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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

JOHN ALLEN CHIDSEY
Petitioner,

APPELLATE DIVISION
CASE NO: CACE21022257

v.

THE BOARD OF TRUSTEES,
CITY OF HOLLYWOOD POLICE
OFFICERS' RETIREMENT SYSTEM,

Respondent.
_____/

RESPONDENT, BOARD OF TRUSTEES FOR THE CITY OF HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM'S NOTICE OF SUPPLEMENTAL AUTHORITY

Respondent, Board of Trustees of the City of Hollywood Police Officers' Retirement System ("Board"), respectfully files the attached supplemental authority, in support of the Board's position as stated in Section V, Subsection A, paragraphs 4 through 6 on pages 6 and 7 of the Board's Response to Order to Show Cause, filed January 27, 2022.

- *DeMichael v. Department of Management Services, Division of Retirement,* 2022 WL 480589, (Feb. 16, 2022), finding no authority for an Administrative Law Judge or a court to allow a spouse to change a member's benefit when the plain language of the governing statute only allows a member to change their selection, and only before the first payment is received.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the court via e-portal and furnished via e-mail to all parties below on this 9th day of March, 2022.

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2022 WL 480589
Only the Westlaw citation is currently available.

District Court of Appeal of Florida, First District.

Rina Richard DEMICHAEL, Appellant,
v.
DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT, Appellee.

No. 1D20-2678
|
February 16, 2022

On appeal from the Department of Management Services, Division of Retirement. Jonathan Satter, Secretary.

Attorneys and Law Firms

James C. Casey of Law Offices of Slesnick & Casey, LLP The Biltmore, Coral Gables, for Appellant.

Ladasiah Jackson Ford, Assistant General Counsel, Kristen Larson, General Counsel, and Rebekah A. Davis, Deputy General Counsel, Department of Management Services, Tallahassee, for Appellee.

Opinion

Nordby, J.

***1** Rina Demichael appeals a final order denying her petition to change her late husband's retirement benefits selection. She raises three grounds for reversal, two of which we discuss below. First, she claims that her husband lacked sufficient mental capacity to select a benefits option. And second, she claims that the spousal acknowledgment form was invalid. We affirm on all grounds because competent substantial evidence supports the findings below.

Florida's Retirement System

Chapter 121, Florida Statutes, governs Florida's Retirement System (FRS). A member's rights under the system are contractual and enforceable as such. § 121.011(3)(d), Fla. Stat. (2020). Before retirement, an FRS member can choose from four benefits options:

1. The maximum benefit "payable to the member during his or her lifetime."

2. A decreased benefit "payable to the member during his or her lifetime," and if the member dies within ten years after retirement, the member's beneficiary gets the same monthly payment for the rest of that ten-year period.

3. A decreased benefit "payable during the joint lifetime of both the member and his or her joint annuitant," and if either dies, the survivor still receives the same benefit during his or her lifetime, subject to section 121.091(12), Florida Statutes.

4. A decreased benefit "payable during the joint lifetime of the member and his or her joint annuitant," and if either dies, the survivor receives a further-reduced benefit (66 2/3 % of the previous payment) during his or her lifetime, subject to section 121.091(12), Florida Statutes.

§ 121.091(6)(a) 1.–4., Fla. Stat. (2020).

If a member selects option one or two, then that member's spouse "shall be notified of and shall acknowledge" that selection. § 121.091(6)(a), Fla. Stat. To enforce this provision, a member's payments will not begin until:

(1) the Department receives the completed spousal acknowledgment form;

(2) the Department agrees that the spouse cannot be found; or

(3) if the spouse refuses to sign the acknowledgment form, "the Division shall notify the spouse in writing of the option selection. Such notification shall constitute acknowledgment by the spouse of such selection."

Fla. Admin. Code R. 60S-4.010(9)(b). Once benefits begin and the first payment is cashed, the member's option selection becomes "final and irrevocable." § 121.091(6)(h). Fla. Stat.

Background

The relevant facts begin shortly before FRS Member David Demichael filled out his option selection form. In early 2013, the Member checked himself into a Sunrise Detox Facility

to help his struggles with alcoholism. Records from the facility show that the Member recently relapsed and was on temporary leave from work. Although the Member reported experiencing anxiety and depression, he had not sought help from a mental health professional. According to the intake notes, the Member met the criteria for admission.

Five days after check-in, the Member left the facility. Doctor's notes from that morning say that the Member was "medically stable for discharge." The Member went straight to his job at the Broward County Sheriff's Office (BCSO) accompanied by Ms. Demichael.

***2** Once they arrived, they ate breakfast in the cafeteria and went up to a rooftop terrace. Ms. Demichael then met with an officer to discuss the Member's recent troubles. Meanwhile, the Member filled out retirement paperwork and selected option one—to receive the maximum benefit payable during his lifetime. Ms. Demichael was then alone on the rooftop when Tiffany Pieters, another BCSO employee, approached her with a document. Ms. Demichael signed the form then left with the Member.

The Member soon started receiving retirement benefits in line with option one. Sadly, just two years later, he passed away. The Department informed Ms. Demichael that the Member's benefits selection provided no continuing benefits after his death.

A few years passed before Ms. Demichael petitioned the Department to direct the benefits payments to her. The Department denied her request and submitted the matter to the Division of Administrative Hearings for a formal hearing. There, Ms. Demichael argued that she had a right to change the Member's benefits option for two reasons. First, the Member lacked the mental competency to select an option when he retired. Second, the spousal acknowledgment form was invalid because Ms. Demichael had no chance to read the form and Ms. Pieters improperly notarized the form.

At the hearing, Ms. Demichael testified that the Member became visibly upset and was "traumatized" on the way home from BCSO the day he retired. She said he eventually reached a breaking point at home and even started drinking in front of deputies who came to collect BCSO equipment. As for the spousal acknowledgment form, Ms. Demichael asserted that Ms. Pieters obstructed the document with both hands to prevent Ms. Demichael from reading the form. Ms. Demichael admitted that she signed the form. Yet she claimed that Ms. Pieters marked "personally known" when notarizing the form even though she did not know Ms. Pieters.

The Administrative Law Judge (ALJ) soundly rejected Ms. Demichael's testimony. Citing a distinct opportunity to observe Ms. Demichael's demeanor, the ALJ found that her testimony was not credible. The ALJ then denied her petition on both claims.

On the first claim, the ALJ found that Ms. Demichael presented no medical evidence to show that the Member was mentally incapacitated when he retired. According to records from Sunrise, the Member was "medically stable for discharge" the morning he retired. Plus, the Member ate breakfast, smiled, and exchanged pleasantries with Ms. Demichael once at BCSO. Even after that day, Ms. Demichael never sought a guardianship or power of attorney to protect the Member.

On the second claim, the ALJ found that Ms. Demichael failed to prove that she had no chance to read the spousal acknowledgment form before signing. The writing near the signature line explained that the Member selected either option one or two. And the writing just below where Ms. Demichael signed explained the four benefits options. Ms. Demichael never asked Ms. Pieters to explain the form, nor did she ask for more time to read it.

The Department adopted the ALJ's recommended order and denied Ms. Demichael's exceptions. This timely appeal followed.

Discussion

An administrative agency may not reject an ALJ's factual findings when competent, substantial evidence supports those findings. § 120.57(1)(*l*), Fla. Stat. (2020); *Strickland v. Fla. A & M Univ.*, 799 So. 2d 276, 278 (Fla. 1st DCA 2001). As the reviewing court, we are similarly bound. § 120.68(7)(b), Fla. Stat. (2020). Competent, substantial evidence is evidence that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "[T]he weighing of evidence and judging of the credibility of witnesses ... are solely the prerogative of the Administrative Law Judge as finder of fact." *Strickland*, 799 So. 2d at 278.

***3** The Member's competence may have been a close call, but competent, substantial evidence supports the ALJ's

findings. Sunrise's records signify that the Member was "medically stable for discharge" the morning he retired. The Member ate breakfast and was in a positive mood at BCSO. From then on, Ms. Demichael never sought legal protection over the Member, and a court never adjudicated the Member to be incompetent. This evidence is all relevant to determine the Member had the proper mental capacity.

Ms. Demichael highlights compelling evidence to the contrary. For example, Sunrise's records reported that the Member lacked proper judgment and was anxious about losing his job. And after leaving BCSO, the Member was traumatized and cried the whole way home. He even started drinking in front of the officers who came to retrieve his equipment. This evidence supports Ms. Demichael's assertions that the Member lacked the proper mindset to make a sound retirement benefits choice.

Essentially, Ms. Demichael asks us to reweigh the evidence, or credit her testimony where the ALJ declined to do so. But that is not our role. Instead, we simply hold that the ALJ's findings on this claim are supported by competent, substantial evidence. That is, the ALJ relied on relevant and material evidence that a reasonable person would accept as enough to support the decision. *See* *De Groot*, 95 So. 2d at 916.

Even so, Ms. Demichael cites no authority that would allow an ALJ, or this Court, to let a spouse change a member's benefits selection once payments begin. We have found none either. What is more, the plain language of the statute appears to allow only a *member* to change their selection and only *before* the first payment is received. *See* § 121.091(6)(a), (h), Fla. Stat. Without backing up her argument through legal support, her first claim ultimately fails.

Ms. Demichael next raises two arguments to support her claim that the spousal acknowledgment form is invalid. She first contends that she had no chance to read the form before signing. Then, she argues that Ms. Pieters improperly notarized the form. We find that both arguments lack merit.

To start, the ALJ relied on competent, substantial evidence. The ALJ found that Ms. Demichael saw the parts of the form near where she signed which included information that the Member had selected either option one or two. She failed to read the fine print below her signature which explained the four retirement benefits options. And she never asked Ms. Pieters to explain the form or for more time to read the form. Taken together, this evidence supports the decision that Ms. Demichael had a chance to read the form before signing it. *See* *De Groot*, 95 So. 2d at 916.

Ms. Demichael again merely highlights evidence to the contrary. She says that Ms. Pieters prevented her from reading the form. This obstruction, coupled with the circumstances —an intimidating environment and Ms. Demichael's limited ability to read English—obligated Ms. Pieters to explain the form. But because the ALJ discredited Ms. Demichael's testimony, and because we cannot reweigh the evidence at this stage, her first argument fails.

Finally, we reject Ms. Demichael's argument about notarization. The Department persuades us to find that even a faulty notarization does not afford Ms. Demichael her requested relief. To be sure, the statute requires spousal acknowledgment. But the rules give multiple ways to secure such acknowledgment. *See* Fla. Admin. Code R. 60S-4.010(9)(b) (allowing acknowledgment even if a spouse refuses to sign the form by providing written notice of the member's selection). This means, as the Department puts it, the spousal acknowledgment form does not give Ms. Demichael "veto power" over the Member's selection. Ultimately, as with her first claim, Ms. Demichael cites nothing to show she can change the Member's selection even if the form's notarization were invalid.

***4** In short, we affirm the ALJ's findings as supported by competent, substantial evidence. Beyond that, Ms. Demichael has shown no legal support for her desired relief.

Affirmed.

Bilbrey and Long, JJ., concur.

All Citations

--- So.3d ----, 2022 WL 480589

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