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The Ret. Bd. of the Emples. Ret. Sys. of R.I. v. Randall, 249 A.3d 629 (R.I. 2021)

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Pension and Retirement Law. *The Ret. Bd. of the Emples. Ret. Sys. of R.I. v. Randall*, 249 A.3d 629 (R.I. 2021). Pursuant to the Public Employee Pension Revocation and Reduction Act (PEPRRA), the Rhode Island Superior Court has the discretion to award an innocent spouse the revoked or reduced pension benefit of a convicted public employee, after considering the financial needs of the individual as justice may require. However, the court may not condition the pension payment to be forwarded to parties outside the scope of the statute to satisfy the restitution obligations. Additionally, the Superior Court has the discretion to consider whether the prior pension contributions should be used towards satisfying outstanding restitution without the parties' specific request.

FACTS AND TRAVEL

The defendant, Fred Randall, was a public employee of the University of Rhode Island (URI) since 1976, and he held positions as a fiscal clerk both at the Departments of Computer Science and Chemistry and as “a fiscal clerk and senior teller in the Bursar’s Office.”¹ Through his state employment, he contributed to the Employees’ Retirement System of the State of Rhode Island (ERSRI) for about thirty-five years.² He then “retired from state service in 2011 and began receiving retirement benefits of approximately to \$4,300 per month.”³ In 2012, the defendant was charged with felony embezzlement⁴ and access to a computer for fraudulent purposes⁵ after he allegedly stole “a significant amount of money from

1. *Randall*, 249 A.3d at 630–31.

2. *Id.* at 630.

3. *Id.* at 631.

4. Felony embezzlement is a violation of R.I. GEN. LAWS §§ 11-41-3, 11-41-5 (1956).

5. Access to a computer for fraudulent purposes is a violation of R.I. GEN. LAWS §§ 11-52-2, 11-52-5 (1956).

URI” between 2005 and 2011.⁶ As a result of a *nolo contendere* plea, “the defendant was sentenced to twenty years at Adult Correctional Institution, with eighteen months to serve, twelve months of home confinement, and the balance suspended, with probation” and was ordered to pay \$200,000 in restitution.⁷

Prior to this civil action, the defendant’s pension benefit was “reduced to approximately \$2,500 per month in November 2014, [upon becoming] eligible for Social Security benefits.”⁸ The plaintiff, the Retirement Board of the Employees’ Retirement System of the State of Rhode Island (the Retirement Board), brought this suit in January 2015, “pursuant to the Public Employee Pension Revocation and Reduction Act, G.L. 1956 chapter 10.1 of title 36 (PEPRRA).”⁹ The Retirement Board sought revocation of the defendant’s pension and a declaratory judgment that “the defendant failed to satisfy the condition precedent of rendering honorable services in his public employment” to qualify for retirement payments from ERSRI.¹⁰

At trial, it was revealed that the defendant used embezzled funds “to feed his gambling addiction at” two local casinos.¹¹ The trial justice found that the defendant’s wife was not aware that he was embezzling funds from the URI because the converted funds were not available to her, and the defendant continuously lied to cover up his activities.¹² When the casinos sent free gifts to their home, the defendant would tell his wife that a coworker “played big” using his membership card and that he would receive points on his rewards card.¹³ Due to her lack of knowledge of his embezzlement scheme or any indication that would have led her to believe that he was engaging in inappropriate conduct, the trial justice found Mrs. Randall to be an innocent spouse.¹⁴ The parties were not in dispute that Mrs. Randall was an innocent spouse.

6. *Randall*, 249 A.3d at 631.

7. *Id.*

8. *Id.*

9. *Id.*; see 36 R.I. GEN. LAWS § 36-10.1-3 (Rhode Island Public Employee Pension Revocation and Reduction Act).

10. *Randall*, 249 A.3d at 631.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 632.

The trial justice held that a complete revocation of the defendant's pension was appropriate pursuant to PEPRRA,¹⁵ and it was not an issue on appeal.¹⁶ However, the trial justice also held that Mrs. Randall was entitled to "some pension payment"¹⁷ because she was an innocent spouse.¹⁸ Because the defendant's financial condition "limited the likelihood that [URI] will ever be made whole[,]," the trial justice awarded "ongoing pension payments" to Mrs. Randall "in the amount of \$1,667 per month, on the condition that all of those payments be forwarded promptly, or assigned in advance, towards her husband's restitution debt."¹⁹ "[U]pon full payment of the defendant's restitution debt, Mrs. Randall's pension payment would be reduced to \$500 per month and paid directly to her."²⁰ Defendant appealed timely and argued that such conditioning violates PEPRRA.²¹ Additionally, the defendant contended "that 'his pension contribution of \$73,569.84 should [have been] transferred to pay his restitution obligations" and that the trial justice erred in concluding that the court "had not been asked to transfer the funds to satisfy the restitution."²²

ANALYSIS AND HOLDING

In reviewing the Superior Court order, the Rhode Island Supreme Court had to examine two issues: (1) whether conditioning of the pension payment to the innocent spouse accords with language and intent of PEPRRA, and (2) whether it was proper for the Superior Court to conclude that it "had not been asked to direct the

15. *Id.*

16. *Id.* at n.3.

17. *Randall*, 249 A.3d at 632 (noting that PEPRRA provision is based on the principles related to the equitable distribution of marital property and the Court had recognized that "an innocent spouse has a cognizable property interest in a vested pension," such that Superior Court may, in its discretion, award "some or all of the total benefits to an innocent spouse" (quoting Ret. Bd. of the Emples. Ret. Sys. of R.I. v. DiPrete, 845 A.2d 270, 292 (R.I. 2004))).

18. *Randall*, 249 A.3d at 632.

19. *Id.*

20. *Id.*

21. *Id.* at 632–33.

22. *Id.* at 635.

pension contributions” because there was an existing restitution obligation.²³

As to the first issue, the Court began by stating that the primary purpose of the retirement pension outlined in PEPRRA is “to provide for the family in the future.”²⁴ Accordingly, PEPRRA provision § 36-10.1-3(d) provides that:

If the [S]uperior [C]ourt determines that the retirement . . . payments of a public official . . . should be revoked or reduced under this chapter, it may, in its discretion, and after taking into consideration the financial needs and resources of any innocent spouse or domestic partner, dependents . . . order that some or all of the revoked or reduced benefits or payments be paid to any innocent spouse or domestic partner, dependent or beneficiary as justice may require.

As such, “the Retirement Board argue[d] that the trial justice’s decision did not directly order that the defendant’s pension payment be made to URI, but rather ‘conditioned the spousal payment to Mrs. Randall on her payment to URI,’ which, according to [the plaintiff], accords with the language and intent of the PEPRRA.”²⁵ In rejecting the Retirement Board’s argument, the Supreme Court stated that the legislature did not intend PEPRRA to be punitive in its application, rather the legislative enactment was intended to be equitable in nature.²⁶ The Court looked at two aspects when deciding whether trial justice acted within his or her discretion in fashioning an appropriate PEPRRA order. First, the Court “look[ed] to the identity of the final payee of the benefits”, which in this case would not qualify because the final payee would be URI, and not the “innocent spouse, dependent, or beneficiary as required by” PEPRRA.²⁷ The second aspect involved assessing the financial circumstance of the innocent beneficiary by looking at their assets and

23. *Id.* at 630.

24. *Id.* at 634 (quoting *Thompson v. Thompson*, 642 A.2d 1160, 1164 (R.I. 1994)).

25. *Randall*, 249 A.3d at 633.

26. *Id.* at 635.

27. *Id.* at 634.

income.²⁸ Here, this balancing test tipped in favor of the innocent spouse, and the Court held that “PEPRRA cannot be used to punish . . . the innocent spouse for the misdeed of [the defendant];” “she cannot be forced to forward the payment that was awarded to” her.²⁹

The Court analyzed two PEPRRA provisions for the second issue. The first applicable statute § 36-10.1-4(a) provides the general rule, which states “[a]ny . . . public employee whose retirement or other benefits or payments are revoked . . . shall be entitled to return of his or her contribution paid to the relevant pension fund(s), without interest.”³⁰ However, the second relevant statute, § 36-10.1-4(c), prohibits such return if the employee has unsatisfied judgments or orders “for the payment of restitution for losses incurred by any person as a result of the subject crime related to . . . public employment.”³¹ The statute further provides that “[i]f there is outstanding restitution due, the Superior Court ‘may order that any funds otherwise due to the . . . public employee as a return of contribution . . . be paid in satisfaction of the judgment or order.’”³² The Court emphasized that the use of the term “may” in the statute indicates a permissive condition³³ and held that § 36-10.1-4(c) clearly vests the discretion in the Superior Court to determine whether a public employee’s contribution can be used to pay down their outstanding restitution.³⁴ The Court also noted that there is nothing in the statute requiring a public employee to request that his or her return contributions be applied towards the satisfaction of existing restitution.³⁵ Thus, the Supreme Court held that although the trial justice had the discretion to order that any return of contributions be paid to satisfy the defendant’s outstanding restitution, the statute did not require him to do so.³⁶

28. *Id.* at 632 (discussing the amount Mrs. Randall inherited from her father’s estate, the amount spent on the home improvements, her annual income from the part-time job, and outstanding debts and ongoing expenses).

29. *Randall*, 249 A.3d at 635.

30. 36 R.I. GEN. LAWS § 36-10.1-4 (a) (1992); *see id.*

31. 36 R.I. GEN. LAWS § 36-10.1-4 (c) (1992); *see Randall*, 249 A.3d at 635.

32. *Randall*, 249 A.3d at 635.

33. *Id.* at 635–36 (citing *Downey v. Carcieri*, 996 A.2d 1144, 1151 (R.I. 2010)).

34. *Randall*, 249 A.3d at 636.

35. *Id.*

36. *Id.*

Accordingly, the Court affirmed the portion of the judgment that revoked the defendant's pension benefits and that declared Mrs. Randall as an innocent spouse.³⁷ However, the Court vacated the portion of the judgment that required Mrs. Randall to forward her payments to URI and the portion that declined to apply the defendant's pension to his restitution for the sole reason that a specific request was not made.³⁸ The Court remanded the case to the Superior Court for recalculation of the innocent spouse's benefit and for them to consider whether the defendant's return of contributions should be applied to his outstanding restitution.³⁹

COMMENTARY

The holding in this case is important because it emphasized the need to be cognizant of innocent beneficiaries and his or her financial circumstances when the pension benefit is to be revoked from a convicted public employee pursuant to PEPRRA. The Court made it clear that the purpose of PEPRRA is to be equitable in nature;⁴⁰ thereby requiring the Superior Court to consider the identity of a final payee that will receive a public employee/official's revoked or reduced pension benefit.⁴¹ If the final payee is someone not in one of the three listed categories, an innocent spouse or domestic partner, dependent, or beneficiary,⁴² imposing a condition to forward the payment to a non-relevant party would not be in accordance with PEPRRA.⁴³ Additionally, justice requires that the evaluating court assess the financial strength of the innocent beneficiary by looking at their assets and income.⁴⁴ This case showcased that even if the Retirement Board rightfully revokes the benefit based on the defendant's conviction, the plaintiff could lose on the merits because PEPRRA protects the innocent party. The advantage of this holding is that it protects an innocent beneficiary by recognizing their property interest in the defendant's vested pension.⁴⁵ However, the

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 634.

41. *Id.*

42. *Id.*

43. *Id.* at 634–35.

44. *See Id.* at 632.

45. *Randall*, 249 A.3d at 634.

plaintiff is disadvantaged at the outset because they may or may not know that an innocent party existed or the financial circumstances surrounding the innocent party.

The counterweight to such unforeseeability for the plaintiff is the subsequent holding that utilized two PEPRRA provisions.⁴⁶ The general provision § 36-10.1-4(a) provides that a “public employee whose retirement or other benefit is revoked, shall be entitled to a return of his or her contribution paid into the relevant pension fund(s), without the interest”; however, such return of contribution shall not be made if there is an unsatisfied judgment or an order for the payment of restitution.⁴⁷ The exception provision § 36-10.1-4(c) states that the Superior Court “may order” the return of the contribution made by the public official to satisfy an outstanding restitution.⁴⁸ Accordingly, the Supreme Court held that a trial justice has discretionary power to order the return of pension contribution to pay down the existing restitution without a specific request from a litigant.⁴⁹

Although this discretionary power appears to be a counterbalance, it may not truly redress the damage incurred by the plaintiff. It is because the defendant could have contributed little to none to the ERSRI, and it may not sufficiently cover the defendant’s restitution. Coupled with the ongoing pension payments the plaintiff must make towards the innocent party, the plaintiff will continue to suffer. However, the public policy behind such a holding could possibly be that the state’s pension retirement board is the superior risk bearer compared to an individual public employee or the innocent party.

CONCLUSION

The Rhode Island Supreme Court held that requiring an innocent beneficiary to forward the pension benefits they would have received from revocation of public employee’s pension benefit would not be in accordance with PEPRRA. Moreover, the Court held that the Superior Court has the discretion to consider whether the return of a pension contribution should be applied toward an

46. *Id.* at 635.

47. *Id.*

48. *Id.*

49. *Id.* at 635–36.

outstanding restitution obligation regardless of whether specific requests were made by the parties.

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