

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

KONRAD KUCZAK, Et al.,

Plaintiffs,

-vs-

J. DOUGLASS PETERS, Et al.,

Defendants.

Case No. 73CV-05-1707

D E C I S I O N

Rendered this 5th day of November, 1974.

MARTIN, J.

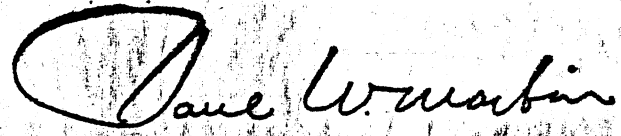
THOMAS J. ENRIGHT
CLERK OF COURTS

1974 NOV - 7 AM 9:25

COMMON PLEAS COURT
FRANKLIN CO., OHIO

This case comes before the Court on Cross Motions for Summary Judgment. The Court finds that there are no genuine issues as to any material facts. The salient facts are that decedent William K. Riley, a member of the Public Employees Retirement System died on October 17, 1972, survived by his second wife and widow, Eleanor Riley, and a minor son. Decedent Riley's prior marriage resulted in three children who were living in the home of his first wife from whom he was divorced, such divorce decree awarding custody to his wife. After Mr. Riley's death, his second wife, Eleanor Riley, made application for survivor's benefits under the PERS laws. No such payments have been made during the pendency of this action. Plaintiffs are the minor children of the first marriage, represented by their guardian ad litem. The issue presented is the validity of payments to the decedent's second wife-widow as opposed to his minor children from a prior marriage to whom he was paying Court ordered

support. Upon consideration of the arguments cited by both counsel the Court finds that the appropriate Revised Code Section 145.45 creates an arbitrary distinction between children living with a PERS member and children of prior marriages dependant upon the PERS member for support. As the policy of this Chapter of the Revised Code is to provide for the support of dependents upon the death or retirement of public employees, such a discrimination is unconsitutional, absent a valid State interest in favor of the distinction. Finding none, the Court concludes that Plaintiff's motion for summary judgment should be, and hereby is, SUSTAINED, and Defendant's motion for summary judgment is OVERRULED. Counsel for Plaintiff may prepare an Entry for the Court's signature ordering the proper distribution of benefits.



PAUL W. MARTIN, Judge

APPEARANCES:

Konrad Kuczak
Attorney for Plaintiffs

Michael R. Grove & Stephen D. Freedman
Assistants Attorney General
Attorneys for PERS

Gary R. Johnson
Attorney for Eleanor Riley