

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 2246

MARGARET ANNE COADY LATIOLAIS

VERSUS

TEACHERS' RETIREMENT SYSTEM OF LOUISIANA

DATE OF JUDGMENT: AUG 11 2014

ON APPEAL FROM NINETEENTH JUDICIAL DISTRICT
NUMBER C541036, DIV. 8, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILSON E. FIELDS, JUDGE

* * * * *

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* * * * *

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: REVERSED AND REMANDED.

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KUHN, J.

Plaintiff-appellant, Margaret Anne Coady Latiolais, appeals the trial court's grant of summary judgment dismissing her claims as beneficiary for payments of the monthly retirement benefits of her deceased sister who was a member of defendant-appellee, Teachers' Retirement System of Louisiana (TRSL). TRSL answered the appeal, urging that if the summary judgment is reversed, the trial court erred in finding its peremptory exceptions were moot. We reverse the trial court's grant of summary judgment in favor of TRSL and its decree that the peremptory exceptions are moot. The matter is remanded to the trial court with instructions to rule on the peremptory exceptions.

FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2002, Mary Christina Coady, who worked in the St. Charles Parish School System and was a member of TRSL for over 25 years, completed an "Application for Service Retirement," wherein she indicated she was divorced and specified January 22, 2003 as her effective retirement date. Section 4 of the TRSL form addressed "Retirement option beneficiary" and stated, in pertinent part, "You may designate one beneficiary below to receive a monthly survivor benefit in the event of your death." In this section of the form, Coady designated her sister, Latiolais, as her beneficiary and also provided Latiolais' birth date and Social Security number. In filling out the application, Coady struck through Sections 2, 5, and 6 of the application form, which referenced an "Initial Lump Sum Benefit." TRSL received Coady's application on August 28, 2002 and, according to its records, acknowledged receipt of the application by a letter dated September 3, 2002.

Coady died on February 27, 2003 before TRSL had finalized her retirement application. TRSL updated its system to reflect Coady's death and notified Latiolais that because Coady had died more than thirty days after the effective date of retirement but before TRSL had received her Affidavit of Retirement Option Election

(the retirement affidavit), Latiolais would receive the Option 1 beneficiary benefit, i.e., a single life annuity in a one-time payment, which represented the present value of Coady's annuity at the time of her retirement.

On March 1, 2006, Latiolais filed this petition, seeking a declaratory judgment concluding that under the law, TRSL was obligated to pay her a reduced retirement allowance paid throughout her life from the date of Coady's death, along with attorney's fees, penalties, legal interest, and costs. Latiolais averred that TRSL did not send a retirement affidavit to Coady which, based on TRSL's rules and procedures particularly the July 2002 brochure that TRSL mailed to Coady entitled "When It's Time to Retire," it was responsible for producing and providing. Due to this failure, the petition alleged that TRSL unjustly denied Latiolais' recovery of Option 2 benefits under the retirement plan. After TRSL answered the suit, Latiolais filed a motion for summary judgment urging that TRSL's error caused an unlawful denial of Latiolais' benefits. The trial court granted Latiolais' motion.

In an earlier opinion, this court affirmed in part and reversed in part the grant of summary judgment, concluding that the trial court had correctly ordered TRSL to pay Latiolais a monthly survivor benefit but reversed that portion of the judgment that concluded she was entitled to a particular retirement benefit option, finding outstanding issues of material fact. See *Latiolais v. Teachers' Retirement System of Louisiana*, 2008-1792 (La. App. 1st Cir. 8/24/09), 22 So.3d 948. The Supreme Court granted a writ of review, vacated the rulings of both this court and the trial court, and remanded for a full trial on the merits "as there [were] outstanding issues of material fact remaining." *Latiolais v. Teachers' Retirement System of Louisiana*, 2009-2081 (La. 1/8/10), 24 So.3d 872.

After additional discovery, TRSL filed a motion urging entitlement to summary judgment on both legal and factual bases. TRSL also filed peremptory exceptions, objecting on the basis that Latiolais' petition failed to state a cause of

action; as beneficiary, she had no right of action to enforce a duty owed to her deceased sister as retiree; and that even if there were a cause of action and a right of action in favor of Latiolais, the matter was prescribed by the time she filed her petition.

After a hearing, in oral reasons for judgment, the trial court stated TRSL was entitled to summary judgment because there were no genuine issues of material fact outstanding, and it dismissed Latiolais' petition. In light of its grant of summary judgment, the trial court found the peremptory exceptions were moot. A judgment in conformity with these rulings was signed, and Latiolais appealed. TRSL answered the appeal, suggesting that if the motion for summary judgment is reversed, it is entitled to a review on the merits of its peremptory exceptions.

DISCUSSION

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966B. Summary judgment is favored and shall be construed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966A(2).

The initial burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial, he need not negate all essential elements of the adverse party's claim, but he must point out that there is an absence of factual support for one or more elements essential to the claim. La. C.C.P. art. 966C(2). Once the movant has met his initial burden of proof, the burden shifts to the non-moving party to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden at trial. *Samaha v. Rau*, 2007-1726 (La. 2/26/08), 977 So.2d 880, 883. The plaintiff may not rest on mere allegations or denials, but must set forth specific facts that show that a genuine issue of material fact remains. If the

plaintiff fails to meet this burden, there is no genuine issue of material fact, and the defendant is entitled to summary judgment as a matter of law. *Berry v. Paul Revere Life Ins. Co.*, 2008-0945 (La. App. 1st Cir. 7/9/09), 21 So.3d 385, 388, writs denied, 2009-2241 and 2009-2220 (La. 12/18/09), 23 So.3d 942 and 945.

TRSL contends that because Latiolais failed to show that TRSL had a duty to Coady, summary judgment was warranted. Thus, it urges we uphold the trial court's grant of summary judgment on this basis.

The pertinent version of La. R.S. 11:783, providing for a method of payment option selection after the death of a member of TRSL, stated in relevant part:

A. (1) No optional election shall be effective when a retiree or participant in the Deferred Retirement Option Plan dies within thirty days after the effective date of retirement or the effective date of participation in the Deferred Retirement Option Plan, and such a retiree or participant in the Deferred Retirement Option Plan shall be considered as an active member at the time of death.

(2) Upon retirement or participation in the Deferred Retirement Option Plan any member may make an election which is irrevocable after the effective date of retirement or the effective date of participation in the Deferred Retirement Option Plan to receive his benefit in a retirement allowance payable throughout life, or he may make an election which is irrevocable after the effective date of retirement or the effective date of participation in the Deferred Retirement Option Plan to receive the actuarial equivalent of his retirement allowance in a reduced retirement allowance payable throughout life with the provisions that:

Option 1. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his succession or to any person he shall designate in a written instrument acknowledged and filed with the board of trustees.

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made; or

Option 2A. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made, provided that if the designated beneficiary predeceases the retiree, the retiree's reduced benefit shall change to the maximum benefit effective on the

first day of the next month following the death of the designated beneficiary.

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of and paid to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made; or

Option 3A. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of and paid to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made, provided that if the designated beneficiary predeceases the retiree, the retiree's reduced benefit shall change to the maximum benefit effective on the first day of the next month following the death of the designated beneficiary.

Option 4. Upon his death, some other benefit which shall not exceed the Option 2 benefit amount, designated by him at the time the election is made, shall be paid throughout the life of and to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made, provided such other benefit, together with the reduced retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees; or

Option 4A. Upon his death, some other benefit which shall not exceed the Option 2 benefit amount, designated by him at the time the election is made shall be paid throughout the life of and to a natural person he shall irrevocably designate in a written instrument acknowledged and filed with the board of trustees at the time the election is made, provided such other benefit, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and approved by the board of trustees, provided that if the designated beneficiary predeceases the retiree, the retiree's reduced benefit shall change to the maximum benefit effective on the first day of the next month following the death of the designated beneficiary.

(3) Initial Lump-Sum Benefit. (a) If a member has not participated in the Deferred Retirement Option Plan provided by the provisions of this Chapter and has thirty years of creditable service, or is age fifty-five and has twenty-five years of creditable service, or is age sixty and has ten years of creditable service, and if the maximum benefit, Option 2, 2A, 3, 3A, 4, or 4A above is chosen, then a reduced retirement allowance plus an initial benefit shall be paid to the member. The accredited service referenced in this Paragraph shall not include unused accumulated sick leave and unused accumulated annual leave.

...

H. If a retiree or a participant in the Deferred Retirement Option Plan dies **more than thirty days after the effective date of retirement** or more than thirty days after his effective date of participation in the Deferred Retirement Option Plan, but before the retirement system has received his Affidavit of Retirement Plan Election and leaves a surviving spouse, he shall be retired under Option 2 of Subsection A of this Section as of his effective date of retirement and the surviving spouse shall be paid Option 2 beneficiary benefits; however, if he does not leave a surviving spouse but does leave an eligible surviving minor child or children, only the benefits provided under R.S. 11:762(C) shall be payable; and **provided that if he does not leave a surviving spouse, he shall be retired under Option 1 of Subsection A of this Section as of his effective date of retirement and his latest named beneficiary including any beneficiary named on his retirement application received by the retirement system shall be paid the Option 1 beneficiary benefit.** (Emphasis added.)

Clearly, under the provisions of this article, TRSL has, at a minimum, an implied obligation of good faith and fair dealing. See also La. C.C. art. 2315 (providing for liability for acts that cause damage).

At the hearing on the motion for summary judgment, TRSL provided evidence that might permit the trier of fact to conclude it had mailed out a retirement affidavit to Coady on or around September 3, 2002, thereby fulfilling any duty of good faith and fair dealing it may have owed. The supreme court's action of vacating our earlier opinion demonstrates that even an inference from parties' earlier-offered evidence was sufficient to create a genuine issue of material fact as to whether any duty TRSL owed to Coady or Latiolais was breached. See *Latiolais*, 24 So.3d 872.

Although TRSL suggests that in her January 11, 2013 deposition Latiolais admitted she had seen the information provided in the retirement affidavit thereby conceding that TRSL had sent the retirement information to Coady in compliance with any duty it may have owed, based on our reading of all of the excerpts of Latiolais' deposition, we disagree with TRSL's characterization of the testimony as constituting unequivocal proof of an undisputed issue of material fact. The excerpts show that Latiolais was confused about whether the information she actually recalled having seen was that of her own retirement or her sister's. She also testified that she

never saw an actual completed form setting forth the particulars relating to her sister's retirement. The different versions of the witnesses' testimony leave outstanding a material issue of fact as to whether TRSL sent the retirement affidavit to Coady.¹ Thus, we conclude the trial court erred in granting summary judgment in favor of TRSL on the basis that no genuine issues of material fact existed.² Accordingly, that portion of the trial court's judgment is reversed.

Because we have reversed the trial court's grant of summary judgment, we find that the trial court erred in concluding TRSL's peremptory exceptions raising objections of no cause of action, no right of action, and prescription were moot. And since the trial court did not rule on these exceptions which, we note, have not been referred to the merits of the case, we decline to exercise our power of review. See *Falcon v. Town of Berwick*, 2003-1222 (La. App. 1st Cir. 6/25/04), 885 So.2d 1222, 1225; *Hall v. Hebert*, 99-2781 (La. App. 1st Cir. 6/22/01), 798 So.2d 159; *Riley v. Riley*, 94-2226 (La. App. 4th Cir. 9/4/96), 680 So.2d 169, 171 n.3, writ denied, 96-2430 (La. 12/6/96), 684 So.2d 932; and *Adserv Corp. v. Lincecum*, 385 So.2d 432, 435 (La. App. 1st Cir. 1980). Accordingly, the peremptory exceptions raising

¹In our earlier opinion, we held that La. R.S. 11:783H imposed an implicit duty on TRSL to provide the retirement affidavit to a member who submits a retirement application. See *Latiolais*, 22 So.3d at 955. Citing La. R.S. 11:702 generally as well as *Honda v. Bd. of Trustees of the Employees' Retirement System of the State*, 118 P.3d 1155, 1164 (Haw. 2005) and *Ricks v. Missouri Local Gov't Employees' Retirement System*, 981 S.W.2d 585, 592 (Mo. Ct. App. 1998), we reasoned that TRSL's fiduciary duties included the duty to provide retirees sufficient information to make an informed decision in electing a retirement option. Although the supreme court vacated the entirety of our opinion, see *Latiolais*, 24 So.3d 872, that action does not clearly establish whether our holding imposing the more narrower duty was error. Since there are outstanding issues of material fact relative to the more general duty of good faith and fair dealing clearly owed by TRSL, we pretermitt a discussion of any applicability of a more narrow duty.

² TRSL maintains Latiolais failed to provide any evidence to support the imposition of damages. Latiolais has styled her petition as one for declaratory relief, a remedy to which she is clearly entitled. See La. C.C.P. art. 1871. To the extent that she is successful in obtaining the declaration which she seeks, Latiolais may be entitled to damages pursuant to La. C.C.P. art. 1878. Thus, TRSL has not borne its initial burden as movant under the present procedural posture of the case and is not entitled to summary judgment on this basis.

objections of no cause of action, no right of action and prescription are remanded to the trial court for disposition.³

DECREE

For these reasons, the trial court's grant of summary judgment and its decree that the peremptory exceptions filed by TRSL were moot is reversed. The exceptions raising objections of no cause of action, no right of action, and prescription are remanded for the trial court to rule on. Appeal costs in the amount of \$3,864.00 are assessed against defendant-appellee, Teachers' Retirement System of Louisiana.

REVERSED AND REMANDED.

³ TRSL asserts that even if there is an outstanding issue of fact on whether it had breached any duty it owed to Coady, it is nevertheless entitled to summary judgment as a matter of law because Latiolais did not provide any evidence that TRSL had a contractual duty to pay Latiolais monthly retirement benefits. But this assertion was not fully briefed in conjunction with TRSL's defense of the trial court's grant of summary judgment and was instead articulated in its answer challenging the trial court's conclusion that its exception of no right of action was moot. Mindful that evidence is admissible on an exception of no right of action, we believe the issue is correctly addressed by the trial court on remand.