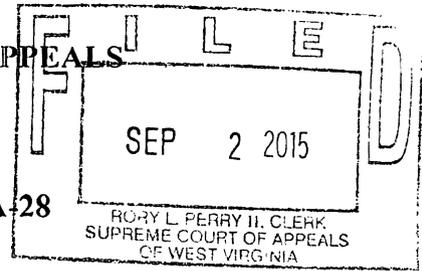


BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

Docket No.: 15-0281

Kanawha County Circuit Court, Civil Action No.: 11-AA-28



CYNTHIA RINGEL-WILLIAMS,

Petitioner-Appellant

v.

**STATE OF WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD,**

Respondent.

REPLY BRIEF OF PETITIONER CYNTHIA RINGEL-WILLIAMS

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I. INTRODUCTION

The West Virginia Consolidated Public Retirement Board (hereinafter referred to as the “Board” or “Respondent”) filed its Brief in Opposition to Petition for Appeal. Respondent’s Brief discussed each of the three assignments of error alleged by Petitioner-Appellant Ms. Ringell-Williams. This Reply Brief will not counter the points made by Respondent in regard to the last two assignments of error as such matters were adequately discussed in Appellant’s Brief. Appellant files her Reply Brief in order to counter the erroneous arguments set forth by Respondent in regard to the issue of statutory construction.

II. ARGUMENT

THE BOARD’S RESPONSE BRIEF IGNORED PETITIONER’S ARGUMENTS REGARDING STATUTORY CONSTRUCTION, FURTHER, ITS OWN CONSTRUCTION OF THE STATUTE AT ISSUE IS FUNDAMENTALLY FLAWED

The issue of statutory construction here, essentially, concerns whether Ms. Ringell-Williams was properly a member of the Teachers Retirement System (hereinafter referred to as the “TRS”) for the five and one half years in which the Board took her contributions. In Appellant’s Brief, the argument was convincingly made that under the proper reading of the statutory language in question, Petitioner qualified for plan membership. Moreover, Appellant’s argument was buttressed by several different rules of statutory construction.

In its reply, the Board argues that the statutory language at issue clearly prohibits Ms. Ringell-Williams’s participation. Opining that no ambiguity exists, Respondent did not contest any of the canon’s of statutory construction cited in Appellant’s Brief. However, Respondent’s interpretation of the statutory language at issue is fundamentally flawed because, as demonstrated below, it ignores a key word pertaining to membership in the TRS. Thus, if this

Court rules that the statutory language at issue is not ambiguous, Ms. Ringell-William's appeal should be granted because such language makes her a members of the TRS. Additionally, Respondent's failure to contest the points in Appellant's Brief regarding the cannons of statutory construction detailed therein is a concession that if the language at issue is ambiguous, Appellant also prevails under the law cited thereunder. These points will be discussed further below.

1. Appellee's Interpretation of the Statute at Issue is Wrong Because it Ignores a Key Word Within a Key Definition.

As a starting point, the Board argues in its Response that it should be granted deference in its interpretation of the statutes at issue. That is a general statement of the law, but under the circumstances in this case, any claim of deference is a weak one at best.

The action of the Board in this case was based upon an internal interpretation of the statute. The Board has never issued any formal regulation regarding this interpretation, which would have been subject to scrutiny and comment, and would have been published and available to participants and employers, who would have been placed on notice and could have conformed their actions to the Board's interpretation if they had the opportunity to do so. However, it was an undisclosed interpretation. There is no evidence that the Board's interpretation was publicized to public employers, or disclosed to new employees or existing employees, until a particular member was notified, often years later, that she or he was never eligible to participate in the pension plan. This lack of formalized adoption process means that no deference should be given to Respondent's statutory interpretation in this instance.

Moreover, even if such deference is given, Ms. Ringell-Williams appeal should still be granted because Respondent's interpretation of the definitional requirements of membership in the TRS is clearly wrong. In making its interpretive determinations, the Board ignored a key word in a key definition.

The key statutory provision is 18-7A-3(27), the definition of being “regularly employed for full time service.” As stated in both parties legal memoranda submitted to date, this definition requires an employee to be working in his or her job “throughout the employment term. . .” And, as Respondent notes, under 18-7A-3(11), an “employment term” means “for at least ten months, a month being defined as twenty employment days.” Appellee misconstrues these provisions to require for membership the working of 20 days per month for a ten month period, in other words, having a 200 day contract. Respondent is wrong.

A better interpretation of this language is contained in Appellant’s Brief. As argued therein, these definitions give the general parameter of what constitutes a year of work: ten months, a month being defined as having 20 work days. of It is not intended to set forth a specific 200 day requirement. This position is supported by the word “throughout,” contained in the definition of “regularly employed for full-time service,” which is ignored in Respondent’s statutory analysis. According to merriam-webster.com, the word “throughout” means, in pertinent part, “during the whole time or action : from beginning to end <remained loyal throughout> .” Thus, the point of the definition of “regularly employed for full-time service” is that to become a member, an individual must be employed from the “beginning to the end” of the ten month period and not some smaller portion then that.

As stated in Appellant’s Brief, if the State Legislature wanted there to be a 200 day requirement for participation, then it would have simply said so. However, that was not the intent. Rather, the Legislature intended to define membership in terms of the individual’s length of service during a school year. For example, an individual who worked only a single semester of the school year, would not satisfy the definitional requirement for membership, because he or

she did not work “throughout” the “term of employment.” However, an individual such as Ms. Ringell-Williams, who did work “throughout” the ten month term of employment, does qualify for membership.

2. The Statutory Provisions at Issue are Ambiguous and Under the Canons of Statutory Construction Discussed in Appellant’s Brief, Respondent’s Interpretation of Them are Erroneous.

Petitioner has offered an interpretation of the statutory provisions at issue just based on the plain meaning of the words used that is superior to the one offered by Respondent. In the very least, the varying possible interpretations demonstrate that there is an ambiguity regarding the statutes’ meaning.

Appellant’s Brief demonstrated that using the proper cannon’s of statutory construction, Ms. Ringell-Williams is a member of the TRS. In its Reply, Appellee did not even attempt to argue that Petitioner’s application of the rules of statutory construction were incorrect. Indeed, by not discussing such rules, Respondent is conceding Appellant’s argument. Rather, Appellee rests its argument entirely on the proposition that the Code provisions at issue are not ambiguous, making statutory construction unnecessary. Since, as demonstrated herein, ambiguity of the meaning of the relevant Code provisions exists, Appellee’s position fails and Ms. Ringell-Williams’ appeal should be granted.

Finally, even if Respondent is correct, that on its face, the statutory definitions that determine membership eligibility are not ambiguous, this Court can and should decide in Petitioner’s favor because applying such language leads to an absurd result. As this Court has noted, even language that seems facially unambiguous should be construed to avoid an absurdity. State v. Morris, 128 W. Va. 456, 37 S.E.2d 85 (1946). And as demonstrated in Appellant’s Brief, a reading of the statute proffered by Respondent would lead to the absurd result such as an

individual who worked five days a week for as little as one or two periods a day would be a “member,” but Ms. Ringel-Williams, who worked for an entire day three days a week would not. Certainly, the West Virginia State Legislature could not have meant for this type of non-sensical result.

III. CONCLUSION

Ms. Ringell-Williams’ appeal should be granted and her years of service should be restored for the reasons contained herein and in Appellant’s Brief

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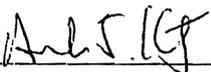
STATE OF WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD,

Respondent-Appellee.

CERTIFICATE OF SERVICE

I, Andrew J. Katz, counsel for Cynthia Ringel-Williams, do hereby certify that I have on the 2nd day of September, 2015 caused to be served a true copy of a **RESPONSE BRIEF** via first class United States mail, postage prepaid, to the following individual:

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