

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2006 CA 0547

JESSE BAUMLER

VERSUS

TEACHERS' RETIREMENT SYSTEM OF LOUISIANA

Judgment Rendered: December 28, 2006

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge
State of Louisiana
Case Number 517,742

The Honorable Timothy E. Kelley, Judge Presiding

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

EJG
JKW
JK

GAIDRY, J.

This appeal contests a trial court's determination that a retiree intended to select the maximum retirement benefit, pursuant to which all benefits ceased at the time of her death, as well as the trial court's denial of a motion for a new trial on the issue of intent. We affirm.

DISCUSSION

This record reflects that Vera Alford worked as a teacher in several Louisiana school systems from 1963 to 1982. On three occasions, she withdrew contributions she made to the Teachers' Retirement System of Louisiana (TRSL). On December 20, 2000, Ms. Alford paid \$37,117.11 to the TRSL to purchase eight years of service credit, which restored her service for the years 1963 to 1971.

Ms. Alford, who had a history of heart problems dating back to a bypass in 1992, was hospitalized in June of 2003 with congestive heart failure. On August 19, 2003, she submitted a retirement application to TRSL. That day, she met with Linda Dunnington, a TRSL employee whose principal duty is to counsel members about retirement. Ms. Dunnington attested that in counseling members at the time of retirement, she prepares a document entitled "Your TRSL Estimate" and explains the document in detail to the retiree. The TRSL Estimate generated and furnished that day to Ms. Alford lists eight options, explains the options, and sets forth an estimated benefit she would receive under each option. The first, entitled "Maximum Option" informed Ms. Alford that she would receive the largest monthly benefit possible, that all benefits ceased at the time of her death, and that no beneficiary may be designated under this option. The second, entitled Option 1, apprised Ms. Alford that she would receive a benefit slightly less than the Maximum Option amount, but that she could designate

a beneficiary, who, at the time of her death, would receive any remaining balance of her accumulated contributions. Ms. Dunnington explained that she informs the applicants that the actual selection will be made at a later date on another form entitled "Service Retirement Option Election Form."

During her August 19, 2003 retirement meeting, Ms. Alford executed a document entitled "Application for Service Retirement." The first page of the document states that the applicant "must complete Section 4 on the reverse and any other appropriate beneficiary information." In Section 4 of the retirement application, Ms. Alford listed her son, Jesse Baumler, as her retirement option beneficiary who would receive a monthly survivor benefit in the event of her death.

On September 24, 2003, the TRSL sent Ms. Alford a letter seeking additional information necessary to continue processing her retirement application, including a copy of Jesse Baumler's birth certificate only if she chose an option other than the Maximum or Option 1 on her "Affidavit of Retirement Plan Election," and a copy of her beneficiary's social security card. In an affidavit, Mr. Baumler attested that his mother telephoned him around September 25, 2003, while he was living in New York, and told him that the TRSL needed a copy of his birth certificate and social security card so that he could be the beneficiary of her retirement account. Mr. Baumler stated that he sent a copy of the requested documents the next day to his mother via Federal Express. A Federal Express receipt submitted by Mr. Baumler reflects a September 26, 2003 overnight shipment to Ms. Alford.

On October 8, 2003, Ms. Alford made her retirement option selection in a document executed before a notary. The document bears a stamp warning the retiree to read the document carefully, and that option choices could not be changed. The form set forth the monthly benefits she would

receive under six of the available options, and described the Maximum Retirement Allowance and Option 1 in detail. Under the Maximum Retirement Allowance, Ms. Alford would receive a monthly payment of \$1,006.00 for the remainder of her life, and all benefits would cease upon her death. Under Option 1, Ms. Alford would receive a monthly payment of \$979.00. This option stated that Ms. Alford had made contributions to her retirement account in the amount of \$62,690.46, and set forth that if she died before she exhausted her total contributions, the unpaid balance would be paid to her beneficiary. The form states that the figures provided therein were based on calculations relating to beneficiary Jesse Baumler. On the notarized affidavit, Ms. Alford elected the Maximum Retirement Allowance, writing out the words "Maximum Retirement" in the blank for her selection. On the form, there is a circle around the \$1,006.00 figure set forth in the maximum retirement plan, a reference to "\$50", which is the amount Ms. Alford elected to have withheld from her pension on the second page of the form, and some initials.

On November 5, 2003, Ms. Alford was hospitalized with end-stage congestive heart failure. She died in the hospital on November 18, 2003.

Thereafter, Mr. Baumler contacted the TRSL to receive information about collecting whatever benefit was available. He was informed that no benefits were available because his mother made a selection that did not provide for a beneficiary. Mr. Baumler filed this lawsuit against TRSL on March 2, 2004, seeking to recover the unpaid balance in his mother's retirement account on the date of her death in the amount of \$62,690.00. He claimed that his mother did not intend to exclude him from receiving the benefit of her retirement funds in the event of her death. He urged that the estimated affidavit on which his mother made her selection was ambiguous,

which led his mother to mistakenly elect the maximum retirement allowance. He also asserted claims for unjust enrichment and negligence.

In support of his argument regarding his mother's intent, Mr. Baumler submitted his affidavit in which he attested that he was told by his mother, in the summer of 2003, that she was going to name him as the sole beneficiary of her TRSL retirement account. He also submitted the affidavit of his uncle, Lloyd Alford, Ms. Alford's brother, who attested Ms. Alford told him that she intended to have Mr. Baumler be the sole beneficiary of her TRSL retirement account when she died. He also stated that prior to her death in November 2003, his sister informed him that she had arranged for Mr. Baumler to be the beneficiary of her retirement account.

Upon considering the evidence, the trial judge found that Ms. Alford did intend to select the Maximum Retirement plan on October 8, 2003, stressing that she made the selection in her own handwriting, and the fact that the monthly payment under that plan was circled and initialed.

This appeal, taken by Mr. Baumler, followed. He contends that the trial court misconstrued the evidence and should have found that his mother intended to make him the beneficiary of her retirement account. The trial court's finding as to Ms. Alford's intent on the date she selected her retirement plan is a factual finding that will not be disturbed by this court in the absence of manifest error. **Drapcho v. Drapcho**, 2005-0003 (La. App. 1 Cir. 2/10/06), 928 So.2d 559, 564-65, writ denied, 2006-0580 (La. 5/5/06), 927 So.2d 324. The issue to be resolved by this court is not whether the trial court ruling was right or wrong, but whether the ruling was a reasonable one. **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). There were two permissible views of the evidence under the facts of this case, namely, that Ms. Alford intended to

select the maximum benefit, which did not provide for a beneficiary benefit, or that her selection on the TRSL did not reflect her actual intent to provide for a beneficiary benefit. As there were two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. **Stobart**, 617 So.2d at 882. Accordingly, we may not disturb the trial court's ruling on the issue of Ms. Alford's intent.

Mr. Baumler filed a motion for a new trial, seeking to submit a supplemental affidavit from Lloyd Alford to add that Ms. Alford informed him for the last time while she was hospitalized on November 16, 2006, several days before her death, that she signed her son up to be the beneficiary of her retirement account. The trial court denied the motion for a new trial. We find no abuse of the trial court's discretion in denying the motion. See **Drapcho**, 928 So.2d at 565-66.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Jesse Baumler.

AFFIRMED.