

NOTICE
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2018 IL App (5th) 170213-U

NO. 5-17-0213

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

KAREN GHERARDINI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Clinton County.
)	
v.)	No. 14-MR-111
)	
CARLYLE COMMUNITY UNIT SCHOOL)	
DISTRICT #1,)	Honorable
)	William J. Becker,
Defendant-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court erred in finding that plaintiff teacher did not prove that defendant school district was required to recognize plaintiff’s teaching seniority accumulated within the special education cooperative districts prior to being hired by defendant.

¶ 2 Plaintiff, Karen Gherardini, sought declaratory judgment against defendant, Carlyle Community Unit School District #1 (hereinafter Carlyle), seeking a determination as to her seniority status with defendant. Specifically, plaintiff requested that defendant be ordered to recognize the seniority accrued from her employment at different school districts dating back to August 1981 for purposes of determining her

eligibility for certain retirement benefits and incentives. Plaintiff sought relief under the theory of promissory estoppel as well as a violation of the “super tenure” statute of the Illinois School Code (105 ILCS 5/14-9.01 (West 2014)). The circuit court of Clinton County found in favor of defendant after a bench trial. Plaintiff appeals the court’s order entered January 24, 2017. We reverse and remand.

¶ 3 Plaintiff began her career as a special education teacher with the Kaskaskia Special Education District #801 (hereinafter KSED) in July 1981. KSED is a special education cooperative of school districts in Marion, Clinton, and Washington Counties that provides special education services in a coordinated manner to students in its 33 member districts. Carlyle is a member district of KSED. In 1985, the cooperative became a legal entity. While the cooperative still existed to coordinate special education services among the member districts, special education teachers became employed by the member districts directly instead of by the cooperative.

¶ 4 Special education teachers hired by KSED before 1987 also had “super tenure.” Super tenure meant that those special education teachers had tenure in all the districts that were members of KSED. See 105 ILCS 5/24-11 (West 2014). If a special education teacher were going to lose their position in a district because of a reduction in work force, then it was the responsibility of the cooperative and all member districts to find that individual a position somewhere else in the cooperative in any area in which they were certified. Super tenure was designed to afford teachers like plaintiff job security.

¶ 5 In May 2002, plaintiff accepted a position with Carlyle as a special education teacher. At the time she accepted the position, plaintiff had accumulated 21 years of

seniority as a special education teacher with school districts within KSED. Plaintiff stated she was motivated to apply for the Carlyle position because of an increase in salary, and because her son attended school in the district and her husband already worked for Carlyle.

¶ 6 Before plaintiff accepted the position at Carlyle, she interviewed with Kevin Meyer, the then principal for Carlyle High School. Meyer had authority to conduct job interviews and to explain to applicants the terms, salary, and benefits of their prospective employment with Carlyle. During the interview, plaintiff claimed she discussed her 21 years of seniority and explained to Meyer that she would not accept a position with Carlyle if it meant that she would lose any seniority or accompanying benefits she had accumulated. According to plaintiff, Meyer assured her that she would keep her seniority that she had accumulated up to that point. At trial, however, Meyer did not remember any such conversation. In his deposition taken earlier in April 2016 Meyer did not recall whether such a conversation took place, but he also admitted he could not refute plaintiff's version either. According to Carlyle, Meyer and plaintiff only discussed placement on the salary schedule commensurate with plaintiff's years of teaching experience, but not her seniority. At that time, Carlyle had the discretion to place new hires on the salary schedule at a level that matched their previous teaching experience. After plaintiff was hired, she was placed on level 22 of the salary schedule, recognizing her 21 years of teaching experience.

¶ 7 The evidence also revealed that every year of her employment with Carlyle, plaintiff was given a salary agreement that listed her level on the salary schedule, extra

duty compensation, longevity bonus, level of seniority, and co-curricular salary. For the 2002-03 school year, plaintiff's salary agreement indicated she was at salary level 22 and level 1 of seniority. According to plaintiff, Meyer explained that the line stating the level of seniority referred only to a small intradistrict longevity bonus that was unique to Carlyle and was specifically described in the collective bargaining agreement as applying to years of service only in Carlyle. Because she knew she was not going to get the longevity bonus, plaintiff did not complain about the seniority level listing and signed the salary agreements each year she worked for Carlyle. At the start of the 2006-07 school year, plaintiff had been at Carlyle for five years. She was listed at level 26 of the salary schedule. The next year plaintiff should have been at level 27, but the salary steps stopped at level 26. Under the collective bargaining agreement, those teachers who passed the level 26 salary cap were given stipends based on their education level. Plaintiff accordingly thought she was entitled to a stipend for the year, but she received no additional monies above the salary for level 26. Plaintiff was told she was not entitled to a stipend because she had not been at Carlyle for 26 consecutive years. Plaintiff, however, believed her employment with KSED prior to being employed with Carlyle was creditable as seniority, both as to wages and benefits she should have been entitled to from Carlyle.

¶ 8 Plaintiff subsequently retired from Carlyle in July 2016. Prior to her retirement, plaintiff learned she did not have enough years with Carlyle to qualify for a 6% early retirement incentive. Plaintiff had 35 years of creditable service necessary to retire under the Teachers Retirement System (TRS) but not enough years with Carlyle to qualify for

its early retirement plan. Plaintiff had understood her seniority with Carlyle was based on the entire time she had been teaching with KSED and would reflect her 21 years of prior service as a teacher. She pointed out that her position with Carlyle was essentially a lateral transfer and did not include enough of an increase in pay or benefits that would otherwise have made the transfer worth such a substantial loss in seniority. She specifically testified that she would not have made the move if she had known it would have resulted in a loss of 21 years of experience for any benefit. According to plaintiff, she suffered tens of thousands of dollars in lost salary, and a substantial loss of TRS retirement pay.

¶ 9 The Carlyle Board of Education determined plaintiff was not entitled to credit for all of the years she taught prior to being hired at Carlyle in 2002. According to Carlyle, as a teacher within its district, plaintiff was subject to the negotiated terms of a collective bargaining agreement between the district and the Unit 1 Education Association (Association). Collective bargaining agreements provided specific benefits to teachers based on their years of seniority within the district. At the time of plaintiff's hire in 2002, the collective bargaining agreement provided a longevity bonus to teachers with a certain number of consecutive years in the Carlyle district. Later agreements also included stipends for those teachers who had reached the maximum level on the salary schedule after 26 consecutive years in the Carlyle district. The early retirement incentive contained in the collective bargaining agreement provided that any teacher who was 60, with 35 years of service with the TRS, and who had been employed by Carlyle for at least

20 years, was eligible for a 6% increase in salary for the final 4 years of employment with Carlyle.

¶ 10 Carlyle pointed out that plaintiff did not qualify for any of the collective bargaining benefits because she had not worked enough years in the Carlyle school system. According to Meyer, seniority represents the number of years a teacher has worked within a particular district, whereas placement on a salary schedule is determined by years of experience in the profession. Meyer testified that giving a teacher automatic seniority upon joining a school district would be tantamount to granting that teacher benefits for which they had not worked and would be destructive to the relationship between the district and the Association. Carlyle also asserted that plaintiff's tenure status had no bearing on benefits to which she claimed she was entitled. She was never the subject of a reduction in force or other employment action that would have triggered the tenure protections. According to Carlyle, the super tenure lists prepared by KSED had no role in what plaintiff was given in terms of her placement on the salary schedule or her benefits, such as early retirement or stipends under Carlyle's collective bargaining agreements. Carlyle further pointed out that plaintiff did not lose any of her teacher's retirement system creditable earnings or years of service upon taking a position with Carlyle.

¶ 11 The trial court found plaintiff failed to meet her burden of proof on either of her claims against Carlyle. According to the court, Carlyle was not required to recognize plaintiff's teaching seniority within KSED prior to being hired. The court specifically determined that the super tenure statute did not apply because her claim did not concern

the removal or dismissal of a teacher in continued contractual service, but rather the claimed loss of salary and retirement benefits because of a claimed promise of no loss of seniority. While the court did find that plaintiff was promised no loss of seniority when hired, she signed an agreement indicating that she had no years of service in the Carlyle district when she started in 2002, and she signed successive documents for a number of years indicating that she had service in the district that corresponded to the years she worked in Carlyle. She did not challenge the seniority list within 30 days as she had a contractual right to do so. The court therefore concluded Carlyle's calculations with respect to plaintiff's seniority as it applied to wages and salary was correct. The court further noted that plaintiff could not have detrimentally relied on Meyer's alleged promise in 2002 for a benefit that did not even exist at the time the promise was made. Specifically, the stipends she claims she was entitled to did not exist under the collective bargaining agreement until the 2005-06 school year.

¶ 12 Before addressing plaintiff's contentions, we must first determine whether the trial court had jurisdiction over plaintiff's complaint. Carlyle asserts plaintiff's claims involve the right to annual longevity bonuses and certain retirement benefits which arise out of the collective bargaining agreements. Because the Illinois Educational Labor Relations Act (115 ILCS 5/1 *et seq.* (West 2014)) provides the exclusive remedy for contract disputes between union employees and a public school district, Carlyle contends the trial court was divested of jurisdiction to determine plaintiff's claims. See *Board of Education of Community School District No. 1 v. Compton*, 123 Ill. 2d 216, 221 (1988). According to Carlyle, plaintiff is nothing more than an employee claiming a breach of a collective

bargaining agreement who must first exhaust his or her administrative remedies under the agreement's grievance procedure and then file an unfair labor practices charge with the Educational Labor Relations Board. See *Dudley v. Board of Education, Bellwood School District No. 88*, 260 Ill. App. 3d 1100, 1106 (1994). Carlyle points out that the trial court never should have exercised jurisdiction over the matter, as evidenced by the court's finding that the contract negotiated by the Association covered the terms of plaintiff's employment. Plaintiff points out that the trial court correctly denied Carlyle's earlier motion to dismiss for lack of jurisdiction at the outset of the lawsuit. She asserts that no interpretation of the collective bargaining agreement was necessary to determine whether traditional elements of promissory estoppel were proven. Under the circumstances presented here, we agree with plaintiff. The trial court had, and therefore this court has, jurisdiction over promissory estoppel causes of action, even by employees covered under collective bargaining agreements against their employing school district. See *Lawrence v. Board of Education of School District 189*, 152 Ill. App. 3d 187 (1987). We also note the union specifically advised plaintiff that her situation was unique and was not a union issue.

¶ 13 Plaintiff's main contention on appeal is that the court erred in concluding that she was not entitled to have her seniority recognized by Carlyle for purposes of both her salary and retirement benefits. We agree. Contrary to the trial court's conclusion and Carlyle's assertions, we believe plaintiff established her claim of promissory estoppel. While we normally would not reverse the decision of the trial court on the issue of whether all of the elements of promissory estoppel are present (see *Illinois Valley*

Asphalt, Inc. v. J.F. Edwards Construction Co., 90 Ill. App. 3d 768, 770 (1980)), we must do so when that decision is against the manifest weight of the evidence. Such is the case here.

¶ 14 Promissory estoppel is an equitable device invoked to prevent a person from being injured by a change in position made in reasonable reliance on another's conduct. *Lawrence*, 152 Ill. App. 3d at 201. In essence, the common law doctrine creates a contract to protect those who substantially perform in reliance on a promise made by someone where injustice would result if the promise were not enforced. *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 91; *Lawrence*, 152 Ill. App. 3d at 201. "To establish a claim, the plaintiff must prove that (1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendants, and (4) plaintiff relied on the promise to its detriment." *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). The doctrine has been applied to school boards. See *Lawrence*, 152 Ill. App. 3d at 202.

¶ 15 Prior to accepting the position with Carlyle, plaintiff interviewed with Meyer, the principal for Carlyle High School. Meyer, as agent for the board of education, had actual and apparent authority to conduct the interview and to explain the terms and conditions of employment with the district. Plaintiff explained in detail that she wanted to move to the Carlyle school district, but did not want to give up her 21 years of seniority to do so. This, essentially, was a lateral transfer for her even though there was a salary increase over her current employment. The increase was not large enough to justify the loss of

benefits, however, should she have to start over with another district. Again, plaintiff explained to Meyer about her seniority and her desire not to lose what she had already accumulated if she were to switch to the Carlyle school district. According to plaintiff, Meyer understood her position and agreed to her terms. Being placed on the salary schedule her first year at Carlyle at level 22, taking into account her 21 years of prior experience, is reflective of their agreement. If plaintiff were not also eligible for all of the benefits, including retirement, of the collective bargaining agreement, it was Meyer's responsibility to explain this to plaintiff. Instead when she questioned the seniority 1 listing on the salary agreement, Meyer explained it was a longevity bonus within the district, paid to recognize those employees who stayed within the district. Perhaps plaintiff should have been more diligent in checking out the seniority listing of 1 on her salary agreement, but plaintiff was relying on the representations made to her that she would not lose her seniority status by accepting the position at Carlyle.

¶ 16 While we agree that the super tenure statute is not controlling in this instance, it does support our conclusion that plaintiff was promised more than Carlyle wishes to recognize. Super tenure implies that a teacher has concurrent tenure in more than one district. Per the statute, plaintiff was a tenured teacher at Carlyle when she was hired in 2002. Without those consecutive years of service in KSED, plaintiff could not have had tenure. If she had zero years of seniority at Carlyle, she could not be a tenured teacher. If plaintiff was a tenured teacher because of the operation of the statute on the day she was hired by Carlyle, then she, as a matter of law, had to have her prior service within KSED recognized as years of service at Carlyle. Otherwise, she had no entitlement to

tenure. Her tenure status was not something Carlyle could change, waive, or modify through a collective bargaining agreement or individual contract. Plaintiff had tenure by state law. Under the super tenure statute, plaintiff was deemed, as a matter of law, a tenured teacher in each school district within the special education district. She could not be a new teacher without seniority in Carlyle and at the same time be a tenured teacher. Such would be an inconsistency of law. The purpose of the super tenure statute was to allow special education teachers to freely transfer between districts within the special education district cooperative, without fear of exactly what happened to plaintiff in this instance, losing benefits that affected her salary, and ultimately, her retirement.

¶ 17 We conclude the representations made by Meyer were sufficient to induce plaintiff to accept the position with Carlyle and plaintiff reasonably relied, to her detriment, upon those representations made. It was unlawful for Carlyle to treat plaintiff as a new teacher for any purpose. We therefore conclude plaintiff was and is entitled to all salary, bonuses, and retirement benefits that a teacher with the same years of service within the Carlyle district would have been afforded.

¶ 18 Accordingly, we reverse the order of the trial court. Plaintiff is hereby deemed to have seniority at Carlyle for all her years of service within KSED. We therefore remand this cause for a recalculation of plaintiff's salary and retirement benefits.

¶ 19 Reversed and remanded.