

COMMONWEALTH OF MASSACHUSETTS  
Division of Administrative Law Appeals

---

ANN BLAKESLEE and	:	Docket No. CR-19-0409
MARY HAGGAN	:	Docket No. CR-19-0471
<i>Petitioners,</i>	:	
v.	:	
	:	Date: May 12, 2023
STATE BOARD OF RETIREMENT:	:	
<i>Respondent</i>	:	
	:	
and	:	
	:	
JOYCE BRODERICK	:	
<i>Intervenor.</i>	:	

---

**Appearance for Petitioners:**

Kathleen Reagan, Esq.  
Braintree, MA 02184

**Appearance for Respondent:**

Melinda Troy, Esq.  
State Board of Retirement  
Boston, MA 02108

**Appearance for Intervenor:**

Joyce Broderick, *pro se*  
Hanover, MA 02339

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

Before passing away, Paul Kilduff, a member of the State Retirement System, filed a beneficiary form. It listed the Petitioners as beneficiaries—one as the primary and the other as contingent. He also checked off that each Petitioner’s proportion of shares should be both “all” and “50%.” After he passed away, the Board decided the form was invalid and voted to pay his

benefits to his estate. However, the form was not invalid because Mr. Kilduff substantially complied with the requirements of the state retirement system. Furthermore, the form itself, and extrinsic evidence, indicate his intent was to evenly distribute his benefits between the Petitioners.

## DECISION

Pursuant to G.L. c. 32, § 16(4) Petitioners Ann Blakeslee and Mary Haggan timely appealed a decision of Respondent, State Board of Retirement (Board) denying them distribution of the funds remaining in decedent Paul Kilduff's retirement account as his beneficiaries. DALA consolidated two related appeals,<sup>1</sup> and notified other potential beneficiaries of Mr. Kilduff's estate.<sup>2</sup> During the hearing, which I held via Webex on April 26, 2023, I formally designated Joyce Broderick as an intervening party. She is Mr. Kilduff's sister and the administrator of his estate.

I presided over the April 26 hearing from the Division of Administrative Law Appeal ("DALA") office located at 14 Summer Street, 4<sup>th</sup> Floor, Malden, MA 02148. The Petitioners testified on their behalf; the Board did not present any witnesses; Ms. Broderick also testified. I was able to observe the witnesses' demeanor throughout their testimony. I admitted Exhibits 1 – 14 into evidence.

---

<sup>1</sup> One case is the initial appeal of the Board's decision denying the Petitioners the benefits. The second case is an appeal of the Board's decision denying Petitioners' request for reconsideration.

<sup>2</sup> Joyce Ann Broderick, Patricia Rose Kilduff, Claire Kilduff Duckett, David Christopher Duckett, Kathleen Moore Broderick, Brendan Kilduff Duckett, Deirdre Cameron Rogers, and Fiona Rogers.

At the close of the hearing, the parties presented summations at which point I closed the administrative record.

### **FINDINGS OF FACT**

Based on the testimony and exhibits, I find the following facts.

1. Paul Kilduff was born in 1951. He passed away in June, 2019. (Exhibit 2.)
2. He was survived by his sister, Joyce Broderick, and several other brothers, sisters, nieces, and nephews. (Broderick testimony.)
3. He also had two very close friends who he referred to as sisters: Mary Haggan and Ann Blakeslee. (Blakeslee and Haggan testimony.)
4. Ms. Haggan and Blakeslee are twin sisters but were not related to Mr. Kilduff. (Blakeslee testimony.)
5. The Petitioners and Mr. Kilduff were close. They spent a lot of time together. For example, Mr. Kilduff would celebrate holidays and birthdays with the Petitioners instead of with his family. (Blakeslee testimony.)
6. Mr. Kilduff spoke to the Petitioners about his own family. He was not really involved with his family and rarely saw them. He did not speak fondly of them. (Blakeslee testimony.)
7. The Petitioners and Mr. Kilduff were so close that when he passed away, the police called Ms. Blakeslee to let her know. Apparently, he had listed her as his emergency contact. (Blakeslee testimony.)

8. Mr. Kilduff began working for the Massachusetts Department of Transportation in August 2016. He was a member in service of the Massachusetts State Board of Retirement. (Exhibit 1.)
9. When he became a member, he submitted a New Member Enrollment Form. It included beneficiary information. (Exhibit 1.)
10. He listed two beneficiaries: Mary Haggan and Ann Blakeslee. He included both their addresses and identified their relationship as “sister.” (Exhibit 1.)
11. The enrollment form has options for the retirement system member to check off in designating one or more beneficiaries: “primary” or “contingent.” The form also allows the retirement system member to check off the proportion of distribution to each of the listed beneficiaries as “all” or a “percentage.” If “percentage” is checked, there is a blank line where a number is supposed to be inserted. (Exhibit 1.)
12. The instructions state that “beneficiary or beneficiaries nominated will receive in the proportion designated any amount due at your death if you pass away prior to retirement. The right to change any nominated beneficiary is reserved by the member. A beneficiary blank with corrections or erasures is not acceptable.” (Exhibit 1.)
13. Mr. Kilduff designated Ms. Haggan the “primary” recipient. For her proportion, he checked “all” but then wrote in 50%. (Exhibit 1.)
14. He designated Ms. Blakeslee as a “contingent” recipient and crossed out “primary.” For her proportion, he also checked “all” but then wrote in 50%. (Exhibit 1.)

15. This part of the form is reproduced below:

Give Complete Name and Address of Each Beneficiary			
Name: <u>MARY HAGGAN Med.</u>	Designation <input checked="" type="checkbox"/> Primary <input type="checkbox"/> Contingent	Proportion* <input checked="" type="checkbox"/> All <input type="checkbox"/> 50% (Percent)	DOB: [REDACTED] Relationship: <u>SISTER</u> SSN: [REDACTED]
Street: [REDACTED]			
City, State, Zip: <u>BRAINTREE, MA</u>			
Name: <u>ANN BLAKESLEE RN.</u>	Designation <input type="checkbox"/> Primary <input checked="" type="checkbox"/> Contingent	Proportion* <input checked="" type="checkbox"/> All <input type="checkbox"/> 50% (Percent)	DOB: [REDACTED] Relationship: <u>SISTER</u> SSN: [REDACTED]
Street: [REDACTED]			
City, State, Zip: <u>BRAINTREE, MA</u>			

16. The form was signed by Mr. Kilduff and a witness. (Exhibit 1.)
17. Ms. Blakeslee explained that Mr. Kilduff came to her home on August 16, 2016 to talk about this form. (Blakeslee testimony.)
18. He brought the form with him. He told Ms. Blakeslee he wanted her and her sister to receive his money if he should pass away. He asked her for her personal information, including her social security number—which she gave him. (Blakeslee testimony.)
19. After speaking with Ms. Blakeslee for about a half hour, Mr. Kilduff went to Ms. Haggan’s house. (Haggan testimony.)
20. He had a similar conversation with Ms. Haggan. He told her he wanted her to have some of his money. She was very moved, but also felt a little guilty. In fact, when he asked her for her social security number, she declined to give it to him. (Haggan testimony.)
21. After Mr. Kilduff passed away, the Board notified the Petitioners they would not receive his benefits and, instead, the Board would pay the funds to Mr. Kilduff’s estate:

[Mr. Kilduff’s] enrollment form named his two sisters, Anna Blakeslee and [Mary Haggan] as primary beneficiaries but did not indicate the designation or percentages correctly. We sent a new form to Mr. Kilduff on August 23, 2016 in order to make corrections, however we did not

receive it back. On July 25, 2019 the Board met and approved to disburse his funds on account to his estate.

(Exhibit 4.)

22. The Board issued its written decision, and notice of appeal rights, in letter form on August 5, 2019; the Petitioners filed a timely appeal on August 12, 2019. (Exhibits 6 and 10.)
23. The Petitioners also asked the Board to reconsider its decision. The Board denied their request in letter form with notice of appeal rights on September 9, 2019. The Petitioners filed a timely appeal of that decision on September 18, 2019. (Exhibits 12 and 13.)

#### **CONCLUSION AND ORDER**

The statute governing how to designate beneficiaries is not complicated: “[a]ny member, upon his written notice on a prescribed form filed with the board prior to his death, may nominate, and from time to time change, one or more beneficiaries . . .” G.L. c. 32, § 11(2)(c). If there is no beneficiary, payment goes to the member’s legal representative, normally the executor or administrator of the estate. *See Robbins v. State Bd of Ret.*, CR-20-0344, 2023 WL 2806503 (DALA Mar. 31, 2023); *Fritz-Elliott v. State Bd. of Ret.*, CR-14-0368, 2016 WL 3476354 (DALA Apr. 22, 2016).

No statute or regulation requires the “prescribed form” contain anything in particular. *See Robbins; cf. Millar v. State Bd. of Ret.*, CR-12-634 (DALA June 29, 2018) (no statute or regulation requires that superannuation application be witnessed). But Boards have drafted forms that require beneficiary information, witness signatures, and more.

DALA has held that if a beneficiary form is missing a witness signature, it is a fatal omission nullifying the form's effect. *Lawlor v. State Bd. of Ret.*, CR-16-514, 2019 WL 1583072 (DALA Jan 25, 2019), *citing Fritz-Elliott*.<sup>3</sup> Otherwise, "when a beneficiary designation is on file, although not quite in the form a board expected, it may be given effect if it 'substantially complies' with the requirements of the state retirement system." *Reis v. New Bedford Ret. Sys.*, CR-07-391, 2008 WL 7557364 (DALA Mar. 12, 2008), *citing Smith v. CRAB* Superior Court No. 05-3364, (May 2, 2007). If the beneficiary form is ambiguous, a retirement board should attempt to comply as best as possible with the decedent's "apparent wishes." *See Robbins; Lawlor*. This includes considering extrinsic evidence. *Id.* Therefore, retirement funds should pass to the estate only when there is no beneficiary form, the beneficiary form is invalid (*e.g.* because it lacks a signature), or the form is so ambiguous that the decedent's intent cannot be proven. *See Robbins*.

Here, the beneficiary form was signed and dated by the member, Mr. Kilduff, and signed by a witness. The Board's decision that the entire form was invalid because Mr. Kilduff "did not

---

<sup>3</sup> In *Fritz-Elliott*, the Petitioner "failed to indicate the proportion of his benefits to be paid to Ms. Fritz-Elliott upon his death, and the form was not signed by a witness." DALA noted that "[t]hese omissions" were fatal. However, nothing in that case, or the cases it cited, indicated that a blank proportion of benefits alone would invalidate the form. Rather, the controlling factor was that the document was not signed by a witness.

Similarly, a will must be in writing, signed by the testator, and signed by two witnesses. *See G.L. c. 190B, § 2-502*. As long as it meets those basic requirements, it is a valid will—even if it contains ambiguous or incomplete sections. If ambiguities exist, a court will not invalidate the will; rather, it will ascertain the testator's intent by interpreting the language of the document and considering any extrinsic evidence. *See generally Flannery v. McNamara*, 432 Mass. 665, 668 (2000).

indicate the designation or percentages correctly” is an unduly harsh result not warranted by statute or precedent. *Id.* The form substantially complied with the retirement statute and is valid. The only question is whether I can discern Mr. Kilduff’s apparent wishes. In doing so, I evaluate whether his wishes are unambiguous; if not, I may rely on extrinsic evidence. *Id.*

The beneficiary form can be confusing, especially for a lay person. It warns that a “beneficiary blank with corrections or erasures is not acceptable.” It therefore encourages the member to fill out each section. But the choices are not necessarily apparent, especially to someone unfamiliar with the terminology. That may explain why Mr. Kilduff, for example, indicated each beneficiary should receive “all” and “50%” proportions of his benefits.

In any event, the form provides unambiguous evidence of Mr. Kilduff’s intent. It is clear he wanted his friends, the Petitioners, to be his beneficiaries.<sup>4</sup> It also indicates unambiguously that he wanted to divide his proceeds evenly between the two. That is why, even though he listed Ms. Haggan as the “primary” beneficiary, he wrote 50% as her share upon distribution. That he made her the “primary” beneficiary and Ms. Blakeslee the “contingent” beneficiary is irrelevant. Even if Ms. Haggan had some superior claim over Ms. Blakeslee, Mr. Kilduff intended only that Ms. Blakeslee receive the 50% that remained in his retirement account after the distribution to Ms. Haggan.

The extrinsic evidence available supports the same conclusion. The Petitioners both testified credibly about their close relationship with Mr. Kilduff. He spoke to them on the same

---

<sup>4</sup> His reference to them as “sisters” was either because he felt as they were like sisters to him, or his belief that “relationship” referred to the beneficiary’s connection to each other. Either way, I do not interpret it as a mistake or fraud, as Ms. Broderick argued at the hearing.



day about wanting to leave them this money. He filled out the beneficiary form in front of them as he confirmed their personal information. There is no doubt he wanted them to have this money. The fact that he was equally close with them corroborates that he wanted them to evenly split the proceeds.

Therefore, the Board's decision that the Petitioners are not the beneficiaries of Mr. Kilduff's retirement benefits is **reversed**. The Board shall distribute half of Mr. Kilduff's benefits to Ms. Blakeslee and half to Ms. Haggan.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

---

Eric Tennen  
Administrative Magistrate