

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Lorraine Moore,
Petitioner

v.

Docket No. CR-23-0053
Dated: March 1, 2024

Boston Retirement System,
Respondent

Appearance for Petitioner:

Joseph J. Brodigan, Esq.
Brodigan and Gardiner LLP
40 Broad Street
Boston, MA 02109

Appearance for Respondent:

Natacha Thomas, Esq.
Boston Retirement System
One City Hall Square
Boston, MA 02201

Administrative Magistrate:

James P. Rooney

Summary of Decision

A domestic relations order required a member to name his ex-wife as his Option D beneficiary. He never filed a prescribed option selection form with his retirement board, however, and hence the board properly denied his ex-wife's claim for survivor benefits.

DECISION

When Lorraine Moore divorced Donny Moore, who was a member of the Boston Retirement System, they entered into a Domestic Relations Order in which Mr. Moore promised to name her as his beneficiary if he died prior to retirement. After he died, the Boston Retirement System denied Ms. Moore's efforts to claim a survivor benefit because Mr. Moore

had not filed a prescribed form with the Retirement System naming Lorraine Moore as his beneficiary.

The Retirement System filed a motion for summary decision, which Ms. Moore opposed. I held a hearing on the motion on July 13, 2023. I marked the motion as Pleading A and the opposition as Pleading B. I accepted the exhibits each party proposed (Moore exhibits A and B and Retirement System exhibits 1-5). I have also admitted additional exhibits that Ms. Moore submitted with her appeal: the appeal itself, the letter she received from the Boston Retirement Board that she appealed, and a 2012 letter from the Board to her then-attorney regarding the Domestic Relations Order. These are now exhibits C-E. The exhibits are listed in an appendix.

Findings of Fact

Based on the exhibits and reasonable inferences from them, I make the following findings of fact:

1. Donny Moore became a member of the Boston Retirement System because of his work as a public safety officer for the Boston Housing Authority from 2008 until 2022. (Ret. Sys. Exs. 1 and 5)
2. Mr. Moore married Lorraine Moore in 1992. (Pleading B.) The couple divorced on September 27, 2011. On that date, the Probate and Family Court approved a Domestic Relations Order that addressed various scenarios concerning Mr. Moore's anticipated retirement benefit from the Boston Retirement System. To address the possibility that Mr. Moore might die before he retired, the Domestic Relations Order provided in clause 9 that:

The participant [Mr. Moore] hereby agrees to complete the appropriate Boston Retirement Board Beneficiary Designation Form, designating the Alternate Payee [Lorraine Moore] as the beneficiary for the death benefit pursuant to M.G.L. Chapter 32, Section 12(2)(d) . . . ; to file such completed form with the Boston Retirement Board in a timely manner; and to continue to maintain the Alternate Payee as the beneficiary for such death benefit during the lifetime of the Alternate Payee. Such death benefit . . . is to be payable to the Alternate payee in the event that the Participant should die prior to retiring and commencing receipt of his retirement benefit.

If Ms. Moore became ineligible to receive the entire Section 12(2)(d) benefit because she had remarried, this same clause provided that Mr. Moore:

agrees to complete the appropriate Boston Retirement Board Beneficiary Designation form, designating the Alternate Payee [Ms. Moore] as the beneficiary for a death benefit equal to Fifty percent (50%) of the Participant's [Mr. Moore's] contributions through September 27, 2011 (date of Judgment of Divorce) together with the interest credited on such contributions, through the date of Participant's death.

(Moore Ex. A; Ret. Sys. Ex. 3.)¹

3. The Board received the Domestic Relations Order in September 2011. (Pleading A.) On June 1, 2012, Timothy J. Smyth, the General Counsel of the Boston Retirement Board, sent a letter to Lawrence E. O'Brien, Esq, presumably an attorney representing Ms. Moore, stating that the Board had received the Domestic Relations Order but could not "process" it. Rather, Attorney Smyth declared that the Order will remain in Mr. Moore's file "until such time as Mr. Moore retires, dies or terminates service and requests a refund of his annuity." (Moore Ex. C.)

4. There is no evidence that Mr. Moore ever filed with the Boston Retirement Board a form designating Lorraine Moore as his Option D beneficiary. The Retirement System's records contain an Option D beneficiary designation form signed on June 10, 2019 designating Mr.

¹ Although there is nothing in the record to show that Ms. Moore remarried, it is apparent that she did because her appeal seeks 50% of her late husband's benefit, not the 100% she was supposed to receive if she had not remarried. *See* Ex. E.

Moore's daughter, Carolee Moore, as his beneficiary. (Ret. Ex. 2.) There is also a document dated May 18, 2022 in which Mr. Moore designated a different daughter, Jenese Brownhill, as his beneficiary. (Moore Ex. B.)

5. On May 19, 2022, Mr. Moore filed an intent to retire with the Boston Retirement Board. (Moore Ex. D.) He did not make it to retirement, however, as he died at age 71 on July 7, 2022 from cancer. (Ret. Sys. Ex. 4.)

6. Counsel for Ms. Moore wrote a letter to the Boston Retirement Board asking that the Board honor the Domestic Relations Order and provide Ms. Moore with an Option D death benefit. Board General Counsel Natacha Thomas responded in a January 11, 2023 letter that:

The Domestic Relations Order required Mr. Moore to list Ms. Moore as his option D survivor beneficiary. However, Mr. Moore never filed the Board's prescribed Option D form naming Ms. Moore as his Option D beneficiary. Therefore, Ms. Moore is not entitled to a survivor benefit.

She explained further that a Domestic Relations Order "is not a prescribed form as required under M.G.L. c. 32 § 1" and that the Public Employee Administration Commission had "determined that a DRO is not a 'prescribed form' as required by statute." (Moore Ex. D.)

7. Ms. Moore filed a timely appeal. (Moore Ex. E.)

Discussion

A member's public pension rights can be assigned as part of a divorce decree. M.G.L. c. 32, § 19; *Early v. Early*, 413 Mass. 720, 725 (1992); *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184, 186 (1989). A qualified domestic relations order (QDRO) is a mechanism divorcing parties may use to reach an agreement on the assignment of pension rights, but that does not mean that a QDRO is self-effectuating.

That issue was considered in another case involving someone named Moore, this time Diane Moore. In the QDRO entered into between Ms. Moore and her ex-husband, a Boston firefighter named Daniel Moore, Mr. Moore stated that he “elects to receive his retirement benefit under Option C of the Retirement Plan and hereby designates the Alternate Payee as the beneficiary for the death benefit under Option C.” *Dianne Moore v. Boston Retirement Board and PERAC*, CR-12-73, at 4 (DALA Oct. 9, 2015). This QDRO was filed with the Boston Retirement Board, but Mr. Moore did not file a form designating Ms. Moore as his Option C beneficiary. Decision at 4 and 6.

Although the QDRO purported to be self-effectuating, Magistrate Kenneth Bresler determined that it was not. He noted that the public employee retirement statute required that, for a member to nominate a beneficiary to receive a member survivor allowance if he should die before retiring, he must file a “written notice on a prescribed form filed with the board prior to his death” that nominates an eligible beneficiary. *See* M.G.L. c. 32, § 12(1). The statute defines prescribed form as “any form prescribed by any board and subject to the approval of the actuary.” *Id.* In this instance, Magistrate Bresler determined that the QDRO was not a form, was not prescribed by the Boston Retirement Board, and had not been approved by the actuary, that is the Public Employee Retirement Administration Commission. Decision at 8. He pointedly observed that this was PERAC’s view as well and that the statute supported this view because the only mention of QDROs in the provision addressing retirement options was language to the effect that:

The provisions of this section relative to the retirement of the member's election being accompanied by the member’s spouse shall not apply in the case of a member who is divorced and who has previously filed with the retirement board a domestic relations

order which has been entered by the probate court and provides for the option to be elected by the member.

M.G.L. c. 32, § 12(1). That is, the filing of a QDRO with a retirement board relieved a member from having to seek his wife’s signature acknowledging the option he selected, but had no other effect. Decision at 9.

The Contributory Retirement Appeal Board (CRAB) affirmed Magistrate Bresler’s decision. It observed that:

Although this case illustrates the injustice that can result from a failure to make agreed elections, the solution is not to place retirement boards in a position of having to discern an election from the widely variant language of court orders in domestic relations cases. The Legislature has not imposed this requirement on retirement boards, and PERAC and the magistrate correctly held that a “prescribed form” is just what the retirement law defines it to be — a “form prescribed by any board and subject to the approval of the actuary.”

Dianne Moore v. Boston Retirement Board and PERAC, CR-12-73, at 9-10 (CRAB, Sept. 30, 2016). The Suffolk Superior Court affirmed CRAB’s decision.. *Dianne Moore v. Boston Retirement Board and PERAC*, CA 178CV00244 (Leighton, J., Dec. 13, 2017).

If a QDRO is not self-effectuating even when it purports to be, how much less so is the DRO here that specifically informed Ms. Moore that in order for Mr. Moore’s agreement to name her as his Option 12(2)(d) beneficiary to be fulfilled, he “must file such completed form with the Boston Retirement Board in a timely manner; and to continue to maintain the Alternate Payee [Ms. Moore] as the beneficiary for such death benefit during the lifetime of the Alternate Payee.” Finding 2. Thus, the DRO informed Ms. Moore that she would not become her ex-husband’s Option D beneficiary until he filed a prescribed form naming her as such. This is consistent with the Option D provision in the retirement statute stating that “a member, upon his

written notice on a prescribed form filed with the board prior to his death, may nominate an eligible beneficiary.” M.G.L. c. 32, § 12(2)(d). Had Ms. Moore’s ex-husband actually filed a form naming her as his 100% Option D beneficiary, he would have had to file a new form if she remarried, which seems likely, to name her his 50% Option D beneficiary. He did neither. Instead, at different times he named one or the other of his daughters as his Option D beneficiary.

DALA has no power to undo what Mr. Moore did or failed to do. Because Donny Moore did not file a prescribed form with the Boston Retirement Board naming Lorraine Moore as his Option D beneficiary, the Boston Retirement Board acted within its authority to deny her survivor benefits. Hence, I affirm its decision.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: March 1, 2024

APPENDIX - EXHIBIT LIST

Lorraine Moore's exhibits

- A. Domestic Relations Order
- B. Beneficiary Form (May 18, 2022)
- C. Letter from Boston Retirement Board to Attorney O'Brien (June 1, 2012)
- D. Letter from Boston Retirement Board to Attorney Brodigan (January 11, 2023)
- E. Letter from Attorney Brodigan to Boston Retirement Board (January 20, 2023)

Boston Retirement System exhibits

- 1. Member Enrollment Form
- 2. Option D Beneficiary Selection Form (June 10, 2019)
- 3. Domestic Relations Order
- 4. Death Certificate of Donny Moore
- 5. Diane Moore v. Contributory Retirement Appeal Board, PERAC, and Boston Retirement Board, Suffolk Superior Court, Civil Action 178CV00244, Memorandum of Decision (Dec. 13, 2017).