2012 IL App (1st) 11-2438-U

FOURTH DIVISION
January 31, 2013

No. 1-11-2438

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LOUIS APOSTOL, Plaintiff-Appellant, v. STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS AND THE BOARD OF TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. 10CH38636 The Honorable Stuart Palmer, Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The administrative decision of the State retirement system's Board of Trustees appropriately ruled that plaintiff was not an employee within the meaning of the State Employees' Retirement System of Illinois (SERS) under Article 14 of the Illinois Pension Code (40 ILCS 5/14-101 *et seq*. (West 2010)) during his time of service as the Cook County public administrator because of the plain and ordinary language of the statute.

¶ 2 Plaintiff Louis Apostol appeals from a circuit court judgment affirming the administrative decision of the Board of Trustees of the State Employees' Retirement System (SERS) declaring that Apostol was not an employee within the meaning of SERS under Article 14 of the Illinois Pension Code (Pension Code) (40 ILCS 5/14-101 *et seq*. (West 2010)) when he served as the Cook County public administrator. He now challenges that determination on appeal. We affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff was employed as the Cook County public administrator for about 12 years, from June 1991 to August 2003. Each county has a public administrator to manage intestate estates to "protect and secure the estate from waste, loss or embezzlement until letters of office on the estate are issued to the person entitled thereto ***," or when no relative or creditor is available. 755 ILCS 5/13-1, 13-3(a), 13-4 (West 2010); *In re Richter's Estate*, 341 Ill. App. 334, 337 (1950). Plaintiff received $20,000, the minimum salary set by statute and subject to county board appropriation, from the fees collected by his office; this salary issued from the county treasury. See 755 ILCS 5/13-3(a) (West 2010)). Following his service in that position, Apostol joined the Illinois court of claims as a commissioner and, six months later, became a participant in SERS. In a March 2004 SERS form entitled, "Membership Record," Apostol checked "no" to the question of whether he had previously been employed by the State of Illinois. In 2008, Apostol became the executive director of the Illinois property tax appeal board with his SERS membership continuing.

¶ 5 Apostol subsequently applied for credit towards his State pension for time served as the Cook County public administrator. SERS rejected this application, and Apostol appealed.

¶ 6 A hearing was held before the SERS Executive Committee. Although a transcript has not been included in the record on appeal, the facts appear in the recommendation from the Executive Committee. According to the recommendation, Apostol testified that he was appointed public administrator by the Governor with the Senate's advice and consent and that it was his understanding, while serving in that position, that he was a state employee, thus entitling

him to SERS credit. Apostol testified that a prior administrative case, involving the business manager of the public administrator's office, supported his position. In addition, he argued court decisions held that public administrators constitute state employees.

¶ 7 The Executive Committee denied Apostol's appeal for SERS credit, concluding that he "was not an employee entitled to membership in the State Employees' Retirement System of Illinios for his period of service as a Public Administrator of Cook County." The Committee noted that section 14-103.06 of the Code defines "member" as "[a]ny employee included in the membership of the system ***" and section 14-103.05 defines "employee" as "[a]ny person employed by a Department who receives salary for personal services rendered to the Department on a warrant issued pursuant to a payroll voucher certified by a Department and drawn by the State Comptroller upon the State Treasurer ***." 40 ILCS 5/14-103.05(a), 14-103.06 (West 2010). The Committee concluded it was "clear that Petitioner was not paid on a warrant issued pursuant to a payroll voucher certified by any department," or a warrant drawn "by the State Comptroller upon the State Treasurer," and thus Apostol did not meet the definition of "employee" under SERS. With regard to the prior administrative case, cited by Apostol, the Committee noted that petitioner ultimately had been determined to be employed by Cook County and therefore a contributor to the county pension fund system. Based on all the evidence, the Executive Committee denied Apostol's appeal.

¶ 8 The Board of Trustees subsequently adopted the Committee's recommendation.

¶ 9 Apostol then filed a complaint, and later an amended complaint, for administrative review in the circuit court against SERS and the Board of Trustees. He argued he was an employee for

the purposes of SERS while serving as public administrator pursuant to section 14-103.05(b)(3) of the Code (40 ILCS 5/14-103.05(b)(3) (West 2010). That section provides that the term employee does *not* include "except as otherwise provided in this Section, any person appointed by the Governor with the advice and consent of the Senate *unless that person elects to participate in this system*[.]" (Emphasis added). 40 ILCS 5/14-103.05(b)(3) (West 2010). Apostol argued he had been appointed as public administrator by the Governor with the advice and consent of the Senate, in accordance with section 13-1 of the Probate Act of 1975 (755 ILCS 5/13-1 (West 2010)), and had then elected to participate in the SERS program. As such, he argued, he fit within the parameters of section 14-103.05. While acknowledging that he did not fit the general definition of employee under section 14-103.05(a), because he did not receive a salary "on warrant issued pursuant to a payroll voucher certified by a Department and drawn by the State Comptroller upon the State Treasurer," Apostol nevertheless argued the statute provided for a "number of additional circumstances and exceptions," like the one noted immediately above. Apostol thus argued SERS failed to consider the definition of employee in its entirety and policy considerations compelled the result he advocated. Apostol further argued that under the supreme court's *Ramsay v. Van Meter*, 300 Ill. 193, 203 (1921), a public administrator was a state officer in spite of the fact that the administrator's salary did not come from the State. Having exhausted all administrative remedies, Apostol requested that the circuit court reverse the July 20, 2010, determination of the SERS Executive Committee and enter an order permitting him SERS credit for time served as a public adminstrator.

¶ 10 SERS and its Board of Trustees (collectively, SERS) filed a response in which they

argued that Apostol still did not meet the general definition of employee and, as such, he could not fit within the exception. That is, because Apostol had not been paid by a warrant drawn by the State Comptroller on the State Treasurer, but instead was paid from the Cook County treasury, there was no need to consider whether, with his appointment to the position and election to opt into the system, he was an "employee" under the Code.

¶ 11 Following a hearing where the parties argued their respective positions, the circuit court affirmed the decision of the Board of Trustees for SERS, and this timely appeal followed.

¶ 12 ANALYSIS

¶ 13 Apostol now contends, as he did below, that he is entitled to SERS credit for time served as a Cook County public administrator because the position meets the definition of state employee under the Pension Code and also case law precedent mandates such an interpretation. Apostol raises no issue of fact on appeal, only one of law. We review the administrative decision of the Board of Trustees, not the judgment of the trial court. *DuPage County Board of Review v. Department of Revenue of State of Illinois*, 339 Ill. App. 3d 230, 235 (2003); see also 40 ILCS 5/14-150 (West 2010) (noting that final administrative decisions of the retirement board are subject to review under the administrative review law). Generally, we accord deference to the interpretation of a statute by an agency charged with its administration. *Mattis v. State Universities Retirement System*, 212 Ill. 2d 58, 76 (2004). However, because statutory interpretation is a question of law affording *de novo* treatment, a reviewing court will reject an agency's statutory interpretation if it is erroneous. *Id*.

¶ 14 The controlling principles of statutory construction are well established. In interpreting a

statute, a court's primary goal is to ascertain the legislature's intent, which is best gleaned from the plain and ordinary meaning of the statutory language. *Id.*; *In re Commitment of Weekly*, 2011 IL App (1st) 102276, ¶ 38. Since all provisions of a statutory enactment are viewed as a whole, words and phrases should not be construed in isolation, but should be interpreted in light of other relevant provisions of the statute. *Id*. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. *Id*. For the reasons to follow, after applying the tenets of statutory construction to the relevant sections of the Pension Code, we can find no error with the agency's conclusion in this case.

¶ 15 Under the Pension Code, "members" may participate in SERS by making contributions while within the employment of the State and then receive benefits upon retirement. 40 ILCS 5/14-107, 14-133 (2010) (West 2010). The Pension Code defines "member" as "any employee included in the membership of the system; and any former employee who made contributions to the system and has not received a refund and who is not receiving a retirement annuity under this Article." 40 ILCS 5/14-103.06 (West 2010). This requires an individual to be a current or former "employee" for the purposes of qualifying under SERS. As noted above, section 14-103.05(a) of the Pension Code (40 ILCS 5/14-103.05(a) (West 2010)) generally defines an "employee" as any person employed by a Department "who receives salary for personal services rendered to the Department on a warrant issued pursuant to a payroll voucher certified by a Department and drawn by the State Comptroller upon the State Treasurer," then "shall become an employee for purpose of membership in the Retirement System" when commencing that employment. 40 ILCS 5/14-103.05(a) (West 2010). A "Department," in relevant part, includes

"[a]ny department, institution, board, commission, officer, court, or any agency of the State having power to certify payrolls to the State Comptroller authorizing payments of salary or wages against State appropriations, or against trust funds held by the State Treasurer," with certain exceptions. 40 ILCS 5/14-103.04 (West 2010). Subsection 14-103.05(b) of the Pension Code sets forth a list of some 12 positions excluded from the definition of "employee" for purposes of SERS – the list ranges from members of the state legislature to "an employee of a municipality or any other political subdivision of the State." 40 ILCS 5/14-103.05(b) (West 2010). Of particular relevance to this appeal is the exclusion appearing in subsection 14-103.05(b)(3), which states that an employee does not include, "except as otherwise provided in this Section, any person appointed by the Governor with the advice and consent of the Senate unless that person elects to participate in this system[.]" 40 ILCS 5/14-103.05(b)(3) (West 2010).

¶ 16 Apostol glosses over whether he qualifies as a state employee under subsection 14-103.05(a). Instead, he maintains that he fits within the exception to the exclusion in subsection 14-103.05(b)(3), and is therefore entitled to SERS credit, because he was appointed Cook County administrator by the Governor with the advice and consent of the Senate (see 755 ILCS 5/13-1 (West 2010)) and has since *elected* to participate in the system.

¶ 17 The appellees respond that while Apostol raised this argument relating to subsection 14-103.05(b)(3) in his appeal to the circuit court, he did not raise it before the administrative agency charged with his case and, accordingly, waived it for review. We agree, for where a party fails to assert a particular argument before an administrative agency, the point is forfeited and should not be considered on appeal. See *Provena Health v. Illinois Health Facilities Planning Board*, 382

Ill. App. 3d 34, 50 (2008).

¶ 18 Even forfeiture aside, Apostol's claim still has no merit because subsection 14-103.05(b) cannot apply where, as in this case, Apostol fails to qualify as an employee in the first place under section 14-103.05(a). That is, the plain and ordinary statutory language at issue requires that for an individual to qualify as an "employee" under SERS, he must first have a state salary, as set forth in subsection 14-103.05(a). See also 40 ILCS 5/14-102, 14-103.09 (West 2010) (noting, respectively, that the system provides an orderly means for employees to retire from active service and "service" means "[s]ervice as an employee of a Department, for which compensation is paid by the State."). This interpretation comports with the statute as a whole. Subsection 14-103.05(b) clearly means to exclude individuals who might otherwise be mistaken as "employees of the State," for example, where they have alternative retirement options (see *e.g.*, 40 ILCS 5/14-103.05(b)(1) (West 2010), noting an alternative retirement system for members of the State legislature). Indeed, it would make little sense to permit an individual who does not earn a state salary, and thus does not contribute to SERS, to benefit from the system, and it is undisputed that Apostol's salary issued from the county treasury, not that of the State. See 755 ILCS 5/13-3, 13-3.1 (West 2010)). For the reasons stated, we can think of no reason why Apostol should qualify under SERS.

¶ 19 Relying on *Ramsay v. Van Meter*, 300 Ill. 193 (1921) and progeny, Apostol nonetheless insists that he qualifies as an "employee" for the purposes of SERS. In *Ramsay*, the supreme court addressed whether the public administrator was a state officer under the Illinois Constitution of 1870 (Ill. Const. 1870, art. 5, §§10, 12) to determine the legality of the

Governor's acts of removing and replacing the public administrator. Noting that a public administrator is required to give bond to state officers, take an oath of office, uphold the state and federal constitutions, and, significantly, dispose of estates left intestate for the good of the public, the supreme court determined that the "public administrator, under our statute, occupies a very different position to that of the ordinary administrator and is undoubtedly an officer." *Ramsay*, 300 Ill. at 204; see also 755 ILCS 5/13-2 (West 2010) (current statute requires bond, oath of office, and upholding constitution). The supreme court, then, held a public administrator was a state officer within the meaning of the 1870 Constitution even though he "receives no salary or fees from the state." *Id*. at 203; see also *Grimes v. Saikley*, 388 Ill. App. 3d 802, (2009) (relying on *Ramsay* to affirm dismissal of suit against public administrator as barred by sovereign immunity because public administrator was a "state officer" and, therefore, a "state employee").

¶ 20 Apostol argues that because *Ramsay* and progeny have held a public administrator to be a "state officer," a public administrator *ergo* must be a "state employee" and, specifically, a "state employee" within the meaning of SERS. Apostol asserts the decision in this case, as a result, "flies in the face of clear Illinois decisional law developed over 90 years, as well as the clear language of section 14-103.06 of the Pension Code." We disagree for two reasons. First, even assuming a public administrator constituted a "state officer" under the current jurisprudence – a question that we have not necessarily been called upon to determine – this still would not preclude the public administrator from also being a "county officer." This logic is consistent with *Ramsay*, which held that a person may serve simultaneously in one position as *both* a state and a county officer and the two need not be mutually exclusive. *Ramsay*, 300 Ill. at 200-01.

Second, and more importantly, we have already held that under the plain language of the statute, a public administrator does not qualify as a state employee entitled to retirement benefits under SERS. See *Bohm v. State Employees' Retirement System*, 404 Ill. 117, 120-21 (1949) (State's Attorney not entitled to SERS credit, as he was excluded from the statutory definition of employee, even in spite of State duties). The legislature has the power to make any reasonable definition of the terms in a statute, and such definitions, for the purpose of the act, will be sustained against any hypothetical indulgences. *Modern Dairy Co. v. Department of Revenue*, 413 Ill. 55, 66 (1952); *Chicago-Midwest Meat Association*, 96 Ill. App. 3d 966, 969 (1981). That is, statutory definitions control in the construction of the terms of an act, and the common-law definitions of those terms must yield to the statutory definitions. *People v. Perry*, 224 Ill. 2d 312, 327 (2007). We are confident that given the extensive case law surrounding the status of a public administrator, had the legislature intended to categorize such a position as eligible for benefits under article 14 of the Pension Code, the legislature would have done so.

¶ 21 CONCLUSION

¶ 22 Based on the foregoing, we affirm the decision of the circuit court affirming the decision of the Board of Trustees denying Apostol's claim.

¶ 23 Affirmed.