

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000309-MR

YVONNE WILLIAMS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 03-CI-01364

COUNTY EMPLOYEES RETIREMENT
SYSTEM; AND BOARD OF TRUSTEES OF
KENTUCKY RETIREMENT SYSTEMS

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CAPERTON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Yvonne Williams appeals from the Franklin Circuit Court's
opinion and order upholding the Kentucky Employees Retirement Systems'

("Retirement Systems") decision denying her survivor disability retirement benefits.

After a careful review of the record, we reverse.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

In the fall of 2002, William R. Williams was an employee of the Berea Sewer Commission, and a member of the County Employees Retirement System (“CERS”) by virtue of the Commission’s participation in CERS. In October 2002, Williams was diagnosed with a malignant brain tumor. His last day of work was apparently some time in October, and he spent the last weeks of his life hospitalized in Lexington. Williams died on Sunday, November 17, 2002.

After his diagnosis, Williams sought to apply for disability retirement, designating his wife, Yvonne, as his survivor beneficiary. Retirement Systems, which manages CERS pursuant to Kentucky Revised Statutes (KRS) 78.780(1), forwarded the appropriate paperwork to Cora Wilson, the Office Manager at the Commission, who gave it to Mrs. Williams for completion and execution. On Friday, November 15, Mrs. Williams returned the properly completed forms to Wilson. Unfortunately, Williams died two days later, before Wilson sent the paperwork to Retirement Systems. On the next day, Monday, November 18, Wilson called Retirement Systems and was told to fax the papers, which she did. Ultimately, Retirement Systems determined that Williams’ disability retirement application had been filed too late since he died prior to Retirement Systems’ receipt of the application, and that he was no longer a member of CERS due to his death. Thus, Retirement Systems determined that Mrs. Williams was entitled to a death before retirement benefit, instead of a survivor’s benefit under a disability retirement.²

Mrs. Williams brought this declaration of rights action in the Franklin Circuit Court seeking a court order requiring Retirement Systems to process the

² The death before retirement benefit resulted in a monthly benefit of \$406.74 under a life annuity; under disability retirement, Mrs. Williams’ survivor benefit would have been \$1,077.29 per month for life.

application for disability retirement. However, the trial court affirmed Retirement Systems' decision on the basis that KRS 61.590(1) requires a member's application for retirement benefits to be on file with Retirement Systems. The court concluded that since Williams died before that occurred, both his membership in CERS under KRS 61.535(1)(d), and his eligibility for retirement benefits pursuant to KRS 61.550, ceased upon his death. This appeal follows.

On appeal from a ruling by an administrative agency, courts apply the substantial evidence standard of review applicable to decisions of administrative agencies. "If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found."

Kentucky Unemployment Ins. Comm'n v. Landmark Cmty. Newspapers of Kentucky, Inc., 91 S.W.3d 575, 578 (Ky. 2002) (quoting *Southern Bell Tel. & Tel. Co. v. Kentucky Unemployment Ins. Comm'n*, 437 S.W.2d 775, 778 (Ky. 1969)). In this instance, however, no questions of fact exist. The only issue concerns the interpretation and application of KRS 61.535, 61.550, 61.590 and 61.600. Questions of law arising out of administrative proceedings are fully reviewable *de novo* by the courts. See *Camera Ctr., Inc. v. Revenue Cabinet*, 34 S.W.3d 39, 41 (Ky. 2000) (holding that "an erroneous interpretation or application of the law is reviewable by the court which is not bound by an erroneous administrative interpretation no matter how long standing such an interpretation"); *Revenue Cabinet v. Joy Techs., Inc.*, 838 S.W.2d 406, 408 (Ky.App. 1992) (holding that "[i]f a board has misconstrued the legal effect of the facts, courts are not bound to accept legal conclusions of that administrative body").

In pertinent part, KRS 61.535(1) provides that a person's membership in the system shall cease "(b) [u]pon disability retirement; (c) [u]pon service retirement; (d) [u]pon death[.]" KRS 61.550 provides that "[w]hen membership ceases, except in the case of retirement, the member shall thereafter lose all right to any retirement allowance or benefits[.]" Thus, Retirement Systems argues that these provisions, in conjunction with the KRS 61.590(1) requirement that "[a] member or beneficiary eligible to receive retirement benefits . . . shall have on file at the retirement office on the form prescribed by the board, notification of retirement," mandate that the failure to have a notification of retirement on file prior to the cessation of membership by death forfeits all right to retirement benefits. We disagree.

As an initial matter, this argument overlooks the fact that KRS 61.600(1) provides that "[a]ny person may qualify to retire on disability" subject to certain requirements, one of which is "[t]he person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment[.]" KRS 61.600(1)(c). Additionally, KRS 61.542(2) specifically states that "[i]f the member dies prior to filing a notification of retirement or a request for refund, any **retirement benefits** shall be payable to the principal beneficiary." (Emphasis added.) The Retirement Systems' argument, and the trial court's ruling, cannot be squared with KRS 61.542(2) since that statute is rendered meaningless if the right to retirement benefits ceases due to death.³

³ Retirement Systems' argument would have more force if KRS 61.542(2) provided that when the member dies prior to filing a notification of retirement or a request for refund, any **death benefits** shall be payable to the principal beneficiary. The General Assembly, however, did not so provide.

In *Commonwealth v. Phon*, 17 S.W.3d 106, 107-08 (Ky. 2000), the court

stated:

When there appears to be a conflict between two statutes, as here, a general rule of statutory construction mandates that the specific provision take precedence over the general. Moreover, it is the Court's duty to harmonize the law so as to give effect to both statutes. Finally, statutes should be construed in such a way that they do not become meaningless or ineffectual.

(Citations and footnotes omitted.)

In this instance, we will not adopt a construction of KRS Chapter 61 which would render KRS 61.542(2) meaningless. In *Maybury v. Coyne*, 312 S.W.2d 455, 457 (Ky. 1958), the court noted that “[p]ension statutes should be examined in their entirety for the legislative intent and are to be given a liberal construction.” Furthermore, we note that no one has alleged that Williams’ last day of work was other than in October 2002. Nor has anyone alleged that Williams did not sign the notice of retirement, the beneficiary designation, or the application for disability retirement, *i. e.*, all the forms which he was required to complete in order to receive the requested benefits. Thus, under the limited facts of this case, Retirement Systems erred in failing to process Williams’ application for disability retirement.

The Franklin Circuit Court’s Opinion and Order is hereby reversed, and this case is remanded to that court for the entry of an order in conformity with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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