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PENSION LAW--Garnishment--Pension Fund Benefits Governed By the Federal Employee Retirement Income Security Act Are Subject to Court-Ordered Alimony And Child Support Payments.

CASE NOTE

PENSION LAW—Garnishment—Pension Fund Benefits Governed By The Federal Employee Retirement Income Security Act Are Subject To Court-Ordered Alimony And Child Support Payments. *American Telephone & Telegraph Co. v. Merry,* 592 F.2d 118 (2d Cir. 1979).

Plaintiffs, American Telephone and Telegraph Company (AT&T) and Chemical Bank, operate a pension benefit plan in which the defendant, Addison D. Merry, participated.[1] In 1966 Ann R. Merry, co-defendant in this action, obtained a judgment of divorce against Mr. Merry in the Connecticut Superior Court.[2] The terms of the decree required Mr. Merry to pay alimony and child support in an amount equal to one-half his monthly pension benefit from the AT&T plan.[3] When Mr. Merry defaulted in his payments, Mrs. Merry obtained a judgment for arrearages from the court in the amount of $22,422.34.[4] She contended that she was entitled to receive her husband's pension benefits until the judgment was fully satisfied.[5] The Connecticut Superior Court agreed. The court issued a garnishment order against the AT&T pension plan,[6] whereupon the plaintiffs (AT&T and Chemical Bank) instituted an action in the United States District Court for the District of Connecticut.[7]

Plaintiffs argued that the garnishment was ineffective because the Employment Retirement Income Security Act of 1974 (ERISA)[8] protects pension plans from such action. Specifically, they pointed to section 206(d)(1) of the Act which states that pension fund bene-

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1. American Telephone & Telegraph Co. v. Merry, 4 Fam. L. Rep. 2831 (D. Conn. 1978) (BNA). Co-plaintiff Chemical Bank administers the plan as trustee and custodian of the pension fund. Ann R. Merry and Addison D. Merry are the co-defendants.
2. *Id.* at 2832.
3. American Telephone & Telegraph Co. v. Merry, 592 F.2d 118, 119 (2d Cir. 1979).
4. *Id.* at 120.
5. *Id.*
6. *Id.*
7. *Id.* While the district court action was pending, Mrs. Merry obtained a supplemental judgment from the Connecticut Superior Court for additional arrearages totaling $32,373.92. She cross-claimed against her former husband for this amount in the district court but the cross-claim was dismissed on the ground that a federal court could not interfere with the state court authority in matters of domestic relations. The Court of Appeals for the Second Circuit affirmed on other grounds. *Id.* at 126.
8. 29 U.S.C. § 1001-81 (1976) [hereinafter cited as ERISA].

fits may not be assigned or alienated.[9] They claimed further that the state court was without authority over the controversy in this instance since ERISA, a federal statute, pre-empts state laws affecting employee pension benefit plans.[10]

The district court did not agree with the plaintiffs' argument. It ruled that ERISA did not prohibit the garnishment of pension plan benefits to satisfy alimony and support payments nor did it displace the state court's authority in this area by its pre-emption provisions.[11] Judge Newman found that enforcement of a state court garnishment order is clearly to be preferred when the court must choose between enforcing the rights of a former wife to overdue support payments or the rights of a delinquent former husband.[12]

Plaintiffs appealed from the district court decision in an effort to clarify their rights and obligations as fiduciaries under ERISA.[13] They also sought to protect the pension plan from loss of its favorable tax status[14] and from unanticipated increases in administration costs which might result from the decision.[15] The Court of Appeals for the Second Circuit affirmed the district court decision.[16] Judge Werker,[17] writing for the court, indicated that a state court garnishment order issued against a pension plan to satisfy support and alimony payments was "impliedly excepted" from the provisions of ERISA which prohibit assignment and alienation of pension funds

9. *Id.* § 1056(d)(1).

10. 4 Fam. L. Rep. at 2832.

11. *Id.* The court had trouble reaching this decision inasmuch as it found the statutory language in ERISA unclear. There was no substantial evidence of a congressional intent to prohibit the garnishment of pension funds to satisfy support obligations. The court elected to interpret the statute in accordance with the dictates of public policy rather than leave the issue for eventual resolution by Congress. *Id.*

12. *Id.*

13. ERISA charges the fiduciary with meeting the standard of "care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. . . ." ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1) (1976).

14. "A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." I.R.C. § 401(a) 13, 26 U.S.C. § 401(a)(13) (1976).

15. For example, the clerical work involved in redirecting a portion of a garnished pension benefit to comply with a court order of support would be one factor contributing to increased costs.

16. 592 F.2d 118 (2d Cir. 1979).

17. Honorable Henry F. Werker, United States District Judge for the Southern District of New York, sat by designation in this case. *Id.*

and which pre-empt state law.[18] When Congress created ERISA, he continued, it did not intend to change traditional support obligations, but rather, to ensure that pension benefits are available upon retirement.[19]

Prior to the enactment of ERISA in 1974, there were many problems involving pension plans.[20] These include inadequacies in coverage, loss of pension benefits due to plan terminations, misuse of pension funds and lack of disclosure of pension operations.[21] ERISA, as originally introduced in the Congress in 1967, was intended to assuage the public's fear of deficiencies in the pension fund system which threatened the security of an adequate income upon retirement.[22] In order to accomplish this goal, Congress required the disclosure and reporting of pension plan operations to participants, established standards of conduct, and defined the obligations of fiduciaries under these plans.[23] In addition to providing remedies and sanctions, Congress removed the usual requirements of amount in controversy and diversity of citizenship to allow aggrieved parties ready access to the federal courts. All plans were required to have insurance against termination so that accrued benefits would be available to employees upon retirement.[24] Through these measures

18. *Id.* at 121. Judge Werker was responding to the plaintiff's claim that ERISA pre-empts all state law unless there is an express statutory exception. The judge dismissed such a literal interpretation as unreasonable since it would have ERISA pre-empt virtually every state law having a remote relation to pension plans. Such a limitation without exception would interfere with the traditional predominance of state authority in the areas of domestic relations. *Id.*

In response to the plaintiff's concern that compliance with the garnishment order would breach a fiduciary duty, the court indicated that every fiduciary is subject to court guidance. When the plaintiffs allow garnishment of plan benefits pursuant to a court order, they are protected from liability for breach of their fiduciary duty. With regard to plaintiffs' fear of loss of their plan's tax qualified status, the court indicated that the Internal Revenue Service has recognized an implied exception for the enforcement of family support rights. While the court recognized the possibility of increased administration costs to plaintiffs, it viewed these costs as minimal in comparison to the overwhelming public benefit of its decision. *Id.* at 125.

19. *Id.* at 124.

20. H. R. REP. No. 93-807, 93d Cong., 1st Sess. (1973), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4670, 4677. [hereinafter cited as H. R. REP. No. 93-807]. For a history of ERISA, *see* Note, *At Variance with the Administrative Exemption Procedures of ERISA: A Proposed Reform*, 87 YALE L.J. 760, 761-65 (1978).

21. H. R. REP. No. 93-807, *supra* note 20, at 4678-81. *See* Note, *Legal Problems of Private Pension Plans*, 70 HARV. L. REV. 490, 495 (1957).

22. S. REP. No. 93-127, 93d Cong., 1st Sess. (1973), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4838.

23. 29 U.S.C. § 1001(b) (1976).

24. *Id.* §§ 1001(b), 1132(f) (1976).

Congress hoped to increase the number of workers participating in employer-financed plans.[25]

Despite careful drafting of the statute, however, there has been much litigation on the issue of whether pension funds may be garnished to satisfy support and alimony orders. In New York, the courts have consistently permitted enforcement of support and alimony orders against pension plans.[26] For example, in *Cogollos v. Cogollos*[27] a divorced wife sought to enforce a court order of support against her ex-husband's pension benefits.[28] Attorneys for the pension plan argued that ERISA prevented the assignment and alienation of pension benefits but the supreme court allowed enforcement of the outstanding support order.[29] The court indicated that the New York judiciary has in the past rejected the argument that ERISA protects an employee spouse from his obligation to support his dependents.[30]

The United States District Court for the Eastern District of New York came to the same conclusion in *Cody v. Riecker*.[31] A trustee of an employee pension benefit plan sued a state court judge, a city sheriff and others to enjoin a levy upon an employee's pension fund benefits for the enforcement of the employee's obligation to support his wife.[32] Plaintiff alleged violations of ERISA section 206(d)(1) and article VI, section 10 of the employer's pension fund rules and regulations which prohibit alienation of pension funds.[33] The court rejected the claim that ERISA pre-empted all state laws.[34] It held that the husband's obligation, which arose under the state law,

25. *Id.* § 1001(c) (1976).

26. *See* M.H. v. J.H., 93 Misc. 2d 1016, 403 N.Y.S.2d 411 (Fam. Ct. Queens County 1978) (garnishment of pension funds for child support was not defeated by ERISA's ban on assignment and alienation); *see also* Zwingman v. Zwingman, 150 A.D. 358, 134 N.Y.S. 1077 (2d Dept. 1912); Monck v. Monck, 184 A.D. 656, 172 N.Y.S. 401 (1st Dep't 1918); Legler v. Legler, 244 A.D. 55, 278 N.Y.S. 804 (4th Dep't 1935); Albert v. Albert, 199 N.Y.S.2d 766 (Sup. Ct. 1960); Wanamaker v. Wanamaker, 93 Misc. 2d 784, 401 N.Y.S.2d 702 (Fam. Ct. Rockland County 1978).

27. 93 Misc. 2d 406, 402 N.Y.S.2d 929 (Sup. Ct. 1978).

28. *Id.* at 407, 402 N.Y.S.2d at 929.

29. *Id.*

30. *Id.* at 408, 402 N.Y.S.2d at 930.

31. 454 F. Supp. 22 (E.D.N.Y. 1978), *aff'd*, 594 F.2d 314 (2d Cir. 1979).

32. 454 F. Supp. at 22, 23.

33. *Id.* at 23.

34. *Id.* The court indicated that a husband's obligation to support his dependents does not terminate upon retirement. Therefore, it reasoned pension funds should be made available for support purposes. *Id.*

could be enforced by executing upon the benefits of a pension plan subject to ERISA.[35]

Shortly after *Cody*, a similar action was brought in the Southern District of New York to enjoin a family court from garnishing the pension of a retiree to fulfill support obligations and make up arrearages owed to his wife.[36] The plaintiffs, members of the pension plan committee, alleged that the order violated ERISA's prohibition against assignment or alienation of pension benefits.[37] The district court held that while ERISA may protect benefits from attachment, execution, or garnishment, it cannot prevent the enforcement of validly executed court orders protecting alimony and support rights of families.[38] Judge Weinfeld noted that the plaintiffs' contention was premised upon a strict and literal interpretation of the language of ERISA section 206(d)(1).[39] Such a literal interpretation, he continued, defeats the intention of Congress to preserve the "ancient family law right of maintenance and support and the issuance of process to enforce that right."[40]

The preceding decisions are not the product of a rationale unique to the New York courts. In *Stone v. Stone*[41] the United States District Court for the Northern District of California held that ERISA did not pre-empt that state's community property laws.[42] A dependent spouse brought an action against her former husband for her share of his pension benefits in accordance with the community property laws of California.[43] Since an underlying purpose of ERISA is to protect the families of employees participating in pension benefit plans,[44] the court indicated that ERISA is not in conflict with the state law.[45] It held that the non-employee spouse was entitled to half the pension benefits owed to her former husband.[46]

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35. *Id.* at 24, 25.
36. Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978).
37. *Id.* at 1149.
38. *Id.* at 1156.
39. *Id.* at 1154. Section 206(d)(1) of ERISA states that "each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1976).
40. 457 F. Supp. at 1154.
41. 450 F. Supp. 919 (N.D.Cal. 1978), *appeal pending*, No. 78-2313 (9th Cir.).
42. 450 F. Supp. at 932.
43. *Id.* at 919.
44. 29 U.S.C. § 1001 (1976).
45. 450 F. Supp. at 931.
46. *Id.* at 926.

Several months later, however, the District Court for the Northern District of California took a much different position. In *Francis v. United Technologies Corp.*[47] a non-employee spouse sought what she considered to be her interest in her husband's retirement plan under California's community property law.[48] The court held that ERISA pre-empted the state law which allowed a non-employee spouse to have an interest in the pension plan of an employee spouse.[49] The court, referring specifically to its ruling in *Stone*, stated that "[w]ith the exception of a participant's *voluntary* designation of a beneficiary (which designation has not been made) ERISA prohibits any and all assignments or alienations of benefits. No exception is made for the community property laws."[50]

In another California action,[51] plaintiffs sued to avoid compliance with a state law regulating the health care industry.[52] The District Court for the Northern District of California ruled that ERISA pre-empted state law by virtue of the specific language in section 514(a).[53] The court found that there could be no question of interpretation here since the meaning of the statute was quite clear.[54]

The Court of Appeals for the Second Circuit in *American Telephone & Telegraph Co. v. Merry*[55] did not find the reasoning in *Francis* persuasive.[56] Judge Werker stated that a decision involving garnishment of pension fund benefits cannot rest solely on a literal interpretation of sections 206(d)(1) and 514(a) of ERISA. The strong

47. 458 F. Supp. 84 (N.D. Cal. 1978).

48. *Id.*

49. *Id.* at 88.

50. *Id.* at 86. Under California community property law each spouse takes a one-half property interest in all assets acquired during the marriage regardless of their needs. CAL. CIVIL CODE § 5105 (West) (amended 1973).

51. Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir. 1978), *cert. denied*, 99 S. Ct. 108 (1978).

52. 425 F. Supp. at 1295. The state law was the Knox-Keene Health Care Service Plan Act of 1975 which duplicated many of the controls of ERISA in the areas of benefit plan funding and disclosure among others. It was primarily involved in the health care industry but also sought to regulate self-funded programs such as the one offered by plaintiffs. *Id.* at 1297.

53. Section 514(a) states that "this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ." 29 U.S.C. § 1144(a) (1976).

54. 425 F. Supp. at 1297. *See also* Ogle v. Heim, 69 Cal. 2d 7, 442 P.2d 659, 69 Cal. Rptr. 579 (1968) (California Supreme Court refused to enforce judgment for support payments against retirement benefits protected by statute claiming it could not create an exception not provided by the statute itself).

55. 592 F.2d 118 (2d Cir. 1979).

56. *Id.* at 123.

public policy which required fulfillment of family support obligations must also be considered.[57] The importance of this factor originates in the common law principle that a wage earning spouse has a duty to support his dependents.[58]

For example, in *Schlaefer v. Schlaefer*[59] a spouse was confronted with a state statute which exempted disability insurance from garnishment, attachment and other legal process.[60] The Court of Appeals for the District of Columbia stated that the claim of the spouse was not a mere "debt" or "liability" as these words are usually understood. Rather, a spouse's claim, arising out of the marital relationship, created a higher obligation which was not within the purview of the exemption statutes.[61] Judge Rutledge stated: "Disability does not relieve him [the employee] of that obligation though it may affect the extent to which he can perform it. The obligation which he assumes upon marriage operates 'in sickness and in health.' "[62]

ERISA recognizes this common law "right" to support when it indicates that its purpose is to ensure the soundness of pension plans for ". . . the continued well-being and security of millions of employees *and their dependents* . . . ."[63] While it is true that section 206(d)(1) prohibits voluntary and involuntary transfers of benefits from the pension plan of an employee who has earned them,[64] the main purpose of the statute is to ensure that the employee's accrued benefits are available upon retirement, impliedly for the support of the employee's dependents as well as himself.[65] Congress cannot protect the security of pension payments once they are received by the participant. Through section 206(d)(1) of ERISA, however, it does protect those funds from the claims of creditors prior to the time of payment.[66] To interpret section 206(d)(1) as

57. *Id.* at 123, 124.
58. Schlaefer v. Schlaefer, 112 F.2d 177 (D.C. Cir. 1940).
59. *Id.*
60. *Id.*
61. *Id.* at 186.
62. *Id.* at 185.
63. 29 U.S.C. § 1001(a) (1976) (emphasis added).
64. A pensioner can, however, make a voluntary and revocable assignment of his pension benefits up to ten percent. ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1) (1976).
65. H.R. REP. No. 93-807, *supra* note 19, at 4670, 4734.
66. *See* Michel v. Michel, 86 Misc. 2d 774, 776, 384 N.Y.S.2d 381, 382 (Fam. Ct. Rensselaer County 1976).

barring garnishments for the benefit of a participant's dependents, as well as for his creditors, would allow the employee spouse to frustrate the essential purpose of ERISA by jeopardizing the well-being of his dependents.

Moreover, it is clear that these two classes of claimants should be treated differently. Unlike a general creditor, a non-employee spouse is dependent on the pension benefits sought if he or she has only one source of income—the employee spouse.[67] The non-employee spouse also has no way to minimize losses once the support obligation is ignored,[68] whereas a creditor can always use tax write-offs or raise the selling price of its merchandise or services to compensate for uncollectible debts.

A non-employee spouse does have the remedy of contempt when an employee spouse ignores a court order of support.[69] However, should the delinquent spouse be arrested and incarcerated pursuant to an order of contempt, the burden on society would only be increased. In addition to supporting his dependents, the state could now have to bear the expense of caring for the jailed spouse.[70] This alternative to allowing garnishment of pension funds to fulfill obligations is not at all attractive yet to do nothing would, as the New York Supreme Court has said:

> create a privileged sanctuary, behind which a delinquent husband or father can thumb his nose at concededly valid and outstanding support orders. It is inconceivable that Congress meant to authorize use of a pension fund as a barrier behind which a husband could shed all his assets and income, live on the pension arrangements, and leave his wife—or . . . infant children to go begging for welfare.[71]

Thus, support obligations do have a "special nature" which is based upon strong public policy. It is this special nature which the courts in *Francis* and similar decisions chose not to consider.

In *Wanamaker v. Wanamaker*,[72] the Rockland County Family Court held specifically that pension funds were meant for the use of both husband and wife.[73] A divorced husband tried to defend

67. Stone v. Stone, 450 F. Supp. at 927.
68. *Id.*
69. Ogle v. Heim, 69 Cal. 2d at 14, 442 P.2d at 663, 69 Cal. Rptr. at 583. *See* note 54 *supra.*
70. Cartledge v. Miller, 457 F. Supp. at 1151.
71. Cogollos v. Cogollos, 93 Misc. 2d at 408, 402 N.Y.S. 2d at 93.
72. 93 Misc. 2d 784, 401 N.Y.S.2d 702 (Fam. Ct. Rockland County 1978).
73. The court found the real purpose of ERISA to be the provision of benefits for both the pensioner and his dependents. *Id.* at 789, 401 N.Y.S. at 705, 706.

against a support order by claiming that his former wife should be considered a creditor and barred from this remedy by ERISA section 206(d)(1).[74] The court made it clear that the wife was "not a creditor within the exclusion provided for in the Employee Retirement Income Security Act of 1974"[75] and allowed the support order to stand despite the ERISA restrictions.[76]

The argument has been made that "the non-financial contributions of the non-employee spouse are no less essential or valuable to a marriage . . ." than the contributions of the employee spouse.[77] Under this view, the non-employee spouse is considered to have "earned" his or her share of the pension benefits.[78] The restrictions of ERISA section 206(d)(1) are thus avoided since ownership rights cannot be considered a garnishment, assignment or attachment of property.[79] With the growing appreciation for equality of men and women, the common law duty to support one's dependents may indeed give way to the view that marriage is "a joint enterprise and shared undertaking, based on a division of labor, which should entitle each spouse to a share of the family assets upon divorce."[80]

While the Second Circuit in *Merry* held that support obligations were exempt from the prohibitions of section 206(d)(1) against assignment and alienation and that these obligations were enforceable under state law, it acknowledged that section 514(a) of ERISA pre-empts all state law.[81] However, Judge Werker, in keeping with prior decisions,[82] found that family support orders were "impliedly excepted" from the pre-emption provision of ERISA because marriage and divorce are areas of particular concern to the states.[83]

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74. *Id.* at 784, 401 N.Y.S.2d at 702.

75. *Id.* at 789, 401 N.Y.S.2d at 706.

76. *Id.*

77. Stone v. Stone, 450 F. Supp. at 927.

78. *Id.*

79. Hisquierdo v. Hisquierdo, 99 S. Ct. 802 (1979).

80. Inker, Walsh & Perocchi, *Alimony and Assignment of Property: The New Statutory Scheme in Massachusetts*, 11 FAM. L.Q. 59, 61 n.8 (1977).

81. 592 F.2d at 120, 121.

82. *See* Cogollos v. Cogollos, 93 Misc. 2d. 406, 402 N.Y.S.2d 929 (Sup. Ct. 1978); Cody v. Reicker, 454 F. Supp. 22 (E.D.N.Y. 1978), *appeal pending*, No. 78-7460 (2d. Cir.); Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978); Stone v. Stone, 450 F. Supp. 919 (N.D. Cal. 1978), *appeal pending*, No. 78-2313 (9th Cir.).

83. 592 F.2d. at 121. *See also* Gersten v. Commissioner, 267 F.2d 195 (9th Cir. 1959); Lee v. Commissioner, 550 F.2d 1201 (9th Cir. 1977); Commissioner v. Wilkerson, 44 T.C. 718 (1965), *aff'd*, 368 F.2d 552 (9th Cir. 1966).

The United States Supreme Court has held that state laws are not superseded by federal legislation unless there is a clear and manifest intent of Congress.[84] No indication of an intent to interfere with legitimate state concerns has been made by Congress or by the Conference Committee Report on ERISA.[85] In addition the Supreme Court has noted that the United States Constitution prohibits Congress from infringing upon the power of each state "to make rules to establish, protect and strengthen family life. . . ."[86] The tenth amendment to the Constitution provides that states retain jurisdiction over matters not clearly and specifically ruled upon by the federal government.[87] Furthermore, it is evident from the disagreement among the lower courts that no clear statement in the area of support obligations has been made by Congress and that the states therefore retain jurisdiction over such matters.[88]

The argument is made, however, that ERISA explicitly pre-empts any state law in the area of employee benefit plans.[89] Section 514(c) of the Act defines state law to include "all laws, decisions, rules, regulations or other state action having the effect of law, of any State." In *Francis,* the court held that this all-inclusive definition was intended to pre-empt not only laws specifically directed to the question of garnishment of pension plans but also those laws which

84. Ray v. Atlantic Richfield Co., 435 U.S. 151, 157 (1978). Further, it has been held that only the clearest of congressional statements can be allowed to pre-empt policies of the state. *See* Merrill Lynch, Pierce, Fenner & Smith v. Ware, 414 U.S. 117 (1973).

85. Pattiz, *In a Divorce or Dissolution Who Gets the Pension Rights: Domestic Relations Law and Retirement Plans,* 5 PEPPERDINE L. REV. 191, 238 (1978).

86. Labine v. Vincent, 401 U.S. 532, 538 (1971). The Court held state law barring an illegitimate child from sharing equally with legitimate children under an intestate distribution does not violate due process since the state has power to establish such rules for the protection and strengthening of the family under the tenth amendment. *Id.* at 539, 540.

87. The tenth amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

88. *Compare* Francis v. United Technologies Corp., 458 F. Supp. 84 (N.D. Cal. 1978) *with* Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978). Despite the controversy, it would appear that Congress has implied an exception in ERISA for support obligations since it has already recognized similar exceptions in other statutes. Section 17(a)(7) of the Bankruptcy Act, 11 U.S.C. § 35(a)(7) (1976), provides that a debtor will be released from all of his provable debts upon a discharge in bankruptcy with the exception of his alimony and support obligations. Likewise, section 456 of the Social Security Act, 42 U.S.C. § 656 (1976), states that where an individual is owed moneys from the United States, those funds are subject to legal process to enforce legal obligations of child support and alimony payments.

89. 592 F.2d at 121.

"affected" such plans.[90] While the supremacy clause of the Constitution supports the pre-emption argument, since it provides that any state law which conflicts with a federal law is invalid,[91] the Supreme Court has held that such a conflict can exist only when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[92] The congressional intent behind ERISA was, at least in part, to ensure support for dependents of an employee spouse through the latter's pension plan.[93] Thus, when a state court requires that such support be provided out of the employee spouse's pension benefits, it does not "stand as an obstacle" to congressional goals and should, therefore, be upheld.

The Supreme Court has warned that "injustice, oppression or an absurd consequence may result from too limited a construction of general terms in a statute."[94] Courts faced with problems of statutory construction must not only seek to avoid injustice but must interpret the policies which the legislature sought to enforce.[95] The court of appeals in *Merry* has fulfilled this duty and in doing so it has re-emphasized the intent of ERISA.

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90. 458 F. Supp. 84, 86.

91. Article VI, cl. 2 of the United States Constitution provides in pertinent part: "This Constitution and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land."

92. Hines v. Davidowitz, 312 U.S. 52 (1941). *See* Jones v. Rath Packing Co., 430 U.S. 519, 526, 540-41 (1977); Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978).

93. 29 U.S.C. § 1001 (1976). *See* note 63 *supra* and accompanying text.

94. Holy Trinity Church v. United States, 143 U.S. 457, 461 (1892). *See* Lau Ow Bew v. United States, 144 U.S. 47, 59 (1892) ("Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion.")

95. Moragne v. States Marine Lines, Inc., 398 U.S. 375, 392 (1970) ("It has always been the duty of common-law court to perceive the impact of major legislative innovations and to interweave the new legislative policies with the inherited body of common-law principles—many of them deriving from earlier legislative exertions.")