BEFORE THE EXECUTIVE DIRECTOR
FOR THE INDIANA STATE TEACHERS" RETIREMENT FUND

IN THE MATTER OF ROY D. HANELY, Member, KATHLEEN HANLEY, Petitioner, V. INDIANA STATE TEACHERS' RETIREMENT FUND, Respondent,	)	THE INDIANA STATE TEACHERS' RETIREMENT FUND

FINAL ORDER

By Resolution No. 2009-03-01 of the Board of Trustees of the Indiana State Teachers' Retirement Fund as the ultimate authority in this administrative review and pursuant to and in accordance with IC 4-21.5-3-28, the Board has directed the Executive Director to act as the Board's delegee and conduct final authority proceedings to issue a final order with respect to review and appeals of administrative action taken by the Fund and received by the Fund.

1. The Administrative Law Judge issued a Decision and Order in this matter on September 10, 2009 denying Petitioner's motion for summary judgment and granting summary judgment filed by respondents.

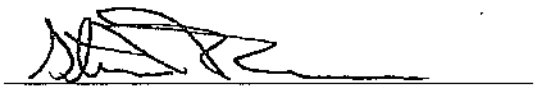
2. It has been more than fifteen (15) days since having received the Decision and Order of the Administrative Law Judge.

3. Copies of the Decision and Order have been served to the parties.

4. No objection to the Decision and Order of the Administrative Law Judge has been received.

NOW THEREFORE the Decision and Order of the Administrative Law Judge is affirmed.

DATED September 29, 2009



Steve Russo, Executive Director
Indiana State Teachers' Retirement Fund
150 West Market Street, #300
Indianapolis, IN 46204

BEFORE AN ADMINISTRATIVE LAW JUDGE
FOR THE INDIANA STATE TEACHERS' RETIREMENT FUND

In re: ROY D. HANLEY, Member,	)
KATHLEEN HANLEY, Petitioner,	)
v.	)
INDIANA STATE TEACHERS' RETIREMENT FUND and RONALYNN STANFIELD, Respondents.	)

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DECISION AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Introduction

Kathleen Hanley appealed from the initial determination of the Teachers' Retirement Fund (TRF) to honor a change of designation of beneficiary submitted by her husband, Roy D. Hanley. Roy made the change of beneficiary, naming his sister Ronalynn Stanfield as his primary beneficiary, while the Hanleys' marriage dissolution action was pending. The parties dispute whether Roy's change of beneficiary was void because it violated a provisional order entered by the Porter Superior Court.

Pursuant to a schedule agreed to by the parties, Kathleen Hanley filed a motion for summary judgment, and TRF and Stanfield filed cross-motions for summary judgment. The motions are fully briefed and ready for decision.

Findings of Undisputed Fact

1. Roy D. Hanley, born in April 1953, became a member of TRF in 1994. At that time, for the purposes of survivor benefits, he designated his beneficiary to be Kathleen M. Schulz, identified as his fiancé.

2. In April 1999, Roy submitted a change of data form changing his primary beneficiary to Kathleen M. Hanley, with the same date of birth, now identified as his wife.

3. On August 1 and 13, 1999, Roy submitted nearly identical change of data forms re-designating Kathleen as his primary beneficiary, and adding Mary K. Schulz (his stepdaughter) as secondary beneficiary.

4. In January 2006, Roy initiated a dissolution of marriage action in the Porter Superior Court. [1]

5. On or about April 20, 2006, the Porter Superior Court entered an order styled "Provisional Orders" stating that a hearing on provisional matters was held on March 16, 2006, approving the parties' stipulations and agreements as to some issues and resolving contests as to others. [2]

6. Among the stipulations approved was the following:

> The parties are mutually restrained from transferring, encumbering, concealing, selling or in any way disposing of any property except in the usual course of business or for the necessities of life or from interfering with any insurance policies currently in effect.

7. On October 30, 2006, Roy signed an Active Member Change of Data Form designating Ronalynn Jane Stanfield (his sister) as primary beneficiary, and two nieces also named Stanfield as his secondary beneficiaries. The form was received by TRF on November 3, 2006.

8. Roy died intestate on March 22, 2007. He was 53 years old.

9. All parties appear to assume that the dissolution action was still pending at Roy's death, and there is no evidence to the contrary in the record.

10. On September 5, 2007, Kathleen filed a complaint for declaratory judgment in the Porter Superior Court against Ronalynn Stanfield and TRF, seeking a declaration that Roy's change of beneficiary violated of the Provisional Orders entered in the dissolution action, and that Kathleen is the lawful primary beneficiary.

11. On February 4, 2008, Kathleen moved to voluntarily dismiss the declaratory judgment action in order to pursue her claim through TRF's administrative procedures. The action was dismissed without prejudice on the same date.

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[1] Kathleen alleges here that the dissolution action was filed on February 7, 2006, but the docket number, 64D02-0601-DR-500, indicates that the action was initiated in January.

[2] Kathleen states that the Provisional Orders was filed on April 10, 2006. The file stamp on the best copy of the Provisional Orders is difficult to read, but appears to say April 20, 2006. The judge who signed it did not fill in the blank for the date, but the order provided that it was entered "*nunc pro tunc* to March 17, 2006."

12. On April 22, 2008, Kathleen's attorneys, identifying her as Roy's spouse and administrator of his estate, applied for payment of all funds remaining in Roy's TRF annuity savings account, believed to be [redacted]

13. By letter to Kathleen's counsel dated May 12, 2008, TRF Pension Administrator Tony Gemmill responded that Kathleen was not the designated beneficiary, so no benefit would be paid to her. The letter did not include any explanation of procedures and time limits for seeking review.

14. By letter dated May 23, 2008, TRF's general counsel responded to an inquiry from Kathleen's counsel about the "next steps in the administrative review process." He requested that a petition for review be directed to the TRF Board of Trustees. He enclosed a document explaining "Your Right to Administrative Review."

15. By letter dated and faxed on June 26, 2008, Kathleen's counsel sought administrative review of the Pension Administrator's decision. This letter referred to a "letter dated March [*sic*] 23, 2008 which we received on June 25, 2008."

16. The TRF Board met on November 18, 2008, and voted to uphold staff's decision to pay the benefit to the most recently designated beneficiary.

17. Kathleen's counsel was given notice of this decision by letter dated November 19, 2008, which also explained that review by an administrative law judge could be obtained by filing a petition for review within 15 days after receipt. It appears that this letter was received by Kathleen's counsel on November 24, 2008.

18. On December 8, 2008, Kathleen's counsel filed a Petition for Review.[3]

19. Any finding of fact set forth as a conclusion of law is incorporated herein.

Conclusions of Law

Legal standard

Summary judgment "shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law." Ind. Code § 4-21.5-3-23(b).

[3] The copy of the petition supplied to the ALJ does not have a file-stamp or certificate of service. TRF staff represents that it was submitted on December 8, 2008, which is within 15 days after the November 19 letter was received.

As with motions under Ind. Trial Rule 56, a genuine issue of material fact exists where facts concerning an issue which would dispose of litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue. The party moving for summary judgment bears the burden of making a *prima facie* showing that there is no genuine issue of material fact and that he or she is entitled to a judgment as a matter of law. Once the moving party meets these two requirements, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact by setting forth specifically designated facts. *Indiana-Kentucky Electric Corp. v. Comm'r, Indiana Dept. of Environmental Management*, 820 N.E.2d 771, 776 (Ind. App. 2005) (citing cases).

Contrary to federal practice, a moving party cannot simply allege that the absence of evidence on a particular element is sufficient to entitle that party to summary judgment—it must prove that no dispute exists on all issues. *Dennis v. Greyhound Lines, Inc.*, 831 N.E.2d 171, 173 (Ind. App. 2005), citing *Jarboe v. Landmark Community Newspapers*, 644 N.E.2d 118 (Ind. 1994).

When the parties have filed cross-motions for summary judgment, each motion is considered separately to determine whether the moving party is entitled to judgment as a matter of law, construing the facts most favorably to the non-moving party in each instance. *Keaton and Keaton v. Keaton*, 842 N.E.2d 816, 819 (Ind. 2006); *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 160 (Ind. 2005).

An ALJ's review of an agency's initial determination is *de novo*, without deference to the initial determination. *Indiana Dept. of Natural Resources v. United Refuse Company, Inc.*, 615 N.E.2d 100, 103-04 (Ind. 1993); *Branson v. Public Employees' Retirement Fund*, 538 N.E.2d 11, 13 (Ind. App. 1989).

Evidence

No party has raised an objection to the admissibility of the evidence submitted.

Genuine disputes of material fact

No party has argued that there is a genuine dispute of material fact.

Issues presented

The ultimate question presented is whether TRF must honor Roy's change of beneficiary submitted in 2006 while he was subject to the Provisional Orders entered in the dissolution action. The parties break this into the following subsidiary issues:

1. Did Roy's change of beneficiary in 2006 violate the Porter Superior Court's Provisional Orders?

2. If so, was TRF bound to honor the change in beneficiary or give effect to the court order?

Discussion

If TRF is not required to honor a court order restraining a member from changing the member's beneficiary designation, but instead must honor the designation without reference to external documents, part of the reason for that rule (as will be discussed below) is that TRF should not be placed in the position of having to consider and interpret external documents such as court orders. Therefore, it is appropriate to reverse the issues as presented by the parties, and first consider whether TRF was required to honor the court order even if it restrained Roy from changing his designation of beneficiary.

A. TRF was required to honor Roy's change of beneficiary, and the Porter Superior Court order was invalid to the extent that it could be read to require TRF to distribute Roy's account to someone other than his designated beneficiary.

Regardless of whether the restraining order purported to forbid Roy from changing the beneficiary, the order was invalid to the extent that it levied TRF assets, and TRF was not required to honor it. To the contrary, TRF was required to follow the statutory terms of the retirement fund law and honor the change of beneficiary.

The benefits payable by Indiana's public employee pensions are exempt from seizure, levy on attachment, supplemental process and all other process. Ind. Code § 5-10.4-5-14(a) (TRF); § 5-10.3-8-9(a) (PERF). In two cases where a dissolution court ordered division of one spouse's public pension rights by way of a qualified domestic relations order (QDRO), the Court of Appeals held that such an order is invalid and that the equitable division of marital assets must take place in another way. *Everette v. Everette*, 841 N.E.2d 210, 212-13 (Ind. App. 2006); *Bd. of Trustees of Indiana Public Employees' Retirement Fund v. Grannan*, 578 N.E.2d 371 (Ind. App. 1991). For example, the court is free to evenly divide the marital estate by adjusting the distribution of other assets based on the value of the public pension. *Everette*, 841 N.E.2d at 214.

One valid policy behind this rule is to protect TRF and PERF from competing claims and the risk of violating court orders that are unknown or unclear. The General Assembly has dictated that TRF and PERF assets will be distributed solely as provided by statute and rule, not as modified by a court order or outside agreements memorialized in external documents.

The U.S. Supreme Court recently endorsed the policy reasons behind a rule restricting a pension plan to its own plan documents in determining whether to honor a beneficiary designation. In *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 129 S.Ct. 865 (2009), the wife, as part of a divorce proceeding, relinquished all rights to the husband's retirement and benefit plans, but he did not remove her as beneficiary from a

savings and investment plan (SIP) covered by ERISA.[4] When he died, over the conflicting claim of his estate, the plan awarded the SIP to the former wife. Although it found that the wife's waiver was valid under ERISA, the Supreme Court held that the plan was not required to honor a waiver external to the plan documents (that is, the rules of the plan). Referring to ERISA's requirement that a plan be administered solely by its own terms, the court observed:

> [B]y giving a plan participant a clear set of instructions for making his own instructions clear, ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: "simple administration, avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

129 S.Ct. at 875-76, quoting *Fox Valley & Vicinity Const. Workers Pension Fund v. Brown*, 897 F.2d 275, 283 (7th Cir. 1990) (Easterbrook, J., dissenting). The court went on:

> And the cost of less certain rules would be too plain. Plan administrators would be forced "to examine a multitude of external documents that might purport to affect the dispensation of benefits," *Altobelli v. IBM Corp.*, 77 F.3d 78, 82-83 (C.A.4 1996) (Wilkinson, C. J., dissenting), and be drawn into litigation like this over the meaning and enforceability of purported waivers. The Estate's suggestion that a plan administrator could resolve these sorts of disputes through interpleader actions merely restates the problem with the Estate's position: it would destroy a plan administrator's ability to look at the plan documents and records conforming to them to get clear distribution instructions, without going into court.

129 S.Ct. at 876.

TRF is required by law to obtain a designation of beneficiary from each member as soon as possible. Ind. Code § 5-10.4-4-10. TRF is required by law to pay the balance of the annuity savings account to the designated beneficiary. Ind. Code § 5-10.2-3-7.5(e). TRF's promulgated rules provide in pertinent part:

> (a) A new member shall designate, by name, primary and secondary beneficiaries to receive the assets present in the annuity savings account on the occasion of the member's death prior to retirement, less any disability benefits paid.

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[4] The Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, does not apply to plans established by states or their political subdivisions. 29 U.S.C. §§ 1002(32), 1003(b)(1). But the Supreme Court's observations about the merit of sticking to the plan documents and rules are equally applicable here.

* * *

(e) A member may change his or her beneficiary designation in a manner and form approved by the board. Only beneficiary designations received by the fund or in the case when it was postmarked on or before the date of death shall be valid. The designated beneficiary's right to a benefit vests on the date of death of the member.

550 IAC 2-4-5(a) and (e).

It is undisputed that Roy's change of designation was clear and met TRF's rules. TRF had no option other than to honor it. To the extent that the Porter Superior Court's order was intended to restrict TRF from honoring Roy's change, the order was invalid under *Everette* and *Grannan*, and TRF was not required to honor it.

B. Kathleen's interest in designation as a survivor beneficiary of Roy's annuity savings account was not marital property subject to the Porter Superior Court's restraining order.

As noted above, the point of the above is that TRF should never be placed in the position of interpreting a court order such as the restraining order put forward by Kathleen in this case. For that reason, the ALJ is reluctant to analyze the parties' arguments on the question of whether the order prohibited Roy from changing the survivor beneficiary of his annuity savings account. Nevertheless, because the parties have presented considerable argument on the issue, and because those arguments do not fully appreciate the nature of the assets at issue here, the question will be addressed in the alternative.

The Porter Superior Court was authorized to enter a temporary restraining order restraining any party from transferring or disposing of property. Ind. Code § 31-15-4-3(1). This authority is in furtherance of the court's ultimate authority to divide the property of the spouses as part of the final relief. Ind. Code § 31-15-7-4. For the purposes of IC 31-15, "property" is defined to mean all the assets of either party or both parties, *including*:

(1) a present right to withdraw pension or retirement benefits;

(2) the right to receive pension or retirement benefits that are not forfeited upon termination of employment or that are vested (as defined in Section 411 of the Internal Revenue Code) but that are payable after the dissolution of marriage; and

(3) the right to receive disposable retired or retainer pay (as defined in 10 U.S.C. 1408(a)) acquired during the marriage that is or may be payable after the dissolution of marriage.

Ind. Code § 31-9-2-98(b). Although this list is not exclusive,[5] the Court of Appeals has read it so, holding that in order to be included in marital property, pension benefits must be vested or "not forfeited upon termination of employment." *Granzow v. Granzow*, 855 N.E.2d 680, 683-84 (Ind. App. 2006). The status of the "vesting" of the benefits is determined as of the date of final separation, *i.e.*, the date the petition for dissolution is filed, *id.*, unless the pension is deemed to have been accumulated by the joint efforts of the parties, in which case it is included if the "vesting" occurs before the final decree. *Elkins v. Elkins*, 763 N.E.2d 482, 485 (Ind. App. 2002).

Any attempt to determine whether Kathleen's interest as a designated beneficiary was "marital property" must begin with an understanding of the dual nature of the funds that TRF collects and holds for its members.[6]

TRF maintains two segregated accounts. One account consists of "member contributions" of three percent of the member's salary, paid by the employer or the member. Ind. Code §§ 5-10.4-1-10, 5-10.4-4-11. These contributions are held in a segregated "annuity savings account" (ASA). Ind. Code § 5-10.4-2-2(d) and (e). The other account is a "retirement allowance account" funded by the General Assembly, based on the actuarial determination of what is necessary to provide the benefits promised by statute. Ind. Code §§ 5-10.4-2-2(b)(2) and -4.

The ASA belongs to the member. A member whose employment is terminated may suspend membership and withdraw the ASA plus accrued interest or earnings (subject to a tax penalty unless the funds are rolled into another tax-deferred account). Ind. Code § 5-10.4-4-13, applying § 5-10.2-3-6(a). Upon retirement, the member can take the ASA as a lump sum or purchase an annuity which supplements the member's pension benefit. Ind. Code § 5-10.2-4-2. Thus, the ASA is very much like other tax-deferred savings vehicles such as Individual Retirement Accounts (IRAs) and those authorized by 26 U.S.C. §§ 401(k) and 403(b).

A pension benefit from the retirement allowance account, on the other hand, is a traditional defined benefit pension. The TRF member is eligible for "normal retirement" if the member is at least 65 years old with at least 10 years of creditable service; is at least 60 years old with at least 15 years of creditable service; or is at least 55 years old and the member's age plus years of service total at least 85. Ind. Code § 5-10.2-4-1(b). A member is eligible for

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[5] In *In re Marriage of Adams*, 535 N.E.2d 124, 126 n. 1 (Ind. 1989), the Supreme Court expressly left open the question of whether the listing of assets in the statute is exclusive.

[6] In many respects, the TRF statutes at IC 5-10.4 apply or incorporate provisions of the PERF law, IC 5-10.2 and 5-10.3. *See* Ind. Code § 5-10.4-5-6 (TRF member eligible for retirement benefit as specified in IC 5-10.2-4); § 5-10.4-5-12 (benefit to TRF member who dies before retirement paid as specified in §§ 5-10.2-3-7.5, -7.6 and -8).

"early retirement" if the member is at least 50 years old and has at least 15 years of service. Ind. Code § 5-10.2-4-1(c).

Public employees are fond of thinking that their pension rights are "vested" after 10 years of service, but 10 years of service merely renders the employee eligible to retire upon meeting the age requirement. Legally, TRF is a "gratuitous" pension, so contractual rights do not vest until all retirement conditions have been met. *Haverstock v. State Public Employees' Retirement Fund*, 490 N.E.2d 357, 360-61 (Ind. App. 1986); *Bd. of Trustees of Indiana Public Employees' Retirement Fund v. Grannan*, 578 N.E.2d 371, 376 n. 1 (Ind. App. 1991).

At the time of the filing of the petition for dissolution, Roy had 11 years of service and was 52 years old. When he died, he probably had one more year of service and was 53 years old. Thus he was many years short of eligibility for normal retirement and needed at least three more years of service for early retirement.

Therefore, if this case involved a right to Roy's *pension benefit*, there is authority that such a right is marital property. While Roy's pension rights were not fully vested under *Haverstock*, his pension rights were "not forfeited upon termination of employment." Ind. Code § 31-9-2-98(b)(2). In *Grannan*, the trial court entered a QDRO dividing the husband's future PERF benefits before the husband reached retirement eligibility. The Court of Appeals noted that "the parties recognize the husband's PERF rights are an asset of the marriage subject to distribution." 578 N.E.2d at 376. The court cited *In re Marriage of Adams*, 535 N.E.2d 124 (Ind. 1989), in which the Supreme Court held the husband's police pension rights to be marital property because, by the time the final decree was entered, he had served the minimum 20 years of service required to be eligible for a benefit upon retirement.

However, in this case we are not dealing with the right to a future pension benefit. Nor are we dealing with a death benefit to a survivor of a retiree. Instead, we are dealing with disposition of Roy's ASA.

With respect to the death of a member before retirement, TRF provides a benefit to a surviving spouse or dependent under certain circumstances, none of which applies here. No spouse/dependent benefit was payable under Ind. Code § 5-10.2-3-7.5(a)–(c), because Roy was not a member of the General Assembly with 10 years of service, did not have 15 years of creditable service, and was not at least 65 years old with 10 to 14 years of service. No spouse/dependent benefit was payable under § 5-10.2-3-7.6 because Roy did not have 30 years of service. No spouse/dependent benefit was payable under § 5-10.2-3-8, which applies to members who die while not in service, while eligible to receive retirement benefits, but who have not yet applied for them; as noted above, Roy was not yet eligible for benefits when he died.

The default, therefore, is that the member's ASA—which is his money all along—is paid either to the member's designated beneficiaries or, in the absence of a designation, the

member's estate. Ind. Code § 5-10.2-3-7.5(e) and (f). So the dispute in this case is not about an expectation of a future pension benefit. It is about a savings account, like an IRA or a § 401(k) account or some other tax-sheltered savings account, that is the member's property.

It is clear that the ASA itself was marital property. In *Everette*, *supra*, the subject of the trial court's QDRO was the husband's PERF "account balance" of $14,117.14. *Id.* at 213 n. 8. While the court did not refer to this as an ASA, that is the only "account balance" that a PERF member could have. The Court of Appeals treated this balance as part of the marital estate. *See also Qazi v. Qazi*, 492 N.E.2d 692 (Ind. App. 1986) (tax-sheltered accounts from which husband could withdraw contributions, albeit subject to tax penalties, were marital property). None of the responding parties questions that the ASA itself was marital property.

The closer question is whether Kathleen's interest as designated survivor beneficiary was marital property subject to the restraining order. The precedent is that the survivor interest in a tax-sheltered account is not part of the marital property because its contingency on the owner's death is too speculative.

In *Rishel v. Estate of Rishel ex rel. Gilbert*, 781 N.E.2d 735 (Ind. App. 2003), a dissolution property settlement gave the husband full rights to his TRF retirement account, but he failed to change his beneficiary from his former wife and died after the dissolution was final. The Court of Appeals held that the wife did not have a property interest in the "mere expectancy or possibility" of being the survivor beneficiary. Therefore, her entry in the property settlement did not waive her beneficiary status.

Among the cases relied on by the court in *Rishel* was *Graves v. Summit Bank*, 541 N.E.2d 974 (Ind. App. 1989), which involved an IRA. In *Graves*, a final dissolution decree awarded the husband's IRA to him, but he died without changing the beneficiary from the former wife. In the ensuing dispute over the IRA between the husband's estate and the former wife, the court held that the divorce decree did not effect a change of survivor beneficiary. The court further held that the property settlement agreement, in which the IRA went to the husband and the wife released all claims to any property awarded to the husband, did not bar the wife from receiving the IRA as a survivor beneficiary. The court held that at the time she executed the release, the wife held no property interest until the death of the insured, her only interest being a "mere expectancy." 541 N.E.2d at 978.

In *Riddle v. Riddle*, 566 N.E.2d 78 (Ind. App. 1991), the husband had received an annuity as part of the structured settlement of a personal injury claim. The trial court awarded the wife 40% of the continued monthly income from the annuity and the survivorship benefit. The husband conceded, and the appellate court agreed, that the annuity itself was marital property, because the husband's right to the annuity was absolute prior to the filing of the dissolution petition and its value was fixed and ascertainable. 566 N.E.2d at 81, citing *Sedwick v. Sedwick*, 446 N.E.2d 8 (Ind. App. 1983). But the husband argued that the award of the *survivorship* benefit was an impermissible distribution of a future interest in a death

benefit. The court ruled that awarding the wife an interest in a survivor benefit, the value of which would depend on when the husband died, violated the requirement of certainty in the distribution of marital property.

Stanfield also relies on cases discussing the property interest of a beneficiary to a term life insurance policy, such as *Metropolitan Life Insurance. Co. v. Tallent*, 445 N.E.2d 990 (Ind. 1983). *Tallent* holds that the interest of a beneficiary to a term life insurance policy is a "mere expectancy," is not part of the marital estate, and was not subject to a restraining order similar to the one in this case. The term policy at issue in *Tallent* did not have a cash value, and the court held that the husband would have been forbidden from disposing of the policy if it had, but the restraining order still would not have forbidden the owner of the policy from changing the beneficiary. 445 N.E.2d at 993.

Based on this authority, Kathleen's interest as survivor beneficiary of the ASA was not marital property and was not subject to the court's restraining order. Therefore, the restraining order by its own terms did not forbid Roy from changing his beneficiary.

Order

Petitioner Kathleen Hanley's motion for summary judgment is denied. The cross-motions for summary judgment filed by respondents TRF and Ronalynn Stanfield are granted.

TRF's initial determination that it would deny Kathleen Hanley's claim for the balance of member Roy Hanley's annuity savings account and disburse the account to Stanfield as the designated survivor beneficiary is affirmed.

DATED: September 10, 2009.

Wayne E. Uhl
Administrative Law Judge
8710 North Meridian Street, Suite 200
Indianapolis, Indiana 46260-5388
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STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the PERF Board to hear this matter pursuant to I.C. § 4-21.5-3-9(a). Under I.C. § 4-21.5-3-27(a), this order becomes a final order when affirmed under I.C. § 4-21.5-3-29, which provides, in pertinent part:

> (b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:
>
> (1) affirming;
>
> (2) modifying; or
>
> (3) dissolving;
>
> the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.
>
> (c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.
>
> (d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:
>
> (1) identifies the basis of the objection with reasonable particularity; and
>
> (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.
>
> (e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by U.S. Postal Service first-class mail, **certified mail, return receipt requested**, postage prepaid, on September 10, 2009:

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