

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Appeal of Death Benefits
Payable Upon the Death of Patricia L. Franzen
by:

Case No. 2014-1076

OAH No. 2015050058

PHILLIP GARRIDO,

Respondent,

and

RONALD G. GARRIDO,

Respondent.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 28, 2015, in Sacramento, California.

Christopher Phillips, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

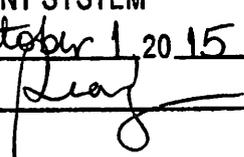
Ronald G. Garrido (respondent Ronald) appeared at the hearing and represented himself.

There was no appearance by or on behalf of Phillip Garrido (respondent Phillip).

Evidence was received, the record was closed, and the matter was submitted for decision on September 28, 2015.

ISSUE

The question for determination is whether respondent Phillip or respondent Ronald is entitled to their mother's death benefits.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED October 1, 2015


FACTUAL FINDINGS

1. CalPERS established that respondent Phillip was properly served with the Notice of Hearing in this matter. Consequently, the hearing proceeded as a default hearing against him pursuant to Government Code section 11520. Although respondent Phillip did not appear at the hearing, he submitted a package of documents, which was marked as Exhibit A and admitted into evidence.

1997 Beneficiary Designation and 2010 Will

2. Patricia L. Franzen, the mother of respondents Ronald and Phillip, was employed by Antioch Unified School District as a Head Custodian. In this capacity, she was a local miscellaneous member of CalPERS.

3. In 1997, when Ms. Franzen applied for service retirement, she elected an Option 1 monthly allowance and designated respondent Phillip as the beneficiary of her death benefits.

4. On August 29, 2009, respondent Phillip was arrested, pled guilty, and was sentenced to 431 years in prison.

5. On July 29, 2010, Ms. Franzen executed a will, which in relevant part stated:

THIRD: I give one half of my estate to my son Phillip Garrido if and only if he becomes free from the custody of either a county jail, a state prison or other penal or mental health locked institution within one year of my death. If he is not free of such incarceration within one year of my death, this gift shall lapse and become part of the residue of my estate.

FOURTH: I give the residue of my estate as follows:

1. If my other son, Ronald G. Garrido, survives me for one year, I give the residue of my estate to him.

6. Ms. Franzen died on September 10, 2012. She was survived by her two sons, respondents Phillip and Ronald. Respondent Ronald submitted Ms. Franzen's July 29, 2010 will to CalPERS.

CalPERS' Determinations re: Ms. Franzen's Death Benefits

7. Daniel Schofield is a Retirement Program Specialist II in the Death Benefit and Refund Processing Section of CalPERS. He reviewed the file in this matter and sent a letter dated December 24, 2012, to respondent Ronald, which in relevant part stated:

After a thorough review of the file, we have accepted the will as a beneficiary designation change. Therefore, you are entitled to the Retired Death Benefit of \$2,000.00 and the prorata of \$334.11 for the 10 days in September that Patricia survived.

8. On December 24, 2012, Julie Watson, Manager of the Death Benefit and Refund Processing Section of CalPERS, wrote a letter to respondent Phillip, which in relevant part stated:

... This letter is regarding the death benefits payable from CalPERS and our determination of the eligible beneficiary.

The benefits consist of the lump sum of \$2,000.00 Retired Death Benefit and \$334.11 prorated amount due for days your mother was living in September 2012. The law provides that these benefits are first payable in accordance with a member's written beneficiary designation. Your mother submitted a beneficiary designation naming you as beneficiary on April 15, 1995.¹ However, we received a copy of your mother's will executed on July 29, 2010. A "writing," such as a member's will or trust, may be accepted as a written beneficiary designation for the CalPERS death benefits if the writing shows the member's intent to designate the CalPERS benefits. Such intent would be demonstrated if the CalPERS benefits were specifically named as an asset to be administered by the will or trust, or if the otherwise entitled beneficiary(ies) are specifically disinherited. Therefore, based on the language contained in your mother's will, we accepted her will as a beneficiary designation of her estate. Since her estate is not being probated, we intend to process payment of the lump sum benefits to the beneficiary named in her will.

9. On March 4, 2013, CalPERS received a handwritten letter from respondent Phillip. In his letter, respondent Phillip asserted that in July 2010, his mother suffered from Parkinson's disease and dementia, and was not mentally capable of understanding or signing a new will. He also asserted that his mother loved and stood by him when he was sent to prison, and that she would "never" have left him out of her will. Respondent Phillip asserted further that respondent Ronald "subjected his will on a person who clearly was unable to reason and perceive reality."

¹ The date on the beneficiary designation submitted at hearing was September 4, 1997. There was no evidence about where the April 15, 1995 date in the December 24, 2012 letter came from.

10. CalPERS received a letter dated May 13, 2013, from Jerry M. Martins and Gail A. Martins, who witnessed Ms. Franzen's July 29, 2010 execution of her will. In their May 13, 2013 letter, Mr. and Ms. Martins stated that they had known Ms. Franzen for "some time," and that they had visited with her on two occasions before witnessing her signature on the will. According to Mr. and Ms. Martins, Ms. Franzen "always knew who [they] were." They stated that:

During our meetings we would question her about family events from the past and her recollection of the events of Phillip Garrido's arrest and the trial. She would always tell us she could not understand why Phillip did these things as no one on either side of her family had ever committed a crime or been in jail. She had a very good grasp of the reality and gravity of these things and the fact that she did not want to leave anything to Phillip if he were to remain in prison.

In their May 13, 2013 letter, Mr. and Ms. Martins concluded by stating that it was their belief that Ms. Franzen was "fully aware and competent in understanding what she wanted and what she was doing."

11. By letter dated July 12, 2013, Anthony Suine, Chief, CalPERS Benefit Services Division, wrote to respondent Phillip. In the letter, Mr. Suine, in relevant part, stated:

On March 4, 2013, CalPERS received your letter where you stated your mother did not have the capacity to clearly reason and understand the will she signed on July 29, 2010. You stated your mother was suffering from multiple impairments which affected her cognitive ability and would make her incapable of creating a new will. CalPERS received a signed statement from the two individuals who witnessed your mother sign her will. The statement indicated your mother had a good grasp on reality, she was fully aware and competent in understanding what she wanted and what she was doing, and she did not want to leave anything to you if you were to remain in prison. Therefore, CalPERS will honor our original determination to accept your mother's will executed on July 29, 2010, as a valid beneficiary designation.

In his July 12, 2013 letter, Mr. Suine notified respondent Phillip of his right to appeal from CalPERS's determination.

Respondent Phillip's Appeal

12. By letter dated August 27, 2013, respondent Phillip appealed from CalPERS' determination to accept Ms. Franzen's July 29, 2010 will as changing her beneficiary designation from respondent Phillip to respondent Ronald. In the August 27, 2013 letter, respondent Phillip again asserted that Ms. Franzen did not have the "cognitive capacity to clearly reason and understand so as to knowingly make sound judgments according to her will and not someone else."

13. The documents from respondent Phillip which were marked as Exhibit A and admitted into evidence included: (1) a closing argument; (2) pages 4, 6, 8, 9 and 10 of a Report of the Court Investigator Prior to Appointment (Probate Investigation Report) from the Probate Investigations Unit in Case No. P09-01085; (3) two letters from respondent Ronald to respondent Phillip, one dated December 25, 2009, and the other dated May 1, 2015; and (4) portions of CalPERS's July 12, 2013 letter and the Statement of Issues in this matter.

14. In his closing argument, respondent Phillip argued that, "This case is about a will drawn up years after Patricia L. Franzen was diagnosed with dementia." He asserted that respondent Ronald "has committed himself to hiding and concealing the truth about" his mother's "mental capacity" to "conceal the obvious fact that [respondent Ronald] composed and wrote himself a will naming him as heir," knowing "full well she was not legally capable of writing a new will." As stated in respondent Phillip's closing argument, the Probate Investigation Report was issued in response to respondent Ronald's request for conservatorship for Ms. Franzen filed in the probate court. That report was served on respondents Phillip and Ronald in December 2009.

15. Although incomplete, the Probate Investigation Report stated that, "Ms. Franzen appeared to comprehend the advisement and provided intelligible responses to inquiries." She was "able to provide her correct name, date of birth and age," but she incorrectly reported that she was residing in her residence. She was "disoriented as to the correct day, month and year, reporting that it was 1988." She correctly stated that she had two sons, but mistakenly stated that her own brothers had passed away.

16. The Probate Investigation Report indicated that respondent Ronald was interviewed on November 3 and 19, 2009. He told the investigator that Ms. Franzen remembered things that happened 20 years ago, but had trouble remembering more recent events.

17. The Probate Investigation Report noted that:

... orders related to capacity and medical authority are not currently requested in the petition. However, according to Ms. Franzen's medical records reviewed at the facility, she has been diagnosed with dementia. As such, Ms. Franzen may be

adjudged to lack capacity to give informed consent for medical treatment in the future, and may benefit from medications for the treatment of dementia. Therefore, as specified below, it is respectfully recommended that the proposed conservator petition for medical authority and dementia powers related to the administration of medications for the treatment of dementia.

Based on observations and information obtained during the investigation, it appears Ms. Franzen is unable to properly provide for her physical health, food, clothing, or shelter, and is unable to manage her financial affairs. Appointment of a conservator of the person and estate of Ms. Franzen appears necessary to ensure her well-being, and it appears that Ronald Garrido has acted appropriately and in Ms. Franzen's best interest thus far.

18. The Probate Investigation Report recommended that respondent Ronald's "proposed conservator petition for medical authority and dementia powers related to the administration of medications for the treatment of dementia" be granted.

19. In his letter dated December 25, 2009, respondent Ronald wrote to respondent Phillip that it was "devastating" for Ms. Franzen to hear about and comprehend what respondent Phillip had done, "But hear and comprehend she did!" Respondent Ronald also stated that Ms. Franzen believed that respondent Phillip and his wife, Nancy Garrido were visiting her every few days, and that it was "so hard for her to understand that [respondent Phillip] and Nancy will be in jail for the rest of your lives."

Testimony at Hearing

20. At the hearing, respondent Ronald testified that Ms. Franzen's July 29, 2010 will was not contested. Mr. and Ms. Martins, who witnessed Ms. Franzen's signature on the will, were the son and daughter-in-law of a "life-long friend" of Ms. Franzen. Respondent Ronald testified that Ms. Franzen executed the will in 2010 because she had an ongoing concern with respondent Phillip's incarceration, which was hard for her to deal with. At the time Ms. Franzen signed the will, respondent Ronald had been appointed her conservator, caring for her health and financial responsibilities.

21. Mr. Schofield testified that there were two criteria that allow CalPERS to accept a change of beneficiary set forth in a will that was executed after a beneficiary designation was submitted: (1) when the decedent bequeathed the death benefits in the will to a different beneficiary; and (2) if the decedent in the will disinherited the beneficiary originally designated as the recipient of the death benefits. In this case, CalPERS interpreted Ms. Franzen's will as disinheriting respondent Phillip if he were still in prison more than one year after Ms. Franzen died. Because respondent Phillip was sentenced to serve 431 years in

prison, CalPERS made the determination that he would be in prison more than one year after Ms. Franzen died even before that one year ended.

22. Mr. Schofield also determined that the will appeared to be properly witnessed and executed. CalPERS received the statement from Mr. and Ms. Martins, which indicated that Ms. Franzen executed the will "fully aware" of what she was doing.

23. Mr. Schofield reviewed the information respondent Phillip submitted to contest the will. Mr. Schofield did not find the information that he provided to be persuasive. In particular, Mr. Schofield did not find that there was enough information in the portions of the Probate Investigation Report that were submitted to establish that the will was not valid. Although Mr. Schofield was not aware of how the Probate Investigation Report "came about," there was nothing in that report to indicate that the will had been challenged in court. In addition, the report did not address Ms. Franzen's capacity to execute the will. According to Mr. Schofield, in order to challenge the will, respondent Phillip had to submit an opinion from a medical doctor opining that Ms. Franzen did not have the mental capacity to execute the will. There was no such medical report submitted.

24. Mr. Schofield explained that, in general, CalPERS relies upon the parties to provide information upon which to base a determination about whether a subsequent will should be accepted as superseding an earlier beneficiary designation. CalPERS does not conduct an independent investigation. In this case, the materials that Mr. Schofield reviewed to make a determination that Ms. Franzen intended to change her designated beneficiary of her death benefits from respondent Phillip to respondent Ronald were: (1) Ms. Franzen's July 29, 2010 will; (2) the witness statement of Mr. and Ms. Martins; (3) the written arguments submitted by respondent Phillip; and (4) the portions of the Probate Investigation Report submitted by respondent Phillip. When all that information was reviewed, CalPERS determined that it was Ms. Franzen's intent to disinherit respondent Phillip and designate respondent Ronald as the beneficiary of the \$2,334.11 in total death benefits.

Discussion

25. When all the evidence is considered, the determination that CalPERS made that it was the intent of Ms. Franzen when she executed her July 29, 2010 will to disinherit respondent Phillip and designate respondent Ronald as the beneficiary of her death benefits was reasonable. There was no indication that her July 29, 2010 will was ever contested. There were no court determinations that the will was not valid. There were no doctors' opinions that Ms. Franzen was not competent to execute the will. The Probate Investigation Report did not address any issues relating to Ms. Franzen's mental capacity to execute the will, or make any findings that the will was not valid. In sum, respondent Phillip did not submit adequate information to overturn CalPERS's determination that Ms. Franzen executed the July 29, 2010 will to disinherit respondent Phillip and designate respondent Ronald as the recipient of her death benefits if respondent Phillip were still in prison within one year after her death. Consequently, CalPERS' determination that respondent Ronald was

entitled to the Retired Death Benefit of \$2,000 and the prorata of \$334.11 for the 10 days in September 2012 that Ms. Franzen survived should be upheld.

LEGAL CONCLUSIONS

1. By virtue of her employment as Head Custodian for the Antioch Unified School District, Ms. Franzen was a local miscellaneous member of CalPERS.

2. Government Code section 21490, in relevant part, provides:

(a) Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.

[¶] ... [¶]

(c) The designation, subject to conditions imposed by board rule, may be by class, in which case the members of the class at the time of the member's death shall be entitled as beneficiaries. The designation shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of any person designated as beneficiary, and payment made by this system in reliance on any determination made in good faith, notwithstanding that it may not have discovered a beneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of this system for further liability for the benefit.

3. Government Code section 21494, in relevant part, provides:

If, upon the death of a person there is a valid beneficiary designation on file with the board naming the decedent's estate as beneficiary, and the estate will be probated, benefits shall be paid to the estate or to the duly authorized representative or representatives of the estate upon receipt by this system of a court order appointing an executor, administrator, or personal representative, or in the case of an estate with a total value not exceeding the amount prescribed in paragraph (2) of subdivision (a) of Section 7660 of the Probate Code, to a public administrator upon receipt by this system of a written

certification of authority for summary administration from that public administrator.

If the deceased person had a will, but the estate does not require probate, benefits may, in the judgment of the board, be paid to the beneficiary or beneficiaries, as specified in the will, notwithstanding any other provision of law.

4. CalPERS determined that Ms. Franzen's July 29, 2010 will should be accepted as a beneficiary designation change. It was within CalPERS' authority to make this determination under Government Code sections 21490 and 21494. Respondent Phillip did not submit sufficient evidence to establish that CalPERS's determination should be overturned. Consequently, his appeal must be denied.

ORDER

The appeal of respondent Phillip Garrido is DENIED. The Retired Death Benefit of \$2,000 and the prorata of \$334.11 for the 10 days in September 2012 that Patricia L. Franzen survived shall be paid to respondent Ronald G. Garrido.

DATED: September 29, 2015



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings