

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120839-U

NO. 4-12-0839

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 8, 2013
Carla Bender
4th District Appellate
Court, IL

JAMES KNIERIM,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Clark County
THE CITY OF CASEY, an Illinois Municipal)	No. 10CH37
Corporation,)	
Defendant-Appellee.)	Honorable
)	Steven L. Garst,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* After a hearing on the parties' competing motions for summary judgment, the trial court correctly found defendant city cannot be estopped from requiring retired city officials to reimburse the city for health insurance costs it previously paid in full for those city officials who qualified through years of service.

¶ 2 Plaintiff, James Knierim, a retired alderman, brought an action for a permanent injunction or a declaratory judgment seeking to prohibit defendant, City of Casey (City), from requiring plaintiff to pay his health insurance costs through the City's group health plan when it previously provided health insurance coverage to plaintiff at no cost to him. Plaintiff argued he had a vested right in the continuation of the retiree health benefit provided to him upon the date he became an alderman and he was justified in relying on the continuation of that retiree health insurance benefit.

¶ 3 Defendant argued the health insurance plan had been changed several times

during the time plaintiff had been covered by the plan and plaintiff knew it could be changed at any time; thus, he could not have reasonably relied upon it remaining the same after he retired.

¶ 4 The trial court agreed with defendant and found plaintiff could not reasonably rely on a city ordinance providing for free retiree health insurance coverage, especially since the ordinance had been changed at least twice while plaintiff served as an alderman and he helped put the changes in place. The court granted defendant's motion for summary judgment and denied plaintiff's motion. Plaintiff appealed. We affirm.

¶ 5 I. BACKGROUND

¶ 6 James Knierim served as an alderman for the City of Casey from February 1, 1999, through May 7, 2007. He served in the military and pursuant to the Illinois Municipal Retirement Fund Act (40 ILCS 5/7-139(a) 5.1 (West 2004)) received two years' military credit in addition to the eight years he served as a municipal officeholder for purposes of retirement service credits.

¶ 7 When plaintiff commenced his service as an alderman, he was appointed to fill a vacancy. The mayor, Ed Bolin, advised plaintiff of the existence of health insurance coverage and free eligible retiree provisions of the plan. Plaintiff contends these were important considerations for him when he accepted his appointment. He later ran for reelection and these remained important considerations for him as he needed to acquire a total of 10 years' service credit to be eligible for the free retiree benefits.

¶ 8 On January 3 and 17, 2000, defendant amended its health insurance plan to provide upon retirement from office by an elected official having served at least 10 years, defendant shall pay all of the retired official's and the official's spouse's health insurance

premiums under the plan. On December 2, 2002, defendant, through its city council, amended its health plan again discontinuing its policy of providing health insurance to any official not in office prior to December 2, 2002.

¶ 9 Plaintiff retired as an alderman on May 7, 2007. He continued to participate in defendant's health insurance plan. Plaintiff is retired from his job in the oil industry and is on Medicare. His health benefits through defendant's health plan are his Medicare supplement policy.

¶ 10 On June 21, 2010, defendant, by action of its city council, adopted Ordinance 361, which provided any retired elected official with at least six years of service may be covered by defendant's group health insurance. However, it also required former elected officials "bear the cost" for their group health insurance coverage and if they did not reimburse defendant on a monthly basis, defendant could drop them from coverage.

¶ 11 As a result of the adoption of Ordinance 361, plaintiff has paid health insurance premiums to defendant of \$571 per month beginning August 2010 through June 2011 and beginning July 2011 of \$597 per month for the purpose of maintaining his health insurance coverage.

¶ 12 On August 30, 2010, plaintiff filed a three-count complaint for injunction against defendant to prohibit defendant from requiring plaintiff to pay his health insurance through defendant's group health plan. He also seeks reimbursement for all payments he was required to make pursuant to defendant's enjoined behavior.

¶ 13 On November 19, 2010, defendant filed a motion to dismiss the complaint. After a hearing on March 28, 2011, the motion was denied as to count I, an action for equitable

estoppel. As to count II, an action under the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2010)) in regard to the adoption of Ordinance 361, the motion was granted with leave granted to refile. As to count III, an action alleging it is unconstitutional to diminish or impair a pension or retirement benefit which is enforceable as a contract, the motion was taken under advisement and on April 21, 2011, dismissed with leave to refile.

¶ 14 On February 22, 2012, an amended one-count complaint for injunction was filed by plaintiff raising only the issue of equitable estoppel based on the theory free retiree health insurance was a vested right. On April 10, 2012, plaintiff filed a motion for summary judgment.

¶ 15 On May 7, 2012 defendant filed a motion for summary judgment and a hearing was held on both motions for summary judgment. On July 13, 2012 the trial court filed an opinion letter finding for defendant and against plaintiff. On August 10, 2012 judgment was entered in favor of defendant and against plaintiff. Plaintiff filed a timely notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 Plaintiff's notice of appeal references the trial court's order of August 10, 2012, following the hearing of May 7, 2012, on the parties' cross-motions for summary judgment. Despite plaintiffs' arguments in their appellate brief on the issues raised in counts II and III and dismissed by the trial court, those issues are not before us in this appeal. After those counts were dismissed, the court allowed leave to refile those counts and they were not refiled. When an amended complaint was proposed by plaintiffs and allowed by the court, it only raised the issue originally raised in count I, equitable estoppel. Plaintiff's motion for summary judgment stated it was in regard to their amended complaint, which raised only the issue of equitable estoppel. That is the sole issue before us on appeal.

¶ 18 Plaintiff contends the trial court erred in granting defendant's motion for summary judgment and denying his motion for summary judgment. None of the parties argue there are any issues of fact.

¶ 19 A summary judgment is appropriate where the pleadings, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, reveal there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *American Standard Insurance Company of Wisconsin v. Slifer*, 395 Ill. App. 3d 1056, 1059, 919 N.E.2d 372, 375 (2009). A trial court's grant of motion for summary judgment is reviewed *de novo*. *Id.*

¶ 20 Plaintiff argues defendant, by city council action, provided a health insurance plan for its elected officials, retirees, and spouses who fulfilled the qualifications enumerated by the plan and this plan existed throughout the entire time he served as an alderman. The existence of the health-care plan was one of the inducements made to plaintiff to get him to accept an appointment to defendant's city council and later run for election and serve the required eight years which, together with two years of military service credit, were necessary to obtain the free retiree health benefits available to him after those years of service.

¶ 21 Plaintiff contends this provision for defendant-paid retiree health insurance coverage was strong motivation for him to change his course of conduct and devote many of his free hours to serving defendant and its citizens.

¶ 22 Equitable estoppel applies against a municipality if the aggrieved party can establish (1) the municipality affirmatively acted; (2) the affirmative act induced substantial reliance; and (3) the aggrieved party substantially changed its position as a result of justifiable

reliance. *Monat v. County of Cook*, 322 Ill. App. 3d 499, 509, 750 N.E.2d 260, 270 (2001).

Plaintiff contends he has shown all three parts to establish a claim of equitable estoppel against defendant: defendant offered a free retiree health insurance plan to plaintiff if he served as an alderman; plaintiff, relying on defendant's promise, devoted many hours of service to defendant; and now, to his detriment, he has been told he can no longer receive free retiree health benefits but will have to pay his health coverage.

¶ 23 The general rule in Illinois is a legislative body has a continuing right to amend its ordinances. *Island Lake Water Co., Inc. v. LaSalle Development Corp.*, 143 Ill. App. 3d 310, 316-17, 493 N.E.2d 44, 48-49 (1986). A law is presumed not to create vested contractual rights between the State and private parties. See *Chicago Limousine Service, Inc. v. City of Chicago*, 335 Ill. App. 3d 489, 495, 781 N.E.2d 421, 426 (2002). Despite these cases, plaintiff contends the facts of this case are governed by *Dell v. City of Streator*, 193 Ill. App. 3d 810, 550 N.E.2d 252 (1990).

¶ 24 In *Dell*, the City of Streator provided its nonunion employees and officeholders the same benefits negotiated with the union representing all other city employees. *Dell*, 193 Ill. App. 3d at 811, 550 N.E.2d at 253. After several years the city then tried to terminate lifetime free health benefits for the retired nonunion employees and officeholders. *Id.* The court found equitable estoppel applied because the lifetime health benefits had "vested" for the union employees and, thus, also for the nonunion employees because to find otherwise would be discriminatory and could raise a constitutional question in regard to contract rights. *Dell*, 193 Ill. App. 3d at 813, 550 N.E.2d at 254.

¶ 25 We are dealing solely with elected officeholders and not city employees, union or

otherwise. Free health insurance upon retirement was promised plaintiff as he began his service as an alderman. He later voted on provisions terminating this benefit for persons elected after December 2, 2002. Salaries or other compensation for elected officials shall *not* be increased *or* diminished during the term pursuant to section 3.1-50-5 of the Illinois Municipal Code (65 ILCS 5/3.1-50-5 (West 2002)). Free retiree health insurance was not a vested right but could be changed at any time via city ordinance.

¶ 26 Parties seeking to claim the benefit of equitable estoppel must have relied on actions and representations of the city and must have had no knowledge or convenient means of knowing of any changes made. See *Tim Thompson, Inc. v. Village of Hinsdale*, 247 Ill. App. 3d 863, 878, 617 N.E.2d 1227, 1239 (1993). Plaintiff could not have reasonably relied on defendant's ordinance remaining unaltered because in his eight years' service on the city council he was aware ordinances could be amended and policies changed. He voted in 2000 against amending the retiree health coverage and in 2002 to terminate the benefit for officials taking office after 2002. Plaintiff should have realized his "right" to receive free health insurance could be amended. As the trial court concluded, relying on these ordinances never changing is unreasonable.

¶ 27 Plaintiff had no vested right to free retiree health insurance coverage. He was aware of the fact defendant changed parts of the health-care coverage several times. He could not reasonably rely on his health-care coverage cost remaining free to him forever. He should have anticipated it could be changed at any time. The trial court did not err in denying his motion for summary judgment and granting defendant's motion.

¶ 28

III. CONCLUSION

¶ 29 We find the trial court did not err in denying plaintiff's motion for summary judgment and granting defendant's motion. We affirm the judgment of the court granting judgment to defendant.

¶ 30 Affirmed.