

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DST 10143

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JAMES R. TROTTER,	)	
	)	
Petitioner,	)	
	)	ORDER GRANTING
v.	)	SUMMARY JUDGMENT
	)	FOR RESPONDENT
STATE TREASURER, STATE RETIREMENT	)	
SYSTEMS DIVISION,	)	
	)	
Respondent.	)	

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**THIS CAUSE** coming on to be heard and being heard by the undersigned Administrative Law Judge at the North Carolina Office of Administrative Hearings (OAH), on the Respondent’s Motion for Summary Judgment, and the Petitioner appearing *pro se*, and the Respondent appearing and being represented by the North Carolina Attorney General’s Office, the undersigned, after considering the filings and after hearing the argument of Petitioner and of attorney for Respondent, hereby determines that there is no genuine issue as to any material fact and the Respondent is entitled to Summary Judgment as a matter of law.

1. After the hearing on Respondent’s Motion, Petitioner filed a request with the OAH stating his belief that the matter could “best be resolved by settlement than by judicial rights and remedies,” and asked for an appointment of a settlement Administrative Law Judge.
2. The parties had discussed settlement directly prior to the hearing on Respondent’s motion and circumstances were such that settlement was not possible. Moreover, after receiving Petitioner’s request as noted above, Respondent filed a Response to Request for Mediation, citing that his particular matter was not appropriate for mediation.
3. Based on the undisputed facts, Petitioner did not request the change to his beneficiary designation on his Option 2 retirement benefits with the Teachers’ and State Employees’ Retirement System within the time allowed by statute.
4. N.C.G.S. § 135-5(g) provides that a retired member may change his survivor beneficiary designation on an Option 2 retirement benefit to be his current spouse when the prior named beneficiary was his former spouse who died. The statute provides that “he or she may request to nominate a new spouse to receive the retirement allowance under the previously elected option, within 90 days of the remarriage, and may nominate a new spouse to receive the retirement allowance under the previously elected option by written designation duly acknowledged and filed with the Board of Trustees within 120 days of the remarriage.” N.C.G.S. § 135-5(g).

5. Petitioner retired effective February 1, 1993 naming his spouse, Saravette Trotter as his beneficiary. Saravette Trotter passed away on October 24, 2004. On November 8, 2008, Petitioner remarried. Petitioner requested by letter dated August 25, 2014 to name his current spouse as his designated beneficiary.

6. “Summary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that [a] party is entitled to a judgment as a matter of law.’” *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003) (citing N.C.R. Civ. P. 56(c)).

7. When ruling on summary judgment, the evidence is viewed in the light most favorable to the non-moving party, according that party the benefit of all reasonable inferences. See *Bailey v. Blue Cross & Blue Shield of Virginia*, 67 F.3d 53 (4<sup>th</sup> Cir. 1995) *cert. denied*, 516 U.S. 1159, 116 S.Ct. 1043, 134 L.Ed.2d 190 (1996); See also *Waddle v. Sparks*, 331 N.C. 73, 82, 414 S.E.2d 22, 27 (1992).

8. A party moving for summary judgment satisfies its burden of proof (1) by showing an essential element of the opposing party's claim is nonexistent or cannot be proven, or (2) by showing that the opposing party cannot (or did not) produce evidence to support an essential element of his or her claim or (3) the opposing party cannot surmount an affirmative defense which would bar the claim. See *Bernick v. Jurden*, 306 N.C. 435, 293 S.E.2d 405 (1982).

9. In the present case, it is uncontested that a period of more than five years elapsed from Petitioner’s remarriage to the time he requested that the beneficiary designation be changed. As a matter of law, Petitioner’s survivor beneficiary designation cannot be changed.

### **FINAL DECISION**

**NOW, THEREFORE, based on the foregoing**, and finding there are no genuine issues of material facts in this matter, the Respondent is entitled to judgment as a matter of law pursuant to Rule 56 of the North Carolina Rules of Civil Procedure. Respondent’s Motion for Summary Judgment is hereby **GRANTED**.

### **NOTICE**

**THIS IS A FINAL DECISION** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The

appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This is the 28th day of October, 2015.

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Augustus B. Elkins II  
Administrative Law Judge