

STATE OF MICHIGAN
COURT OF APPEALS

STUART TRAGER,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant,

and

DETROIT BOARD OF TRUSTEES OF THE
GENERAL RETIREMENT SYSTEM OF THE CITY
OF DETROIT,

Defendant-Appellant.

UNPUBLISHED

August 18, 2000

No. 209668;214835

Wayne Circuit Court

LC No. 97-715854-CL

ON REMAND

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

This case is on remand by order of the Supreme Court “to consider defendant’s argument that, under the charter or other provisions of law in effect during the time plaintiff accrued his pension rights, a person was not retired for purposes of qualifying for pension benefits if that person had returned to active employment with the city.” *Trager v Detroit*, ___ Mich ___; ___ NW2d ___ (Docket No. 116015-16, issued 7/5/00).

Previously in *Trager v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued 11/23/1999 (Docket Nos. 209668; 214835), we affirmed the grant of summary disposition in favor of plaintiff entered by the Wayne Circuit Court. Therein we summarized the facts concerning the instant dispute over pension benefits:

This case involves a dispute over pension benefits. After plaintiff’s pension rights had vested and he began drawing a pension, defendant adopted a resolution providing that the pension benefits of a “retirant” who returns to work for the city will

be suspended until he or she again retires. More than a year after plaintiff returned to city employment, defendant suspended payment of plaintiff's pension benefits in accordance with that resolution. Plaintiff sued and the trial court ruled that defendant had acted illegally and must resume paying plaintiff his pension.

In affirming summary disposition in favor of plaintiff, we relied on Const 1963, art 9, § 24:

This case is governed by Const 1963, art 9, § 24, which provides in pertinent part:

“The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.”

That provision “makes the financial benefits of a pension plan a contractual obligation of the city,” *Retired Policemen & Firemen of Lincoln Park v Lincoln Park*, 6 Mich App 372, 378; 149 NW2d 206 (1967), and precludes reduction of an accrued benefit, *Seitz v Probate Judges Retirement System*, 189 Mich App 445, 451; 474 NW2d 125 (1991), or other impairment thereof. *Campbell v Judges' Retirement Bd*, 378 Mich 169, 181; 143 NW2d 755 (1966). Given that defendant does not dispute that plaintiff's pension rights had vested, its resolution requiring him to forfeit those rights is unconstitutional. Therefore, the trial court properly granted plaintiff's motion for summary disposition.

Defendant contends the modification of plaintiff's accrued pension benefits was authorized by defendant's city charter in effect at the time plaintiff's pension accrued. We disagree.

Defendant's General Retirement System (GRS) is governed by Title IX, chapter VI of the city charter of the City of Detroit. It provides that city employees are members of the GRS. Title IX, chapter VI, art IV, § 1. Members who retire, either voluntarily or mandatorily, “shall receive a retirement allowance,” i.e., the sum of any annuity and the pension. Title IX, chapter VI, art III, § 1.17; art VI, §§ 1.1, 1.3. Members who are at least forty years old and have at least eight years of service and who leave employment for reasons other than discharge, retirement, or death, “shall be entitled to a retirement allowance” which is to be paid “on or after the date he would have been eligible to retire had he continued in city employment.” Title IX, chapter VI, art VI, § 1.4. Article IV, § 2 states who is not a member:

Except as otherwise provided in this chapter, should any member leave the employ of the City, for any reason except his retirement or death, he shall thereupon cease to be a member and his credited service at that time shall be forfeited by him. In the event he is re-employed by the city, he shall again become a member of the Retirement System. Should his said re-employment occur within a period of six years from and after the date his City employment last terminated, his credited service last forfeited by him shall be restored to his credit. Should he become a retirant or die, he shall thereupon cease to be a member.

This section does provide, as defendant contends, that one cannot be a retirant and a member, because a member must be a city employee and an employee who quits, retires, or dies ceases to be a member. However, plaintiff did not cease to become a member when he resigned because he presumably had attained the age of forty and had over twenty years of service and thus came within the “Except as otherwise provided” category. It is unclear if he became a retirant upon qualifying for pension benefits. Assuming that he did, *neither this section nor any other addresses what is to be done with retirants who return to work after collecting a pension.* Therefore, absent an amendment to the charter providing for such a contingency, defendant could not suspend plaintiff’s pension benefits. As noted, the Board did adopt by resolution new “rules, regulations and policies” to cover such a contingency. The charter authorized the Board to “establish rules and regulations for the administration of the Retirement System and for the transaction of its business.” Title IX, chapter VI, art II, § 7. Whether that authorized the Board to change the rules governing who qualifies to receive a pension is doubtful because the Board would, in effect, be amending the charter in contravention of the procedure established by the Legislature. See MCL 117.21; MSA 5.2100; MCL 117.22; MSA 5.2101. Pursuant to Const 1963, art 9, § 24 and *Van Antwerp v Detroit*, 47 Mich App 707; 210 NW2d 3 (1973), because the city charter did not modify or restrict the right to pension benefits in the manner asserted by defendant and the charter was not amended to so provide, the Board could not suspend plaintiff’s right to receive pension benefits. Given defendant does not dispute that plaintiff’s pension rights had vested, its resolution requiring him to forfeit those rights was unconstitutional. Const 1963, art 9, § 24. Accordingly, the trial court properly granted plaintiff’s motion for summary disposition.

Affirmed.¹

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Richard Allen Griffin

¹ Our reversal of the award of attorney fees was not subject to this remand. Rather, plaintiff’s cross appeal of our decision regarding attorney fees was denied by the Supreme Court.