COURT OF APPEALS
DECISION
DATED AND FILED

May 8, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1367 **Cir. Ct. No. 2003CV218**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JOHN RYBERG,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

LEE BENISH, SUSAN CHURCHILL-CHASTAN AND ROBERT KLIMPKE,

PLAINTIFFS,

V.

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE MENOMONIE AREA,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed in part; and reversed in part.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. The Board of Education of the School District of the Menomonie Area appeals a summary judgment concluding John Ryberg is entitled to an early retirement stipend under an employment contract with the Board because, the Board argues, Ryberg did not retire. The Board also disputes the court's determination that Ryberg had a valid WIS. STAT. ch. 109 (2001-02) wage claim. Ryberg cross-appeals the portion of the judgment concluding he was not entitled to health insurance or its cash equivalent. We conclude Ryberg resigned, not retired. He is therefore ineligible for both the retirement stipend and the insurance benefits, and has no wage claim. Accordingly, we affirm the portion of the judgment denying the insurance and reverse the portion of the judgment granting the stipend payments and approving the wage claim.

Background

¶2 Ryberg began working for the school district on February 1, 1989. He had various employment contracts during his tenure. His last full-term contract extended from July 1, 1995, to June 30, 1997. On March 3, 1997, Ryberg submitted a document under WIS. STAT. § 118.24(6) (1997-98) to unilaterally extend his contract through the 1997-98 school year. On June 1, however, Ryberg resigned, effective July 31, 1997. On June 10, the human resources director advised Ryberg the Board had accepted his resignation. On July 10, the parties entered a final short-term contract. This contract contains the most recent terms related to early retirement benefits.

¶3 From August 1, 1997, to February 29, 2004, Ryberg worked full time for the University of Wisconsin—Superior. From March 1, 2004, onward, Ryberg has been a full time employee of the State of Minnesota.

¶4 On November 11, 2002, Ryberg mailed a written notice to the school district that he was claiming early retirement benefits. The Board refused the claim. On April 8, 2003, Ryberg and three other employees filed this civil action, alleging the Board had unlawfully refused to pay their benefits.[1] Ryberg also asserted a wage claim under WIS. STAT. ch. 109.

¶5 In August 2003, in a response to interrogatories, Ryberg asserted he was entitled to benefits because of the circuit court ruling in ***Chapman v. Board of Education***, Eau Claire County case No. 2002CV471. Like Ryberg, Chapman was claiming early retirement benefits from the Menomonie Area district. The court granted summary judgment to Chapman.

¶6 ***Chapman***, however, was appealed to this court and on December 15, 2003, the parties agreed our resolution of that case was likely to govern the resolution of Ryberg's case. We reversed the circuit court and concluded that Chapman had not retired as contemplated by the contract. *See* ***Chapman v. Board of Educ.***, No. 2003AP2263, unpublished slip op. (Ct. App. Aug. 10, 2004). The supreme court declined to grant the petition for review. Ryberg then asserted that ***Chapman*** did not control because of differing facts and moved for summary judgment. The circuit court ultimately agreed that Ryberg was entitled to the stipend benefit, but not insurance, and that he had a valid wage claim. The court granted summary judgment accordingly.

[1] The other employees were eventually dismissed from this action.

Discussion

¶7 We review summary judgments de novo, using the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). That methodology is well-established and need not be repeated here.

¶8 The Board makes several arguments on appeal. For example, it claims it was not properly served, ***Chapman*** applies because of issue preclusion, and Ryberg's election was untimely. However, we do not reach these arguments because we conclude that Ryberg is not entitled to insurance benefits under the contract. *See* ***Pool v. City of Sheboygan***, 2006 WI App 122, ¶6, 293 Wis. 2d 725, 719 N.W.2d 792 (only dispositive issues need be addressed).

¶9 The interpretation of a contract presents us with a question of law, which we also review de novo. ***Deminsky v. Arlington Plastics Mach.***, 2003 WI 15, ¶15, 259 Wis. 2d 587, 657 N.W.2d 411. The objective in construing a contract is to ascertain the parties' intent from the contractual language. ***Waukesha Concrete Prods. Co. v. Capitol Indem. Corp.***, 127 Wis. 2d 332, 339, 379 N.W.2d 333 (Ct. App. 1985). If the contract is plain and unambiguous, we construe it according to its plain meaning even though a party may have interpreted it differently. ***Id.***

¶10 The contract states, in relevant part:

> 5.
>
> ….
>
> e. EARLY RETIREMENT BENEFIT. If ADMINISTRATOR elects to retire early, DISTRICT shall provide the following benefits:

> 1) ….
>
> Vested retirement in part shall be provided where three full years of experience of service in the district would equal one year of retirement benefits stipend plus one year of health/medical insurance.
>
> ….
>
> 13. TERMINATION OF EMPLOYMENT CONTRACT. This employment contract may be terminated by mutual agreement of the parties, by ADMINSTRATOR upon sixty (60) days' written notice of resignation to DISTRICT … by ADMINISTRATOR upon retirement, and by DISTRICT for cause.

¶11 "Contractual language is ambiguous only when it is reasonably and fairly susceptible to more than one construction." ***Dieter v. Chrysler Corp.***, 2000 WI 45, ¶15, 234 Wis. 2d 670, 610 N.W.2d 832 (citation omitted). The parties both assert the contract is unambiguous. We disagree. The contract fails to define "retire" or "retirement." Moreover, the parties' wrangling over the contract's meaning belies their assertion there is no ambiguity.

¶12 Words in a contract are generally given their plain and ordinary meaning. ***North Gate Corp. v. National Food Stores, Inc.***, 30 Wis. 2d 317, 321-22, 140 N.W.2d 744 (1966). However, we must also avoid constructions that render portions of a contract superfluous. ***Stanhope v. Brown County***, 90 Wis. 2d 823, 848-49, 280 N.W.2d 711 (1979) ("Other things being equal, a construction which gives reasonable meaning to every provision of a contract is preferable to one leaving part of the language useless or meaningless.").

¶13 Under the contract, an administrator like Ryberg is entitled to early retirement benefits if he or she "elects to retire early…. " Further, the contract provides four methods for its termination: mutual agreement between the parties, resignation by the administrator, retirement by the administrator, or by the district

for cause. The Board asserts Ryberg did not "elect" to retire early, that they mutually agreed to end his contract, that he resigned, or that Ryberg quit—in short, everything but retire. Ryberg, for his part, appears to concede that he resigned, but asserts that "retire is synonymous with resignation or resign"[2] and the "means by which he terminated the contract is irrelevant."

¶14 Whatever "retirement" means—and we think it difficult to give it a singular plain meaning—it must mean something other than "resignation" under this contract. Any shared or overlapping definition renders one term surplusage. *See* ***Stanhope***, 90 Wis. 2d at 848-49. Under the contract, resignation is an alternative to retirement. Therefore, whatever definition we would give to "retire" or "retirement," it could not include resignation. Because Ryberg resigned and took a position elsewhere, he did not retire from the district in 1997. Paragraph five only allows collection of retirement benefits if the employee retires, so Ryberg is not entitled to those benefits, even if partially vested, because he has not fulfilled the condition precedent.[3] In addition, ineligibility for retirement benefits negates the basis for the wage claim and for the insurance benefits.

By the Court.—Judgment affirmed in part; and reversed in part. No costs awarded.

---

[2] To support his argument, Ryberg cites to ***Bruno v. Milwaukee County***, 2003 WI 28, ¶13 n.5, 260 Wis. 2d 633, 660 N.W.2d 656. However, that case "rests on an application of the definition in the [county] code itself." ***Id.*** The supreme court used the dictionary definition of retire to point out a flaw in the court of appeals' prior decision in the case, not to define "retire."

[3] Ryberg asserts that the short-term contract was the first one that mentioned early retirement benefits and this fact must indicate the Board intended him to become eligible for the benefits when he left to work in Superior. The Board points out that an early retirement provision was in several of his other contracts. However, it does not matter where or when this provision first appeared; the analysis of the contractual language does not change.

Not recommended for publication in the official reports.

¶15 CANE, C.J. (*dissenting*). Because I agree with the circuit court's conclusion that John Ryberg retired under the terms of his employment contract, I respectfully dissent from that portion of the majority's opinion. For a more detailed explanation of my dissent, see ***Chapman v. Board of Educ.***, No. 2003AP2263, unpublished slip op. (Ct. App. Aug. 10, 2004).