2016 IL App (2d) 151127-U
No. 2-15-1127
Order filed June 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THOMAS SHEAHAN, Plaintiff-Appellee, v. THE ILLINOIS MUNICIPAL RETIREMENT FUND BOARD OF TRUSTEES, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 15-MR-418 Honorable Bonnie M. Wheaton, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order reversing the pension board's decision to terminate the plaintiff's pension benefits was reversed; the board was authorized to terminate the benefits and was not estopped from doing so.

¶ 2 The Illinois Municipal Retirement Fund Board of Trustees (the Board) appeals from the judgment of the circuit court of Du Page County reversing the Board's decision to terminate certain pension benefits that it had been paying to plaintiff, Thomas Sheahan. For the reasons that follow, we reverse the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Many of the relevant facts were detailed in *Village of Oak Brook v. Sheahan*, 2015 IL App (2d) 140810 (the Oak Brook appeal). Plaintiff worked as a police officer for the Village of Deerfield (Deerfield) from 1975 to 1988 and accrued 152 months of service credit in Deerfield's Police Pension Fund (the Deerfield Fund). The Deerfield Fund was established under article 3 of the Illinois Pension Code (Pension Code) (40 ILCS 5/3-101 *et seq.* (West 2014)). At the conclusion of plaintiff's employment with Deerfield, he received a refund of his contributions to that pension fund and forfeited his service credits.

¶ 5 Plaintiff subsequently worked as a police officer for the City of Chicago from 1998 to 2004. During that time, he accrued 77 months of service credit in the Municipal Employees' Annuity Benefit Fund of Chicago (MEABF), a pension fund governed by article 8 of the Pension Code (40 ILCS 5/8-101 *et seq.* (West 2014)). Plaintiff's contributions remained in MEABF when he left his employment with the City of Chicago.

¶ 6 Plaintiff began working as the chief of police for the Village of Oak Brook (Oak Brook) in March 2005. He elected to participate in the Illinois Municipal Retirement Fund (IMRF), a pension fund governed by article 7 of the Pension Code (40 ILCS 5/7-101 *et seq*. (West 2014)), as a "sheriff's law enforcement employee," or "SLEP." During plaintiff's tenure with Oak Brook, certain statutes presented him with the opportunity to repurchase his service credits from the Deerfield Fund and then transfer those credits, along with his credits in MEABF, to IMRF. It is undisputed that plaintiff relied on information supplied to him by employees of IMRF in attempting to take advantage of these transfer statutes. Unfortunately, the information provided to plaintiff reflected IMRF's erroneous interpretations of the transfer statutes.

¶ 7 Plaintiff retired from his employment with Oak Brook in April 2011. Although his six years of service with Oak Brook did not, in itself, entitle him to an annuity as a SLEP, IMRF

believed that plaintiff had properly transferred his credits from MEABF and the Deerfield Fund so as to qualify for a SLEP pension. IMRF thus began paying plaintiff pension benefits in May 2011.

¶ 8 In November 2011, IMRF staff notified Oak Brook that it had an unfunded pension liability of $746,434.35 resulting from plaintiff's retirement. Oak Brook requested a hearing to challenge the amount of its unfunded pension liability, contending that plaintiff had improperly transferred to IMRF his service credits from MEABF and the Deerfield Fund. On April 26, 2013, the Board issued a final administrative decision upholding plaintiff's transfers.

¶ 9 Oak Brook filed an action for administrative review. On June 17, 2014, the trial court, Judge Terence M. Sheen presiding, entered an order reversing the Board's April 2013 decision, determining that IMRF erred in approving the transfers. Plaintiff appealed that order to this court. In an opinion released on June 26, 2015, we affirmed the trial court's order and reversed the Board's decision, agreeing with the trial court that the credit transfers were invalid. *Sheahan*, 2015 IL App (2d) 140810 ¶ 1. We explained that the proper course of action was for IMRF to return to MEABF and the Deerfield Fund, respectively, the amounts that had been invalidly transferred, and for plaintiff's credits to be reinstated in those pension funds. *Sheahan*, 2015 IL App (2d) 140810, ¶ 54.

¶ 10 Meanwhile, on June 30, 2014, IMRF wrote a letter to plaintiff detailing its staff determination to terminate his benefits in light of Judge Sheen's June 17, 2014, order:[1]

[1] IMRF did not attempt to collect from plaintiff the amounts that it had paid him prior to the June 17, 2014, court order. The Board insists in its brief in the present appeal that it will not do so.

> "IMRF is bound by Article 7 of the Pension Code and has no authority to pay a benefit which has no basis in the law. Specifically, Section 7-179 of the Illinois Pension Code authorizes the IMRF Board to 'authorize or suspend the payment of any annuity or benefit in accordance with this Article.' [40 ILCS 5/7-179 (West 2014).] In addition, IMRF has the authority to retain amounts deemed to be paid in error. [40 ILCS 5/7-217(c) (West 2014).] Your *** service transfers were deemed invalid by the court and therefore IMRF cannot continue to pay you a benefit based on those transfers. Without those transfers, you are not vested in an independent IMRF pension. As such, IMRF is terminating your benefit based upon the court's interpretation of the statute."

On February 27, 2015, the Board upheld its staff determination to terminate the benefits. Plaintiff filed a complaint for administrative review. On November 5, 2015, the trial court, Judge Bonnie M. Wheaton presiding, reversed the Board's decision. The Board timely appeals.

¶ 11 II. ANALYSIS

¶ 12 In April 2013, the Board rendered a final administrative decision, concluding that plaintiff's service credit transfers were valid. However, as both Judge Sheen and this court determined in the Oak Brook appeal, the Board's decision was erroneous. The first question in this appeal is whether the Board had the authority to terminate plaintiff's SLEP pension benefits in light of those judicial determinations, even though more than 35 days had passed since the Board had rendered its original final administrative decision. If the Board had such authority, the parties dispute whether IMRF should nevertheless be estopped from terminating plaintiff's pension benefits.

¶ 13 In an administrative review action, we review the Board's decision, not the trial court's order. *Sheahan*, 2015 IL App (2d) 140810 ¶ 29. Our standard of review depends on whether the

question presented involves an issue of law, fact, or a mixed issue of law and fact. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). Where, as here, the salient facts are not disputed and the litigation involves the construction of a statute, we apply *de novo* review. *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). Our primary objective in interpreting a statute is to effectuate the legislature's intent. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 30. "The best indication of that intent is found in the statutory language, given its plain and ordinary meaning." *Price*, 2015 IL 117687, ¶ 30. We evaluate a statute as a whole, construing each provision in connection with other sections. *Roselle*, 232 Ill. 2d at 552. "In construing a statute, we presume that the legislature did not intend absurd, inconvenient, or unjust results [citation], and we will not, absent the clearest reasons, interpret a law in a way that would yield such results." *Nelson v. Artley*, 2015 IL 118058, ¶ 27.

¶ 14 Judicial review of the Board's decisions is governed by the Administrative Review Law. 40 ILCS 5/7-220 (West 2014). According to the Administrative Review Law, an action to review a final administrative decision must be commenced "within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103 (West 2014). The parties cite numerous cases illustrating that once 35 days pass from a final administrative decision to award pension benefits, and no party files an action for administrative review, a pension board cannot modify those benefits, absent some specific provision in the Pension Code allowing it to do so. See, *e.g.*, *Sola v. Roselle Police Pension Board*, 2012 IL App (2d) 100608, ¶ 18 (where the pension board's final administrative decision was not timely challenged by any party, a village could not subsequently rely on new case law to argue that the plaintiff's benefits should be modified); *Kosakowski v. Board of Trustees of the*

City of Calumet City Police Pension Fund, 389 Ill. App. 3d 381, 386-87 (2009) (where the pension board granted the plaintiff a line-of-duty disability pension in the amount of $3,208 per month, and there was no appeal from that decision, the board could not subsequently reduce the amount of the pension simply because the board reinterpreted a statute); *Karfs v. City of Belleville*, 329 Ill. App. 3d 1198, 1205 (2002) (where a city did not timely appeal the final administrative decision awarding the plaintiff benefits, the city could not subsequently challenge the calculation of the plaintiff's pension as being illegal). Plaintiff relies on these and other similar cases to argue that the Board could not render a "second final administrative decision" terminating his pension benefits more than 35 days after its "first final administrative decision."

¶ 15 This whole line of case law is simply inapplicable to the case at bar, where there *was* a timely appeal from the Board's April 2013 final administrative decision and where that administrative decision was *reversed*. Unlike many of the cases cited by the parties, the Board never changed its interpretation of the relevant transfer statutes. Instead, two courts determined that the Board's interpretation of those statutes was incorrect and held that this particular plaintiff's attempts to transfer his service credits to IMRF were invalid. *Sheahan*, 2015 IL App (2d) 140810, ¶ 54. Without those transfers, plaintiff was not entitled to the SLEP pension benefits that the Board had authorized.

¶ 16 The Board did not have the authority to continue paying plaintiff SLEP pension benefits after these judicial determinations. The board of trustees of a retirement system "is a creature of statute and, as such, has only the authority that is conferred upon it by law." *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 21. Section 7-178 of the Pension Code provides that the Board "shall have the powers and duties stated in Sections 7-179 to 7-200, inclusive, in addition to such other powers and duties provided in this Article." 40 ILCS 5/7-178 (West 2014).

Section 7-179 empowers the Board "[t]o authorize or suspend the payment of any annuity or benefit in accordance with this Article." 40 ILCS 5/7-179 (West 2014). We note that, by its plain language, section 7-179 thus empowers the Board both to "authorize" and to "suspend" the payment of annuities and benefits "in accordance with this Article." To be clear, we do not believe that the power to "suspend" benefits is at issue in this case. Although the word "suspend" is not defined in article 7 of the Pension Code, the ordinary use of that word implies a temporary interruption of payments, not the outright termination of benefits, as the Board seeks to do here. See Black's Law Dictionary 1487 (8th ed. 2004) (the first definition of "suspend" is "[t]o interrupt; postpone; defer"). That is consistent with how the word "suspend" is used in other sections of article 7. See, *e.g.*, 40 ILCS 5/7-144(a) (West 2014) (when a person receiving an annuity returns to work as a participating employee, the annuity "shall be suspended," subject to being "resumed" upon proper application); 40 ILCS 5/7-217(e) (West 2014) (allowing an annuitant to "suspend" the payment of all or part of an annuity for personal reasons, subject to the right to have the annuity "reinstated as to future monthly payments" upon notice to the Board).

¶ 17 Instead, we focus on the Board's power under section 7-179 to "authorize" the payment of annuities and benefits "in accordance with" article 7. 40 ILCS 5/7-179 (West 2014). The Board initially authorized the payment of SLEP pension benefits to plaintiff, a determination which was based on the assumption that plaintiff had properly transferred his service credits from MEABF and the Deerfield Fund. Two courts in the Oak Brook appeal, acting within the context of a timely filed administrative review action, determined that plaintiff's service credit transfers were invalid. *Sheahan*, 2015 IL App (2d) 140810, ¶ 54. The result of those judicial determinations was that plaintiff did not qualify for SLEP pension benefits "in accordance with"

article 7 of the Pension Code. 40 ILCS 5/7-179 (West 2014). Plaintiff takes a narrow view of the issues involved in the Oak Brook appeal, suggesting that that case concerned only Oak Brook's obligations to IMRF, not IMRF's obligations to plaintiff (*e.g.*: "The result was that Oak Brook was not required to pay IMRF additional funds for Sheahan's pension with IMRF. Neither the Appellate Court nor the Circuit Court of Du Page County *** made any ruling on whether IMRF had to continue to pay Sheahan as they had been doing."). That position is untenable. By holding that the service credit transfers were invalid, both Judge Sheen and this court effectively overruled the Board's original decision to authorize the payment of pension benefits based on those transfers. When the Board terminated plaintiff's pension benefits, it was merely enforcing these judgments.

¶ 18 Precluding the Board from terminating plaintiff's pension benefits would lead to absurd results, allowing plaintiff to continue to receive an annuity to which he has no legal right. It would also result in a windfall to plaintiff, potentially giving him not only SLEP pension benefits, but interests in two other pension funds as well. See *Sheahan*, 2015 IL App (2d) 140810, ¶ 54 (directing IMRF to return to MEABF and the Deerfield Fund the amounts that had been invalidly transferred so that plaintiff's credits could be reinstated with those pension funds). Having held that the Board properly terminated plaintiff's SLEP pension benefits in response to the judicial determinations in the Oak Brook appeal, we need not consider the parties' arguments regarding whether section 7-217(c) of the Pension Code authorized the termination of benefits.

¶ 19 Plaintiff nevertheless argues that "IMRF is estopped from reversing its 2013 'final administrative decision.' " We disagree, because IMRF did not reverse its 2013 final administrative decision. Judge Sheen and this court did so in the Oak Brook appeal. Furthermore, although it is unfortunate that plaintiff relied on IMRF's erroneous interpretations

of the applicable transfer statutes, this court has held that "estoppel does not apply where the agency regulation upon which the plaintiff relies conflicts with a statute." *Village of Westmont v. Illinois Municipal Retirement Fund*, 2015 IL App (2d) 141070, ¶ 25. Specifically, "[a]n agency's mistaken interpretation of a statute cannot preclude a court from enforcing that statute." *Westmont*, 2015 IL App (2d) 141070, ¶ 25. Accordingly, in *Westmont*, we held that IMRF was not estopped from reclassifying the Village of Westmont's firefighting force. This was so even though the reclassification could result in costs to the village "in the multimillion-dollar range" and IMRF had previously given the village contrary assurances due to "an unfortunate mistake." *Westmont*, 2015 IL App (2d) 141070, ¶¶ 13, 30.

¶ 20 Citing *Bowerman v. Wal-Mart Stores, Inc.*, 226 F.3d 574 (7th Cir. 2000), plaintiff insists that estoppel can apply in pension matters where a person with apparent authority provides misleading information. Aside from the fact that *Bowerman* did not involve a pension at all, that case does not support invoking equitable estoppel against the Board. In *Bowerman*, a healthcare insurer failed to provide the plaintiff with an adequate explanation of its plan documents and was ultimately estopped from denying coverage for a pre-existing condition. *Bowerman*, 226 F.3d at 587-88. In contrast, the Board in the present case adequately conveyed its interpretations of the relevant statutes to plaintiff and did not provide him with misleading information. As explained in *Westmont*, 2015 IL App (2d) 141070, ¶ 25, the fact that the Board's interpretations turned out to be incorrect does not provide a basis for invoking estoppel.

¶ 21 Plaintiff also relies on *Rossler v. Morton Grove Police Pension Board*, 178 Ill. App. 3d 769 (1989). In that case, the plaintiff, who was the deputy chief of police for Morton Grove, requested a five month leave of absence to serve as a consultant for the 1984 Olympic Games. *Rossler*, 178 Ill. App. 3d at 771. The pension board approved that request and agreed that the

leave would count as creditable time toward the plaintiff's pension, so long as he continued to make contributions. *Rossler*, 178 Ill. App. 3d at 771. The plaintiff took the leave of absence and made his contributions. *Rossler*, 178 Ill. App. 3d at 771-72. Shortly after returning to work, he was notified that he had 20 years of creditable service, and he then retired and applied for a pension. *Rossler*, 178 Ill. App. 3d at 771. In July 1985, the pension board granted the plaintiff a pension, which was to be payable in the amount of $19,256.95 per year beginning on his 50th birthday. *Rossler*, 178 Ill. App. 3d at 772. The Illinois Department of Insurance subsequently determined that there was a five-month error in plaintiff's creditable service time, and in June 1987, the pension board scheduled a rehearing to determine whether the pension should be modified. *Rossler*, 178 Ill. App. 3d at 772. Plaintiff sought an injunction in the trial court, but the court granted summary judgment in favor of the pension board. *Rossler*, 178 Ill. App. 3d at 772.

¶ 22 The appellate court reversed, first finding that the pension board lacked authority to conduct a rehearing to modify the plaintiff's benefits more than 35 days after it had granted the pension. *Rossler*, 178 Ill. App. 3d at 774-75. As an additional basis for reversal, the court determined that "[e]ven if the Board had jurisdiction to conduct a rehearing, it would be estopped from doing so under the circumstances here." *Rossler*, 178 Ill. App. 3d at 775. The court explained:

> "Although generally a finding of equitable estoppel against a public body is not favored [citation], estoppel against a municipality may be invoked where a party's action was induced by the conduct of municipal officers and where, in the absence of such relief, the party would suffer substantial loss. [Citation.] The party claiming estoppel must prove reasonable reliance on the acts or representations sought to be estopped [citation], and the

> affirmative action taken by the party to be estopped must be such that it would be unjust to permit the party to deny what it has done." *Rossler*, 178 Ill. App. 3d at 775.

The court found it significant that the pension board had not only pre-approved the leave of absence in question, but had also notified the plaintiff that such leave would count toward his creditable time. *Rossler*, 178 Ill. App. 3d at 775. According to the court, "[t]he board was presented with all the documentation available to [the plaintiff] and it had an independent duty to investigate the facts before it in order to determine the claimant's eligibility." *Rossler*, 178 Ill. App. 3d at 775. The court noted that, in reliance on the pension board's representations, the plaintiff had retired and relocated to another state. *Rossler*, 178 Ill. App. 3d at 776. The court concluded that it would be unjust under these circumstances to require the plaintiff to either resume his employment with the police department or to return to Illinois for a rehearing. *Rossler*, 178 Ill. App. 3d at 776.

¶ 23 *Rossler* is distinguishable. As for its discussion regarding whether a pension board may modify its final administrative decision after 35 days, *Rossler* is simply another case where no party appealed from the original decision to grant benefits. Additionally, unlike the present case, the plaintiff in *Rossler* did not rely on the pension board's mistaken interpretation of any statute. *Rossler* is further distinguishable, because the Board in the present case never took any legal position that was contrary to plaintiff's position until a court of law rejected that position in the context of a timely administrative review action.

¶ 24 In further support of his estoppel argument, plaintiff suggests that the Board has, in entirely different circumstances, elected to pay annuitants benefits even though an error was discovered. He also suggests that our decision in the Oak Brook appeal may have affected other annuitants' pensions and that IMRF continues to pay those people. Apart from the fact that

plaintiff's contentions are underdeveloped and lack citation to any legal authority, these arguments do not support applying estoppel. This case is not about the discovery of any error; it is about two courts reversing the final administrative decision rendered in plaintiff's own case. Additionally, how IMRF opts to apply our decision in the Oak Brook appeal to other annuitants' cases is an issue that is far beyond the scope of the present appeal.

¶ 25 Within the section of his brief addressing estoppel, plaintiff raises several other points that could be construed as distinct arguments. He directs our attention to cases involving the pension protection clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. XIII, § 5), which provides: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Plaintiff argues that, contrary to the supreme court's recent decision in *In re Pension Reform Litigation*, 2015 IL 118585, the Board seeks to:

> "a. Hold that pension benefits are not subject to the Illinois Constitution; b. Hold that pension benefits and promises are not binding contracts; c. Unilaterally change a contract without consideration; d. Make pension rights unenforceable; e. Allow diminished benefits under a formula that was not in effect at any time when Sheahan was enrolled in IMRF ***; f. Not be bound by their contracts; g. Shrug off their responsibility for the problem that only they created; h. Force Sheahan to solely bear the responsibility for the problem only they created; i. Obtain a presumption that they alone are presumed not to know what the law says; [and] j. Force Sheahan to live without dignity in his golden years."

Continuing with this line of reasoning, plaintiff cites cases involving whether employee handbooks can create enforceable contractual rights or otherwise be unilaterally altered by an employer to an employee's disadvantage. See *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482 (1987); *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104 (1999).

¶ 26 Plaintiff's point appears to be that he has a contractually-protected, and indeed constitutionally-protected, interest in his SLEP pension benefits, even though those benefits were incorrectly granted and were specifically challenged in a timely administrative review action. Suffice it to say that none of the cases that plaintiff relies on support such a proposition.[2] The Pension Code creates enforceable contractual rights; a pension board's erroneous interpretation of the Pension Code does not. See *Klomann v. Illinois Municipal Retirement Fund*, 284 Ill. App. 3d 224, 227 (1996) (a plaintiff could not "avail himself of the protections afforded by the Illinois Constitution to pension fund participants where the terms of the Code exclude [him] from participation."). Plaintiff was never entitled to SLEP pension benefits, so his pension rights have not been diminished or impaired in any way.

¶ 27 Finally, plaintiff cites federal cases that he claims support his contention that IMRF breached its fiduciary duty by failing to provide him with a correct interpretation of the law. See *Killian v. Concert Health Plan*, 742 F.3d 651 (7th Cir. 2013); *Tegtmeier v. Midwest Operating Engineers Pension Trust Fund*, 390 F.3d 1040 (7th Cir. 2004); *Bowerman*, 226 F.3d 574 (7th Cir. 2000); *Anweiler v. American Electric Power Service Corp.*, 3 F.3d 986 (7th Cir. 1993).

[2] After the briefing in this matter, plaintiff filed a motion for leave to cite *Matthews v. Chicago Transit Authority*, 2016 IL 117638, as additional authority. We grant the motion, insofar as plaintiff had cited the appellate court decision in his appellee's brief. However, *Matthews* does not support plaintiff's position on appeal.

None of these cases involved a situation where a fiduciary failed to provide a correct interpretation of a statute, and we do not find them to be instructive here. As explained above, the fact that the courts disagreed with IMRF's interpretation of certain statutes is not a basis to circumvent the application of the law.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse the judgment of the circuit court of Du Page County and affirm the decision of the Illinois Municipal Retirement Fund Board of Trustees.

¶ 30 Circuit court judgment reversed.