

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1537-09T2

THOMAS SACCONA,

Appellant,

v.

BOARD OF TRUSTEES, POLICE and  
FIREMEN'S RETIREMENT SYSTEM,

Respondent.

---

Submitted September 29, 2010 – Decided November 15, 2010

Before Judges Kestin and Coburn.

On appeal from the Board of Trustees  
of the Police and Firemen's Retirement  
System, PFRS #3-10-25559.

Law Office of Donald D. Vanarelli,  
attorneys for appellant (Mr. Vanarelli,  
of counsel and on the brief; Whitney W.  
Bremer, on the brief).

Paula T. Dow, Attorney General, attorney for  
respondent (Lewis A. Scheindlin, Assistant  
Attorney General, of counsel; Don E. Catinello,  
Deputy Attorney General, on the brief).

PER CURIAM

Thomas Saccone, a member of the Police and Firemen's  
Retirement System ("PFRS"), asked PFRS for permission to name a  
Supplemental Needs Trust for his son as his contingent

beneficiary for monthly survivor benefits. Ultimately, the PFRS Board of Trustees issued a final administrative decision declining to answer the question on the ground that it was not obliged to issue an advisory opinion.

Saccone appeals, contending that he was entitled to a favorable determination on the merits.

After carefully considering the record and briefs, we affirm substantially for the reasons expressed by the Board of Trustees in its final administrative decision dated October 16, 2009. Nonetheless, we add the following comments.

The facts are not in dispute. Saccone retired in December 2000. He listed his wife as primary beneficiary, entitled on his death to collect \$4,254.37 per month. As contingent beneficiary, he listed his son, Anthony Saccone. Eight years later, Saccone asked for permission to change his contingent beneficiary from his son Anthony to "Anthony Saccone Supplemental Benefits Trust under Article X of the document probated as his Last Will and Testament." He took this action so that his disabled son would remain eligible for unspecified public benefits while preserving the trust for Anthony's "supplemental" needs.

The Division repeatedly rejected Saccone's requests because the governing statute did not provide for payments to trusts and

because the "Division cannot be party to an effort to enable . . . [Anthony] to continue to be eligible for public assistance by not reporting the benefit he receives as a beneficiary as taxable income."

The Board took note of the relevant statutory provision which provides for payments after the beneficiary's death to a spouse or "child." N.J.S.A. 43:16A-12.1. The statute says nothing about payments to a trust. However, the Board declined to rule on the merits that payments could only be made to a spouse or child as distinguished from a trust. Instead, the Board expressed its final determination in these words:

Since Mr. Saccone and his spouse are still living, the Board declined to offer an advisory opinion to aid you in estate planning. The statutory requirements for payment of benefits (both pension and life insurance) are adequately defined and require no further explanation as to the meaning of payments of the benefits upon Mr. Saccone's death.

In Donadio v. Cunningham, 58 N.J. 309, 325 (1971), the Court observed that "it is clear that relief by way of a declaratory judgment should be withheld when the request is in effect an attempt to have the court adjudicate in advance the validity of a possible [claim or] defense in some unexpected future lawsuit." And Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971), stands for the

proposition that courts "will not render advisory opinions or function in the abstract" Thus, for example, we have held that an advisory opinion from the Director of Taxation to assessors and county tax board was "merely an advisory opinion rather than a final agency action," and not within the Tax Court's jurisdiction to review. Exxon Corp. v. Twp. of E. Brunswick, 192 N.J. Super. 329, 336 (App. Div. 1983), certif. denied, 96 N.J. 312-313 (1984).

The substantive issue raised by Saccone, whether a statute mandating compensation to a "child" of a retiree in these circumstances should be read as permitting the retiree to designate a trust for that child instead, is clearly hypothetical since Saccone and his wife are still alive and his son may or may not be alive when Saccone dies. Consequently, the opinion he sought was clearly advisory.

Judicial review of an agency decision "is restricted to four inquiries:

- (1) whether the agency's decision offends the State or Federal Constitution;
- (2) whether the agency's action violates express or implied legislative policies;
- (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (4) whether in applying the legislative policies to the facts, the agency clearly

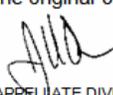
erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Taylor, 158 N.J. 644, 656 (1999)(citations omitted).

None of those principles were violated in this case. There were no issues of fact and the requested opinion was clearly advisory. The governing legislation contains no provision requiring or even permitting the Board to provide purely advisory opinions to retirees. Thus, we cannot criticize the Board for applying in this administrative setting the same principles which we would apply in a judicial setting. Consequently, we are obliged to affirm the Board's determination to withhold a ruling on the substantive question placed before it by Saccone.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION