

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHARLOTTE A. WILKINS,

Plaintiff-Appellant,

v

CITY OF LIVONIA CIVIL SERVICE  
COMMISSION and CITY OF LIVONIA BOARD  
OF PENSION TRUSTEES FOR THE LIVONIA  
EMPLOYEES' RETIREMENT SYSTEM,

Defendants-Appellees.

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UNPUBLISHED

January 11, 2000

No. 214080

Wayne Circuit Court

LC No. 98-807000 AS

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court order granting summary disposition to defendants in this action for superintending control. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the former spouse of Robert Wilkins, a former employee of the City of Livonia. Under a judgment of divorce, plaintiff had an interest in pension benefits earned by her former husband. Mr. Wilkins no longer worked for the city at the time of his death, and he had yet to reach retirement age. Defendants denied plaintiff's request for monthly retirement benefits, and instead refunded Mr. Wilkins' accumulated pension contributions to plaintiff.

Plaintiff filed a complaint for superintending control in the circuit court, asserting that she was entitled to pension benefits where her former husband was a vested former member of the retirement plan. The court denied plaintiff's motion for summary disposition and granted summary disposition to defendants under MCR 2.116(I)(2), finding that Mr. Wilkins was not a member of the plan at the time of his death, and that there was no provision in the retirement ordinance that allowed for payment of pension benefits to plaintiff.

Decisions of municipal civil service commissions are reviewed through original actions for superintending control. *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994). If the entity in

charge of administration of a pension program has reasonably interpreted the retirement ordinance in light of the objects and purposes to be accomplished, the court should not overturn that interpretation. *Detroit Fire Fighters Assn v Detroit*, 127 Mich App 673, 677; 339 NW2d 230 (1983). The burden is on the challenging party to establish cogent grounds for overruling the commission's decision. *Hay v Highland Park*, 134 Mich App 624, 631; 351 NW2d 622 (1984).

Under the definitions of the ordinance, Mr. Wilkins was no longer a member of the plan when his employment was terminated prior to his reaching retirement age. Section 2.96.170 provides that should any member no longer be employed by the city, for any reason other than death or retirement, he shall cease to be a member, except as otherwise provided in the plan.

Had Mr. Wilkins survived to retirement age, he would have been entitled to deferred pension benefits under section 2.96.240, which provides in part:

In the event a member who has ten or more years of total service credited to his service account separates from city employment prior to his attainment of his voluntary retirement age, for any reason except his retirement or death, he shall be entitled to a pension computed according to section 2.96.230, subject to the limitation of same, provided he does not withdraw his accumulated contributions from the pension savings fund. His pension shall begin the first day of the calendar month next following the date his application is filed with the board, on or after his attainment of his voluntary retirement age.

This section does not provide for the payment of benefits after the former member's death. Non-duty death benefits are addressed in section 2.96.270, which provides in part:

Any member who continues in the in the employ of the city on or after the date he acquires ten years of total service credit may, at any time prior to the effective date of retirement, elect option (A) provided for in section 2.96.260 and nominate a beneficiary whom the board of trustees finds to be dependent upon him for at least fifty percent of his support due to lack of financial means....Upon the death of a member who has an option (A) election in force, his beneficiary, if living, shall be entitled to the same pension to which the beneficiary would have been entitled had the member retired the day preceding the date of his death, notwithstanding that he might not have attained his voluntary retirement age. Payment of the pension shall begin immediately upon the death of the member, if the member had attained age fifty-five years on the date of his death: otherwise, payment shall begin the first day of the calendar month next following the date the member would have attained his voluntary retirement age.

While plaintiff asserts that she is entitled to benefits under this provision, defendants interpreted this section as providing benefits only for members. Where decedent was no longer a

member at the time of his death, this provision is inapplicable. There is no showing that defendants unreasonably interpreted the ordinance is reaching this conclusion.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage