2015 IL App (4th) 140893-U

NO. 4-14-0893

FILED
July 24, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GEORGE P. HAMILTON, Plaintiff-Appellant, v. JENNIFER GILL, in Her Official Capacity as Acting Superintendent of Springfield School District 186; and THE SCHOOL BOARD OF SPRINGFIELD SCHOOL DISTRICT 186, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 14L77 Honorable Patrick W. Kelley, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Appleton specially concurred.

ORDER

¶ 1 *Held*: The trial court committed no error in granting defendants' motion to dismiss plaintiff's complaint for wrongful termination on the basis that an affirmative matter defeated plaintiff's claim.

¶ 2 Plaintiff, George P. Hamilton, filed a complaint against defendants, Jennifer Gill, in her official capacity as acting superintendent of Springfield School District 186 (District), and the School Board of Springfield School District 186 (School Board), alleging he was wrongfully terminated from his employment as a janitor based upon his previous conviction for a drug-related offense. The trial court granted a motion by defendants to dismiss plaintiff's complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)) and plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 16, 2009, plaintiff began working for the District as a janitor. On December 17, 2013, the School Board terminated him from his employment on the basis that a criminal background check revealed he had previously been convicted of a drug-related offense. The record shows that in November 1994, plaintiff pleaded guilty to possession of a controlled substance (720 ILCS 570/402(c) (West 1992)), a Class 4 felony, and was sentenced to one year of probation. In March 1996, plaintiff's probation was revoked and he was sentenced to three years in prison.

¶ 5 On April 2, 2014, plaintiff filed a complaint, alleging he was unlawfully or wrongfully terminated from his employment. Plaintiff's complaint contained two counts. In connection with count I, he alleged he was "unlawfully" terminated by the School Board. Plaintiff asserted the School Board had no authority to terminate him because he did not fail to perform his duties as directed by his supervisor. Plaintiff also asserted the doctrine of *laches* prevented the School Board from terminating him on the basis of his criminal history. He alleged he worked for the District for over 3 ½ years, the School Board knew of his background, and the School Board employed him despite his record. Plaintiff claimed the delay in terminating him based on his criminal history caused him to suffer irreparable harm. In connection with count II of his complaint, plaintiff alleged he was "wrongfully" terminated because the School Board lacked authority to terminate him on the basis that he had a previous felony conviction. Citing section 10-21.9 of the School Code (105 ILCS 5/10-21.9 (West 2012)), plaintiff maintained the prohibition against hiring an employee with a felony conviction was limited to employees who held certified positions, *i.e.*, teachers.

¶ 6 Plaintiff attached a letter to his complaint addressed to him from the Director of Human Services for Springfield Public Schools. The letter identified the cause for plaintiff's dismissal as his "[f]ailure to meet the requirements of a criminal background check." The letter further stated as follows:

> "Specifically, it was discovered that on June 6, 1994[,] you were arrested and later found guilty of a Class 4 felony for 'possession of controlled substance[.']
>
> According to [section 10-21.9 of the School Code (105 LICS 5/10-21.9 (West 2012))] it is specific that no person shall knowingly employ a person who has been convicted of any offense that subject him or her to the aforementioned citation.
>
> It is unfortunate that you were previously approved for employment under an assumption that a 'statute of limitation' applied. It has been determined that the 'statute of limitation' does not apply to these offenses. Therefore, the District was obligated to terminate your employment."

¶ 7 On June 30, 2014, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)). They argued that, pursuant to section 10-21.9(c) of the School Code (105 ILCS 5/10-21.9(c) (West 2012)), plaintiff could not be employed by the School Board. Defendants maintained plaintiff was incorrect in asserting section 10-21.9(c) was limited to employees seeking certified positions and maintained that section prohibited the School Board from employing any person convicted of certain offenses, including drug-related offenses.

¶ 8 On September 15, 2014, the trial court conducted a hearing in the matter. The appellate record does not contain a transcript of the hearing. However, the court made a docket entry showing it considered defendants' motion to dismiss and heard arguments. Further, the court granted defendants' motion to dismiss, stating as follows:

> "The court finds [s]ection [10-]21.9 of the School Code, read in its entirety, prohibits a school district from knowingly hiring or employing, in any capacity, a person such as [p]laintiff[,] who has been convicted of a controlled substance offense. Consequently, [d]efendant's [*sic*] termination of [p]laintiff's employment promptly upon learning of his controlled substance conviction was proper and thus completely negates [p]laintiff's cause of action."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff argues the trial court erred by granting defendants' motion to dismiss. He contends that under section 10-21.9(c) of the School Code the School Board was only prohibited from hiring a certified employee with a felony conviction such as plaintiff's. Plaintiff maintains that, as a janitor, he was a noncertified employee and not subject to the same requirements.

¶ 12 "A motion for involuntary dismissal under section 2-619(a)(9) of the Code admits the legal sufficiency of the complaint, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts an affirmative matter outside the complaint bars or defeats the cause of action." *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31, 988 N.E.2d 984. "[W]hen ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352, 882 N.E.2d 583, 588 (2008). "The motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action." *In re Estate of Boyar*, 2013 IL 113655, ¶ 27, 986 N.E.2d 1170. "The circuit court's dismissal of a complaint under section 2-619 is reviewed *de novo*." *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 14, 28 N.E.3d 747.

¶ 13 In their motion to dismiss, defendants asserted plaintiff was not wrongfully terminated because, pursuant to section 10-21.9 of the School Code, the School Board was not permitted to employ a person with plaintiff's criminal history. As stated, plaintiff disputes that the statutory language relied upon by defendants applies to him—a noncertified employee. As a result, the issue presents a matter of statutory construction, which is also subject to *de novo* review. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29, 28 N.E.3d 727.

¶ 14 "The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature" and "[t]he best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *In re Marriage of Turk*, 2014 IL 116730, ¶ 15, 12 N.E.3d 40. "It is improper for a court to depart from the plain statutory language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Home Star Bank & Financial Services v. Emergency Care

& Health Organization, Ltd., 2014 IL 115526, ¶ 24, 6 N.E.3d 128. "Words and phrases should not be viewed in isolation, but should be considered in light of other relevant provisions of the statute." *Gillespie Community Unit School District No. 7 v. Wight & Co.*, 2014 IL 115330, ¶ 31, 4 N.E.3d 37. "Where statutory language is clear and unambiguous, it will be given effect without resort to other aids of construction." *Gillespie*, 2014 IL 115330, ¶ 31, 4 N.E.3d 37. "However, if the meaning of an enactment is unclear from the statutory language itself, the court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy, as well as other sources such as legislative history." *Home Star Bank*, 2014 IL 115526, ¶ 24, 6 N.E.3d 128.

¶ 15 Relevant to this appeal, section 10-21.9(a) of the School Code (105 ILCS 5/10-21.9(a) (West 2012)) requires applicants for employment with a school district to submit to a criminal history records check, providing as follows:

> "Certified and noncertified applicants for employment with a school district, except school bus driver applicants, are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c) of this Section or have been convicted, within 7 years of the application for employment with the school district, of any other felony ***."

Subsection (c) then provides:

> "No school board shall knowingly employ a person who has been

> convicted of any offense that would subject him or her to license suspension or revocation pursuant to Section 21B-80 of this [School] Code. Further, no school board shall knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987." 105 ILCS 5/10-21.9(c) (West 2012).

¶ 16 Section 21B-80 (105 ILCS 5/21B-80 (West 2012)), to which subsection (c) refers, sets forth the various "narcotics offenses" and "sex offenses," which subject a licensed employee to suspension or revocation of his or her license. A "narcotics offense" includes "[a]ny offense defined in the Illinois Controlled Substances Act, except any offense for which the holder of a license is placed on probation ***, provided that if the terms and conditions of probation required by the court are not fulfilled, the offense is not eligible for this exception." 105 ILCS 5/21B-80(a)(2) (West 2012).

¶ 17 We note that, on appeal, the parties primarily refer to certified versus noncertified employees under the School Code, while sections 10-21.9(c) and 21B-80 refer to licensed employees. Article 21B of the School Code (105 ILCS 5/21B-5 through 21B-105 (West 2012)) sets forth a system of educator licensure, and its provisions have superseded many of the provisions in the School Code regarding teacher certification. See Pub. Act 97-607 (eff. Aug. 26, 2011). Further, "[r]eferences in law regarding individuals certified or certificated or required to be certified or certificated *** include individuals licensed or required to be licensed under [article 21B]." 105 ILCS 5/21B-20 (West 2012).

¶ 18 Here, plaintiff does not dispute that he was convicted of a "narcotics offense" within the meaning of section 21B-80 of the School Code. Instead, he maintains that his criminal history did not require his termination from employment because the relevant portion of section 10-21.9(c) applies only to certified, *i.e.*, licensed, employees. In particular, he notes that section 10-21.9(c) prohibits the employment of "a person who has been convicted of any offense *that would subject him or her to license suspension or revocation*." (Emphasis added.) 105 ILCS 5/10-21.9(c) (West 2012). After viewing section 10-21.9 as a whole and in light of other relevant provisions of the School Code, we disagree with plaintiff and find the relevant portion of section 10-21.9(c) applies to plaintiff and required his termination from employment.

¶ 19 First, section 10-21.9(a) clearly requires that a noncertified applicant for employment undergo a records check to determine if he or she had been convicted of a criminal or drug offense referenced in subsection (c). Specifically, that section expressly states "[c]ertified and noncertified applicants for employment with a school district *** are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if such applicants have been convicted of any of the enumerated criminal or drug offenses in subsection (c)." 105 ILCS 5/10-21.9(a) (West 2012). If the portion of subsection (c) at issue did not apply to noncertified or unlicensed employees, it would be unnecessary for such employees to undergo a records check to determine whether they committed one of the narcotics or sex offenses at issue. Thus, reading section 10-21.9 as a whole demonstrates subsection (c) applies to all employees and not just those who are certified or licensed.

¶ 20 Second, we find the intent of section 10-21.9 is to prevent individuals who possess certain criminal histories from working for a school district where they will be in close proximity to students. Section 21B-80 refers to a variety of "narcotic offenses" and "sex offenses," which could require suspension or revocation of an educator's license and, under section 10-21.9(c), prohibit employment with a school district. Plaintiff presents no rationale for treating certified or licensed employees convicted of such offenses differently from noncertified or unlicensed employees who have the same criminal histories. We note section 10-22.34(a) of the School Code (105 ILCS 5/10-22.34(a) (West 2012)), entitled "Non-certificated personnel," provides that school boards may employ nonteaching personnel for supervising study halls, detention and discipline areas, and school-sponsored extracurricular activities. Additionally, a school board may "employ non-certificated personnel to assist in the instruction of pupils under the immediate supervision of a teacher." 105 ILCS 5/10-22.34(b) (West 2012). Although plaintiff worked as a janitor and may not have had the same type of contact with students as a teacher, the School Code contemplates the employment of noncertified or unlicensed individuals in a variety of capacities and with varying degrees of contact with students. Thus, we find the legislative intent behind section 10-21.9 of the School Code is best served by finding subsection (c) applicable to all employees.

¶ 21 On appeal, plaintiff points to an amendment to section 10-21.9(c) as evidence that the legislature intended the first sentence of that subsection to apply only to certified or licensed employees. Initially, defendants contend plaintiff failed to raise this specific argument with the trial court. Generally, issues not raised before the trial court are forfeited on appeal. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 92, 923 N.E.2d 735, 741 (2010). Here, plaintiff referenced the amendments to section 10-21.9(c) in his reply to defendants' motion to dismiss. Thus, we decline to apply forfeiture.

¶ 22 As plaintiff notes, at the time he was hired by the District on March 16, 2009, section 10-21.9(c) provided as follows:

> "No school board shall knowingly employ a person who has been convicted for committing attempted first degree murder or for committing or attempting to commit first degree murder or a Class X felony or any one or more of the following offenses: (i) those defined in Sections 11-6, 11-9, 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-19, 11-19.1, 11-19.2, 11-20, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal Code of 1961; (ii) those defined in the Cannabis Control Act except those defined in Sections 4(a), 4(b) and 5(a) of that Act; (iii) those defined in the Illinois Controlled Substances Act; (iv) those defined in the Methamphetamine Control and Community Protection Act; and (v) any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses." 105 ILCS 5/10-21.9(c) (West 2008).

Thereafter, subsection (c) was amended to provide that "[n]o school board shall knowingly employ a person who has been convicted of any offense that would subject him or her to certification suspension or revocation pursuant to Section 21-23a of [the School] Code." Pub. Act 96-431 (eff. Aug. 13, 2009) (amending 105 ILCS 5/10-21.9(c) (West 2008)). Ultimately, that section was again amended to remove references to *certification* suspension or revocation and to provide, as the statute currently does, that "[n]o school board shall knowingly employ a person who has been convicted of any offense that would subject him or her to *license* suspension or revocation pursuant to Section 21B-80 of [the School] Code." (Emphasis added.) 105 ILCS 5/10-21.9(c) (West 2012).

¶ 23 In his brief, plaintiff asserts the amendment to 2009 amendment to section 10-21.9(c) "limited" application of that subsection to certified employees. Again, we disagree with plaintiff's position. The amendment at issue removed references to specific offenses within sub-section (c) and directed that the offenses relevant to that subsection were listed elsewhere in the School Code. Although after August 2009, section 10-21.9(c) referred to offenses that would subject an employee to suspension or revocation of a license or certification, we do not find the legislature intended to limit application of that section to only certified or licensed employees. For the reasons already expressed, we find that, when viewing section 10-21.9 as a whole and in light of other provisions of the School Code, section 10-21.9(c) was intended to apply to all employees, including those who are noncertified or unlicensed.

¶ 24 Both the trial court and defendants correctly interpreted section 10-21.9(c) of the School Code. Thus, as a result of plaintiff's criminal history, the School Board was prohibited from employing him. The court committed no error by dismissing plaintiff's complaint pursuant to section 2-619(a)(9) of the Code.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.

¶ 28 JUDGE APPLETON, specially concurring.

¶ 29 I concur with the majority's decision in this case. However, I question the reasonableness of the result for two reasons.

¶ 30 First, I do not understand how an employee of the District could be employed for four plus years without the District having any knowledge of plaintiff's drug convictions and subsequent violation of probation.

¶ 31 That being said, my second concern is that there is no evidence that plaintiff was not a good employee. We do not know any specifics of the quality of plaintiff's job performance or of any problems concerning his work with the District. It would seem to be the case that he was a good employee and, as such, he could have served as an informed resource interacting with students for advice to not enter upon the path that brought him to his involuntary termination.