

2013 IL App (1st) 122720-U

No. 1-12-2720

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SIXTH DIVISION
March 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF SAUK VILLAGE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 12 CH 9989
)	
HENRIETTA TURNER,)	Honorable
)	Thomas R. Allen,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly interpreted and enforced the terms of the parties' settlement agreement and ordered defendant to comply with the municipal ordinance that placed her on paid administrative leave.

¶ 2 Plaintiff, the Village of Sauk Village (Village), and defendant Henrietta Turner entered into a settlement agreement to resolve their pending litigation concerning the decision of the

1-12-2720

Village Board of Trustees (Board) to terminate Turner's position as the Village manager.

Thereafter, the Board issued an ordinance that eliminated the Village manager position for the upcoming fiscal year. The Board also placed Turner on paid administrative leave while the Village investigated allegations of financial irregularities and misspent Village funds. Turner, however, refused to go on administrative leave and continued to go to work. The Village moved the circuit court to, *inter alia*, enforce the settlement agreement and enter an order requiring Turner to comply with the Board's directive placing her on paid administrative leave. The circuit court granted the Village this relief.

¶ 3 On appeal, Turner argues that the circuit court failed to apply the plain and obvious terms of the settlement agreement, which prevented the Village from removing her from office. Turner also argues that, because the circuit court's ruling did not enforce any provision of the settlement agreement, the court lacked subject matter jurisdiction to enter the ruling that ordered her to comply with the Board's administrative leave decision.

¶ 4 For the reasons that follow, we affirm the judgment of the circuit court.

¶ 5 I. BACKGROUND

¶ 6 In June 2011, the Village issued Ordinance No. 11-023, which created the Village manager position. Ordinance No. 11-023 provided that the Village manager "shall be hired by the Village Board of Trustees," "shall be the chief administrative employee of the Village," and "shall serve for an indefinite period of time." Furthermore, two thirds "of the members of the Board of Trustees shall have the power to remove the Village Manager." Ordinance No. 11-023 also set forth the Village manager's duties and powers.

1-12-2720

¶ 7 In November 2011, the Village entered into an employment contract with Turner, hiring her as the Village manager from November 2011 through April 2013. The contract provided that the Village could terminate the contract for any reason by giving 30 days written notice to Turner. Moreover, the contract was subject to the appropriation and budget ordinances of the Village.

¶ 8 In February 2012, the Board terminated the contract for financial reasons—*i.e.*, to avoid the layoff of police officers. The Village gave Turner notice of her termination, and her last day of employment was to be March 16, 2012.

¶ 9 In March 2012, the Village filed a lawsuit seeking a declaratory judgment that Turner was terminated effective March 16, 2012 and was not entitled to pay under the contract after that date. The Village sought a temporary restraining order and a preliminary injunction to: bar Turner and Lewis Towers, the mayor at that time, from further undermining the Village's contractual rights; require Turner to leave her position; require Turner to return all Village property to the Village immediately; and require Turner to cease trespassing on Village property.

¶ 10 The circuit court denied the Village's motion for a temporary restraining order and preliminary injunction, and the Village moved for judgment on the pleadings. Shortly thereafter, however, the Village, Turner and the mayor resolved their dispute by entering into a settlement agreement in May 2012.

¶ 11 The terms of the settlement agreement provided, *inter alia*, that the Village would "dismiss all claims against Henrietta Turner" and the Village and Board agreed to "cease all attempts to remove Henrietta Turner from her position as Village Manager for the Village of

1-12-2720

Sauk Village, pursuant to the contract entered between Henrietta Turner and the Village Board or Sauk Village Ordinance 11-023." Furthermore, the mayor and Turner agreed not to "make any challenge to Ordinance 11-023 so long as neither the Board nor the Village take any steps to remove Henrietta Turner from the position of Village Manager during the current fiscal year pursuant to contract or Sauk Village Ordinance 11-023." Moreover, the Village and Board agreed not to "pass an ordinance eliminating the Village Manager position, which would result in the elimination of the position before the end of the fiscal year for the Village of Sauk Village, October 31, 2012." However, "[i]f the Village or Board passes an ordinance eliminating the Village Manager position in next year's budget, Henrietta Turner and the Mayor acknowledge the Village or Board has the lawful right to do so, and if said ordinance is passed, Henrietta Turner and the Mayor will accept the position has been eliminated and they agree not to file any lawsuit to challenge the elimination of the Village Manager position." In addition, the parties acknowledged that "Turner, as Village Manager, has those powers, duties, and responsibilities set forth in Ordinance 11-023 [and would] endeavor to carry out those powers, duties and responsibilities to the best of her ability for the benefit of the Village of Sauk Village."

¶ 12 The Village paid Turner and the mayor's attorney fees and costs, and the parties agreed that the court would retain jurisdiction over the settlement agreement and release. On May 23, 2012, the circuit court issued an order dismissing the declaratory judgment action with prejudice but retaining jurisdiction to enforce the terms of the settlement agreement.

¶ 13 In September 2012, the Board approved Ordinance No. 12-015, which eliminated the Village manager position for the 2013 fiscal year. The Board also placed Turner on paid

1-12-2720

administrative leave for 14 days, pending an investigation of her conduct and allegations of financial irregularities and misspent Village funds. The mayor, however, stated that he would veto Ordinance No. 12-015 and ordered Turner to report to work.

¶ 14 Consequently, the Village moved the circuit court to enforce the settlement agreement. Specifically, the Village asked to court to order Turner to comply with the Board's directive placing her on paid administrative leave. The Village also asked to court to bar the mayor from vetoing the Board's ordinance eliminating the Village manager position for the 2013 fiscal year and from otherwise interfering with the Board's directive placing Turner on administrative leave.

¶ 15 After reviewing the parties' briefs and hearing argument on the matter, the circuit court rejected Turner's argument that the Board had violated the terms of the settlement agreement by taking action in 2012 to eliminate the Village manager position for the 2013 fiscal year. The court also rejected Turner's argument that the Board's action to place her on administrative leave constituted a removal from office and, thus, a violation of the plain terms of the settlement agreement. The court found that, according to the provisions of Ordinance No. 11-023, the Board, not the mayor, had the authority to control the employee the Board had hired as the Village manager, and it was a proper exercise of the Board's authority to place Turner on paid administrative leave. The court found that because the Board had the power and authority "to deal with" the Village manager, neither the mayor nor the chief of police had the authority to order Turner to continue to report to work in contravention of the Board's decision to place her on paid administrative leave. Accordingly, the court ordered Turner to comply with the Board's directive placing her on paid administrative leave.

1-12-2720

¶ 16 The court, however, found that it did not have jurisdiction over the mayor, who was never a party to the declaratory judgment action. Accordingly, the court denied the Village's request for an order barring the mayor from carrying out his expressed intent to veto Ordinance No. 12-015.

¶ 17 Turner timely appealed the circuit court's ruling.

¶ 18 II. ANALYSIS

¶ 19 Before addressing the merits of this appeal, we address the Village's claim that Turner's appeal is moot because she has already served her paid leave, is no longer employed by the Village, and has suffered no damages. We disagree.

¶ 20 "A case becomes moot where the occurrence of events since filing of the appeal make it impossible for the reviewing court to render effectual relief." *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 7 (1997). There is, however, a basis for this court to decide this appeal because a decision could have "important consequences for the parties before the court" (*id.* at 8.), such as *collateral estoppel* effect on the pending discrimination claims between them. Therefore, we conclude that this appeal is not moot.

¶ 21 Turning to the merits of this appeal, Turner contends that the circuit court lacked subject matter jurisdiction to order her to comply with the Board's directive to take paid administrative leave because the Village sought to enforce the settlement agreement but the settlement agreement made no provision concerning administrative leave and more than 30 days had passed after the entry of the order dismissing the declaratory judgment action. Turner cites *Universal Outdoor, Inc. v. City of Des Plaines*, 236 Ill. App. 3d 75, 83 (1992), for the proposition that the "trial court's retention of jurisdiction to enforce the settlement agreement cannot be construed as

1-12-2720

a retention of jurisdiction to *** 'non-enforce' the agreement." Turner also argues that the circuit court's order was contrary to the plain language of the settlement agreement. We disagree.

¶ 22 A settlement agreement is a contract, and construction and enforcement of settlement agreements are governed by principles of contract law. *Hills of Palos Condominium Ass'n v. I-Del, Inc.*, 255 Ill. App. 3d 448, 476 (1993). A trial court interprets the meaning of clear and unambiguous contract terms as a matter of law, and its interpretation is subject to *de novo* review. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). A court's duty in construing a settlement agreement is to effectuate the intent of the parties to the agreement. *Gibbs v. Top Gun Delivery & Moving Services, Inc.*, 399 Ill. App. 3d 765, 772 (2010). "The intent of the parties must be determined from the plain and ordinary meaning of the language of the contract, unless the contract is ambiguous." *Henderson v. Roadway Express*, 308 Ill. App. 3d 546, 548 (1999).

¶ 23 A contract "should be given a fair and reasonable interpretation based on consideration of all its language and provisions." *Shelton v. Andres*, 106 Ill. 2d 153, 159 (1985). "[B]ecause words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others." *Gallagher*, 226 Ill. 2d at 233 (2007). "The intent of the parties is not to be gathered from detached portions of the contract or from any clause or provision standing by itself." *Id.* An unambiguous contract is enforced as it is written. *Bank of America National Trust & Savings Ass'n v. Schulson*, 305 Ill. App. 3d 941, 945 (1999). An ambiguity exists if a contractual provision is susceptible to more than one reasonable interpretation. *Id.* at 945-46. Contract language is not ambiguous simply because the parties disagree as to its meaning. *In re Marriage of Lehr*, 217 Ill. App. 3d 929, 935 (1991).

1-12-2720

¶ 24 Turner argues that the circuit court could not enforce the settlement agreement by ordering her to comply with the Board's directive placing her on administrative leave because nothing in the settlement agreement gave the Village the authority to place her on administrative leave. According to Turner, the court based its ruling on its interpretation of Ordinance No. 11-023, rather than the settlement agreement. Turner argues that the circuit court misapplied the plain language of the settlement agreement, which stated that the Village and Board would "cease all attempts to remove [her] from her position as Village Manager for the Village of Sauk Village, pursuant to the contract entered between Henrietta Turner and the Village Board or Sauk Village Ordinance 11-023." Turner contends it was irrelevant that she was placed on paid leave because she was removed from her position as Village manager where the Board continued to place her on serial leaves and thereby prevented her from reporting to work and performing her duties as Village manager.

¶ 25 We reject Turner's argument that the Board's action to place her on paid administrative leave was contrary to the plain terms of the settlement agreement. The unambiguous provisions of the settlement agreement provided that the Village and Board would not attempt to "remove" her from her position as the Village manager and would not eliminate that position from the budget for the remainder of the 2012 fiscal year. The settlement agreement also acknowledged that Ordinance No. 11-023 still governed Turner's powers, duties and responsibilities, and Turner agreed not to challenge Ordinance No. 11-023, which gave the Board the power to manage her as the Village's employee.

1-12-2720

¶ 26 Nothing in the settlement agreement provided that the Board would relinquish for the remainder of the 2012 fiscal year any of its responsibilities concerning the oversight and supervision of the Village manager as the Village's employee. Moreover, Turner fails to cite any relevant authority to support her assertion that being placed on paid administrative leave is the equivalent of removal from office. Turner's failure to support her conclusory assertion with legal authority results in forfeiture of the issue. *People v. Jung*, 192 Ill. 2d 1, 9 (2000). Such failure notwithstanding, the law is clear that the action of village trustees to place an employee on administrative leave does not constitute a removal from employment. See *Szewczyk v. Board of Fire & Police Commissioners of Village of Richmond*, 381 Ill. App. 3d 159, 170 (2008) (where the village president had removed the police chief from employment by firing him, the board of trustees subsequently restored him to his position by placing him on administrative leave). Accordingly, the Board was not prohibited by the terms of the settlement agreement from placing Turner on paid administrative leave during the investigation of her conduct concerning allegations of fiscal irregularities and the misspending of Village funds.

¶ 27 We also reject Turner's argument that the court lacked subject matter jurisdiction to enter the ruling directing her to comply with the Board's decision to place her on paid administrative leave. The relief granted by the circuit court clearly fell within its retained jurisdiction to enforce the terms of the settlement agreement, which provided, *inter alia*, that Turner would not challenge Ordinance 11-023 or the Board's elimination of the Village manager position for the 2013 fiscal year. The Village moved the court to enforce the settlement agreement because Turner refused to go on paid administrative leave and instead chose to follow with the mayor's

1-12-2720

contrary directive to continue to report to work. The Board argued that Turner's conduct breached the settlement agreement because she was challenging the Board's authority under Ordinance No. 11-023 to manage her as the Village's employee and was opposing the Board's authority to eliminate the Village manager position for the 2013 fiscal year. In response, Turner argued that the Board had breached the terms of the settlement agreement. Accordingly, the circuit court was required to construe the parties' contract terms and address the propriety of the Board's administrative leave decision and Turner's reliance on the mayor's contrary decision. The fact that administrative leave was not mentioned in the settlement agreement is irrelevant because the settlement agreement provided that Turner would not challenge the propriety of Ordinance No. 11-023, which gave the Board the power to manage her as the Village's employee.

¶ 28 We conclude that the circuit court properly (1) determined that the settlement agreement did not prevent the Board from placing Turner on paid administrative leave and (2) ordered Turner to comply with the Board's administrative leave decision.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 31 Affirmed.