

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 May 2019

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Fundsatwork Umbrella Pension Fund v Guarnieri and Others [2019] ZASCA 78

The SCA today dismissed an appeal against a judgment of the Gauteng Division of the High Court, Pretoria setting aside the determination by the board of the appellant pension fund to allocate 42 percent of the death benefit of a member of the fund to the member's mother. The circumstances were that when the member died he was survived by his wife, his two children and his aged mother, who was living in a home for the elderly and suffered from emphysema.

The board decided to allocate 42 percent of the death benefit to the mother, but made that decision four days after her death. Payment was made thereafter and by virtue of arrangements made through another insurer the benefit of the payment was received by the member's sister. The initial distribution was set aside by the Pension Funds Adjudicator and remitted to the board for a fresh decision to be made. The board made the same allocation as in its original decision. This was set aside by the high court at the instance of the widow and children.

The SCA held that on a proper interpretation of the definitions of 'member' and 'dependant' in the Pension Funds Act 24 of 1956 and

s 37C(1)(a) of that Act, for a beneficiary to qualify as a dependant and be allocated a portion of a member's death benefit, they had to be alive at the time the distribution decision was made. As this was not the case with the member's mother there had been no effective allocation to her and the board was required to make an allocation among the group of dependants constituted by the widow and children.

The fact that the fund had made a payment pursuant to its decision did not affect the matter. In allocating a portion of the death benefit to the member's mother, it had made an allocation to someone who did not qualify for it and such allocation was a nullity. The position was no different from one where an allocation was made and paid to a complete stranger. There was no effective allocation in respect of that portion of the death benefit and the board was obliged to address that afresh.