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Heirs of Benjamin v. Heirs of Benjamin
20 FSM R. 188 (App. 2015)

As a result, the Decision issued by the Kosrae State Court is affirmed, whereby parcels 038U01, 038U03 and 022U02 were awarded to the Heirs of Clinton Benjamin and parcel 022U01 to the Heirs of Isaiah Benjamin.

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FSM SUPREME COURT TRIAL DIVISION

GLORY I. HADLEY,

Plaintiff,

vs.

FEDERATED STATES OF MICRONESIA
SOCIAL SECURITY ADMINISTRATION,

Defendant.

CIVIL ACTION NO. 2015-021

ORDER GRANTING SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Decided: October 5, 2015

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
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For the Defendant: Stephen V. Finnen, Esq.
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HEADNOTES

Civil Procedure – Summary Judgment – Grounds; Civil Procedure – Summary Judgment – Procedure

A trial court, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, may grant summary judgment only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, and once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

The trial court's disposition of a Social Security appeal on the record is final, subject to review by the appellate division. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Civil Procedure – Motions – Unopposed

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Social Security

Surviving spouse benefit payments are paid for each month starting with the month of death of the fully insured spouse and ending with the month preceding the month in which the surviving spouse dies or remarries. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

Administrative Law – Judicial Review; Domestic Relations – Marriage; Social Security

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

A Summons and Petition to Appeal was filed on May 14, 2015 by the Plaintiff, Glory I. Hadley (herein "Hadley"). The Defendant, Federated States of Micronesia Social Security Administration (herein "FSMSSA"), entered an Answer on May 25, 2015. On July 6, 2015 the FSMSSA filed a

Motion for Summary Judgment. Hadley did not respond to the motion within the time allowed under FSM Civ. R. 6(d). A Motion for Enlargement of Time was filed by Hadley on September 29, 2015 requesting time to file an opposition, which was denied by the court. After reviewing the evidence presented, the court grants FSMSSA's Motion for Summary Judgment.

II. STANDARD OF REVIEW

A trial court may grant summary judgment, viewing facts and inferences drawn from them in the light most favorable to the nonmoving party, only if the moving party shows that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. FSM Civ. R. 56(c); Congress v. Pacific Food & Servs., Inc., 17 FSM Intrm. 542, 545 (App. 2011); Carlos Etscheit Soap Co. v. McVey, 17 FSM Intrm. 427, 434-35 (App. 2011); Weno v. Stinnett, 9 FSM Intrm. 200, 206 (App. 1999); Nahnken of Nett v. United States, 7 FSM Intrm. 581, 586 (App. 1996).

Once the party moving for summary judgment presents a prima facie case of entitlement to summary judgment, the burden shifts to the non-moving party to produce some competent evidence showing that a genuine issue of material fact remains for resolution. FSM v. GMP Hawaii, Inc., 17 FSM Intrm. 555, 570 (Pon. 2011); Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308 (Pon. 2004); Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 212 (Pon. 2003); Fredrick v. Smith, 12 FSM Intrm. 150, 151-52 (Pon. 2003); Kyowa Shipping Co. v. Wade, 7 FSM Intrm. 93, 95 (Pon. 1995); Urban v. Salvador, 7 FSM Intrm. 29, 30 (Pon. 1995); Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 295 (Kos. 1992); Federated Shipping Co. v. Ponape Transfer & Storage, 4 FSM Intrm. 3, 11 (Pon. 1989).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 152 (Kos. 2005).

Failure to timely oppose a motion is deemed a consent to that motion, but a court still needs proper grounds before it can grant an unopposed motion. FSM Civ. R. 6(d); Dungawin v. Simina, 17 FSM R. 51, 55 (Chk. 2010); Marar v. Chuuk, 9 FSM Intrm. 313, 314 (Chk. 2000); Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 442 (App. 1994); Actouka v. Etnison, 1 FSM Intrm. 275, 276 (Pon. 1983).

III. DISCUSSION

Administrative Hearing

Glory Ada Hadley was married to Wainer Hadley, who passed away on July 17, 2009. Hadley received deceased spousal benefits from October 2009 to May 2012. The FSMSSA discontinued the payment of benefits based on Hadley's remarriage to Dixon David (herein "David"), pursuant to 53 F.S.M.C. 802(2), which states: "Surviving spouse benefit payments shall be paid for each month commencing with the month of death of the fully insured spouse and ending with the month preceding the month in which the surviving spouse dies or *remarries*." (emphasis added).

The decision to cease benefits by the FSMSSA was confirmed by the FSM Social Security Board (herein "the Board") on April 6, 2015 after an administrative review held on April 2, 2015. Hadley commenced this action claiming that the Board's decision was arbitrary, capricious, and an abuse of discretion because the evidence presented during the hearing on April 2, 2015 did not support her having remarried. Pl.'s Compl. at 3.

A transcript of the April 2, 2015 hearing shows that Hadley, David, and Kerman Alten (herein "Alten"), investigator of the FSMSSA, all provided testimony before the Board. Hadley testified that her and David were never married in court, nor was there a customary act performed to legitimize a marriage. Tr. of Administrative Hr'g at 2.

Upon being cross-examined by the FSMSSA, Hadley admitted that she and David have been living together for three (3) years, and that she has the title of Kedmadaw, which is a title taken from Soumadaw, the title given to David.¹ Hadley also admitted that her title is derived from being the wife of David. *Id.* at. 3.

The summary of David's testimony is that Hadley's designation is out of respect for being a companion of David, and not because they are married. *Id.* at 4-5. Alten testified that in speaking with Hadley in November of 2013, she stated that herself and David had been living together for thirteen (13) months during the time of the interview. *Id.* at 6. Based on the evidence adduced at the hearing, the Board ceased spousal benefit payments to Hadley.

Evidence presented during administrative hearing

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. 53 F.S.M.C. 708 ; Alokoa v. FSM Social Sec. Admin., 16 FSM Intrm. 271, 276 (Kos. 2009); Clarence v. FSM Social Sec. Admin., 12 FSM Intrm. 635, 636 (Kos. 2004).

Here, the following evidence used during the administrative hearing is submitted to the court for consideration:

- 1) Letter putting benefits "on hold" from administrator Alexander Narruhn to Hadley dated April 3, 2012;
- 2) Report on interview with Hadley by investigating officer Alten dated November 13, 2012;
- 3) Letter finding terminating payments of deceased spousal benefits from Alexander Narruhn to Hadley dated January 17, 2013;
- 4) Letter from Salomon Saimon, Esq., to the Board appealing January 17, 2013 decision dated April 12, 2013;
- 5) Letter from Alexander Narruhn to Salomon Saimon accepting appeal dated February 19, 2014;
- 6) Transcript of administrative hearing held on April 2, 2015;
- 7) Letter from Nakama Sana, Chairman of the Board, to Salomon Saimon upholding the

¹ The transcript also shows that Dixon David is also known as "peliendal."

termination of benefits to Hadley dated April 6, 2015.

Hadley was given an opportunity to solicit witnesses in her favor and cross examine adverse witnesses and submit documentary proof in support of her position. The court finds that the evidence submitted on record, taken in its entirety, is competent, material, and substantial to support the findings of the Board in denying benefits to Hadley based on remarriage pursuant to 53 F.S.M.C. 802(2). Accordingly, the decision of the Board is upheld.

IV. CONCLUSION

In viewing the facts and inferences in the light most favorable to the non-moving party, the defendant's Motion for Summary Judgment is HEREBY GRANTED. This matter is HEREBY DISMISSED. The Clerk of Court is instructed to enter judgment in favor of the defendant. Accordingly, because judgment is being entered, the hearing in this matter set for October 8, 2015 is HEREBY VACATED.

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FSM SUPREME COURT TRIAL DIVISION

MARK MAILO, individually and as President of
the Chuuk State Legislature House of Senate,

Petitioner,

vs.

SIHNA LAWRENCE, Secretary of the Department
of Finance, Government of the Federated States of
Micronesia, and successors, agents, and assigns,

Respondent.

CIVIL ACTION NO. 2015-1013

ORDER DENYING PRELIMINARY INJUNCTION AND DISSOLVING RESTRAINING ORDER

Ready E. Johnny
Associate Justice

Hearing: September 30, 2015
Decided: October 8, 2015

APPEARANCES:

For the Petitioner: Michael B. Watson, Esq.
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