

SUPREME COURT OF KANSAS

In the Matter of the Marriage of Jacqueline Kay Shevling v. Harley Eugene Shevling; Judith A. Shevling, Intervenor/Appellee, 278 Kan. 356

97 P.3d 1036 (2004) · No. Nos. 90,273, 90,876 · Decided September 24, 2004

SUMMARY

The Kansas Supreme Court held that the ex-wife's former spouse survivor annuity could not be reduced by a post-retirement court order under applicable federal law. The second wife was merely an incidental, rather than intended, third-party beneficiary of the agreement between the ex-spouses and therefore could not enforce it. The court reversed the district court's judgment requiring the ex-wife to share the survivor benefits and holding her in contempt.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Luckert, J.
JURISDICTION	Kansas
DECIDED	September 24, 2004
DOCKET	Nos. 90,273, 90,876
DISPOSITION	reversed
PROCEDURAL POSTURE	Jacqueline Kay Shevling appealed from a district court order requiring her to pay Judith A. Shevling a portion of federal survivor benefits and from a contempt judgment based on her refusal to comply.
STANDARD OF REVIEW	The court treated the existence and intended-beneficiary status under the contract as questions governed by contract construction principles; it did not expressly state a separate standard of review for the contempt ruling.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Kansas
PARTIES	Jacqueline Kay Shevling v. Judith A. Shevling

TOPICS

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QUESTIONS PRESENTED

1. Whether Judith Shevling was an intended third-party beneficiary of the 1985 agreement between Kay and Harley Shevling and therefore could enforce it.
2. Whether Judith established an enforceable contract directly between herself and Kay based on an alleged 1995 telephone conversation.
3. Whether the district court's order requiring Kay to share the federal survivor benefits and its related contempt ruling could stand.

HOLDINGS

1. Judith was an incidental, rather than an intended, third-party beneficiary of the agreement and therefore had no right to enforce it.
2. Judith did not establish an enforceable contract between herself and Kay because the district court made no findings concerning mutual assent, the terms of the alleged agreement, or consideration, and Judith did not properly present the issue.

KEY QUOTATIONS

“Under this test a beneficiary can enforce the contract if he is one who the contracting parties intended should receive a direct benefit from the contract.” (278 Kan. at 361)

“Under these circumstances, Judy is an incidental, rather than an intended, third-party beneficiary of Gene and Kay's 1985 agreement.” (278 Kan. at 363)

“Thus, we hold that under the facts of this case, Judy has not established a contract between her and Kay nor one to which she was a third-party beneficiary entitled to enforce the contract.” (278 Kan. at 364)

FACTUAL BACKGROUND

Kay and Harley Shevling divorced in 1985 after 25 years of marriage. Their property settlement agreement, incorporated into the divorce decree, awarded Kay the maximum survivor annuity from Harley's federal civil-service retirement benefits, while a separate agreement purported to reduce Kay's benefit if Harley retired or remarried. Harley retired in 1989, and the Office of Personnel Management and Merit Systems Protection Board determined that the later-filed 1990 order could not modify the survivor-annuity provision under federal law. After Harley died in 2001, his second wife, Judith, obtained a district court order requiring Kay to share the benefits and was later awarded contempt relief when Kay refused to comply.

PROCEDURAL HISTORY

Kay and Harley Shevling's 1985 divorce decree incorporated a property settlement agreement awarding Kay the maximum survivor annuity under Harley's federal civil-service retirement benefits. After Harley's death, his second wife, Judith, intervened in the divorce action and sought enforcement of a separate agreement under

which Kay had agreed to accept reduced benefits. The district court enforced the agreement, awarded Judith ongoing and accrued payments, and later found Kay in contempt for noncompliance. The Kansas Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Martin v. Edwards, 219 Kan. 466, 548 P.2d 779 (1976)
- Burton v. Larkin, 36 Kan. 246, 13 P. 398 (1887)
- Varney Business Services, Inc. v. Pottroff, 275 Kan. 20, 40, 59 P.3d 1003 (2002)

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