

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO:

JOHN ALLEN CHIDSEY,

Petitioner,

v.

THE BOARD OF TRUSTEES,
HOLLYWOOD POLICE RETIREMENT
SYSTEM,

Respondent.

**PETITION FOR CERTIORARI, OR,
IN THE ALTERNATIVE, FOR A WRIT OF MANDAMUS**

This is a petition for certiorari (“the Petition”) requesting that this Court quash and reverse a final quasi-judicial order (“the Order”) of the Board of Trustees of the Hollywood Police Retirement System (“the Board”). Alternatively, a writ of mandamus should be issued directing the Board to give full discretionary consideration to the Petitioner’s request to designate his wife as his pension beneficiary. As is established in the pages that follow, the Order arbitrarily, irrationally and capriciously denied a distinguished public servant and veteran police officer the right to change his pension’s beneficiary to his current wife. The Order is a clearly erroneous departure from the essential requirements of law for which there are no adequate legal remedies. This Court has jurisdiction in accordance with, among other things, Rules 9.030(c)(3) and 9.100(e) and (f) of the Florida Rules of Appellate Procedure.¹

¹ Pursuant to Fla.R.App.Pro. 9.100(b)(3)(B), the individual board members are not named as respondents.

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STATEMENT OF THE CASE AND OF THE FACTS

The Petitioner, John Allen Chidsey, is a retired police officer who is fifty-nine years old and began his service to our community in 1982. (A-3) He retired after twenty-four years of distinguished service in the Hollywood Police Department. *Id.* The former beneficiary, Tanya Chidsey, died more than two years ago (A-4). The retired officer's current wife, Lina Marie Marquez, is virtually the same age as Ms. Chidsey would have been if she were still alive. (A-6). It has never been suggested that any actuarial distinctions were at issue.

When the retired police officer applied to designate Ms. Marquez, his wife, to be the beneficiary of his pension, the Board initially indicated that it would consider the change. (A-12) Later, the Board rejected the Petitioner's application finding they had no discretion to allow it because it would be a third change of beneficiary. (A-1) Although expressing the Board's "sympathies in this matter," they believed they were required to decline because they concluded that they were powerless to approve a change unless "the beneficiary being replaced is alive." (A-1) According to the Board, a widower is unable to remarry and designate his new wife as a beneficiary if that is the third designation. But if, according to the Order, rather than predecease a retired officer, a spouse is divorced by the retiree, the retiree can apparently remarry and potentially designate the new wife as a beneficiary. As is demonstrated in the paragraphs that follow, the refusal to even consider Petitioner's current wife is manifestly irrational, even absurd.

THE ORDER

In its decision, the Board did not exercise discretion with respect to the retired officer's request to allow his wife to be his pension's beneficiary. Instead, the Board concluded that "...the law governing the plan compels that the request must be denied." (Order, at 1)

In its discussion of the statute that supposedly prohibits discretion or consideration, the Board states:

Florida Statutes, Section 185.161(1), subsections b and c govern this request. Under subsection 1b, a police officer (meaning an active member) may change his beneficiary more than twice with the Board's permission, provided that the beneficiary being replaced is alive.

§185.161(1), Fla.Stat. (2021). Turning to subsection (1)(c), the Board further stated:

Subsections 1c governs requests by retired police officers. This section permits replacement of a beneficiary who is deceased, but a retired member may only change beneficiaries on two occasions. Unlike subsection b, subsection c does not empower the Board to grant additional changes.

This proceeding to seek review of this plainly wrong and unjust determination was timely commenced below.

THE BOARD'S ORDER IMPROPERLY CONSTRUES AND REVISES THE GOVERNING STATUTES

While the Board found that "subsection c does not empower the Board to grant additional changes," *id*, the cited statutory provision contains no such prohibition. Instead, Subsection (1)(c) of Section 185.161 simply provides:

(c) Notwithstanding paragraph (b), a retired police officer may change his or her designation of joint annuitant or beneficiary up to two times as provided in § 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary.

Id. (emphasis added). Plainly, rather than preclude a further designation, this language simply means that Board approval is required for a third change of beneficiary. Nonetheless, the Board concluded that a third designation could not be allowed even with the Board's approval. This is a harsh limitation provided by the statute. A superimposed prohibition is not proper and departs from the essential requirements of law. In construing statutes, it is impermissible "to add words which were not placed there by the Legislature." *State v. Little*, 104 So.2d 1263, 1264 (Fla. 4th DCA

2013). Plainly, the Board has no power to engraft a prohibition on a third designation where none is found in the legislation.

Moreover, any such statutory revision would ignore other fundamental principles of statutory interpretation. A pension statute is a remedial law. See *3C Sutherland Statutory Construction* §75.4 (8th ed.) at 3. It is well-settled that remedial statutes are to be “liberally construed in favor of granting access to the remedy provided by the Legislature.” *Golf Channel v. Jenkins*, 752 So.2d 561, 565-66 (Fla. 2000). Conversely, restrictions on remedies are narrowly construed. *Id.* at 566. See also *JPG Enterprises, Inc. v. McLellan*, 31 So.3d 821, 825 (Fla. 4th DCA 2010) (“...liberally construed to advance the remedy...”). In the present case, rather than advance the remedy for the retired police officer, the Board eliminated it based on a supposed statutory prohibition that cannot be found in the statutory language.

Another controlling principle that compels appellate relief here is the rule that unreasonable or absurd consequences are to be avoided whenever possible. In the present case, there is no logical basis for denying the retired officer’s chosen designation simply because his previous wife predeceased him. And there is no public policy or statute that demands that he be denied his fundamental right to remarry and to designate his current wife as a beneficiary. No rational basis was suggested for this arbitrary erasure of the important rights. Nor can any rationality be found in the Board’s position. Florida’s courts reject such manifestly unreasonable analysis. “We have long stated that the Court should not interpret a statute in a manner resulting in unreasonable, harsh or absurd consequences. *Florida Dept. of Environmental Protection v. Contractpoint Florida Parks, LLC*, 986 So.2d 1260, 1270 (Fla. 2008). Thus, the Board’s position is unsupportable as a matter of logic, public policy and statutory interpretation and should be rejected by this Court. “Nor should statutes be construed to so as to lead to untenable conclusions.” *Id.*

**THE BOARD'S APPLICATION OF SECTION 185.161 VIOLATES THE
FLORIDA CONSTITUTION**

Very clearly, Section 185.161(1)(c) does not prohibit a third change but simply says that two changes can be effected “without Board approval.” Irrationally, the Board concluded that this eliminates the Board’s discretion to grant approval for a third change of beneficiary even though such is not what the statute says. Even if the Board’s position applies the statute – and it does not – it would offend the rights of the retired officer and his wife under Florida’s constitution.

Article 1, Section 2, of the Florida Constitution provides:

BASIC RIGHTS – All natural persons, female and male alike, are equal before the law and have inalienable rights among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

It is well-settled that vested rights in a pension create a property interest. *Fort v. Fort*, 951 So.2d 1020, 1022 (Fla. 1st DCA 2007). Equally clear is that Article One, Section Two provides a fundamental right to transfer a property interest.

Thus, the phrase “acquire, possess and protect property” in article 1, section 2, includes the incidents of property ownership: the (c)ollection of rights to use and enjoy property, including (the) right to transmit it to others.

Shriners Hospitals for Crippled Children v. Zrillic, 563 So.2d 64 (Fla. 1990).

Because Petitioner Chidsey enjoyed a fundamental right to transfer the beneficiary status of his pension, any infringement upon that right is subject to strict scrutiny. *T.M. v. State*, 784 So.2d 442 n.1 (Fla. 2001), citing *Reno v. Flores*, 507 U.S. 292 (1993). Such an infringement can only be justified by the least restrictive measures to serve a compelling interest. Plainly, none can be or were asserted here.

Indeed, even under the rational basis test that is deployed for non-fundamental rights, Section 185.161 cannot eliminate Petitioner's right to designate his wife as the beneficiary of his police pension. The rational relationship test requires "a rational relationship to a legitimate governmental objective." *Zapo v. Gilbreath*, 779 So.2d 651, 655 (Fla. 5th DCA 2001). In many contexts, the issue of infringement of a fundamental right is analyzed as a due process issue under Art. 1, § 9, Fla. Const.² *State v. Saiez*, 489 So.2d 1125 (Fla. 1986). Whether analyzed under Section 2 or 9 of Article One, it cannot be seriously contended that punishing a retired police officer for a third marriage (or even a fourth or a fifth) is a legitimate state interest. Nor is it rational to discourage remarriage for a widower, or for others. Absent a reasonable relationship to legitimate state objectives, a statute violates due process. *State v. Saiez*, 489 So.2d 1125, 1129 (Fla. 1986).

Therefore, if § 185.161(1)(c) is applied as provided in the Board's order, there are serious conflicts with Florida's Constitution. It is axiomatic that courts construe statutes, whenever possible, to avoid constitutional tension. This long-standing and universal principle was stated by Justice Brandeis in *Crowell v. Benson*, 285 U.S. 22 (1932):

"...[I]t is a cardinal principal, that this court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

Id. at 62. *See also Witchard v. State*, 68 So.3d 407 (Fla. 4th DCA 407, 408 2011) (when legislative intent is unclear "[we] are... obligated to construe statutes in a manner that avoids a holding that a statute may be unconstitutional.")

Thus, as a matter of both traditional statutory analysis as well as constitutional analysis, the Board's Order clearly departed from essential requirements of law and should be quashed.

² Section 9 **Due Process.** – No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

MANDAMUS

Alternatively, this Court should issue a writ of mandamus. As is well-established, mandamus does not generally require that an authority like the Board “rule one way or the other”. *Flagship National Bank of Miami v. Testa*, 429 So.2d 69, 70 (Fla. 3d DCA 1983). But it is equally clear that mandamus is the proper remedy to require that a public authority exercise discretion where such discretion is reposed by law. *Maxwell v. Pine Gas Corp.*, 209 So.2d 235 (Fla. 4th DCA 1968). As the Fourth District stated: “They also agree that mandamus may be used to compel a public official to exercise the discretion reposed in them by law.” *Id* at 237.

In the present case, it is plain that the Board did not exercise its discretion to consider whether to allow a third designation of beneficiary. To the contrary, it wrongly concluded that no such consideration could be allowed because no discretion was possible. According to the Board, the request had to be denied because the Petitioner is a retired police officer rather than on active duty. As discussed earlier, the distinctions apparently referenced would be irrational, arbitrary and capricious because the core values of pension law center on protecting the retirements of officers. They do not purport to penalize police officers who retire or to penalize retired officers who are widowers. But even beyond the irrationality of any such determination, it ignores the reality that the plain language nowhere prohibits a third designation. Instead the statute says only that two designations can be made without board approval; this necessarily implies that board approval is required for additional designations. But rather than exercise its discretion to consider the retired police officer’s designation, the Board misapplied the any “two without approval” language and rewrote it to say only “two with or without board approval.”

The revision of plain language is unsupportable and the Board plainly retained discretion in this instance. Accordingly, mandamus is proper to direct the Board to give full consideration,

consistent with due process, to determine whether the retired police officer's wife should be permitted as a designated beneficiary.

CONCLUSION

Based on overwhelming maxims of construction as well as common sense, the Petition should be granted. Pursuant to Rule 9.100(h) of the Florida Rules of Appellate Procedure, Respondent should be directed to show cause why the petition should not be granted. Thereafter, Petitioner would respectfully request an opportunity to serve a reply. If this Court quashes the Order or directs through mandamus that the Board exercise its discretion, the Court should further instruct the Board concerning the appropriate standard for exercising discretion. *Cf. United States v. Mead Corp.*, 533 U.S. 218, 238 (2001). That standard should take into account the remedial goals of fully protecting pension rights for those who risk their lives to protect ours.

Dated: December 20, 2021.

Respectfully submitted,

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