

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Timothy K. Goodale,
Petitioner

Docket No. CR-24-0661

May 30, 2025

v.

Newton Retirement System,
Respondent

Appearances:

For Petitioner: Rhonda S. Boulé, Esq., Newton

For Respondent: Jaclyn R. Zawada, Esq., Assistant City Solicitor, Newton

Administrative Magistrate:

Mark L. Silverstein

SUMMARY OF DECISION

Public Employee Retirement Option Selection and Beneficiary Designation, M.G.L. c. 32, § 12(1) and (2) - Retirement “Option C” - Denial of request to change the retired employee’s selection of Option C choice and survivor beneficiary after retirement affirmed.

Following his divorce the petitioner, a retired municipal employee requested that the retirement system remove his former spouse as his retirement “Option C” survivor beneficiary and change his retirement option selection to Option A, which provides no survivor benefit. He based his request upon a court-approved separation agreement that was incorporated but not merged into the divorce judgment and survived as an independent contract between the petitioner and his former spouse. The retirement system properly denied these requests. A retirement system member who chooses retirement Option C cannot change his option choice or survivor beneficiary designation after he retires. The separation agreement provides that if the former spouse cannot be removed as the survivor beneficiary of the petitioner’s pension, she must, no later than 30 days after receiving funds as surviving beneficiary, sign over those funds to her former husband’s estate or to a person he has designated to receive them. The petitioner’s estate could seek to enforce this obligation in the appropriate court if it were to be breached.

DECISION

Petitioner Timothy K. Goodale, a former laborer employed by the City of Newton who retired in January 2020 pursuant to retirement “Option C,” appeals, pursuant to M.G.L. c. 32, § 16(4), the Newton Retirement System’s October 31, 2024 decision denying his request to (1) remove his now-former spouse as his Option C retirement survivor beneficiary pursuant to the property division provisions of a settlement agreement the former couple signed that was incorporated but not merged into their 2024 Divorce Judgment; and (2) change his retirement option selection to “Option A,” which does not provide a survivor benefit and would, as a result, provide Mr. Goodale with a higher monthly retirement income than he receives under Option C.

The parties agreed to have the appeal decided without a hearing upon their written submissions. *See* 801 C.M.R. § 1.01(10)(c). DALA issued a scheduling order on November 15, 2024 identifying the issue to be decided as “whether a retiree who elected option C and named his then-wife as his Option C beneficiary may remove his now ex-wife as his beneficiary post-retirement consistent with what the parties agreed during divorce proceedings.” In accordance with the deadlines established by the scheduling order, Mr. Goodale filed a memorandum in support of his appeal, together with six exhibits (Exhs. A-F) on January 14, 2025.¹ On March 13,

¹/ Mr. Goodale’s Exhibits are:

Exh. A: The Newton Retirement System’s denial of Mr. Goodale’s request to change his retirement option designation (from Option C to Option A) or remove his former wife as his Option C beneficiary, dated Oct. 31, 2024;

Exh. B: Mr. Goodale’s Choice of Retirement Option Form at Retirement, signed by Mr. Goodale and by his former wife on Sept. 9, 2019;

Exh. C: *Goodale v. Goodale*, Judgment of Divorce Nisi issued by the Norfolk (Massachusetts) Probate and Family Court, dated Oct. 8, 2024;

Exh. D: Separation Agreement signed by Mr. Goodale and his former wife, Babie Chona

2025, the Newton Retirement System filed a memorandum that referred to Mr. Goodale's exhibits and offered no others. The submissions upon which I decide this appeal are, therefore, the parties' respective memoranda, and the six exhibits that Mr. Goodale filed.

Findings

Based upon the parties' submissions, and the reasonable inferences drawn from them, I find the following facts:

1. Timothy K. Goodale worked as a laborer employed by the City of Newton, Massachusetts and was a member of the Newton Contributory Retirement System until he retired effective January 13, 2020. (Exh. A.)

2. When he retired, Mr. Goodale was married to Babie Chona Pepico Picante. They had been married in 2011. (Exh. D: Separation Agreement dated Oct. 9, 2024 at 1.)

3. As part of his retirement application, Mr. Goodale completed a "Retirement Option Form" on which he selected his retirement option from among the three options (Options A, B and C) offered by the retirement system pursuant to M.G.L. c. 32, § 12(1) and (2), and his designated surviving beneficiary if he chose an Option providing for one. (Exh. B at 4.) The

Goodale and dated Sept. 9, 2024, with attached "Division of Property Assets and Liabilities;"

Exh. E: Request by Babie Chona Goodale, addressed to Barbara O'Brien, Director, Newton Retirement System, requesting that she be removed as the survivor beneficiary on Mr. Goodale's pension, and waiving and relinquishing any and all of her rights to receive benefits of any kind under his pension, signed and sworn-to Sept. 10, 2024; and.

Exh F: Request by Timothy Goodale that his former wife be removed as his Option C beneficiary and to change his retirement option selection from Option C to Option A, dated Oct. 23, 2024, with attached copies of (1) page 10 of the "Division of Property Assets and Liabilities" attached to the Sept. 9, 2024 signed by Mr. Goodale and his former wife, Babie Chona Goodale; and (2) the request by Babie Chona Goodale, addressed to Barbara O'Brien, Director, Newton Retirement System, requesting that she be removed as the survivor beneficiary on Mr. Goodale's pension, and waiving and relinquishing any and all of her rights to receive benefits of any kind under his pension, signed and sworn-to Sept. 10, 2024.

form explained that the retirement options allowed the retiring employee “to select whether to receive their entire retirement allowance during their lifetime or to leave a lump sum or allowance for their survivor(s).” (*Id.*) The form explained further that:

Option A provided the highest annual retirement allowance, paid monthly, for life. Those payments would cease upon Mr. Goodale’s death, and no benefits would be paid to any survivors. (*Id.* at 1.)

Option B provided a smaller annual retirement allowance for life (paid monthly) than Option A would, with the annuity portion reduced to allow a lump sum benefit to be paid to a named beneficiary, when Mr. Goodale died, from the unexpended balance of his annuity account, if any balance remained. (*Id.* at 2.)

Under Option C, Mr. Goodale would receive, for life, an annual retirement allowance paid to him monthly that was less than he would receive under Options A or B. Upon his death, his designated survivor beneficiary would be paid a monthly allowance for the remainder of her life equal to two-thirds of the retirement allowance Mr. Goodale had received under Option C. (*Id.*)

4. The Retirement Option Form also stated that:

1. You may change your Option selection before your retirement becomes effective by filing a new form.
2. You may not change your Option selection once your retirement becomes effective.

(Exh. B at 1.)

5. Mr. Goodale selected Retirement Option C and designated his wife as his Option C survivor beneficiary. To acknowledge this retirement option choice and beneficiary designation, Mr. Goodale and his wife each signed the retirement option form on September 19,

2019. (*Id.*)

6. Mr. Goodale commenced a proceeding to divorce his wife in September 2021 in the Norfolk, Massachusetts Probate and Family Court. On October 8, 2024, they signed a separation agreement. This document included an agreement providing for the division of the spouses' property, including various financial accounts; real property in the United States and the Philippines; and their respective pensions and rights to pension survivor benefits. The property division agreement included, in turn, a "Statement of Facts" including the following:

8. Pursuant to Husband's (Mr. Goodale's) pension agreement with the Newton Retirement System, upon Husband's death, Wife (Babie Chona Goodale) is currently entitled to receive survivor benefits under Husband's Pension, which designation reduces Husband's available pension benefits. Wife shall cooperate and take all reasonably necessary steps, including executing documents, appearing at any hearing via zoom, or other actions necessary to remove Wife as the survivor beneficiary of Husband's pension. If drafted by Husband, Wife shall review and sign a letter to the City of Newton Retirement Board in which she informs the Board of her desire to relinquish her rights and requests their assent to her removal.

9. In the event that Wife is unable to successfully be removed as beneficiary, upon her receipt of any funds received as the survivor beneficiary from the City of Newton, Wife shall immediately sign over such funds, in a timely manner but no later than 30 days after her receipt, to Husband's estate or a person so designated by Husband to receive such funds.

(Exh. D: Separation Agreement signed by Mr. Goodale and his former wife, Babie Chona Goodale, and dated Sept. 9, 2024; attached "Division of Property Assets and Liabilities" at 10.)

7. The Separation Agreement was approved by the Norfolk Probate and Family Court and incorporated into a Divorce Judgment the Court issued on October 9, 2024. The agreement was not merged into the judgment and survived, instead, as an independent contract. (Exh. C.)

8. By letter dated September 10, 2024, Babie Chona Goodale requested that the Newton Retirement System remove her as the survivor beneficiary on Mr. Goodale's pension.

and waived and relinquished any and all of her rights to receive benefits of any kind under his pension. (Exh. E.) She sent this letter pursuant to Statement of Fact 8 of the “Division of Property Assets and Liabilities” included in the Separation Agreement she had signed earlier with Mr. Goodale (*see* Finding 6). (Undisputed.) The retirement system did not take any action on Babie Chona Goodale’s request. (Undisputed.)

9. On October 23, 2024, Mr. Goodale requested that the Newton Retirement System remove his former spouse as his Option C beneficiary. He based this request upon the property division he and his former spouse agreed-to in their Separation Agreement; his former spouse’s waiver, in the Separation Agreement, of any and all rights she had to receive survivor benefits as Mr. Goodale’s Option C beneficiary; and his former spouse’s letter to the Newton Retirement System requesting that she be removed as Mr. Goodale’s Option C beneficiary. Mr. Goodale also requested that, “if possible,” his retirement option selection be changed from Option C to Option A “going forward,” in order to provide him with a higher monthly pension that would relieve the difficulty he was having paying bills for “basic living expenses” with the Option C retirement benefits he was receiving. (Exh. F.)

10. On October 29, 2024, the Newton Retirement System voted to deny Mr. Goodale’s request pursuant to M.G.L. c. 32, §§ 12(1) and (2) and the information provided by the Retirement Option Form he and his former wife signed on September 19, 2019.

11. By letter dated October 31, 2024, the Newton Retirement System notified Mr. Goodale that it had denied his request to remove his former spouse as his Option C beneficiary and change his retirement option selection from Option C to Option A.

12. Mr. Goodale timely appealed the Newton Retirement System’s decision to DALA on November 6, 2024.

Discussion

M.G.L. c. 32, § 12(1) provides in pertinent part that any public employee retirement system member who is retired for superannuation or disability “may elect to have his allowance paid in accordance with the terms of any one of the three options [A, B or C] specified in subdivision (2) of this section,” which explains how retirement benefits are paid under each of these options. Section 12(1) also provides that a retirement board “shall provide the member and spouse with detailed information regarding the benefit option selected in order for the member and spouse to make an informed decision regarding said option.” Section 12(1) goes on to state that:

Election of an option shall be made by such member in writing on a prescribed form filed with the board, and once made may be changed from time to time by making a new election in a similar manner; provided, that no election of an option shall be valid unless such election is filed with the board on or before the date of receipt by the board of the written application for the retirement of such member or for a retirement allowance under the provisions of section ten, as the case may be, or unless such election is held with the board not more than fifteen days after the date of receipt by the board of the written application for the retirement of such member in case such application is made by the head of his department, or unless such election is filed with the board on or before the date his allowance becomes effective. Upon receipt of such election by the board, the option elected shall take effect as of the date the retirement allowance of such member becomes effective.

As this case illustrates, M.G.L. c. 32, § 12(1)’s provision that “no election of [a retirement] option shall be valid . . . unless such election is filed with the [retirement board] on or before the date the [retirement system member’s] allowance becomes effective” has “generated distress in the cases of members who designated their spouses as beneficiaries, retired, and then divorced.” *Ballinger v. Plymouth County Retirement Bd.*, Docket No. CR-23-0551, Order Granting Summary Decision at 2 (Mass. Div. of Admin. Law App., Jun. 28, 2024). *Ballinger* notes, however, that “the statutory prohibition on post-retirement option modifications applies

even in these circumstances.” *Id.*, citing, *inter alia*, *Barker v. State Bd. of Retirement*, Docket No. CR-15-72, Decision at 5-6 (Mass. Div. of Admin. Law App., Jun. 26, 2015), *aff’d by CRAB* (Mass. Contributory Retirement App. Bd., Dec. 21, 2016)(affirming the denial of retiree’s request to change her option selection from Option C to Option A on account of her subsequent divorce from the husband she had designated as her Option C survivor beneficiary; the DALA decision noted that DALA “lacked authority to change the law” precluding a post-retirement change of retirement option selection from Option C to option A); and *Jump v. State Bd. of Retirement*, Decision at 7 (Mass. Div. of Admin. Law App., Jun. 14, 2019)(although M.G.L. c. 32, § 11(2)(c) permits a change of an Option B beneficiary from time to time as desired by the retirement system member, the retirement statute makes no such provision as to an Option C beneficiary designation). DALA also lacks statutory authority to allow a post-retirement change of Option C selection or survivor beneficiary designation based upon “equitable considerations,” including the retiree’s stated need for additional income, as Mr. Goodale asserts here (*see* Finding 7.) *Ballinger*, Decision at 2, citing *Bristol County Retirement Bd. v. Contributory Retirement App. Bd.*, 65 Mass. App. Ct. 443, 451-52, 841 N.E.2d 274, 280-81 (2006).

Without question, Mr. Goodale’s former spouse waived, pursuant to the Separation Agreement, any interest she had as his Option C retirement beneficiary. The Separation Agreement survives as a private contract between Mr. Goodale and his former wife. However, the Newton Retirement System was not a party to the agreement or to the property division it directs. Neither the Separation Agreement nor the Divorce Judgment required or authorized the retirement system to take any action when Mr. Goodale’s former spouse waived any right or interest she had in his pension as the Option C survivor beneficiary. *See Ballinger*, Decision at 2-3.

As a result, the Newton Retirement System was not obligated by the Separation Agreement to remove Mr. Goodale's wife as his designated Option C beneficiary or change his retirement option election. Any action needed to enforce the terms of the Settlement Agreement against Mr. Goodale's former wife would be for Mr. Goodale or his estate or other successor to take. *See Ballinger*, Decision at 2, *citing Jump*, Decision at 23. The basis for such private action would be the Settlement Agreement's requirement that "[i]n the event that Wife is unable to successfully be removed as beneficiary, upon her receipt of any funds received as the survivor beneficiary from the City of Newton, Wife shall immediately sign over such funds, in a timely manner but no later than 30 days after her receipt, to Husband's estate or a person so designated by Husband to receive such funds." (*See Finding 6.*) In that circumstance, the Probate and Family Court could conceivably compel Mr. Goodale's former spouse to sign over to his estate or designated successor any Option C payments she received if she failed to do so within the time the agreement prescribes.² *See Ballinger*, Decision at 2-3.

No relief lies against the retirement system here, however. As is true of the grounds Mr. Goodale asserts for removing his former spouse as his designated Option C beneficiary or allowing him to change his retirement option selection to Option A, avoiding possible future disputes over Option C survivor benefits, if and when his former spouse receives them, is not a legally viable ground for making these changes. Under M.G.L. c. 32, § 12(1), the retirement system is without statutory authority to change Mr. Goodale's selection of retirement Option C or remove the Option C survivor beneficiary he designated because he requested these changes after retiring.

²/ No such breach, and no ground for reasonably anticipating one, is asserted here.

Disposition

The Newton Retirement Board's denial of Mr. Goodale's request to remove his former spouse as his Option C beneficiary or change his retirement option selection from Option C to Option A is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: May 30, 2025