

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD V. STOKAN,

Plaintiff-Appellee/Cross-Appellant,

v

HURON COUNTY,

Defendant-Appellant/Cross-
Appellee.

UNPUBLISHED

July 8, 2004

No. 242645

Huron Circuit Court

LC No. 99-000732-CK

RICHARD V. STOKAN,

Plaintiff-Appellee,

v

HURON COUNTY,

Defendant-Appellant.

No. 243489

Huron Circuit Court

LC No. 99-000732-CK

Before: Cavanagh, P.J., Gage and Zahra, JJ.

ZAHRA, J. (*dissenting*.)

I respectfully dissent. While I agree with the majority that the language of Resolution 23-83 is unambiguous, I disagree that Resolution 23-83 entitles plaintiff to renew his participation in the county health care benefit plan some seven years after he ceased participation in this plan. I conclude that the plain language of Resolution 23-83 entitles a retiree to receive some level of health care benefits under the plan only if, at the time of retirement, the employee elects to remain under the county health care benefit plan. A former employee cannot elect to remain under the county health care benefit plan where, as here, that employee left the plan several years before his attempted election. I would reverse the trial court's order granting summary disposition to plaintiff on the issue of liability, and remand for entry of judgment of no cause for action.

The language of Resolution 23-83, in relevant part, states:

BE IT FURTHER RESOLVED, that the premium for the county employee health care benefit plan . . . shall be paid by the County for current employees, including elected officials . . . upon retirement from county service after the date of this resolution . . . if an election is made by them *to remain under such plan*[.] [Emphasis added.]

Resolution 23-83 must be construed so that every word or phrase is given effect. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2303) (construction of contract—every word or phrase is given effect); *Danse Corp v Madison Heights*, 466 Mich 175, 182; 644 NW2d 721 (2302) (construction of statute—every word is given effect); *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 57; 672 NW2d 884 (2303) (construction of statute—every phrase is given effect).¹ The majority has ignored that a condition precedent to receipt of retirement health care benefits under Resolution 23-83 is that the employee remain under the health care benefit plan. Resolution 23-83 expressly requires employees entitled to retirement health care benefits to elect “to remain under” the county health care benefit plan. This election must be made at the time the employee retires from the county and before the employee ceases being covered under the county health care benefit plan. Should an employee no longer be covered under the county health care benefit plan, he obviously cannot elect to remain in a plan under which he is no longer covered.

Here, plaintiff ended his employment with the county and received health care coverage through another employer, the Michigan Sheriffs’ Association. Plaintiff could not later elect to *remain* under the county employee health care benefit plan because he left that plan some seven

¹ The majority construes the Resolution as an employment contract. However, the adoption of Resolution 23-83 is governed by MCL 46.12a, which provides in relevant part:

A county board of commissioners at a lawfully held meeting may do 1 or more of the following:

(a) Provide group life, health, accident and hospitalization, and disability coverage for a county employee, retired employee, or an employee of an office, board, or department of the county, including the board of county road commissioners, and a dependent of an employee, either with or without cost participation by the employee, and appropriate the necessary funds for the insurance. . . .

Since the defendant’s board of commissioners exercised statutory authority to adopt the Resolution, the Resolution could be viewed as social or economic legislation. See *Downriver Plaza Group v City of Southgate*, 444 Mich 656, 666; 513 NW2d 807 (1994) (construing resolution adopted by a city council pursuant to the Michigan Drain Code as an economic legislative measure for purposes of a due process challenge). This distinction makes no difference in the outcome of this case, however, since the first rule of construction for statutes and contracts is identical—determine whether the plain language under review is unambiguous. Here, while I disagree with the majority’s interpretation of Resolution 23-83, I agree with the majority that the Resolution is unambiguous.

years prior when he ceased his employment with the county. Therefore, I conclude that summary disposition in favor of plaintiff was improper. I would remand this case to the trial court to enter judgment for no cause of action in favor of defendant.

/s/ Brian K. Zahra