

Baird v Baird

2025 NY Slip Op 32827(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index No. 160117/2014

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

DESIREE BAIRD,

Plaintiff,

- v -

KATHLEEN BAIRD,

Defendant.

-----X

INDEX NO. 160117/2014

MOTION DATE 07/30/2025

MOTION SEQ. NO. 002 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46

were read on this motion to/for POST JUDGMENT OTHER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 45, 52, 53 were read on this motion to/for VACATE STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 47, 48, 49, 50, 51 were read on this motion to/for ALTERNATE SERVICE.

Motion Sequence Numbers 002, 003 and 004 are consolidated for disposition and decided as described below.

Background

Plaintiff’s late husband (and defendant’s father) apparently left his NYCERS benefits to his daughter, the defendant. In this disposed case, plaintiff previously obtained a default judgment against her daughter arising out of a dispute concerning the distribution of those retirement benefits. Plaintiff insists that she entered into a written agreement with defendant whereby defendant would pay plaintiff \$1,000 per month from his retirement benefits (administered by “NYCERS”) until either plaintiff or defendant died. Plaintiff alleged that in

consideration of this agreement, she would refrain from filing a right of election in Surrogate's Court. She brought this case on the ground that defendant initially failed to make full payments before eventually ceasing all payments.

On May 2, 2018, this Court issued a decision after an inquest in the amount of \$52,300 (NYSCEF Doc. No. 11). For some reason, plaintiff did not seek to enter a judgment until November 2023 and eventually obtained a money judgment in February 2024 (NYSCEF Doc. No. 16). Plaintiff now seeks an order directing non-party NYCERS to pay her late husband's benefits directly to her and to amend the judgment to include purportedly missed payments that have accrued since June 1, 2018.

Discussion

As an initial matter, plaintiff admits that she failed to serve defendant via personal in hand service (as required by the order to show cause) and instead filed another motion, MS004, for a finding that her nail and mail service (as well as service on defendant's attorneys) constitutes good service.

Unfortunately for plaintiff, CPLR 2214(b) requires that a notice of motion be filed a minimum of eight days before the return date and this motion (MS004) only provided seven days notice. Moreover, the Court required personal in hand service for the order to show cause (MS002) because plaintiff is seeking to redirect payments made directly to defendant and wanted to ensure that defendant knew about this motion. And while defendant had an attorney in this matter at one point (NYSCEF Doc. No. 3 [a notice of appearance from December 2014]), the fact is that defendant never answered or appeared at the inquest. So, service on defendant's one-time attorney from a decade ago is not appropriate nor was it ordered by this Court in the order to show cause.

Turning to the merits, the Court denies the motion as plaintiff failed to meet her prima facie burden on numerous grounds. Plaintiff did not cite a sufficient legal basis for this Court to order NYCERS to pay benefits to a different beneficiary. Whether or not there may be authority to do so is besides the point—it was plaintiff's burden to cite a binding statute or a case that permits the Court to do what she wants. In fact, the order to show cause failed to cite a CPLR section for this portion of the requested relief as required by CPLR 2214(a).

The Court also denies the request that the judgment be amended to include additional payments that defendant may not have paid. In the notice of motion, plaintiff cites to CPLR 5019(a) and CPLR 5224 in support of this requested relief. CPLR 5019(a) is inapplicable as it relates to the validity or correction of a judgment; there is no reason to believe that the amount awarded after the inquest was incorrect. CPLR 5224 concerns subpoenas and is similarly inapplicable.

In any event, the relief that plaintiff demands (the inclusion of additional amounts due) would appear to require plaintiff to bring a new case. The fact is that this case concluded in May 2018 and plaintiff obtained a judgment that would account for payments until the end of that month. Instead of quickly securing a judgment and seeking to enforce it, plaintiff waited for nearly six years to get a judgment. The amounts that may have accrued in the meantime are not recoverable in this disposed case via a mere motion. After all, an inquest was required to award plaintiff damages in the first instance.

The Court also recognizes that defendant may well be aware of the instant motion practice as she filed her own order to show cause (as a self-represented party) that does not actually seek any affirmative relief. Instead, she claims that her wages have been garnished.

Defendant attaches a writ of garnishment that suggests that the judgment entered in this action was domesticated in Florida, where defendant lives.

Plaintiff offers opposition to this order to show cause in which she claims that she does not seek to garnish defendant's receipt of the inherited pension benefit but, instead, that she wants to assert her property right to the pension benefit. But that is not what was alleged in the complaint—the pleading is styled as a breach of contract case and not as a matter seeking recognition of plaintiff's right to receive the benefit. In fact, the complaint suggests that some (or all) of the benefit was assigned to defendant by her father and that the parties' agreement was done in order to avoid a fight in Surrogate's Court. Plaintiff admits she agreed not to file a right of election in Surrogate's Court. In this Court's view, plaintiff cannot change her theory of the case based on these papers in this long-disposed matter.

Finally, the Court observes that NYCERS uploaded an untimely affirmation seeking an adjournment (it was filed after close of business on the return date) based on the fact that it acquired documents relevant to this motion on July 24, 2025. The Court cannot grant an adjournment based on this vague and conclusory justification. The affidavit of service contends that NYCERS was served, personally, on July 10, 2025 which means that NYCERS had 20 days to gather documents and draft a submission. That is more than enough time to respond or, at the very least, seek an adjournment prior to the return date. The Court declines to consider the “stipulation” of adjournment as it was not signed by defendant.

Summary

In this action, plaintiff commenced and successfully prosecuted a breach of contract claim that awarded her damages through the end of May 2018. She then did nothing for more than five years before finally deciding to enter a judgment and attempting to garnish defendant's

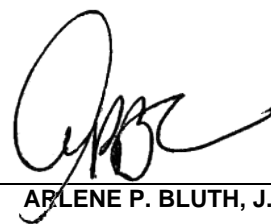
wages in Florida. It is unclear how much, if any, plaintiff has recovered from garnishing defendant's wages or other assets.

In this motion, plaintiff did not cite a sufficient basis for this Court to order NYCERS to redirect payments directly to her. Similarly, plaintiff did not cite any basis for suddenly seeking new damages that have accrued after this Court already held a trial on damages.

Accordingly, it is hereby

ORDERED that plaintiff's motions to direct NYCERS to pay her directly (MS002) and for an order finding that service was properly effectuated (MS004) are denied; and it is further

ORDERED that defendant's motion (MS003), which does not seek any affirmative relief, is denied as moot.



7/31/2025

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: