

THE FLORIDA SUPREME COURT

S. Ct. Case No. SC09-1969
CASE No.: 3D08-2251

LINDA CRAWFORD,

Petitioner.

vs.

JANNIE BARKER, as Personal
Representative of the Estate of
Manuel R. Crawford,

Respondent.

PETITIONER'S REPLY BRIEF

Respectfully submitted,

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**SUMMARY OF RESPONSE TO
POINTS I & II OF BARKER'S ANSWER BRIEF**

Whether specific reference was made in the Crawfords' marital settlement agreement to the proceeds (i.e., death benefits) of the Deferred Compensation Fund is the single most important issue on appeal.

In an attempt to mislead this Court, the Appellant's attorney intentionally misuses the word "proceeds" instead of using it the way this Court in *Cooper II* and the 5th DCA in *Smith* used it in what is an outrageous attempt to differentiate these two controlling authorities from *Barker*. In furtherance of the aforesaid misrepresentation, he states that the word "proceeds" was specifically mentioned in the subject provision of the Crawfords' marital settlement agreement - when in fact it was not.

Once these misrepresentations have been exposed, it is clear that Linda Crawford did not waive her right to the proceeds (i.e., death benefits) of the Deferred Compensation Fund and each and every one of the remaining arguments in his Answer Brief completely fall apart.

His final argument that the 3rd DCA in *Barker* properly endeavored to ascertain Manuel Crawford's intent instead of simply looking to the Deferred Compensation Fund itself to ascertain who was in fact the beneficiary, expressly and directly conflicts with the holdings in *Cooper II* and *Smith*.

Because no specific reference was made to the proceeds (i.e., death benefits) of the Deferred Compensation Fund in the Crawfords' marital settlement agreement, the material facts of this case are consistent with those of *Cooper II* and *Smith*. For this reason alone, and for sound public policy considerations, this Court should protect its decision in *Cooper II* by reversing the 3rd DCA's decision in *Barker*.

RESPONSE TO
POINTS I¹ & II OF BARKER'S ANSWER BRIEF

THE 3rd DCA'S HOLDING IN BARKER IS CONTRARY TO THIS COURT'S HOLDING IN COOPER II AND THE 5th DCA'S HOLDING IN SMITH BECAUSE LINDA CRAWFORD DID NOT SPECIFICALLY WAIVE ANY RIGHT SHE MAY HAVE HAD TO THE PROCEEDS (I.E., DEATH BENEFITS) OF THE DEFERRED COMPENSATION FUND BY VIRTUE OF THE LANGUAGE CONTAINED IN THE SUBJECT PROVISION OF THE PARTIES' MARITAL SETTLEMENT AGREEMENT.

The holding in *Cooper I* that was affirmed by this Court in *Cooper II* was:

“... that without specific reference in a property settlement agreement to life insurance proceeds, the beneficiary of the proceeds is determined by looking only to the insurance contract.” (Emphasis added). (*Cooper I*, 661 So.2d at 54).

¹The arguments raised by Barker's attorney in the first section of his Answer Brief are moot because this Court has already accepted jurisdiction of this appeal. In any event, the arguments made in the first section are also raised in the second section of his Answer Brief and are addressed *infra*.

Therefore, the single most important issue on appeal is whether specific reference was made in the Crawfords' marital settlement agreement to the proceeds (i.e., death benefits) of the Deferred Compensation Fund.

The exact wording of the subject provision of the Crawfords' marital settlement agreement reads as follows:

“Husband shall retain the retirement money with the Town of Surfside and the Deferred Compensation Fund f/k/a Pepsco”. (R. 32).

The Appellee's attorney intentionally misleads this Court by concluding, without providing any support for his conclusion, that the reference in the Crawfords' marital settlement agreement to “retirement money” is in fact a reference to the proceeds (i.e., death benefits) of the Deferred Compensation Fund. Although the words “money” and “retirement money” can sometimes be used interchangeably with the word “proceeds”, that is not the way it was used in *Cooper I*, *Cooper II* and *Smith* as is indicated by the following passages from those cases:

“In *O'Brien*, a trial court's ruling that awarded the insurance proceeds to the ex-spouse beneficiary was reversed. The court held that ***the expectancy of life insurance benefits*** constituted a claim between the parties and that a separation agreement which purported to release all claims precluded the beneficiary from recovering the insurance proceeds. Our holding in this case disagrees with *O'Brien*.” (Emphasis added). (Emphasis added). (*Cooper I*, 661 So.2d at 54).

“However, we hold that without specific reference in a property settlement agreement to **life insurance proceeds**, the beneficiary of the proceeds is determined by looking only to the insurance contract.”

(Emphasis added). (*Cooper I*, 661 So.2d at 54) (*Cooper II*, 682 So.2d at 77).

The agreement, however, made no mention of the *proceeds* or death benefits of the policies or plans. (Emphasis not added). (*Smith*, 919 So.2d at 526).

As can plainly be seen, no specific reference was made to the proceeds (i.e., death benefits) of the Deferred Compensation Fund in the subject provision of the Crawfords' marital settlement agreement. Nevertheless, Barker's attorney deliberately makes the following misrepresentations of fact throughout his Answer Brief in an effort to confuse this Court just like he confused the 3rd DCA in *Barker*:

“However, the former Wife agreed that the proceeds of Manny's retirement account would be distributed to Manny.” (Answer Brief at 2).

“In that appeal the Third District was asked to decide whether a wife who was the designated beneficiary under a deferred compensation plan had waived her rights as beneficiary when she signed a marital settlement agreement in which she agreed that her husband should receive the proceeds of the plan.” (Answer Brief at 4).

“Thus, *Cooper II* is unlike the *Barker* case since the *Barker* agreement **specifically identified the fund** and **specifically identified who should receive the proceeds of that fund.**” (Emphasis not added). (Answer Brief at 5).

In the instant case, Mr. and Mrs. Crawford's Settlement Agreement **did address the proceeds of the Deferred Compensation Fund**. The Settlement Agreement **did** specifically address who should receive the proceeds of this fund. Therefore, the case at bar is distinguishable by its facts from the *Cooper II* and *Smith* decisions and, thus, there is no

conflict with either *Cooper II* or *Smith*. (Emphasis not added). (Answer Brief at 13).

“In the Settlement Agreement the ex-wife had agreed that the **proceeds** of Manuel R. Crawford’s (“Manny”)’s Deferred Compensation Fund were to be paid to Manny.” (Emphasis not added). (Answer Brief at 15).

Of course, the *Levy* case is distinguishable since **in the case at bar the Settlement Agreement very specifically mentioned the proceeds** and stated that the money from the retirement fund was to go to Manny. (Emphases not added). (Answer Brief at 18).

All that the subject provision in the Crawfords’ marital settlement agreement did was to give Manuel Crawford sole ownership of the Deferred Compensation Fund. As such, he was released from any obligation to keep Linda Crawford as the designated beneficiary of this account following their divorce. Under no circumstances did this interfere with *his right* (as owner of this account) to designate whomever he wished as beneficiary thereafter (including Linda Crawford); whether by redesignation or inaction, just as this Court in *Cooper II* found that:

“After signing the separation agreement, Thomas did just what he needed to do to ensure that the proceeds would go to Karin—he did nothing.” (*Cooper II*, 682 So.2d at 79).

Accordingly, the facts of *Barker* are similar to those in *Cooper II* and *Smith* because in all three cases, there was no specific reference to the proceeds (i.e., death benefits) of the subject policies and plans, and therefore, none of the

individuals involved therein could have possibly waived their contingent rights to the proceeds (i.e., death benefits) of the same.

He goes on in his Answer Brief to argue about what each of the parties' might have been:

“In order for Manny’s ex-wife to agree that the proceeds of this fund were to go to Manny, she obviously knew that she was giving up whatever ‘right’ she may have had to this fund. Furthermore, Manny, and rightly so, had no reason to think that he needed to do anything else in order for his daughter and/or his estate to collect the proceeds of this fund when he died.” (Answer Brief at 16).

Some marriages do in fact end amicably. We don’t know what Manuel Crawford was thinking with regard to this issue; however, it may very well have been that he knew full well that his ex-wife was still the designated beneficiary of the Deferred Compensation Fund at all times following their divorce and still wanted her to remain the designated beneficiary of this account the same way he kept her as the beneficiary of his Pacific Life Annuity account following their divorce.²

Barker’s attorney also argues that because a marital settlement agreement is a contract that:

²Paragraph 11 of the Amended Family Mediation Unit Agreement states that “Husband shall retain annuity with Pacific Life”. Barker’s attorney acknowledged that Linda Crawford, the designated beneficiary of this account, was entitled to the death benefits of the same. (See Volume II of the Record, Transcript of the Proceedings Taken 05/28/08 at 27:6 – 27:22).

“...it must be interpreted in such a manner so as to give meaning to all of its terms”...its “...[t]erms are to be construed to promote a reasonable, practicable and sensible interpretation consistent with the intent of the parties...”, and therefore, “[i]n light of the entire Settlement Agreement in the case at bar, what could those eleven words have meant, other than the interpretation given to them by the General Magistrate and the Third District Court of Appeal”, “...that it was Manny and his ex-wife’s intent that Manny should be the beneficiary of this retirement fund”. (Answer Brief at 21).

This argument is a non-starter because Manuel Crawford’s intent is irrelevant. All that matters is whether specific reference was made in the Crawfords’ marital settlement agreement to the proceeds (i.e., death benefits) of the Deferred Compensation Fund. Since no such reference was made, the 3rd DCA should not have made an attempt to ascertain Manuel Crawford’s intent by applying general rules applicable to the construction and interpretation of contracts. Instead, the 3rd DCA should have looked to the plain language of the Deferred Compensation Fund to determine the beneficiary. That person was Linda Crawford.

Towards the end of his Answer Brief, his arguments break down even more:

“The Third District Court of Appeal in the instant case honors the clear intent of the parties as expressed in their settlement agreement and the final judgment. While it may be preferable, once a property division has taken place, for the person retaining the retirement account to change the designation of beneficiary, such action is not what most lay individuals would think to be necessary.” (Answer Brief at 24).

It is not that it is “preferable”, it’s the law. Also:

“Having specifically divided the assets, and providing that Manny was to receive the proceeds of the retirement account, Manny, and most lay people, would assume that their former spouse would have no legal interest in the proceeds of the account.” (Answer Brief at 24).

Why would this Court allow the 3rd DCA to change its longstanding precedent simply because lay people were involved? Lay people are usually the ones involved in these types of controversies.

CONCLUSION

As has been demonstrated herein, the Appellee’s Answer Brief is a flagrant abuse of these judicial proceedings.

The significance of the 3rd DCA’s holding in Barker cannot be minimized. As a matter of public policy, if left to stand, the 3rd DCA’s decision would have an adverse affect on account managers, never being certain as to whom to pay in such situations despite what the policy said or how clearly it was worded. The inherent litigation required to resolve these disputes would undoubtedly overwhelm an already overburdened court system. More importantly, it will surely delay the distribution of death benefits in many cases where the proceeds from these accounts are desperately needed by those beneficiaries, while the courts of our state endeavor to ascertain the *intent* of deceased account holders. And by doing so would infringe on an account owner’s right to name whomever he wishes as the

recipient of those proceeds in the most clear and accurate manner that was established by this Court in *Cooper II*.

As a matter of law and sound reasoning, unless specific reference has been made in a marital settlement agreement to the proceeds (i.e., death benefits) of a policy or plan - the beneficiary is the person identified as such in said policy or plan.

In *Barker*, there simply isn't a legitimate argument that would lead this Court to conclude that the person entitled to receive the proceeds (i.e., death benefits) of Manuel Crawford's Deferred Compensation Fund is anyone other than Linda Crawford.

For the foregoing reasons, this Court should protect its decision in *Cooper II* by reversing the 3rd DCA's decision in *Barker*.³

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³ And, pursuant to Fla. R. App. P. 9.410, this Court should seriously consider whether it should require the Appellee's lawyer to reimburse Linda Crawford for the attorney's fees she has been forced to incur in the trial court, 3rd DCA and now this High Court as a sanction for making the aforesaid intentional misrepresentations throughout these judicial proceedings.

CERTIFICATE OF TYPE SIZE AND STYLE

Undersigned counsel certifies that the size and style of the type used in this brief is Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail this 16th day of July, 2010 to:

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