

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

JOHN ALLEN CHIDSEY,
Petitioner,

APPEAL: CACE21-022257 (AW)

v.

**THE BOARD OF TRUSTEES,
HOLLYWOOD POLICE RETIREMENT
SYSTEM**
Respondents.

Dated: May 20, 2022

Petition for Writ of Certiorari from a decision by the Board of Trustees of the Hollywood Police Retirement System.

Kendall B. Coffey, Esq., COFFEY BURLINGTON, P.L., Miami, FL, for the Petitioner.

Robert D. Klausner, Esq., KLAUSNER, KAUFMAN, JENSEN & LEVINSON, P.A., Plantation, FL, for the Respondent.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

PER CURIAM.

Having carefully considered the Petition, Appendix, Response, Reply, Notice of Supplemental Authority & Response, and applicable law, this Court dispenses with oral argument and the Petition for Writ of Certiorari is hereby **GRANTED** and the Final Administrative Order of The Board of Trustees of the Hollywood Police Retirement System, dated November 22, 2021 is **QUASHED**, for the reasons discussed below.

Statement of the Case

Petitioner is a retired City of Hollywood Police Officer currently receiving pension benefits. Petitioner applied to designate his new wife as his pension beneficiary. The Board of Trustees (“Board”) declined Petitioner’s application finding that Petitioner had changed his named beneficiary on two prior occasions and considering a third change would be a violation of Florida Statutes.

Standard of Review

On a petition for writ of certiorari seeking review the court is limited to a three-part standard. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995). The court must review the record to determine whether: (1) procedural due process is accorded; (2) essential requirements of the law have been observed; and (3) administrative findings and judgment are supported by competent, substantial evidence. *Id.* If the Court determines that any one of the three requirements was not met, the Court can only quash the order below but not enter an order to the contrary. *See Nat’l Adver. Co. v. Broward Cnty.*, 491 So. 2d 1262 (Fla. 4th DCA 1986) (“A court’s certiorari review power does not extend to directing that any particular action be taken but is limited to denying the writ of certiorari or quashing the order reviewed.”).

Here, the Petitioner did not allege violations of procedural due process or that the Board's Final Administrative Order was not supported by competent, substantial evidence. Therefore, this Court's review only addresses whether the Board departed from the essential requirements of the law.

Discussion

The departure from the essential requirements of the law must constitute a "violation of a clearly established principle of law resulting in a miscarriage of justice." *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 889 (Fla. 2003). "...'[C]learly established law' can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law. Thus in addition to case law dealing with the same issue of law, an interpretation or application of a statute, a procedural rule, or a constitutional provision may be the basis for granting certiorari review." *Id.* at 890.

Florida Statute Sections 185.161(1)(b) and 185.161(1)(c) are pertinent to this proceeding and read:

§185.161(1)(b) The police officer upon electing any option of this section must designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of the police officer's death, and may change such designation but any such change shall be deemed a new election and is subject to approval by the pension committee. Such designation must name a joint annuitant or one or more primary beneficiaries where applicable. If a police officer has elected an option

with a joint annuitant or beneficiary and his or her retirement income benefits have commenced, he or she may change the designated joint annuitant or beneficiary but only if the board of trustees consents to such change and if the joint annuitant last designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint annuitant or beneficiary to any such change is not required. The board of trustees may request evidence of the good health of the joint annuitant being removed, and the amount of the retirement income payable to the police officer upon the designation of a new joint annuitant shall be actuarially redetermined taking into account the ages and gender of the former joint annuitant, the new joint annuitant, and the police officer. Each designation must be made in writing on a form prepared by the board of trustees and filed with the board of trustees. If no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in s. 185.3162.

§185.161(1)(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 s. 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

§§185.161(1)(b), 185.161(1)(c), Fla. Stat.

As mentioned previously, the Board's position was that they were not authorized to consider Petitioner's third request to change Petitioner's pension beneficiary as Florida law limits a retired police officer to only two beneficiary changes. As Petitioner had previously made two beneficiaries changes, the Board

determined that it was barred from considering a third request. Florida Statutes Chapter 181 and more specifically, Florida Statutes section 181.161 does not definitively and expressly limit a change of beneficiary to two elections. The clear language of Florida Statutes section 181.161(1)(c) states that a retired police officer may change a beneficiary up to two times **without board approval**. This statute does not expressly bar any subsequent change of beneficiary. The language in Florida Statutes section 181.161(1)(c) is clear as to what is included, albeit incomplete and void of direction regarding situations not expressly stated. This Court must take the law as written and should not create law. Enacting and drafting the Florida Statutes is the job of the legislature, not the judiciary. For this Court to rule otherwise would require the Court to add additional language to the Florida Statutes that is not presently there. Thus, in adding additional requirements, parameters and restrictions not expressly written in section 181.161 the Board has departed from the essential requirements of the law by denying Petitioner's third request to change beneficiary without due consideration. Accordingly, it is hereby,

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **GRANTED** and the Final Administrative Order of The Board of Trustees of the Hollywood Police Retirement System, dated November 22, 2021, is **QUASHED** and **REMANDED** back to The Board of Trustees of the Hollywood Police

Retirement System to make a decision on the merits as to Petitioner's third change of beneficiary request.

BOWMAN, FAHNESTOCK, AND MOON, JJ., CONCUR.

* * *

Not final until disposition of timely filed motion for rehearing.

Copies to:

Kendall B. Coffey, Esq.

Robert D. Klausner, Esq.