bonds were, in fact, nonprobate property, and did not pass through Michael's probate estate. Nevertheless, they are included in his gross estate for New Jersey Inheritance and Estate tax purposes. To the extent that a death beneficiary designation is legally recognized the distinction Jeanine seeks to make will have no effect on the taxability, for New Jersey Inheritance Tax purposes, of the transfer of the bond proceeds to her, a "Class D" beneficiary. Her receipt of the

proceeds as a POD or TOD beneficiary following Michael's death will be deemed as a transfer to her from Michael, a resident decedent. See Beck & Sherman, *New Jersey Inheritance & Estate Taxes*, §3-3, page 23, 2024 (Gann)(U.S. Savings bonds constitute taxable intangible personal property included in the decedent's gross estate.); N.J.A.C. 18:26-1.1 (defining Class D beneficiaries).

Based on the foregoing, Petitioner contends that the Appellate Division erred in holding that N.J.S.A. 3B:3-14 is preempted by the federal regulations related to the savings bonds.

CONCLUSION

For the reasons set forth above, and for the reasons set forth in Petitioner's Brief in Support for Certification and the Brief of Plaintiff/Respondent, Shontell A. Jones, filed in the Appellate Division, Petitioner respectfully requests that this Court reverse the Appellate Division's decision and affirm the result of the trial court.

THE WHELIHAN LAW FIRM LLC
Attorneys for Plaintiff-Petitioner,
Shontell A. Jones

Date: July 15, 2024

By: /s Thomas A. Whelihan
THOMAS A. WHELIHAN