

No. 1-13-2497

**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).

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DANIEL JIMENEZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 12 CH 34985
	)	
BOARD OF EDUCATION OF	)	
HOMEWOOD-FLOSSMOOR HIGH SCHOOL	)	
DISTRICT 233,	)	Honorable
	)	Neil H. Cohen,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Simon and Justice Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court erred in entering summary judgment where plaintiff's claim that he was a tenured teacher involved a question of material fact.

¶ 2 Plaintiff, Daniel Jimenez, filed a writ of mandamus and complaint for declaratory judgment against defendant following the termination of plaintiff's employment as a "non-tenured" teacher. Plaintiff alleged that he was employed as a full-time teacher by the Board for 5 continuous years, thereby attaining "contractual continued service" (tenure) after his fourth year of teaching pursuant to section 24-11 of the Illinois School Code (School Code) (105 ILCS 5/24-

11 (West 2008)) and his employment could not be terminated without the Board following certain statutory procedures. Plaintiff sought a court order declaring him a tenured teacher; requiring defendant re-employ him as a tenured teacher; and awarding him damages equal to his lost wages and benefits. The circuit court found that plaintiff had not achieved tenured teacher status and denied plaintiff's requested relief. For the following reasons, we affirm in part and reverse in part the judgment of the circuit court and remand the matter for further proceedings.

¶ 3

### BACKGROUND

¶ 4 At issue in this appeal is the circuit court's ruling on the parties' cross-motions for summary judgment. In support of the cross-motions, the parties filed a stipulation of facts and exhibits. The following facts and referenced documents are derived from the stipulation and its attached exhibits.

¶ 5 Plaintiff, Daniel Jimenez, was hired by the Homewood-Flossmoor High School Board in August 2007 for an 8/10ths part-time teaching position for the 2007-2008 school term. Before the start of that term, the school principal administratively assigned Jimenez to a full-time teaching position at full salary and benefits. Although the Board did not take any action to change the terms of plaintiff's part-time written teaching contract, the district's administrative staff was aware of the new full-time assignment.

¶ 6 In July 2007, Jimenez was injured in an automobile accident. Jimenez notified the Board's administrative staff that his injuries prevented him from reporting to work on the first day of the 2007-2008 term. Due to his medical condition, Jimenez did not teach for the majority of the first semester. Jimenez was paid at the full-time salary rate for the days he taught, in addition to 17 days of sick leave. He also received full-time health benefits. His pay was

approved by the Board when it approved the district's entire payroll report prior to each pay period. In January 2008, Jimenez returned to work teaching the administratively assigned full-time course load and he continued to receive full-time pay and benefits reflecting the principal's reassignment.

¶ 7 At a meeting on March 13, 2008, Jimenez was informed by district administrators that because he was absent for most of the fall semester, the 2007-2008 school term would not count towards the first year of the four-year probationary term required to attain tenure. On April 1, 2008, the Board voted to adopt a resolution not to renew "part-time non-tenured" teaching contracts. The resolution included Jimenez by name. At that same meeting, the Board voted to employ Jimenez as a full-time teacher for the 2008-2009 school term. Jimenez received notification of both these decisions via two separate letters from the Board, printed on School District 233 letterhead. Jimenez was employed as a full-time teacher for the subsequent three school terms: 2008-2009, 2009-2010, and 2010-2011. During this time, Jimenez's teaching performance was evaluated annually by the principal and superintendent, who rated his performance as "excellent."

¶ 8 On May 1, 2011, on School District 233 letterhead, the District's director of human resources sent a letter to the South Cook ISC Certification Department stating that Jimenez had been employed as a full-time teacher since August 20, 2007, and had completed four years of full-time teaching. Thereafter, the Board rehired plaintiff as a full-time teacher for the 2011-2012 school term. At the end of the 2011-2012 school term, the Board "furnished information" to the ISBE Educator Certification System reporting that Jimenez's "teaching history" at Homewood-Flossmoor commenced in 2008 and continued for the years: 2009, 2010, 2011 and

2012. The information furnished by the Board listed Jimenez as "Full-Time" for each of those years.

¶ 9 On April 3, 2012, the Board notified Jimenez that he was not re-employed to teach for the 2012-2013 school term and his contract had been terminated. The listed reasons for the termination were: "[i]nstructional practices did not develop to meet expectations;" and "[l]ack of contributions to total school setting." On May 25, 2012, Jimenez received notice of a recent teaching evaluation in which the principal and superintendent rated his performance "satisfactory."

¶ 10 Relevant to this appeal, the parties filed cross-motions for summary judgment. In plaintiff's motion, he argued that pursuant to section 24-11 of the School Code, he automatically became a tenured teacher after his employment as a full-time teacher with the District for the 2007-2008, 2008-2009, 2009-2010 and 2010-2011 school terms because: (1) the Board ratified the principal's administrative assignment changing Jimenez's teaching status to full-time for the 2007-2008 school term; and (2) Jimenez's medical absences in the 2007 fall semester did not negate that term from counting as the first year of the four-year probationary term required to attain tenure status under the Code.

¶ 11 In defendant's motion for summary judgment, it first argued that the Board has the sole non-delegable authority to employ teachers and therefore, the principal's reassignment of Jimenez's teaching load did not modify plaintiff's part-time status. Second, Jimenez did not work for the entirety of the 2007-2008 fall semester and therefore, that semester cannot count as part of the first year of the four-year probationary term for the purposes of tenure. Third, even if Jimenez was a full-time teacher for 2007-2008, he was properly terminated at the end of that

school term, which precluded it from counting as the first year of petitioner's probationary period for tenure.

¶ 12 After hearing, the circuit court entered a written memorandum and order granting the Board's motion for summary judgment and denying plaintiff's motion for summary judgment. The circuit court found that the parties did not dispute that for Jimenez to attain tenure he had to "be employed as a full-time teacher for a probationary period of four consecutive school terms." The only dispute between the parties was "whether the 2007-2008 school term counted as the first year of the four-year probationary term."

¶ 13 Ultimately, the circuit court held that the Board had the sole statutory authority to employ teachers, which can never be delegated, and the Board never approved a full-time teaching contract for Jimenez for the 2007-2008 school term. The circuit court found that plaintiff was not employed as a full-time teacher by the Board for the 2007-2008 school term because: (1) the Board did not modify Jimenez's teaching contract to reflect the administrative assignment; and (2) the Board's approval of its monthly payroll for all employees, which included Jimenez's full-time teaching salary for the 2007-2008 term, did not constitute ratification of the unauthorized administrative teaching assignment.

¶ 14 ANALYSIS

¶ 15 Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). Summary judgment is a drastic means of ending litigation and should be granted only when the right of the moving party is free from doubt. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 271 (1992). The purpose of summary judgment is not to try an issue of fact, but

to determine if one exists, or if different inferences could be drawn from the undisputed facts. *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 462 (2003). Where, as here, the parties have filed cross-motions for summary judgment, they represent that no questions of material fact exist. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. However, the filing of cross-motions for summary judgment does not establish that there is no issue of material fact; summary judgment may be inappropriate if the court determines that a question of material fact exists. *Id.*; *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005).

¶ 16 We review a trial court's entry of summary judgment *de novo*. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 702 (2002). In doing so "we are free to consider any pleadings, depositions, admissions, and affidavits on file at the time of the hearing regardless of whether facts contained therein were presented to the trial court in response to the motion for summary judgment." *Id.* at 703. Reversal "is warranted where, on review, a material issue of fact or an inaccurate interpretation of the law exists." *Id.*

¶ 17 Plaintiff contends the circuit court erred in finding that plaintiff was not employed as a full-time teacher for four consecutive years from 2007-2011 because: (1) the Board ratified the principal's administrative assignment, thus plaintiff was employed full-time during the 2007-2008 school term, causing him to automatically attain tenured teaching status at the end of the 2010-2011 school term; and (2) plaintiff's medical absence from part of the 2007 fall semester did not affect his attainment of tenure.

¶ 18 Pursuant to section 24-11 of the School Code, after January 1, 1998, any teacher "employed in any district as a full-time teacher for a probationary period" of "4 consecutive school terms \*\*\* shall enter upon contractual continued service" unless the teacher is "given

written notice of dismissal stating the specific reason therefor, by certified mail, return receipt requested by the employing board at least 45 days before the end of such period." 105 ILCS 5/24-11 (West 2008). Section 24-11 further provides that "[f]or the purpose of determining contractual continued service, the first probationary year shall be any full-time employment from a date before November 1 through the end of the school year." 105 ILCS 5/24-11 (West 2008). Here, plaintiff was employed by the Board to teach for 5 consecutive school terms. The parties agree that for the plaintiff's first year teaching at the district high school, 2007-2008, plaintiff entered into a written agreement with the Board to be employed as a part-time teacher. It is undisputed that plaintiff was employed as a full-time teacher by an official act of the Board for the 2008-2009, 2009-2010, 2010-2011 and 2011-2012 school terms. The parties agree that in order to attain tenure a teacher must be employed for 4 consecutive school terms as a full-time teacher unless given written notice of dismissal within the statutory period at the end of the fourth school term. The primary issue in this case is whether the plaintiff's assignment to teach a full-time course load for the 2007-2008 school term, together with certain factual allegations, counts in the determination of whether he attained tenure under the statute at the end of the 2010-2011 school term. If his first year counted towards tenure, then his dismissal at the end of the 2010-2011 term required compliance with section 24-12 of the Code. 105 ILCS 5/24-12 (West 2008).

¶ 19 Defendant argues that the Board's authority to employ teachers is non-delegable, and therefore the principal's reassignment of plaintiff from part-time to full-time for the 2007-2008 term had no legal affect on plaintiff's status as a part-time employee. The circuit court found that the Board's authority to employ teachers is non-delegable and that the principal acted without

authority. We agree with the circuit court.

¶ 20 Section 34-18 of the School Code lists the powers and duties of a school board. 105 ILCS 5/34-18 (West 2010). Among these is the power to "to employ principals and teachers \*\*\* and fix their compensation." *Id.* This power is exclusively held by a school board. A school board's discretionary power to hire and fire employees may not be delegated to a third party. *Board of Education of City of Chicago v. Chicago Teachers Union*, 88 Ill. 2d 63, 72 (1981); *Illinois Education Ass'n Local Community High School District v. Board of Education*, 62 Ill 2d. 127, 130 (1975). This principle is further reiterated in other parts of the School Code. Section 34-8.1 of the School Code specifically provides that a school principal "shall fill positions by appointment \*\*\* and may make recommendations to the board regarding the employment, discharge, or layoff of any individual" but "[t]he right to employ, discharge, and layoff shall be vested solely with the board." 105 ILCS 5/34-8.1 (West 2010). In short, the Board establishes the terms of a teacher's employment, not, in this case, the principal.

¶ 21 Here, the parties agree that the Board acted pursuant to its authority under the School Code to employ plaintiff part-time for the 2007-2008 school term. The principal administratively assigned plaintiff to teach a full-time course load and to be compensated as a full-time teacher for that school term. Therefore, we find the circuit court did not err in finding as a matter of law that the Board's authority to make employment decisions for the school district is non-delegable and the principal acted without authority in altering plaintiff's employment assignment.

¶ 22 Plaintiff argues that even if the principal did not have the authority to elevate plaintiff's teaching status to full-time, the Board took further action to ratify the principal's unauthorized

act, which ultimately conferred on plaintiff full-time teaching status for the 2007-2008 school term.

¶ 23 "The doctrine of ratification applies to all public and municipal bodies" (*Bethune v. Larson*, 188 Ill. App. 3d 163, 169 (1989); *Athanas v. City of Lake Forest*, 276 Ill. App. 3d 48, 56 (1995)), including school boards (*Bessler v. Board of Education*, 11 Ill. App. 3d 210, 392 (1974)). Because the discharge of an employee is within the exclusive powers and duties of a school board (105 ILCS 5/34-18 (West 2010)), the principal's unauthorized administrative assignment could be ratified. The question then is whether defendant ratified this unauthorized act.

¶ 24 Where an agent acts outside the scope of his authority, a principal, in this case the Board, may ratify the unauthorized act, and that "ratification is equivalent to [the] original authority confirming that which was originally unauthorized." *Athanas*, 276 Ill. App. 3d at 56.

Ratification can be either express or inferred and occurs when the principal, with knowledge of material facts from an unauthorized act by an agent, either retains the benefits of the act or takes a position inconsistent with nonaffirmation of the act. *Karetzkis v. Cosmopolitan National Bank*, 37 Ill. App. 2d 484, 491 (1962); *Schoenberger v. Chicago Transit Authority*, 84 Ill. App. 3d 1132, 1138-1139 (1980). Ratification may be "inferred from surrounding circumstances, including long-term acquiescence, after notice, in the benefits of an unauthorized [act]." *Athanas*, 276 Ill. App. 3d at 57. Ratification acts as a form of equitable estoppel. *In re Marriage of Jackson*, 179 Ill. App. 3d 479, 484 (1989).

¶ 25 Ratification is a question of fact to be decided by looking at the totality of the circumstances, particularly where reasonable persons can draw differing inferences from the

circumstances. *Stathis v. Geldermann, Inc.*, 258 Ill. App. 3d 690, 700 (1994). In the parties' respective briefs, they argue that the facts and circumstances of this case either support or do not support ratification, however, this is not a determination a court can make on summary judgment where there are facts to support both parties' theories and reasonable persons could draw differing conclusions from those facts. *Id.*

¶ 26 The parties use the stipulated facts to dispute whether the Board had knowledge of the administrative assignment, a fact material to the issue of ratification. We highlight several of the stipulations from which, when viewed as a whole, differing conclusions can be drawn. The parties stipulate that although plaintiff was hired by the Board and he executed a written employment contract to work as a part-time teacher for the 2007-2008 school term, plaintiff was administratively assigned to teach full-time for that term and then paid at the full-time rate. The parties agree that the Board's administrative staff was aware of this assignment, but that the Board did not take any action to modify plaintiff's written employment agreement and subsequently terminated his part-time employment after the 2007-2008 term. However, the parties also stipulate that the Board furnished information to the Illinois State Board of Education's certification system reporting that plaintiff was a full-time employee for the 2007-2008 school term. Lastly, they stipulate that the district's human resources director informed a third party educator certification system in writing that plaintiff had been employed as a full-time teacher since August 2007, and as of May 2011, had completed four years of full-time teaching for the Board. In reviewing the record, we observe that the letterhead used by the human resources director matches that same letterhead used by the Board in informing plaintiff of its other decisions included in the record.

¶ 27 The Board argues that it could not have ratified the principal's assignment because it did not have full knowledge of the unauthorized assignment and did not manifest an intent to be bound by the assignment, however, knowledge and intent are material questions of fact, which cannot be properly determined on summary judgment where inferences supporting and opposing these elements can be taken from the evidence in the record. *Stathis*, 258 Ill. App. 3d at 700.

¶ 28 In addition, the Board argues that as a matter of law the 2007-2008 school term could not count as the first year of plaintiff's four-year probationary period because district administrators informed plaintiff that this term would not count as the first year of the four-year probationary period. However, a school board and district administrators cannot make a determination that a certain year of teaching would or would not count for the purposes of tenure. "The courts cannot allow school boards, whether in good or bad faith, to [act] in ways which circumvent the purpose and spirit of the tenure laws." *Kuykendall v. Board of Education of Evanston Township High School District No. 202*, 111 Ill. App. 3d 809, 811 (1982) (citing *Hagopian v. Board of Education*, 56 Ill. App. 3d 940, 944 (1978)). "[I]t is for the legislature, not the court or the school board, to determine the basis upon which tenure may be granted [citation] and to determine who should be embraced within the scope of the purpose of the law relating to teacher tenure [citation]." *James v. Board of Education of School District No. 189*, 193 Ill. App. 3d 406, 412 (1990). The court is required to follow the statute according to its terms. *Id.* According to the plain meaning of section 24-11 of the School Code, if plaintiff was employed as a full-time teacher for the 2007-2008 term then upon his re-employment to teach full-time for the fifth consecutive year, he attained tenure. 105 ILCS 5/24-11 (West 2008).

¶ 29 The Board also contends that the 2007-2008 term did not count for the first year of the

probationary period because the Board properly terminated plaintiff's employment at the end of that term. However, dismissal at the end of the probationary period is the operative dismissal to prevent the conveyance of tenure status upon a teacher, not dismissal and re-hiring for consecutive years during the four-year period. See *Johnson v. Board of Education*, 85 Ill. 2d 338, 344-45 (1981); *Williams v. Board of Education*, 166 Ill. App. 3d 765, 768 (1988) (after a teacher is dismissed from employment he or she would have to "affirmatively show re-employment on a full-time basis to establish tenure rights.").

¶ 30 The Board asserts that the purpose of the four-year probationary period is to allow the Board sufficient opportunity to review a teacher's performance to determine whether the teacher should be hired to teach full-time for a fifth year and thus attain tenure status. The Board suggests that because plaintiff did not teach for most of the fall 2007 semester, the 2007-2008 term could not count towards tenure because the Board did not have an opportunity to review plaintiff's teaching performance. Section 24-11 provides that employment begins prior to November 1 and does not contain any requirement that a specific number of days teaching is required. Attached to the party's stipulation of facts was an April 1, 2008 letter sent by the Board wherein it extended an offer to plaintiff to teach full-time for the 2008-2009 school term "based on the performance that you have exhibited so far." The following month plaintiff received a performance evaluation rating of "[e]xcellent." In addition, the parties stipulated that the Board hired plaintiff as a full-time teacher for the following school year, which suggests that it held a favorable view of his teaching abilities. *Wood v. North Wamac School District No. 186*, 386 Ill. App. 3d 874, 877 (2008).

¶ 31 Therefore, because reasonable persons can draw differing inferences from the parties'

stipulated facts, we find that whether the Board ratified plaintiff's employment as a full-time teacher with full benefits for the 2007-2008 school term is a question of fact to be determined by the trier of fact. *Stathis*, 258 Ill. App. 3d at 700. Accordingly, because a material question of fact exists, we find the circuit court erred in entering summary judgment in favor of defendant on the issue of ratification.

¶ 32 The last issue on appeal is whether plaintiff's medical absences during the fall 2007 semester affected the 2007-2008 school term counting as the first year in the four-year probationary period. The Board argues that because it did not approve a formal medical leave of absence for plaintiff during the 2007-2008 school term, that term cannot count as the first year of the four-year probationary period. Plaintiff argues that the absences did not affect his tenure status and the Board approved a leave of absence by ratification. Section 24-13 of the School Code provides that "[t]he contractual continued service status of a teacher is not affected by \*\*\* absence caused by temporary illness or temporary incapacity as defined by regulations of the employing board." 105 ILCS 5/24-13 (West 2010). Section 24-11 of the School Code "plainly states that a teacher who is employed in a district as a full-time teacher for four consecutive school terms shall attain contractual continued services" and section 24-11 does not "state or imply that a teacher must teach for four consecutive school terms." *Wood v. North Wamac School District No. 186*, 386 Ill. App. 3d 874, 877 (2008). In *Wood*, this court held that a teacher who was employed full-time for five consecutive years, but took a one year permitted leave of absence for medical reasons for the entire third year of teaching, became a tenured teacher after her fourth consecutive year of employment. We found that because Wood was a full-time teacher for four consecutive years and was re-hired for the fifth year, the teacher met the

statutory prerequisites for tenure. *Id.* at 877. Here, the Board stresses that, unlike the situation in *Wood*, Jimenez's leave of absence was never approved and he was not employed full-time while absent in the fall of 2007. In light of our ruling that a question of fact remains as to whether plaintiff was employed as a full-time teacher for the first year of his employment through an act of ratification by the Board, this question is also to be resolved by the trial court on remand after hearing.

¶ 33 In sum, disputed questions of fact exist regarding whether the Board had knowledge of the administrative reassignment and ratified plaintiff's full-time teaching status for the 2007-2008 term. Therefore, we find the circuit court erred in entering summary judgment in favor of defendant on the issue of ratification.

¶ 34

#### CONCLUSION

¶ 35 Based on the foregoing, we affirm in part and reverse in part the circuit court's order on the parties' cross-motions for summary judgment. We affirm the circuit court's finding that the Board's authority to employ teachers is non-delegable and the principal's act to administratively assign plaintiff a full-time teaching load was unauthorized. We reverse the circuit court's entry of summary judgment in favor of defendant on whether plaintiff had attained statutory tenure due to questions of material fact as to whether the Board ratified that principal's unauthorized employment of defendant as a full-time teacher.

¶ 36 Affirmed in part, reversed in part; cause remanded for further proceedings consistent with this decision.