

FSM SUPREME COURT TRIAL DIVISION

KANDIDA LOUIS,) CIVIL ACTION NO. 2014-009
)
Plaintiff,)
)
vs.)
)
FSM SOCIAL SECURITY ADMINISTRATION,)
)
Defendant.)
_____)

ORDER GRANTING SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: July 15, 2015
Decided: December 16, 2015

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
Kolonias, Pohnpei FM 96941

For the Defendant: Michael J. Sipos, Esq.
P.O. Box 2069
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Civil Procedure – Summary Judgment – Grounds

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. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

Civil Procedure – Summary Judgment – Procedure

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. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (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 the 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. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (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, and if the court so concludes, then the findings are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the appellate division. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These APA provisions apply to all agency action unless Congress by law provides otherwise and they apply to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

Domestic Relations – Marriage

The Pohnpei Supreme Court recognizes three types of marriages: 1) statutory civil marriage under 39 TTC 51; 2) statutory "religious marriage" commonly known in Pohnpei as "inou sarawi" meaning (a sacrosanct) and 3) statutory customary marriage known in Pohnpei as "pwopwoud en tiahk en sahpw." Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271-72 (Pon. 2015).

Common Law; Custom and Tradition – Pohnpei

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (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. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015).

Administrative Law – Judicial Review

A reviewing court must hold unlawful and set aside agency actions and decisions found to be: 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) contrary to constitutional right, power, privilege, or immunity; 3) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; 4) without substantial compliance with the procedures required by law; or 5) unwarranted by the facts. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272-73 (Pon. 2015).

Custom and Tradition – Pohnpei; Domestic Relations – Marriage

Customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

Administrative Law – Judicial Review; Social Security

When the Social Security Board's final order denying the plaintiff benefits because of remarriage rests on findings of fact that are supported by competent, material, and substantial evidence and does

not violate 17 F.S.M.C. 111(3)(b), its decision will be affirmed. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

Administrative Law – Administrative Procedures Act

Although a hearing officer has the discretion to decide which recording method to use, stenographic or recording machine, the hearing officer does not have the discretion to altogether fail to make a record of the hearing. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

Administrative Law – Administrative Procedures Act

At the hearing officer's discretion, evidence may be taken stenographically or by recording machine. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

Administrative Law – Judicial Review

When the summary that was submitted indicates the testimonies that were given and recorded and is an adequate account of the hearing, and when the plaintiff does not point to any discrepancy in the summary or dispute any of its content to show that what is presented to the court as the record is insufficient, the court finds, based on the hearing officer's discretion under 17 F.S.M.C. 109(5), and a review what was provided, that the submitted summary is sufficient to constitute the record. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

Civil Procedure – Summary Judgment – For the Nonmovant

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 275 (Pon. 2015).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

A Motion for Partial Summary Judgment was filed on February 3, 2015 by the defendant, FSM Social Security Administration (herein "FSMSSA"). A Reply to Motion for Summary Judgment was filed on February 13, 2015 by the plaintiff, Kandida Louis (herein "Louis"). An Order entered on June 16, 2015 addressed and ruled on the issues raised in the filings.

On June 17, 2015 Louis filed a Motion for Partial Summary Judgment. An Opposition to Motion for Summary Judgment was filed on June 29, 2015 by FSMSSA. A hearing on Louis's Motion for Partial Summary Judgment was held on July 15, 2015. Salomon Saimon, Esq., through the Micronesia Legal Services Corporation, appeared on behalf of Louis, and Michael J. Sipos, Esq., appeared on behalf of the FSMSSA. After consideration of the evidence before the court, summary judgment is entered in favor of FSMSSA.

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. Stinnet, 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, 151-152 (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).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009) (citing 17 F.S.M.C. 111(3)(b)).

III. DISCUSSION

Customary Marriage

The basis of Louis's Motion for Partial Summary Judgment entered on June 17, 2015 is to appeal the Social Security Administrator's decision, which was confirmed by the FSMSSA Board (herein "the Board"), to deny surviving spouse benefits to Louis based on remarriage, specifically, common law marriage.¹ Pl.'s Mot. for Partial Summ. J. at 3.

Louis cites In re Tokutake, 3A Pon. L.R. 444 (Pon. St. Ct. Tr. 1989), where the Pohnpei

¹ 53 F.S.M.C. 802(2) 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).

Supreme Court recognized three types of marriages: 1) statutory civil marriage under 39 TTC, Section 51; 2) statutory "religious marriage" commonly known in Pohnpei as "inou sarawi" meaning (a sacrosanct) and 3) statutory customary marriage known in Pohnpei as "pwopwoud en tiahk en sahpw." *Id.* at 456-57.

Because the Board's decision to deny benefits was based on common law marriage, Louis claims that the decision is invalid since common law marriage is not a legally recognized form of marriage as determined in *Tokutake*. Louis further makes an *ultra vires* argument that the FSMSSA went beyond its statutory authority by adding common law marriage as a basis for denial of Social Security benefits.

In its Opposition to Motion for Summary Judgment, the FSMSSA argues that the decision of the Board was based on Louis's remarriage under customary marriage, not common law marriage as alleged by Louis.² Def.'s Opp'n to Mot. for Summ. J. at 2.

In support of its claim, the FSMSSA made a Certification of Records filing on June 29, 2015, which is a collection of documents relating to this matter while being considered at the administrative level. In the record of the hearing held before the Board on November 20, 2013, under the "Decision" section, it states "The board voted to uphold the denial of the benefit based on the customary nature of the marriage." Certification of Records at 4. The court finds that the decision of the Board is clear, that the denial of benefits is based on customary and not common law marriage, making the decision of the Board valid because customary marriage is a recognized form of matrimony under Pohnpei law.³

Although the Certification of Records was not filed by the FSMSSA until June 29, 2015, the court finds that Louis should have known that the decision was based on customary marriage because they were present during the administrative proceedings, and this issue was raised in the FSMSSA's opposition to the Motion for Partial Summary Judgment. Accordingly, the denial of benefits based on customary marriage is found in favor of the FSMSSA.

Decision of the Board

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. *Alokoa*, 16 FSM R. at 276. The reviewing Court shall hold unlawful and set aside agency

² Both types marriages are defined under § 100.18 of the FSM Social Security Regulations (as amended in May 2012):

(a) *Customary Marriage*. Customary marriage is a marriage between two citizens or habitual residents of the same jurisdiction or State solemnized in accordance with the recognized custom of that jurisdiction or State. State court decisions on this subject may be consulted in cases of doubt, but such Court decisions shall not be given conclusive effect unless they are supported by written findings of fact.

(b) *Common-law Marriage*. A common-law marriage is one based not upon ceremony and compliance with legal formalities, but upon the agreement of two persons, legally competent to marry, to cohabit with each other in the same household, or as is sometimes referred to as "under one roof", who in fact cohabited in the same household for a period of no less than a year, with the intention of being husband and wife.

³ Customary law takes precedence over the common law, according to Pon. Const. art. 5, § 1; 1 TTC 103; 1 F.S.M.C. 203. Phillip v. Aldis, 3 FSM Intrm. 33, 38 (Pon. S. Ct. Tr. 1987).

Louis v. FSM Social Sec. Admin.
20 FSM R. 268 (Pon. 2015)

actions and decisions found to be: (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (ii) contrary to constitutional right, power, privilege, or immunity; (iii) in excess of statutory jurisdiction, authority, or limitations, or a denial of legal rights; (iv) without substantial compliance with the procedures required by law; or (v) unwarranted by the facts. 17 F.S.M.C. 111(3)(b).

Guidance as to what constitutes customary marriage, under Pohnpeian custom, is found in In re Tokutake, 3A Pon. L.R. 444, 455-56, 457 (Pon. St. Ct. Tr. 1989). The court in Tokutake held: The relationship of husband and wife with its attendant rights, duties and obligations is acquired only through marriage, after going through the formalities whether statutory or customary. In a statutory customary marriage known in Pohnpeian as "*pwopwoud en tiahk en sahow*" both parties must be citizens of Pohnpei (39 TTC 55).

The families of both of the parties to the marriage contract must consent expressly or impliedly, to the marriage. Solemnization of a customary marriage takes many forms. According to the common forms the man takes the woman and introduces her to his family, and a sister or a close female relative of the man puts special coconut oil on the bride (*keiehdi*) and places a lei (*kamwaramwarehdi*) over the bride's head. The application of oil and the placing of head lei on the bride, in many instances lately, are not practiced much. However, there must be some kind of gesture exhibited by the family of the bridegroom to indicate that they accept the marriage to take effect. Where the man is a widower or divorced, he would either take the proposed wife to his family and his eldest daughter, eldest sister, or a clan sister would perform the ceremonial rites. Otherwise, the man would make his proposal to marry known to his children, or to his sisters in a case where the man is childless and his children or sisters, if agreeable to the man's proposed wife, would go to the woman to vouch for their father's or brother's proposal to marry the woman. Any of these acts completes a valid customary marriage under Pohnpei custom. Where the marriage is between persons of nobility, certain special rituals are performed by certain select people of the community. A wedding feast follows all marriage ceremonies performed under custom, and gifts are offered to the married couple. For a valid marriage to be recognized by the statute and under Pohnpeian custom neither of the respective parties shall have a lawful living spouse.

[3A Pon. L.R. at 457-58.]

The FSMSSA argues that the holding of the court in Tokutake is instructive as it demonstrates that customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters. Opp'n to Mot. for Summ. J. at 5. The court finds this argument with merit.

The Certification of Records submitted by the FSMSSA shows evidence supporting the denial of benefits to Louis because of remarriage. In the minutes of the hearing before the Board, Louis claims that she had not remarried, although she was in a relationship with Ardin Malakai as boyfriend and girlfriend. However, testimony from Kerman Alten, Investigating Officer for FSMSSA, stated that he had seen Louis at Malakai's house on two occasions, Malakai himself admitted that they had been married, and that Mora Livai, sister of Malakai, stated that Louis was her sister-in-law and that Louis is married to her brother. Mem. from Investigation Officer to Claim Officer (June 14, 2013).

Although Louis raised the issue of potential bias by Alten during the hearing because of a land dispute, the Board accepted Alten's testimony as credible, and the court does not find anything in the record to deem Alten's testimony, or any other evidence before the Board, to be unreliable. The court concludes that the Board's final order rests on findings of fact that are supported by competent,

material, and substantial evidence that is not in violation of 17 F.S.M.C. 111(3)(b). Therefore, the decision of the Board is affirmed.

Full Record

During the hearing on July 15, 2015, Louis argued that the FSMSSA is required to produce a verbatim record of the administrative proceedings for the parties and the court to consider in this matter. 17 F.S.M.C. 109 governs the conduct of administrative hearings. In regards to recording, 17 F.S.M.C. 109(5) and (6) state

(5) At the hearing, technical rules of evidence shall not apply. At the discretion of the hearing officer, *evidence may be taken stenographically or by recording machine*. The hearing officer is authorized to issue subpoenas for witnesses and tangible evidence at the request of any party or on his own motion. Hearings shall be public except when the petitioner requests a closed hearing.

(6) Within 15 days after the conclusion of a hearing, *the hearing officer shall prepare a full written statement of his findings of fact and his decision*. The hearing officer shall forthwith transmit his findings of fact and decision to all parties. The decisions of the hearing officer shall constitute final agency disposition of the action.

(emphasis added).

Although a hearing officer has the discretion to decide which recording method to use stenographic or recording machine the hearing officer does not have the discretion to altogether fail to make a record of the hearing and its failure to substantially comply with this procedural requirement is yet another reason an agency action must be set aside. Ruben v. FSM, 15 FSM R. 508, 517 (Pon. 2008).

When an agency failed to substantially comply with the procedures required by law through the hearing officer's failure to prepare a full written statement of his findings of fact and his decision and the agency's failure to make a record of the hearing proceedings, either stenographically or by recording machine, the court will set aside the agency order. *Id.*

In Ruben v. FSM, 15 FSM R. 508 (Pon. 2008), the court set aside the administrative decision of the FSM Department of Finance because it was not clear from the record what evidence was used to reach a final decision, no statement of findings of fact was included, and neither party presented any evidence of a recording or transcript of the hearing.

In the present case, unlike Ruben, the FSMSSA in its Certification of Record filing submitted the following documents:

- 1) Notice to Louis putting benefits on hold dated June 5, 2013;
- 2) Notice for Closing Due to Remarriage dated June 6, 2013;
- 3) Memorandum from Investigation Officer to Claim Office dated June 14, 2013;
- 4) Letter from Administrator to Louis ceasing benefits and notice of right to appeal dated June 14, 2013;

- 5) Letter from plaintiff's attorney to the Board appealing decision dated July 8, 2013;
- 6) Letter from the Board to plaintiff's attorney accepting request to appeal dated July 11, 2013;
- 7) Memorandum from Claim Officer to Administrator dated August 13, 2013;
- 8) Summary of hearing. The documents show that the hearing was conducted over a course of two (2) days, the second and final day dated November 20, 2013. This document also shows the Board's final decision in upholding the denial of benefits to Louis;
- 9) Affidavit of Administrator certifying that the above-referenced documents are all the documentary evidence upon which the decision denying Louis's claim were made, dated June 25, 2015.

These documents show a chronological sequence of events and communications that led up to the Board's final decision. The remaining issue left for consideration by the court is whether the record that was submitted by the FSMSSA is adequate to reflect what transpired during the hearing.

17 F.S.M.C. 109(5), states that at the discretion of the hearing officer, evidence may be taken stenographically or by recording machine. Stenograph is defined as "A keyboard machine for reproducing letters in a shorthand system . . ." AMERICAN HERITAGE COLLEGE DICTIONARY 1354 (4th ed. 2010). What was submitted indicates the testimonies that were given and recorded is an adequate account of the hearing, and Louis does not point to any discrepancy in the summary or dispute any of its content to show that what is presented to the court as the record is insufficient.

Based on the discretion granted to the hearing officer under 17 F.S.M.C. 109(5), and after reviewing what was provided, the court finds that the summary submitted by the FSMSSA is sufficient to constitute the record under 53 F.S.M.C. 708 and the applicable regulations.

When a party's motion for summary judgment has been denied as a matter of law and it appears that the nonmoving party is entitled to judgment as a matter of law, the court may grant summary judgment to the nonmoving party in the absence of a cross motion for summary judgment if the original movant has had an adequate opportunity to show that there is a genuine issue and that his nonmoving opponent is not entitled to judgment as a matter of law. Western Sales Trading Co. (Phils) v. B & J Corp., 14 FSM Intrm. 423, 425 (Chk. 2006); Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 470 (Pon. 2004); Truk Continental Hotel, Inc. v. Chuuk, 6 FSM Intrm. 310, 311 (Chk. 1994). Because the court finds in favor of the FSMSSA on all issues, judgment is hereby entered in its favor.

IV. CONCLUSION

THEREFORE, in viewing the facts and inferences in the light most favorable to the non-moving party pursuant to FSM Civil Rule 56(c), summary judgment is hereby entered in favor of the defendant. This matter is HEREBY DISMISSED. The Clerk of Court is instructed to enter judgment in favor of the defendant.

* * * *