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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3408-16T3

MARY BROWN for  
ADEBAYO EISAPE (DECEASED)

Petitioner-Appellant,

v.

POLICE AND FIREMEN'S  
RETIREMENT SYSTEM,

Respondent-Respondent,

and

GRACE OYAMENDAN EISAPE,

Intervenor-Respondent.

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Argued April 25, 2018 – Decided May 30, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from the Board of Trustees, Police and Firemen's Retirement Systems, Department of Treasury, PFRS No. 3-64564.

Michael B. Blacker argued the cause for appellant.

John A. Lo Forese, Deputy Attorney General, argued the cause for respondent Police and Firemen's Retirement System (Gubir S. Grewal, Attorney General, attorney; Melissa H. Raksa,

Assistant Attorney General, of counsel; John A. Lo Forese, on the brief).

Donald O. Egbuchulam argued the cause for respondent Grace Oyamendan Eisape.

PER CURIAM

Petitioner Mary Brown appeals from a decision of the Board of Trustees of the Police and Firemen's Retirement System (PFRS) that was adopted from the findings of fact and conclusions of law of the administrative law judge's (ALJ) initial decision denying her spousal survivor benefits as the claimed widow of decedent Adebayo Eisape, a former member of the PFRS. We affirm.

Petitioner and decedent were married on January 30, 1986, in New Brunswick, New Jersey. They lived together for about a year before they separated. At the time of the separation, petitioner was pregnant with another man's child.

After the separation, decedent submitted an affidavit in furtherance of his New York divorce action establishing his residence in that state. Decedent filed an affidavit of service of the complaint relative to petitioner with the court. The affidavit stated that service took place at a particular address in Brooklyn, in May 1987. The affidavit was signed by Isaac Allison. On August 7, 1987, the New York court granted a divorce to decedent by default predicated upon petitioner's failure to plead or to otherwise respond to the complaint.

In November 1987, decedent married Renee Carla Tucker. According to Tucker, decedent used the name Isaac Allison at his job and had a "mail drop" in New York. Decedent told Tucker that he was previously married but divorced in August 1987. Decedent later divorced Tucker and then married his third wife, Bashirat Musa, who he divorced in May 2006. In October 2009, decedent married his fourth wife, Grace Oyamendan. Decedent was married to Oyamendan until the time of his death on June 29, 2012.

When petitioner learned of decedent's death, she contacted PFRS claiming to be the widow. In November 2014, the PFRS rejected petitioner's assertion, determining Oyamendan to be the widow. Petitioner contested the decision. An ALJ conducted a testimonial hearing. At the conclusion of the hearing, the ALJ made findings of fact and determined that petitioner failed to prove by clear and convincing evidence that the New York divorce was invalid.

On March 13, 2017, the PFRS adopted the ALJ's recommendation that Oyamendan is the widow of decedent, and that she is entitled to the widow's survivor benefit provided in N.J.S.A. 43:16A-9(1).

On April 17, 2017, petitioner filed a notice of appeal, raising the following points:

POINT I

PETITIONER HAS OVERCOME THE PRESUMPTION OF VALIDITY OF MR. EISAPE'S SUBSEQUENT MARRIAGES BY CLEAR AND CONVINCING EVIDENCE.

POINT II

NO SUFFICIENT OR SUBSTANTIAL CREDIBLE EVIDENCE  
WAS PRESENTED BELOW TO SUPPORT THE DECISION  
OF THE PFRS BOARD.

An administrative agency's determination is presumptively correct, and on review of the facts, a court will not substitute its own judgment for that of an agency where the agency's findings are supported by sufficient credible evidence. Gerba v. Bd. of Trs., Pub. Employees' Ret. Sys., 83 N.J. 174, 189 (1980).

"If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result." Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001) (quoting Clowes v. Terminix Int'l, Inc., 109 N.J. 576, 588 (1988)).

Only where an agency's decision is arbitrary or capricious, or unsupported by sufficient credible evidence in the record, may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980) (citing Campbell v. Department of Civil Service, 39 N.J. 556, 562 (1963)). Moreover, the party who challenges the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (citations omitted).

Generally, the following three inquiries are made to determine whether a decision was "arbitrary, unreasonable or capricious." First, whether the agency's action violates express or implied legislative policies. Second, whether the record contains substantial evidence to support the findings on which the agency based its action. Finally, whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could reasonably have been made on a showing of the relevant factors. In re Proposed Quest Academy Charter School, 216 N.J. 370, 385-86 (2013) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).

A "widow" is defined as a woman "to whom a member . . . was married to the date of his death and who has not remarried." N.J.S.A. 43:16A-1(24)(b). A widow is entitled to fifty percent of the member's final compensation during her widowhood. N.J.S.A. 43:16A-9(1).

Our Supreme Court has made clear "that irrespective of the factual context in which the issue may arise, the last of two or more marriages is presumptively valid." Newburgh v. Arriqo, 88 N.J. 529, 538 (1982). To overcome such presumption, the challenging party has the burden of proving by clear and convincing evidence that the prior valid marriage was not terminated by death or divorce before the latest marriage. Ibid. The Court further

held when challenging the validity of a divorce in a foreign jurisdiction, the burden rests with the challenger to prove all defects, including lack of jurisdiction. Ibid. Satisfaction of the clear and convincing standard requires clear evidence which causes one to be convinced that the allegations sought to be proved are true.<sup>1</sup>

Further, our Supreme Court has held that "[t]here remains little, if any, interest in encouraging the resurrection of the deceased marriages, even if pronounced dead by other tribunals whose processes are not completely consistent with our own." Kazin v. Kazin, 81 N.J. 85, 98 (1979).

Here, petitioner argues that New York lacked jurisdiction over the divorce action as decedent was a New Jersey resident up until 1987.<sup>2</sup> Second, petitioner contends decedent's "mail drop" address was not sufficient proof of residency. In reaching her decision, the ALJ found:

Here, petitioner has failed to overcome her burden of proving, by clear and convincing evidence, that her marriage to Eisape was not terminated. In short, the record is bereft of testimonial or documentary evidence that would produce a firm belief or conviction in a trier of fact that the [j]udgment of

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<sup>1</sup> See New Jersey Model Civil Charges, Sec. 1.19, revised August 2011.

<sup>2</sup> N.Y. C.L.S. Dom. Rel. §230.

[d]ivorce is invalid, due to fraud or otherwise. I so CONCLUDE.

Next, the subject divorce decree was issued by a court of competent jurisdiction in the State of New York. There is no evidence that petitioner attempted to appeal that judgment. Certainly, this tribunal does not have the jurisdiction to set that judgment aside or disregard it. Therefore, I CONCLUDE that until such time that the [j]udgment of [d]ivorce is declared invalid, it is deemed to be in place.

The PFRS accepted these findings and conclusions without modifications. Having considered the administrative record in light of our standard of review and controlling law, we discern no basis for error.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION