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2013 IL App (4th) 120841-U

NO. 4-12-0841

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 8, 2013

Carla Bender

4th District Appellate
Court, IL

DAVID E. YOCOM and KAREN S. YOCOM,)	Appeal from
Plaintiffs-Appellants,)	Circuit Court of
v.)	Clark County
THE CITY OF CASEY, an Illinois Municipal)	No. 10CH36
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 Plaintiffs, David Yocum, a retired alderman, and Karen Yocum, his wife, brought an action for a permanent injunction or a declaratory judgment seeking to prohibit defendant, City of Casey (City), from requiring plaintiffs pay their health insurance costs through the City's group health plan when it previously provided health insurance coverage to plaintiffs at no cost to them. Plaintiffs argued they had a vested right in the continuation of the retiree health benefit provided to them upon the date of David's retirement and they were justified in relying on the continuation of the retiree health insurance benefit being provided at the time of retirement.

¶ 3 The City argued the health insurance plan had been changed several times during

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

¶ 4 The trial court agreed with the City and found plaintiffs 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 David served as an alderman and he helped put the changes in place. The court granted the City's motion for summary judgment and denied the plaintiffs' motion. Plaintiffs appeal. We affirm.

¶ 5 I. BACKGROUND

¶ 6 David Yocum served as an alderman for the City of Casey from May 1, 1993, through May 5, 2004. He was last elected as alderman on May 1, 2001. David 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 11 years he served as a municipal officeholder for purposes of retirement service credits. David is married to Karen Yocum.

¶ 7 When David commenced his service as an alderman, defendant participated in a health insurance program for its employees and elected officials pursuant to a Local Government Health Plan Intergovernmental Agreement. Defendant's plan permitted enrollment for elected officials and retirees who received a pension benefit through the Illinois Municipal Retirement Fund (IMRF). David receives an IMRF pension as a result of his service as an alderman.

¶ 8 On June 1, 1998, defendant, by action of its city council, changed its health plan to provide for payment by the City of the health insurance premiums for retired aldermen, based on years of service. David began participating in the health insurance plan of defendant on

December 1, 1999, and Karen enrolled as his spouse on July 1, 2000.

¶ 9 On January 3 and 17, 2000, defendant further 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.

¶ 10 David retired as an alderman on May 5, 2004. He continued to participate in defendant's health insurance plan. In January 2010, David retired from employment at Sears after working there for over 36 years. He could have elected to continue with Sears' retiree health insurance plan and pay its premiums but chose not to enroll since he had free coverage under defendant's plan.

¶ 11 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 to "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.

¶ 12 As a result of the adoption of Ordinance 361, as of December 23, 2011, plaintiffs have paid health insurance premiums to defendant totaling \$24,047 and continue to pay health insurance premiums of \$1,550 per month.

¶ 13 On August 27, 2010, plaintiffs filed a three-count complaint for injunction against defendant to prohibit defendant from requiring plaintiffs pay their health insurance through

defendant's group health plan. They also sought reimbursement for all payments made after July 1, 2010.

¶ 14 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 al.* (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.

¶ 15 On February 21, 2012, an amended one-count complaint for injunction was filed by plaintiffs raising only the issue of equitable estoppel based on the theory free retiree health insurance was a vested right. On April 5, 2012, plaintiffs filed a motion for summary judgment.

¶ 16 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 plaintiffs. On August 10, 2012, judgment was entered in favor of defendant and against plaintiffs. Plaintiffs filed a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 Plaintiffs' 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 properly before us. 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. Plaintiffs' 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.

¶ 19 Plaintiffs contend the trial court erred in granting defendant's motion for summary judgment and denying their motion for summary judgment. None of the parties argue there are any issues of fact.

¶ 20 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.*

¶ 21 Plaintiffs argue 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 David served as an alderman. While he still served as an alderman, both plaintiffs enrolled in the health insurance plan. More than one year prior to the time David was elected to his last term in office, defendant amended its health insurance plan to provide upon retirement from office, an elected official, having served at least 10 years, and his spouse would have all of their health insurance premiums paid by defendant so long as they remained enrolled in the plan.

¶ 22 Plaintiffs contend this provision for defendant-paid retiree health insurance

coverage was a consideration of David in his decision to seek reelection to the position of alderman in 2001, and plaintiffs continued to remain on the plan after David's retirement as alderman. Plaintiffs contend David's decision not to enroll in Sears' retiree health insurance plan was due to the fact defendant provided him paid health insurance benefits. David is no longer able to enroll in the Sears plan. He contends he has a chronic kidney disease covered by defendant's plan which would likely not be covered by any health plan he could secure now.

¶ 23 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). Plaintiffs contend they have shown all three parts to establish a claim of equitable estoppel against defendant: defendant offered a free retiree health insurance plan prior to David's retirement. Both plaintiffs, relying on defendant's promise, enrolled in the plan prior to his retirement and now, to their detriment, they no longer qualify for Sears' health plan and, due to David's chronic disease, they argue he would most likely be excluded from any other health plan to which they might apply.

¶ 24 The general rule in Illinois is a legislative body has a continuing right to amend its ordinances. *Island Lake Water Co. v. La Salle Development Corp.*, 143 Ill. App. 3d 310, 316, 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, plaintiffs contend the facts of this case are governed by *Dell v. City of Streator*, 193 Ill. App. 3d 810, 550 N.E.2d 252

(1990).

¶ 25 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 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.

¶ 26 We are dealing solely with elected officeholders and not city employees, union or otherwise. Free health insurance upon retirement was not part of David's compensation because he was originally elected without that provision. 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.

¶ 27 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 any changes made. See *Tim Thompson, Inc. v. Village of Hinsdale*, 247 Ill. App.3d 863, 878, 617 N.E.2d 1227, 1239 (1993). Plaintiffs could not have reasonably relied on defendant's ordinance remaining unaltered because in David's 11 years' service on the city council he was aware ordinances could be amended and policies changed. He voted in 2000 to

amend the retiree health coverage and again in 2002 to terminate the benefit for officials taking office after 2002. Plaintiffs should have realized their "right" to receive free health insurance could be amended. As the trial court noted, relying on these policies never changing is unreasonable.

¶ 28 Plaintiffs contended they substantially changed their position as a result of their alleged justifiable reliance but have never provided any amount constituting a financial loss other than the cost of defendant's health coverage after the loss of free coverage. They have not provided any information about how much it would cost to obtain other health insurance and whether it would have been more expensive than the city's plan will cost them now and have simply stated it would be hard to obtain coverage for David's medical condition—without providing facts to show this is actually the case.

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

¶ 30 III. CONCLUSION

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

¶ 32 Affirmed.