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Retirement - Effect of Annulment of marriage upon survivor benefit right

SYLLABUS:

An annulled marriage is not a "remarriage" within the meaning of 5 M.R.S.A. § 1124, subsection 1B(1)(a) which terminates entitlement to survivor benefit.

FACTS:

On January 1, 1971, Maine State Retirement System granted Mrs. G a survivor benefit allowance as the widow of Mr. G pursuant to 5 M.R.S.A. § 1124, subsection 1B(1)(a). On April 27, 1973, Mrs. G married Mr. B. Prior to that marriage she advised the System of her intent to remarry and was told that survivor benefit payments would cease after April, 1973, and such payments have in fact so ceased. On September 4, 1973, Mrs. G obtained from the Maine Superior Court a decree of annulment which declared that the Court found that the marriage was procured by Mr. B through fraud and the Court ordered, adjudged and decreed the marriage to be invalid and thereby annulled. On September 10, 1973, Mrs. G informed the System of such annulment and requested restoration of survivor benefit payments.

QUESTION:

Does a decree of annulment of marriage restore a spouse to the former status of surviving beneficiary under 5 M.R.S.A. § 1124, subsection 1B(1)(a)?

ANSWER:

Yes.

REASONS:

5 M.R.S.A. § 1124, subsection 1B(1)(a) makes the following provision concerning the eligibility of a spouse to surviving beneficiary status:

> "A spouse, alive and not remarried at the time of the death of the member, shall be paid $100 a month, commencing the first month after such death occurs, and continuing until the date of his death or remarriage, whichever happens first. . ."

It is apparent that the legislature has prescribed two conditions which will operate to change the status of surviving-spouse-beneficiary: death and remarriage.

In the absence of statutory language indicating a different intent, it must be assumed that the legislature intended to use the word "remarriage" to mean a valid remarriage. Annulment of a marriage under 19 M.R.S.A. § 631 is a judicial decree which has the effect of declaring that the "marriage" was void ab initio, i.e., that it was invalid from the beginning. See Whitehouse v. Whitehouse, 129 Me. 24, 26. It is an adjudication that the "marriage" was a nullity. Accordingly, since it was a nullity, it cannot be viewed as a "remarriage."

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