

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LORI A. SAVINSKY, AS GUARDIAN OF
THE PROPERTY OF CALI ANN
SAVINSKY, THE MINOR WARD,

Petitioner,

vs.

Case No. 19-2985

DEPARTMENT OF MANAGEMENT
SERVICES, FLORIDA RETIREMENT
SYSTEM, BUREAU OF BENEFIT
PAYMENTS,

Respondent,

and

JEFFREY SAVINSKY,

Intervenor.

_____ /

RECOMMENDED ORDER

On October 16, 2019, Hetal Desai, Administrative Law Judge with the Division of Administrative Hearings (DOAH), held a final hearing by video teleconference at sites located in Ft. Myers and in Tallahassee, Florida.

APPEARANCES

For Petitioner: Alden Aaron Rumfelt, Esquire
Post Office Box 22
LaBelle, Florida 33975

For Respondent: Thomas E. Wright, Esquire
Nikita S. Parker, Esquire
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

For Intervenor: Jeffrey Savinsky
4559 Sierra Lane
Bonita Springs, Florida 34134

STATEMENT OF THE ISSUE

Whether Petitioner, as a surviving minor child, is entitled to benefits from the Florida Retirement System (FRS), instead of the beneficiaries designated by the FRS member on the form provided by the Department of Management Services, Division of Retirement (Department). Alternatively stated, the issue is what effect, if any, did the marriage and subsequent divorce of the FRS member to the minor child's mother have on his previous designation of beneficiaries, pursuant to section 121.091, Florida Statutes (2018).^{1/}

PRELIMINARY STATEMENT

On September 27, 2018, the Department notified Lori Ann Savinsky it would not pay monthly FRS benefits to Cali Ann Savinsky (the minor child she had with Jeremy Savinsky) because Mr. Savinsky had designated that such benefits be distributed to his son (a child from another mother who is not a party) and

Mr. Savinsky's brother, Jeffery Savinsky, the Intervenor.^{2/} At the time of Mr. Savinsky's death, he and Ms. Savinsky were no longer married.

Petitioner timely filed a Petition for Administrative Hearing with the Department on October 24, 2018, requesting a hearing not involving disputed issues of material fact, pursuant to section 120.57(2), Florida Statutes. The Department assigned the matter to a Department Hearing Officer, who heard the matter on May 22, 2019. On May 28, 2019, the Hearing Officer entered an Order Transferring Matter to DOAH, noting that Petitioner raised disputed issues of material fact necessitating the termination of informal proceedings.

On June 4, 2019, the Department referred the matter to DOAH, where it was assigned to the undersigned and set for hearing. Thereafter, the final hearing was continued based on the Department's unopposed motion for continuance to allow the Intervenor to participate in the final hearing.

A pre-hearing conference was held via telephone on October 9, 2019. During that conference call, the parties discussed Petitioner's Request to Take Judicial Notice filed September 20, 2019, and Petitioner's Notice of Confidentiality filed October 8, 2019. Regarding the confidentiality issue, the parties agreed to present exhibits at trial with the minor child's birthdate and other identifying information redacted.

Regarding the request for judicial notice, at the final hearing the undersigned took official recognition of the following documents: the Final Judgment of Dissolution of Marriage (Exhibit P3), Marital Settlement Agreement (part of Exhibit P2), and Parenting Plan (part of Exhibit P2), in the matter of Savinsky v. Savinsky, Case No. 11-DR-4565 (Twentieth Judicial Circuit for Lee County, Florida); and the attachments to the Petition for Administrative Hearing that were part of the Department files (Ex. P8). See sections 90.202 and 90.203, Fla. Stat; Fla. Admin. Code R. 28-106.213(6).

The final hearing was held on October 16, 2019. Petitioner presented the testimony of Deborah Coe Silver, a psychologist, Ms. Savinsky, and the Department's representative, Dave Heitel. Petitioner's exhibits P2, P3, P5, P7, and P8 were admitted into evidence. Respondent also offered the testimony of Mr. Heitel. Respondent's exhibits R1 and R2 were admitted into evidence. Additionally, Ms. Savinsky was allowed to give a closing statement, which was not considered as sworn testimony.

The hearing was recorded but not transcribed. The parties agreed to submit their proposed recommended orders (PROs) by October 28, 2019. Petitioner and Respondent timely submitted their PROs, which have been considered in the preparation of this Recommended Order. Petitioner also filed an Amended Proposed Order, which has been considered; and a document titled

"Exceptions to Respondent's Proposed Recommended Order," which was reviewed, but has not been considered. See Fla. Admin. Code R. 28-106.215 (not providing for exceptions, a reply, or a response to a PRO); and Fla. Admin. Code R. 28-106.216 (allowing exceptions to a recommended order to be filed with an agency, but not providing for exceptions to a PRO).

FINDINGS OF FACT

Parties

1. The Department is the governmental agency that administers the retirement and pension systems for members of the State of Florida Retirement System (FRS), pursuant to Chapter 121, Florida Statutes. See § 121.025, Fla. Stat.

2. Jeremy Savinsky was a firefighter by profession and a member of the FRS. Mr. Savinsky died on November 4, 2017. There was no evidence of the cause of death, except that it was an accident. There was no evidence Mr. Savinsky died in the line of duty, or that his death was job-related.^{3/}

3. On October 23, 2006, Mr. Savinsky married Ms. Savinsky, who gave birth to their child (minor child) shortly thereafter.

4. On July 1, 2011, Ms. Savinsky and Mr. Savinsky finalized their divorce. By all accounts, during the marriage and after the divorce, Mr. Savinsky was a decent father, paid his child support, and was active in the minor child's life.

5. The Intervenor is Mr. Savinsky's adult brother. As explained below, Mr. Savinsky designated the Intervenor as one of two beneficiaries for his FRS benefits in the event of his own death.

6. The Intervenor is not a "joint annuitant" as defined by Florida Administrative Code Rule 60S-6.001(36).

Form BEN-001

7. On May 1, 2006, Mr. Savinsky filled out and signed Form BEN-001, Beneficiary Designation Form (Form) issued by the Department. That form allows a member to choose one of three options for designation of a beneficiary of his or her FRS benefits, as summarized below.

OPTION 1 - Benefits are paid according to section 121.091, Florida Statutes, in the following order: (1) member's spouse, (2) member's living children (equally), (3) member's parents equally, or (4) legal representative of the member's estate.

OPTION 2 - Benefits are paid sequentially to the persons listed by the member in the order they are listed.

OPTION 3 - Benefits are paid jointly and divided among the persons listed by the member in the percentage provided by the member.

8. Mr. Savinsky chose Option 3 and listed his son (born June 2001) and the Intervenor as joint beneficiaries, with each beneficiary to be given 50 percent of the benefits.

9. The bottom of the Form contains explanatory paragraphs citing section 121.091(8), Florida Statutes, and stating the following:

If your designated beneficiary does not qualify as a joint annuitant, only a refund of any contributions you made to the system will be paid at your death. Only a joint annuitant will be eligible to receive monthly benefits from your retirement account. A joint annuitant is your spouse; your natural or legally adopted child who is either under the age 25 or is physically or mentally disabled and incapable of self-support (regardless of age); or your parent, grandparent, or a person for whom you are the legal guardian, provided such parent, grandparent, or person received one-half or more of their financial support from you or is eligible to be claimed as a dependent on your federal income tax return. Effective January 1, 1999, a member's spouse will be the primary beneficiary regardless of previous beneficiary designations unless a new Form BEN-001 is completed subsequent to the marriage to the current spouse.

Florida Department of Management Services Form BEN-001, rev 7/2000, Rule (1), Enrollment (2000) (emphasis supplied).

Petitioner argues that the use of the term "previous beneficiary" means that any beneficiary designation made prior to an FRS member's marriage is nullified at the time of the marriage. As explained below, that interpretation is not consistent with section 121.091, Florida Statutes.

CONCLUSIONS OF LAW

Jurisdiction

10. Petitioner seeks nullification of the Form so the FRS monies are distributed to the minor child or Mr. Savinsky's estate based on two theories: (1) the Form is "invalid, illegal and/or equitably unenforceable, especially as applied in this case," and (2) application of "equitable principles so that the minor child receives a share of her father's retirement." See Petitioner's PRO, 3 and 5.

11. Although Petitioner challenges the Form, it has not brought this administrative action as a traditional rule challenge pursuant to section 120.56, Florida Statutes. Regardless, Section 120.57(1)(e)1. prohibits the Department or the undersigned from utilizing a rule that is an invalid exercise of delegated legislative authority:

An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on . . . a rule that is an invalid exercise of delegated legislative authority. This subparagraph does not preclude application of valid adopted rules and applicable provisions of law to the facts.

Therefore, the undersigned has jurisdiction to review the validity, legality, and enforceability of the Form.

12. Regarding Petitioner's second theory, as an administrative judge operating under chapter 120, Florida

Statutes, the undersigned does not have jurisdiction to award or recommend equitable relief. Rather, in Florida, circuit courts have exclusive jurisdiction over all cases in equity, and only circuit courts can resolve matters involving equitable relief. See § 26.012(2)(c), Fla. Stat. ("Circuit courts shall have . . . exclusive original jurisdiction [i]n all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985"). "While an administrative agency may exercise quasi-judicial power when authorized by statute, it may not exercise power which is basically and fundamentally judicial such as the grant of an equitable remedy." Biltmore Constr. Co. v. Fla. Dep't of Gen. Servs., 363 So. 2d 851, 853-54 (Fla. 1st DCA 1978) (only a court exercising equitable powers may decree specific performance). Therefore, the undersigned addresses only the issue of whether the Form is invalid or illegal.

Burden and Standard

13. As an applicant, Petitioner bears the burden of proving her entitlement to benefits from Mr. Savinsky's FRS account. See Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139, 141-142 (Fla. 4th DCA 1989). Petitioner must prove entitlement to benefits by a preponderance of the evidence. § 120.57(1)(j).

14. To succeed in the challenge to the Form as an illegal rule, Petitioner must show that the Form "enlarges, modifies, or

contravenes" the specific provisions of the law it implements. See § 120.52(8)(c), Fla. Stat. To determine if a rule contravenes the implementing statutory authority, both the statute and rule must be reviewed to assess whether the rule gives effect to the implementing law and whether the rule interprets the law's specific powers and duties. See Bd. of Trs. of Int. Imp. Trust Fund v. Day Cruise Ass'n, 794 So. 2d 696, 704 (Fla. 1st DCA 2001). Where there is a conflict between a statute and an administrative rule, the statute takes precedence. See State v. Ins. Servs. Off., 434 So. 2d 908 (Fla. 1st DCA 1983); One Beacon Ins. v. Agency for Health Care Admin., 958 So. 2d 1127 (Fla. 1st DCA 2007).

15. First, the statute is unambiguous. It clearly provides that benefits are paid to the person or persons designated on the Form, unless there is a spouse who survives the FRS member and there is no Form executed after the marriage to that spouse.

DESIGNATION OF BENEFICIARIES.—

(a) Each member may, on a form provided for that purpose, signed and filed with the Division, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary who shall receive the benefits, if any, which may be payable in the event of the member's death pursuant to the provisions of this chapter. If no beneficiary is named in the manner provided above, or if no beneficiary designated by the member survives the member, the beneficiary shall be the spouse of the deceased, if living. If the member's spouse is not alive

at his or her death, the beneficiary shall be the living children of the member. If no children survive, the beneficiary shall be the member's father or mother, if living; otherwise, the beneficiary shall be the member's estate. The beneficiary most recently designated by a member on a form or letter filed with the division shall be the beneficiary entitled to any benefits payable at the time of the member's death, except that benefits shall be paid as provided in paragraph (7)(d) when death occurs in the line of duty. Notwithstanding any other provisions in this section to the contrary, for a member who dies prior to his or her effective date of retirement on or after January 1, 1999, the spouse at the time of death shall be the member's beneficiary unless such member designates a different beneficiary as provided herein subsequent to the member's most recent marriage. (emphasis added).

121.091(8)(a), Fla. Stat.

16. In other words, the conditions that the Petitioner must meet in order for the Department to disregard the designated beneficiaries on the Form are (1) Ms. Savinsky was married to the FRS member, and (2) the marriage existed at the time of member's death. Upon satisfaction of both of these conditions, the Form is nullified, but not on the satisfaction of only the first condition. Moreover, contrary to Petitioner's argument, nothing in the statute states the designated beneficiary (or the Form) is invalidated simply because of a marriage. Here, Petitioner cannot satisfy the conditions.

17. Even if Petitioner could satisfy the conditions to circumvent Mr. Savinsky's designations for the beneficiaries, Ms. Savinsky would receive the benefits as a spouse, not the minor child. Had the Legislature intended to carve out an exception to the beneficiary listed on the Form in favor of non-designated minor children, it could have done so. Compare § 121.091(7)(d), Fla. Stat. (providing benefits for minor children of FRS member who dies in the line of duty).

18. Turning next to a review of the rule, neither the Florida Administrative Code Rule 19-11.002 (Rule) (implementing the Form), nor the Form itself contravenes the language of section 121.091(8), Florida Statutes. The statute authorizes the Department to utilize a form for the purpose of designating beneficiaries to receive benefits in case of an FRS member's death. Florida Administrative Code Rule 19-11.002 incorporates the Form by reference and provides with specificity how beneficiaries are designated. The Rule states in relevant part:

(4) A participant may designate a beneficiary or beneficiaries at any time, as follows:

(a) A participant may designate a beneficiary or beneficiaries to receive the assets of the participant's FRS Investment Plan account, either sequentially or jointly.

(b) A participant may designate as beneficiary any person, organization, trust, or his estate.

(c) Any such beneficiary designation shall be made on Form IPBEN-1, rev. 09-03, which is hereby adopted and incorporated by reference. This form is available in paper form and may be obtained by calling the toll-free MyFRS Financial Guidance Line at 1(866)446-9377, Monday through Friday, except holidays, 9:00 a.m. to 8:00 p.m. The beneficiary designation may be made online by logging onto MyFRS.com and clicking on "Resources" and then "Forms."

(d) A participant may change his beneficiary designation at any time by filing a new beneficiary designation form. There is no separate form for changes of beneficiary designation.

(5) If a participant is married and designates a beneficiary who is not the spouse of the participant, then the participant is required to notify the spouse that he or she is not the beneficiary of the proceeds of the participant's FRS Investment Plan account(s). The spouse must acknowledge that he or she understands that he or she is not the beneficiary of the participant's FRS Investment Plan account(s) by signing the beneficiary designation form, Form IPBEN-1, rev. 09-03, in the appropriate place. Alternatively, the spouse may provide the FRS Investment Plan Administrator with a notarized statement reflecting the spouse's understanding that the spouse is not the beneficiary of the participant's FRS Investment Plan account(s). No distribution will be made of any FRS Investment Plan account(s) in the absence of a declaration by the spouse of his or her understanding that he or she is not the beneficiary of the participant's FRS Investment Plan account(s).

Fla. Adm. Code R. 19-11.002(4) (2006).

19. Nothing in the Rule or the Form "enlarges, modifies, or contravenes" the specific provisions of section 121.091(8), Florida Statutes, which it implements.

20. Petitioner also argues Mr. Savinsky intended to provide for the minor child, and his designation was a mistake or error. Rescission of an application of benefits based on a unilateral mistake has been rejected. See Williams v. Department of Management Services, Division of Retirement, Case No. 08-3326 (Fla. DOAH Oct. 30, 2008), aff'd, 31 So. 3d 838 (Fla. 5th DCA 2010). Therefore, this argument also fails.

21. Based on the clear language of the statute, Petitioner has failed to show by a preponderance of the evidence that the Form should be nullified or the designated beneficiaries should be displaced by Petitioner. Petitioner has failed to show that the minor child should receive FRS benefits.

22. Finally, monthly benefits are not available to a beneficiary who does not qualify as a joint annuitant. See §121.091(7)(b)(2.), Fla. Stat. Because the issue of whether the Intervenor was otherwise eligible to receive benefits (monthly or lump sum) was not addressed at the hearing, the undersigned makes no finding regarding the Intervenor's eligibility for monthly benefits.

RECOMMENDATION

Based on the 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 Petitioner's request to receive the death retirement benefits of Jeremy Savinsky, on behalf of the minor child.

DONE AND ENTERED this 20th day of November, 2019, in Tallahassee, Leon County, Florida.



HETAL DESAI
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of November, 2019.

ENDNOTES

^{1/} Unless otherwise specified, all references to the Florida Statutes and Florida Administrative Code are to the 2018 versions, which was in effect when the Petition was filed.

^{2/} Lori Ann Savinsky, brings this action as the guardian of the property of Cali Ann Savinsky, the daughter she had with Jeremy Savinsky, the deceased FRS member. For the purposes of this Recommended Order, "Petitioner" refers to the party bringing this action; "Ms. Savinsky" refers to Lori Ann Savinsky; "minor child" refers to Cali Ann Savinsky; "Mr. Savinsky" refers to Jeremy Savinsky; and "the Intervenor" refers to Jeffery Savinsky.

^{3/} There was no testimony relating to whether Mr. Savinsky was retired or "vested" at the time of his death as defined by Florida Administrative Code Rule 60S-6.001(70). Documentation, however, provided by the Department refers to eligibility of "monthly benefits" indicating that death benefits were to be distributed as if Mr. Savinsky died subsequent to being vested, but prior to his effective date of retirement. Regardless, no finding is made as to the amount or type of distribution the Department must make to the beneficiaries.

COPIES FURNISHED:

Thomas E. Wright, Esquire
Office of the General Counsel
Department of Management Services
Suite 160
4050 Esplanade Way
Tallahassee, Florida 32399-0950
(eServed)

Alden Aaron Rumfelt, Esquire
Post Office Box 22
LaBelle, Florida 33975
(eServed)

Jeffrey Savinsky
4559 Sierra Lane
Bonita Springs, Florida 34134

Nikita S. Parker, Esquire
Office of the General Counsel
Department of Management Services
Suite 160
4050 Esplanade Way
Tallahassee, Florida 32399-0950
(eServed)

David DiSalvo, Director
Division of Retirement
Department of Management Services
Post Office Box 9000
Tallahassee, Florida 32315-9000
(eServed)

Chasity O'Steen, General Counsel
Office of the General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950
(eServed)

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.