

STATE OF MICHIGAN
COURT OF APPEALS

JAMES SMITH, JOHN GATEWOOD, and ODIS
SOLOMON,

UNPUBLISHED
August 28, 2012

Plaintiffs-Appellants,

v

ROYAL OAK TOWNSHIP,

No. 303939
Oakland Circuit Court
LC No. 2010-113507-CK

Defendant-Appellee.

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

Although I agree with the majority's conclusions regarding Gatewood and Solomon, I disagree with the majority's conclusion regarding Smith. Under Michigan law governing retiree benefits, it is clear that Smith's right to lifetime retirement medical benefits vested upon his retirement. The only question remaining is whether they vested at a particular level, and to that end I find persuasive federal precedent with analogous facts holding that vested retirement medical benefits are subject to reasonable modification. Because it is unclear from the record whether Smith's new benefit plan is a reasonable modification of his original benefit plan, I would reverse the trial court's grant of summary disposition regarding Smith, and remand for further findings regarding whether the modification of Smith's retirement medical benefits was reasonable.

The core issue in Smith's case is whether an employer may unilaterally modify a retiree's health care benefits provided for in a collective bargaining agreement (CBA), and if so, by how much.¹ "Though not binding on this Court, federal precedent is generally considered highly

¹ Although there are few examples in Michigan case law dealing with retiree benefits issues generally, and none dealing squarely with the issue presented here, this Court dealt with an issue similar to the one here in *Butler v Wayne County*, 289 Mich App 664; 798 NW2d 37 (2010). Nonetheless, *Butler* alone does not resolve this case. There, the defendant employer appealed the trial court's order holding that the retiree plaintiffs were entitled to a flat-rate premium structure for their life insurance on the basis of a vested right created by the past practice of the parties. *Id.* at 666. This Court reversed, holding that there was no express contractual right

persuasive when it addresses analogous issues.”² To that end, I find *Reese v CNH America, LLC*³ highly persuasive, as it presents a factual situation analogous to Smith’s, and a solution that is both logical and consistent with Michigan law. In *Reese*, the plaintiff retirees had retired under a collective bargaining agreement.⁴ There, as here, the CBA stated that the employer would pay for the retirees’ medical benefits, but did not specify what level of medical benefits to which the retirees were entitled.⁵ The retirees filed suit, seeking, inter alia, “a declaration that they were entitled to lifetime health-care benefits.”⁶ Judge Sutton, writing for a panel of the Sixth Circuit Court of Appeals, explained that the disposition of the case turned on two questions: “Did [the defendant] in the . . . CBA agree to provide health-care benefits to retirees and their spouses for life? And, if so, does the scope of this promise permit [the defendant] to alter these benefits in the future?”⁷

The basic legal framework regarding the vesting of rights under a CBA applied by *Reese* mirrors the framework Michigan courts have adopted. The *Reese* court held that:

When the health plan stems from a CBA . . . we apply ordinary principles of contract interpretation to determine whether benefits have vested . . . and to the extent we put a thumb on the scales in this setting, it favors vesting. Although we do not apply a legal presumption that benefits vest and although we require plaintiffs to bear the burden of proving that vesting has occurred, we apply an inference that it is unlikely that [health care benefits] would be left to the contingencies of future negotiations so long as we can find either explicit contractual language or extrinsic evidence indicating an intent to vest benefits.^{8]}

under the CBA for a flat-rate premium structure, nor did the doctrine of past practices entitle the plaintiffs to one. *Id.* at 672-684. This case, by contrast, addresses the effect of an attempt to modify rights granted under the express contractual provisions of the CBA. In this respect, to the extent *Butler* is instructive in resolving this case, it is helpful only insofar as it lays out certain rules of construction regarding parties’ and beneficiaries’ rights under CBAs.

² *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 360; 597 NW2d 250 (1999).

³ 574 F 3d 315 (CA 6, 2009).

⁴ *Id.* at 318.

⁵ *Id.* at 318 (“The CBA does not spell out what ‘Medical’ benefits are included; it just says that ‘[e]ligibility for specific coverage [will be] based on each plan's eligibility requirements.’”).

⁶ *Id.* at 319.

⁷ *Id.* at 321.

⁸ *Id.* (citations and quotations omitted).

Similarly, under Michigan law, “[a]bsent explicit contractual language to the contrary, a retiree’s contractual rights [under a CBA] vest, if at all, at the time of retirement.”⁹

The *Reese* court ultimately concluded that the retirees had a vested right to lifetime health care benefits, but determined that the scope and level of those benefits may be subject to *reasonable* modification from the level that existed at the time the retirees retired.¹⁰ In reaching this conclusion, the court noted, among other things, that much of the federal case law addressing the issue of benefit vesting under CBAs arose in the context of pension plans. The court explained that pension benefits (which are unalterable after they vest) are distinguishable from health care benefits (which the court ultimately concluded may be subject to reasonable alteration after they vest).

The value of a pension benefit . . . is clear cut—a matter of concrete dollars and cents, fairly measurable as a matter of principal or income stream before retirement, at retirement or after retirement. Vested health-care benefits are another matter. Employers do not send their active or retired employees a monthly account itemizing the value of their health-care benefits.^[11]

The court went on to note that health care plans are different from pension benefits in that health care plans “invariably change over time, if not from year to year,” and it was therefore unreasonable to expect that the same level of benefits be maintained over the life of the retirees.¹² In short, the *Reese* court held that the CBA at issue there “established a right to lifetime healthcare benefits” but that “[n]othing in the text of the [CBA] said that health care coverage would be fixed and irreducible into perpetuity for all employees who retired under it.”¹³ Having concluded that the defendant “cannot terminate all health-care benefits to retirees, but it may *reasonably* alter them,”¹⁴ the court remanded to the district court to “decide how and in

⁹ *Butler*, 289 Mich App at 676. See also *Bender v Newell Window Furnishings, Inc.*, 681 F 3d 253, 264 (CA 6, 2012) (where contract was silent as to duration of retiree medical benefits, those benefits must continue indefinitely and without cost).

¹⁰ *Reese*, 574 F 3d at 327 (“‘Plaintiffs are entitled to vested lifetime retiree health care benefits,’ [the district court] concluded, ‘as provided for in the labor agreements in effect at the time of their or their deceased spouses’ retirement.’ To the extent this ruling indicates that the retirees have a vested right to receive health care benefits for life, it is consistent with [precedent]. But to the extent it suggests that these benefits must be maintained precisely at the level provided for in the . . . CBA, it is not supported by the . . . CBA, extrinsic evidence provided by the parties or common sense. CNH, in short, cannot terminate all health-care benefits for retirees, but it may *reasonably* alter them.”(emphasis added)).

¹¹ *Id.* at 324.

¹² *Id.*

¹³ *Id.* at 325.

¹⁴ *Id.* at 327 (emphasis added).

what circumstances [the defendant] may alter such benefits—and to decide whether it is a matter amenable to judgment as a matter of law or not.”¹⁵

Here, the majority reasons that the Township has fulfilled its obligation under the contract because the contract merely requires that the Township provide HMO coverage, and does not specify what level of coverage is required. Therefore, the majority concludes that the Township has fulfilled its obligation under the contract by providing Smith with *some* level of coverage, even if that level of coverage is *de minimus*. I respectfully disagree. The CBA here states, in relevant part:

Health Maintenance Organization Coverage will be made available to all retirees and their dependants, with such costs being paid for by the Township and only during the life of the retiree.

As this Court has held, “absent explicit contractual language to the contrary, a retiree’s contractual rights [under a CBA] vest, if at all, at the time of retirement.”¹⁶ Smith’s right to lifetime health coverage therefore vested at the time he retired, as the CBA does not contain language to the contrary. Accordingly, under *Reese*, although the level of benefits to which Smith was entitled may be altered to a different level in the future, that alteration must be reasonable.¹⁷

The Township unilaterally terminated Smith’s original health care benefit plan and replaced it with a Blue Cross/Blue Shield (BCN4) plan. Smith asserts, and the majority acknowledges, that the level of coverage Smith receives under the BCN4 plan provides him with no more benefit than that to which he is already entitled under medicare—in essence, according to Smith, his actual benefit under the BCN4 plan is nil.¹⁸ However, it is unclear from the record what benefit level Smith received under his original health care plan, and how it differs in terms of coverage from the BCN4 plan. The parties, both below and on appeal, emphasize the relative *cost* of the two plans (both to the Township and to the plaintiffs), but say little about what level of *benefit* Smith receives under the BCN4 plan compared to the original plan.¹⁹ Absent this comparison, I cannot conclude whether the BCN4 plan amounts to a reasonable alteration of

¹⁵ *Id.*

¹⁶ *Butler*, 289 Mich App at 676.

¹⁷ *Reese*, 574 F 3d at 327.

¹⁸ I acknowledge that retirees covered by the same CBA as Smith who are under 65 may get some benefit from the new plan, as they would not be covered under medicare. However, the same issue arises for those retirees, namely, whether the level of coverage provided them under the new plan is reasonable relative to the old plan.

¹⁹ This is not to say that costs are irrelevant—indeed, one factor that may affect the reasonableness of the modification here is the fact that the Township pays nothing for the BCN4 plan. At oral argument, the Township admitted that the BCN4 plan cost it nothing; apparently, the cost of providing the BCN4 plan is covered using federal subsidies.

Smith's original benefits. The trial court purported to rely on *Reese* when granting the Township's motion for summary disposition, but provided no explanation regarding why the level of benefits Smith receives under the BCN4 plan is reasonable relative to the level of benefits he received under his original plan.²⁰ Therefore, I would reverse the trial court's grant of summary disposition with regard to Smith, and remand for further findings about whether the modification that occurred here was reasonable.

/s/ Kathleen Jansen

²⁰ Nor was the Township itself even aware of what level of benefit the BCN4 plan provided. When asked at oral argument whether the BCN4 plan provided Smith with a benefit level beyond what he is already entitled to under Medicare, counsel for the township indicated that he was "not sure." Nor does the Township's appellate brief, or lower court filings, indicate with any specificity what level of benefit the BCN4 plan provided relative to the prior plan. This is more evidence that remand to determine the reasonableness of the modification is necessary.