

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LETTIE JONES,

Petitioner,

vs.

Case No. 16-0429

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF
RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 29, 2016, in Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Lettie Jones, pro se
14304 John Henry Road
Tallahassee, Florida 32312

For Respondent: Thomas E. Wright, Esquire
Office of the General Counsel
Department of Management Services
Suite 160
4050 Esplanade Way
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STATEMENT OF THE ISSUE

Whether Petitioner is entitled to receive Florida Retirement System (FRS) benefits from her deceased spouse's

retirement account, pursuant to FRS Option 3 (lifetime monthly benefit to joint annuitant).

PRELIMINARY STATEMENT

Petitioner was notified by letter dated January 24, 2014, following the death of her spouse, James Jones (an FRS member), that the retirement system benefit payment option he had elected did not provide for a continuing benefit beyond the month of death. On Petitioner's behalf, Petitioner's daughter requested monthly benefits be paid to Petitioner. By letter dated April 7, 2014, Respondent denied the request for monthly benefit payments, explaining that monthly benefits ceased the first of the month following the member's death, pursuant to FRS Option 2. On May 9, 2014, Petitioner's daughter filed, on Petitioner's behalf, a petition for administrative hearing to challenge the agency's decision (Petition).

Respondent forwarded the Petition to the Division on January 27, 2016.^{1/} The matter was originally scheduled for hearing on March 8, 2016, but was continued twice due to Petitioner's health, and finally rescheduled for September 29, 2016.

The final hearing commenced as rescheduled. Petitioner testified on her own behalf and presented the testimony of her daughter, Kimberly Jones. Petitioner offered no exhibits in evidence.

Respondent presented the testimony of David Heidel, Respondent's Benefits Administrator. Respondent's Exhibits 1 through 10 were admitted in evidence.

The final hearing was recorded, but neither party ordered a transcript of the proceedings. As such, the parties' post-hearing filings were due on or before October 10, 2016.

Respondent timely filed a Proposed Recommended Order, which has been considered in preparation of this Recommended Order. On October 18, 2016, Petitioner filed a request for an extension of time to file a proposed recommended order, which was denied.

FINDINGS OF FACT

1. Petitioner, Lettie Jones, is the wife of FRS member, James Jones, and a designated beneficiary of his FRS account.

2. Respondent, Department of Management Services, Division of Retirement, is the state agency with the responsibility to administer the FRS.

Background Findings

3. Mr. Jones applied to the State of Florida for disability retirement on July 13, 1994. On his application, Mr. Jones noted that the "[m]uscles in [his] feet and legs [were] deteriorating." In response to a question regarding any other physical impairments, Mr. Jones answered, "Losing strength in right hand."

4. The record does not reflect the effective date of Mr. Jones' retirement.

5. Mr. Jones suffered a stroke in April 1996.

6. On January 27, 1997, Mr. Jones obtained from the state an "Estimate of Disability Retirement Benefits" listing the approximate monthly benefit payment amounts for all four FRS payment options. On that date, Mr. Jones also obtained Form 110, the FRS retirement benefit election option form, and Form FST 12, the FRS beneficiary designation form.

7. On March 18, 1997, Mr. Jones executed Form 110, choosing Option 2 for payment of his monthly retirement benefits, and Form FST 12, designating Petitioner as primary beneficiary, and his daughter as contingent beneficiary, of his retirement account.

8. Form 110 provides the following explanation of Option 2:

A reduced monthly benefit payable for my lifetime. If I die before receiving 120 monthly payments, my designated beneficiary will receive a monthly benefit in the same amount as I was receiving until the monthly benefit payments to both of us equal 120 payments. No further benefits are then payable.

9. Form 110 requires the spouse's signature acknowledging the member's election of Option 2.

10. The spousal acknowledgment section appears in a box on Form 110 following the description of Options 1 and 2. The first line inside the box reads, in all capital letters, "THIS SECTION MUST BE COMPLETED IF YOU SELECT OPTION 1 OR 2."

11. On March 18, 1997, Petitioner signed the box on Form 110 acknowledging her husband's election of Option 2.

12. Mr. Jones received more than 120 monthly retirement benefit payments prior to his death in 2013.

Petitioner's Challenge

13. Petitioner alleges that Mr. Jones lacked the capacity to make an informed election of benefit payments on March 18, 1997, because he had reduced cognitive function.

14. Both Petitioner and her daughter testified that they accompanied Mr. Jones to the FRS office on March 18, 1997, but were not allowed to "go back" with him when he met with an FRS employee to select his retirement option and execute Form 110.^{2/}

15. Petitioner admitted that she did sign the box on Form 110, which acknowledges spousal election of Option 2, but testified that the form was blank at the time her husband presented it to her for signature.

16. Petitioner signed the spousal acknowledgment on Form 110 the same day her husband executed the form.

17. Petitioner introduced no evidence, other than the testimony of her daughter, that Mr. Jones suffered from reduced cognitive function on March 18, 1997.

18. The fact that Mr. Jones suffered a stroke in 1996 is insufficient evidence to prove that he lacked the mental capacity to make an informed retirement option selection on the date in question.

CONCLUSIONS OF LAW

19. Respondent administers the FRS under chapter 121, Florida Statutes (2013).^{3/}

20. Section 121.091(6)(a)2. and 3. set out the Option 2 and Option 3 benefit options as follows:

(6) OPTIONAL FORMS OF RETIREMENT BENEFITS
AND DISABILITY RETIREMENT BENEFITS.—

(a) Prior to the receipt of the first monthly retirement payment, a member shall elect to receive the retirement benefits to which he or she is entitled under subsection (1), subsection (2), subsection (3), or subsection (4) in accordance with one of the following options:

* * *

2. A decreased retirement benefit payable to the member during his or her lifetime and, in the event of his or her death within a period of 10 years after retirement, the same monthly amount payable for the balance of such 10-year period to his or her beneficiary or, in case the beneficiary is deceased, in accordance with subsection (8) as though no beneficiary had been named.

3. A decreased retirement benefit payable during the joint lifetime of both the member and his or her joint annuitant and which, after the death of either, shall continue during the lifetime of the survivor in the same amount, subject to the provisions of subsection (12).

* * *

The spouse of any member who elects to receive the benefit provided under subparagraph 1. or subparagraph 2. shall be notified of and shall acknowledge any such election.

21. The governing statute is clear that the benefit option must be selected before retirement and is "final and irrevocable at the time a benefit payment is cashed or deposited."

§ 121.091(6)(h), Fla. Stat.

22. In this case, Petitioner--nominally Mr. Jones, but actually his widow--has the burden to prove entitlement to Option 3 benefit payments. See Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-142 (Fla. 4th DCA 1989); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977) (unless otherwise provided by statute, the party asserting the affirmative of an issue has the burden of proof). The standard of proof is a preponderance of the evidence.

§ 120.57(1)(j), Fla. Stat. (2016).

23. Here Petitioner argues that Mr. Jones' choice of Option 2 benefits should be nullified because he suffered from diminished mental capacity at the time the election was made.

24. Petitioner is, in effect, asking the Division to cancel or rescind a written legal instrument. Such action "is essentially equitable in character, the granting of which depends upon application of equitable principles as distinguished from substantive rules of law." Davis v. McGahee, 257 So. 2d 62, 64 (Fla. 1st DCA 1972); see also Royal v. Parado, 462 So. 2d 849, 853 (Fla. 1st DCA 1985) (holding that rescission is an equitable remedy).

25. A court, exercising its equitable powers, may order the rescission or cancellation of an instrument based upon a showing of mental incompetency. See Hartnett v. Lotauro, 82 So. 2d 362, 364 (Fla. 1955); Long v. Moore, 626 So. 2d 1387, 1388 (Fla. 1st DCA 1993) ("The mental incompetence of one party to a real estate transaction, rendering him unable to understand the effect and significance of his actions, warrants rescission of the transaction."); Gilmore v. Life Care Ctrs. of Am., 2010 LEXIS 111147 *7 (M.D. Fla. 2010) ("Under Florida law, a person lacks the mental capacity to enter into a contract only if she is unable to understand the effect and significance of her actions, i.e., is unable to comprehend the effect and nature of the transaction.").

26. It is questionable whether the Division, which is an administrative, rather than judicial body, has the authority to rescind a transaction upon a showing of mental incompetency. "[A]lthough the legislature has the power to create administrative agencies with quasi-judicial powers, the legislature cannot authorize those agencies to exercise powers that are fundamentally judicial in nature" such as the grant of an equitable remedy. Broward Cnty. v. La Rosa, 505 So. 2d 422, 423 (Fla. 1st DCA 1987), citing Biltmore Constr. Co. v. Dep't of Gen. Servs., 363 So. 2d 851, 854 (Fla. 1st DCA 1978).

27. Assuming, arguendo, the Division has the authority to rescind Mr. Jones' retirement benefit election of Option 2, Petitioner failed to prove by a preponderance of the evidence that Mr. Jones was mentally incompetent at the time the election was made. The only evidence presented was testimony regarding Mr. Jones' stroke event the year prior to making his retirement option election. The mere fact of a stroke, and any accompanying physical weakness, is insufficient to prove mental incompetence.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of Retirement, enter a final order denying the relief requested in the Petition for Administrative Hearing.

DONE AND ENTERED this 25th day of October, 2016, in
Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of October, 2016.

ENDNOTES

^{1/} There is no record explanation for Respondent's delay in forwarding this matter to the Division.

^{2/} This testimony is contrary to Petitioner's statements in her Petition that "[Both] family and deceased were present at the time stated, March 18, 1997, but appeal the decision of the option that was said to be chosen . . . [Option 3] is the option that was discussed and stated by the representative to what the deceased was signing."

^{3/} Unless otherwise specified, all references herein to the Florida Statutes are to the 2013 version, which was in effect when the Petition was filed.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.