NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1498-11T2

THOMAS SACCONE,

Appellant,

v.

BOARD OF TRUSTEES OF THE POLICE
AND FIREMEN'S RETIREMENT
SYSTEM,

Respondent.

Submitted September 24, 2012 - Decided October 24, 2012

Before Judges Sabatino, Fasciale and Maven.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of Treasury.

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

Jeffrey S. Chiesa, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Kellie L. Kiefer Pushko, Deputy Attorney General, on the brief).

PER CURIAM

Thomas Saccone (Saccone) appeals from a final decision by the Board of Trustees of the Police and Firemen's Retirement System (the Board) denying his request to designate a

supplemental benefits trust[1] as a beneficiary for his pension death benefits. We affirm.

Saccone, a retired firefighter, is a member of the Police and Firemen's Retirement System (PFRS). His wife and disabled adult son (Anthony) are entitled to receive pension death benefits when Saccone dies. Saccone requested that the Division of Pensions and Benefits (the Division) change his pension beneficiary from Anthony, the individual, to "Anthony J. Saccone

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[1] The parties have used the terms "supplemental benefits trust" and "supplemental needs trust" (SNT) interchangeably. Here, we use SNT.

> A special needs trust (sometimes known as a[n SNT] . . .) is a form of discretionary trust that permits disabled persons (or others acting on their behalf . . .), to place the assets of the disabled person in a trust (or to place assets of others in a trust) for the supplemental benefit of the disabled person but to still maintain that person's qualification for state and federal support and medical benefits.
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> [1-24 Walter L. Nossaman & Joseph L. Wyatt, Jr., Trust Administration & Taxation § 24.02A (2012).]

SNTs are primarily vehicles to shield assets from being taken into account for determining eligibility for Medicaid and other needs-based programs. See generally J.P. v. Div. of Med. Assistance & Health Servs., (App. Div. 2007) (holding that alimony did not constitute income received by a Medicaid recipient where alimony was paid to an SNT).

Supplemental Benefits Trust" to safeguard Anthony's eligibility to receive unspecified public assistance. In support of his request, Saccone's attorney expressed the following:

> Due to Anthony's disability and the benefits he receives as a disabled person, he cannot receive any additional assets outright. Therefore, it is necessary for Mr. Saccone to change the beneficiary designation on his pension fund to include the [Anthony Saccone Supplemental Benefits Trust] in place of Anthony Saccone, individually.
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> Please . . . provide me with the forms necessary to make the above change of beneficiary.

The Division declined the request and Saccone filed an administrative appeal to the Board. The Board initially "decline[d] to provide an advisory opinion since [Saccone] is still living and is currently collecting monthly PFRS benefits." As a result, the Board determined that "the statutes and regulations governing the PFRS do not require the PFRS Board to provide an advisory opinion as requested." We affirmed, Saccone v. Bd. of Trustees, Police & Firemen's Retirement Sys., No. A-1537-09 (App. Div. Nov. 15, 2010), and the New Jersey Supreme Court summarily reversed our opinion and remanded the matter to the Board to decide the case on the merits, Saccone v. Bd. of Trustees, Police & Fireman's Retirement Sys., C-702 (N.J. July 14, 2011) (interim unpublished order).

On remand, the Board denied Saccone's request and, relying on N.J.S.A. 43:16A-12.1a, explained that a survivor benefit is statutorily created payable only to a qualified survivor. The Board stated that when Saccone dies, he is automatically entitled to payment of pension death benefits to "[his wife] and [Anthony]." The Board relied on the plain language of N.J.S.A. 43:16A-12.1a and stated that Saccone cannot designate a beneficiary for the receipt of accumulated pension contributions. See also N.J.A.C. 17:4-3.5(b).[2] This appeal followed.

On appeal, Saccone argues that the Board (1) failed to interpret N.J.S.A. 43:16A-12.1a as part of a "harmonious plan to benefit its members and their survivors," and as a result, ignored the well-established principle that pension laws constitute remedial social legislation and should be liberally construed; and (2) violated New Jersey's public policy expressed by N.J.S.A. 3B:11-36 favoring the establishment of SNTs.

[2] We reject Saccone's contention that N.J.A.C. 17:4-3.5(b) is inapplicable. He argues that the regulation does not apply because it became effective in 2006 after the Board approved his 2000 application for retirement allowance. The regulation, which states that "[a] retiree cannot designate a primary or a contingent beneficiary for the receipt of the retiree's accumulated pension contributions in the event of the retiree's death," N.J.A.C. 17:4-3.5(b), merely implements the qualified beneficiaries created by N.J.S.A. 43:16A-12.1a. Furthermore, Saccone requested the beneficiary change in 2008, after the effective date of the regulation.

I.

When reviewing State administrative agency decisions, our role is generally 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.
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> [George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994).]

On the whole, "[o]ur function is to determine whether the administrative action was arbitrary, capricious or unreasonable." Burris v. Police Dep't, W. Orange, 338 N.J. Super. 493, 496 (App. Div. 2001) (citing Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980)). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.), certif. denied, 188 N.J. 219 (2006). Applying these standards of review, we conclude that the Board's decision was not arbitrary, unreasonable, or capricious.

"It is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)). "Absent arbitrary, unreasonable or capricious action, the agency's determination must be affirmed." Ibid. (citing R & R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999)). Nonetheless, we are not, of course, bound by the agency's opinions on matters of regulatory law. Levine v. State, Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001) (citing G.S. v. Dep't of Human Servs., 157 N.J. 161, 170 (1999)).

II.

We begin by addressing Saccone's argument that the Board failed to fairly interpret N.J.S.A. 43:16A-12.1a. By preventing him from designating the SNT as a beneficiary for the pension death benefit, Saccone contends that the Board interpreted the statute too narrowly, thereby frustrating the legislative purpose of the PFRS. Saccone asserts that the Board's decision prevented him from planning his estate to provide for Anthony "in a manner that would advance the public policy of [New

Jersey]." He emphasizes that remedial social legislation should be liberally construed and interpreted in favor of the employee who is intended to be benefited.

A.

We summarize the law governing statutory interpretation. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005). A court should "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." Ibid. (citation omitted). Therefore, we strive to give effect to every word of the statute, should not assume that the Legislature used meaningless language, and, lastly, avoid an interpretation that would render part of it superfluous. Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety, 120 N.J. 18, 26-27 (1990).

When interpreting a statute, the first step is to look to the plain meaning of the language. Bergen Commercial Bank v. Sisler, 157 N.J. 188, 202 (1999). Implicitly, where varying interpretations of the plain language in the statute are plausible, the statute's meaning is not self-evident. Bubis v. Kassin, 184 N.J. 612, 626 (2005). In those situations, the

court should look to judicial interpretation, rules of construction, or extrinsic matters. Sisler, supra, 157 N.J. at 202.

Applicable to N.J.S.A. 43:16A-12.1a, the Supreme Court has held that remedial statutes may appropriately be afforded a broad construction, see Hardwicke v. Am. Boychoir Sch., 188 N.J. 69, 90 (2006), and that "[b]eing remedial in character, statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby," Geller v. Dep't of Treasury, 53 N.J. 591, 597-98 (1969).

B.

Applying these principles of statutory interpretation, we conclude that the Legislature intended to limit a member's ability to select his or her own beneficiary of pension death benefits. The statutorily-created benefit is not Saccone's property to bequest and is not assignable; rather, it is Anthony's property. See La Sala v. La Sala, 335 N.J. Super. 1, 10 (App. Div. 2000) (indicating generally that member cannot control statutorily-created benefit of a widow), certif. denied, 167 N.J. 630 (2001); see also N.J.S.A. 43:16A-17 (stating that a retirement benefit is unassignable).

In 1967, the Legislature repealed N.J.S.A. 43:16A-12[3] and enacted N.J.S.A. 43:16A-12.1. By comparing the text of N.J.S.A. 43:16A-12 with that of N.J.S.A. 43:16A-12.1, we discern that the Legislature intended to create a statutory benefit payable only to a member's widow(er) or child(ren), thereby removing a member's ability to select any beneficiary. As enacted in 1944, N.J.S.A. 43:16A-12 permitted a pensioner to designate any beneficiary to receive his periodic retirement allowances. It provided:

> [A]ny member may elect to convert the retirement allowance, otherwise payable on his account after retirement, into a retirement allowance of equivalent actuarial value of one of the optional forms named below . . . .
>
> . . . .
>
> Option 1: A reduced retirement allowance payable during his life, with the provision that at his death a lump sum . . . to such person, if any, as he has nominated by written designation . . . .
>
> Option 2: A reduced retirement allowance payable during his life, with the provision that it shall continue after his death for the life of the beneficiary nominated by him . . . .

[3] In 1944, the Legislature enacted N.J.S.A. 43:16A-12 to permit a retiree to convert his retirement allowances and designate beneficiaries.

> Option 3: A reduced retirement allowance payable during his life, with the provision that it shall continue after his death at one-half the rate paid to him and be paid for the life of the beneficiary nominated by him . . . .
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> [N.J.S.A. 43:16A-12 (emphasis added).]

In 1967, however, the Legislature eliminated the "optional forms" and created a uniform "death benefit" for the member's widow(er) and child(ren), consisting of a pension based on a percentage of the member's final compensation. N.J.S.A. 43:16A-12.1a provides that:

> Upon the death after retirement of any member of the retirement system there shall be paid to the member's widow or widower a pension of 50% of final compensation for the use of herself or himself, to continue during her or his widowhood, plus 15% of such compensation payable to one surviving child[4] or an additional 25% of such compensation to two or more children; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of final compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation would be payable to such children in equal shares.
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> [(Emphasis added).]

[4] Although Anthony was born in 1971, it is undisputed that Anthony meets the definition of "child" pursuant to N.J.S.A. 43:16A-1(21)(d).

The plain text of N.J.S.A. 43:16A-12.1 indicates that a survivor benefit is payable only to a widow(er) or child(dren). Nothing in the text of N.J.S.A. 43:16A-12.1 permits a member to select his or her beneficiary.

The optional death benefits available in 1944 were based on a set retirement allowance which could be converted into an "equivalent actuarial value." In this way, the death benefits offered in 1944 were a form of deferred compensation, to which the actual member was entitled, and the member was offered the opportunity to determine how that compensation would be paid and to whom it would be assigned. N.J.S.A. 43:16A-12.1(a), on the other hand, automatically confers to a widow(er) or child(dren) certain pension death benefits, without requiring the member to accept a reduction in his or her allowance, and removes the member's ability to determine to whom it will be assigned.[5] Thus, reading the text of N.J.S.A. 43:16A-12.1a broadly, Hardwicke, supra, 188 N.J. Super. at 90, we conclude that the

[5] In other scenarios, PFRS members remain authorized to designate beneficiaries for their group life insurance and the return of pension contributions. See N.J.S.A. 43:16A-59 ("[b]enefits under such group [insurance] policy . . . shall be paid . . . to such person . . . as the member shall have nominated"); N.J.A.C. 17:1-5.4a ("[a] deceased member's group life insurance and pension benefits shall be payable directly to a named beneficiary").

Board's decision did not frustrate the legislative purposes of the PFRS.

III.

Next, we conclude that the Board did not violate New Jersey's public policy favoring the establishment of SNTs. In asking the Division to change his beneficiary from his disabled child to a trust established by him for the benefit of that child, Saccone seeks to shelter the child's income for purposes of Medicaid eligibility. Because he is attempting to fund a third-party trust with money that belongs to a first-person trust beneficiary, however, the Board properly found that his request could not be granted. Significantly, Saccone has failed to show that other types of trusts which would accomplish the same purpose are unavailable to Anthony. Moreover, the mere fact that certain funds may not be assigned to a trust does not undermine the public policy in favor of SNTs.

As we recognized in J.P. v. Division of Medical Assistance & Health Services, 392 N.J. Super. 295, 300 (App. Div. 2007), "[t]he Federal Medicaid statute, 42 U.S.C.A. § 1396p(d)(1), counts for purposes of 'an individual's eligibility for, or amount of, benefits under a State plan,' assets placed in a 'trust established by such individual.'" The United States Congress recognized an exception "for [SNTs] created pursuant to

42 U.S.C.A. § 1396p(d)(4)." J.P., supra, 392 N.J. Super. at 300.

Section (d)(4) exempts the following types of trusts from the Medicaid statute:

> (A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3) [42 U.S.C.S. § 1382c(a)(3)]) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title [42 U.S.C.S. §§ 1396 et seq.].
>
> (B) A trust established in a State for the benefit of an individual if--
>
> > (i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),
> >
> > (ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title [42 U.S.C.S. §§ 1396 et seq.], and
> >
> > (iii) the State makes medical assistance available to individuals described in section 1902(a)(10)(A)(ii)(V) [42 U.S.C.S.

> § 1396a(a)(10)(A)(ii)(V)], but does not make such assistance available to individuals for nursing facility services under section 1902(a)(10)(C) [42 U.S.C.S. § 1396a(a)(10)(C)].

(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) [42 U.S.C.S. § 1382c(a)(3)] that meets the following conditions:

> (i) The trust is established and managed by a non-profit association.
>
> (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
>
> (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) [42 U.S.C.S. § 1382c(a)(3)] by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
>
> (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title [42 U.S.C.S. §§ 1396 et seq.].

> [42 U.S.C.A. § 1396(d)(4) (alterations in original).]

Following the adoption of the federal statute, the New Jersey Legislature adopted N.J.S.A. 3B:11-37 (our SNT statute) and defined an SNT as

> a trust established pursuant to 42 U.S.C. § 1396p(d)(4)(A) or an account within a pooled trust pursuant to 42 U.S.C. § 1396p(d)(4)(C).
>
> [N.J.S.A. 3B:11-37a.]

Our Legislature declared that:

> (a) It is in the public interest to encourage persons to set aside amounts to supplement and augment assistance provided by government entities to persons with severe chronic disabilities . . . .
>
> . . . .
>
> (e) Therefore, legislation is appropriate to facilitate the establishment of trusts to supplement and augment assistance provided by government entities to persons with severe chronic disabilities and persons who are disabled under the federal Social Security Act.
>
> [N.J.S.A. 3B:11-36a, e.[6]]

[6] N.J.S.A. 3B:11-36 conferred specific authority on our courts to establish SNTs for disabled persons that can be exempt from N.J.S.A. 30:4D-6f (limiting Medicaid eligibility when individuals attempt to use trusts (or other instruments) to "reduce[] or exclude[] coverage or payment for health care-related goods and services to or for an individual because of that individual's actual or potential eligibility for or receipt of Medicaid benefits").

In establishing our SNT statute, the Legislature omitted reference to 42 U.S.C. § 1396p(d)(4)(B), in effect declining to recognize section (B) or "Miller" trusts.[7] The absence of section (B) exemptions in New Jersey is likely the reason that Saccone seeks to fund a trust directly from PFRS without first vesting the money in Anthony. He believes that such a plan would establish an exempt trust under section (A). However, as previously discussed, the benefits that would fund the trust are not Saccone's, they are Anthony's. A trust funded with Anthony's pension benefits would, by definition, be a section (B) trust and hence not exempt from Medicaid eligibility consideration.

Saccone has not explained, nor do we perceive, why a trust could not be established upon Saccone's death by Anthony's guardian that would conform with the requirements of 42 U.S.C.A.

[7] Miller trusts, named after Miller v. Ibarra, 746 F. Supp. 19 (D. Colo. 1990), allow "individuals to qualify for Medicaid benefits in states that have income caps for Medicaid eligibility." J.P., supra, 392 N.J. Super. at 301 n.3. Qualifying "[i]ndividuals in those states can assign income to a Miller trust in order to avoid having the income counted against the cap." Ibid. (citing L.M. v. Div. of Med. Assistance & Health Servs., 140 N.J. 480, 484-89 (1995) (discussing this State's then-existing income cap program and the use of Miller trusts)). New Jersey no longer uses the income cap approach, and instead has adopted the medically needy Medicaid program. See N.J.A.C. 10:71-4.11(h) (indicating that New Jersey "cover[s] services in nursing facilities under the medically needy component of the Medicaid program").

§ 1396p(d)(4)(C). Such "pooled trusts" may be established by the disabled beneficiary to be managed by a nonprofit organization which retains some of the trust account's funds following the beneficiary's death. See generally Gary Mazart & Regina M. Spielberg, Trusts for the Benefit of Disabled Persons, New Jersey Lawyer, February 2009. Further, an SNT might be established for Anthony's benefit by the court pursuant to its authority under N.J.S.A. 3B:11-36. While the State relies on N.J.S.A. 43:16A-17 to contend that survivor benefits are not assignable in any circumstance, it has yet to be determined whether Anthony's benefits under the PFRS would be considered "retirement benefits" as contemplated by that statute. Barring such a determination, the possibility remains that a trust can be established that will accomplish Saccone's purposes. We need not resolve that question here definitively other than the extent that the possibility weighs against appellant's claim of necessity for a direct transfer of the pension benefit to an SNT.

Even if it is not possible to shield Anthony's pension from Medicaid eligibility consideration, the Board's determination does not undermine New Jersey's public policy concerning SNTs. While the Legislature declared that the establishment of SNTs is in the public interest, N.J.S.A. 3B:11-36a, it did not endorse

them without regard to funding source. Indeed, the Legislature's failure to include 42 U.S.C.A. § 1396p(d)(4)(B) trusts in its definition of SNTs evinces its intent to limit the types of funds that can be sheltered in SNTs. For that reason, the Board's refusal to assign Anthony's pension funds to a third-party trust is not contrary to the legislative purpose behind the establishment of SNTs.

Affirmed.