

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Holman, :
Appellant :
v. : No. 2149 C.D. 2010
City of Pittsburgh, a : Argued: June 6, 2011
municipal corporation :

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge (P)
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: August 5, 2011

James D. Holman appeals from an order of the Court of Common Pleas of Allegheny County (trial court) entering judgment notwithstanding the verdict in favor of the City of Pittsburgh (City) and against Holman. We affirm.

As a City employee, Holman was eligible to receive pension benefits under the City’s municipal pension plan adopted by ordinance¹ pursuant to the Act of August 1, 1975, P.L. 169, 53 P.S. §§23581-23592 (Pension Act of 1975), which is an act relating to pensions for employees of the City of Pittsburgh. Section 1 of the Pension Act of 1975 defines “fund” as “[t]he fund created by the city in

¹ See Chapter 192 of the City of Pittsburgh Code of Ordinances.

accordance with the act of May 28, 1915 (P.L. 596, No. 259), referred to as the Second Class City Employee Pension Law.”² 53 P.S. §23581 (footnote omitted).

Section 1 of the Second Class City Employee Pension Law mandates that “[a]ll cities of the second class shall create a pension fund for the pensioning of employes of said cities, in the manner, under the conditions, and subject to the qualifications following.” 53 P.S. §23561. The qualifications pertinent to this appeal are set forth in Section 3 of the Second Class City Employee Pension Law which provides that an employee who has attained the age of 60 and who has been employed for 20 years may apply for retirement and receive a lifetime pension. 53 P.S. §23563. Section 4 of the Second Class City Employee Pension Law sets forth the precise amount of pension benefits that are to be provided to City employees. 53 P.S. §23564. Section 4 does not allow for the City to extend pension benefits in excess of those specified in the Law, except in one instance not relevant herein. Id.

Section 1 of the Pension Act of 1975 defines “normal retirement age” as “[a]ge 60, with eight or more years of credited service.” 53 P.S. §23581. Section 8 of the Pension Act of 1975 sets forth the calculation for an employee’s pension allowance and also provides that employees are subject to a slight reduction in benefits upon reaching age 65 under a provision known as the social security offset. 53 P.S. §23588.

Sometime in 2003, City Mayor Murphy determined that certain categories of City employees should receive more generous pension benefits than those provided for under state law and City ordinance. Specifically, Mayor Murphy determined that those City employees holding three specific management

² As amended, 53 P.S. §§23561-23579.

job titles, EMS District Chief, EMS Division Chief, and EMS Patient Care Coordinator (hereinafter referred to “EMS Supervisors”), should receive special treatment and be permitted to retire at full pension at age 55 instead of age 60. Accordingly, Mayor Murphy instructed Assistant City Solicitor Edward F. Gentry to act on the Mayor’s behalf and to offer such enhanced pension benefits to the City’s EMS Supervisors.

On June 10, 2003, Gentry met with Ron Romano, who was an EMS District Chief, and who had been authorized by other EMS Supervisors to act as their representative and to accept on their behalf, any offer of enhanced pension benefits that might be extended to them by the Mayor. As such, Romano was acting as Holman’s agent at the June 10, 2003 meeting. As expected, Gentry offered to Romano and the other EMS Supervisors the following enhanced pension benefits: (1) retirement at full pension at age 55; (2) exemption from the social security offset; and (3) a certain unspecified benefit to their surviving spouses. Romano accepted the offer on behalf of himself and the other EMS Supervisors then holding such a position or who would hold such positions in the future in the three affected categories of employees. Gentry sent a confirming memo of the offered enhanced pension benefits to Romano on June 10, 2003. See Reproduced Record (R.R.) at 485a. Thereafter, neither Mayor Murphy nor Gentry took any further steps to have the promised enhanced pension benefits actually enacted into law by the General Assembly or City Council.

In 2007, Holman sent the executive secretary of the City’s pension fund a letter informing her that he would turn age 55 in March 2007 and requesting that she present to the City Pension Board his request for approval of full pension benefits at age 55 with no social security offset and with surviving spousal

benefits. R.R. at 490a. By letter dated August 22, 2007, the executive secretary informed Holman that there was no authority for the Pension Board to grant his request for full pension benefits at age 55 in the pension laws and ordinances governing the plan for any non-union employee. Id. at 491a.

Consequently, Holman filed a complaint with the trial court alleging that the City had breached its contract with him by not providing him with the pension he requested at age 55. The City denied Holman's claims; specifically stating that Mayor Murphy did not have the authority to change statutory pension benefits by way of agreement. A jury trial ensued. At the close of the evidence, the trial court judge informed the jury that he had ruled as a matter of law that the City's Mayor had the authority to direct Gentry, as Assistant City Solicitor, to enter into an agreement with the EMS Supervisors wherein Gentry offered them certain pension enhancements. R.R. at 468a. The trial court judge further informed the jury that they had to decide an issue of fact and presented, by way of special interrogatory, the following issue to be addressed by the jury:

Question 1: Do you find that Mayor Tom Murphy authorized Assistant City Solicitor Ed Gentry to offer the special pension enhancements to District Chief Ron Romano as representative of the EMS Supervisors? In other words, did Mayor Murphy authorize Ed Gentry to enter into the agreement that:

The Pension enhancements (re: social security offset, surviving spouse, etc.) as well as the unreduced at 55 pension benefits will be applicable to the following positions: (1) District Chief, (2) Division Chief, and (3) Patient Care Coordinator.

Id. The jury answered the foregoing question "Yes" and entered a verdict in favor of Holman.

The City filed a timely post-trial motion requesting that the trial court enter judgment for the City notwithstanding the verdict (JNOV). Upon review, the trial court granted the City's motion and entered judgment in favor of the City and against Holman. The trial court held that Mayor Murphy did not have the authority to act unilaterally, without legislative action by City Council or the General Assembly, to bind the City to paying enhanced pension benefits to certain groups of employees over and above what those employees were otherwise entitled to receive under the Pension Act of 1975. This appeal followed.³

The following issues are presented for this Court's review:

1. Whether the trial court erred in granting JNOV in favor of the City when it held that the City's Mayor did not have authority to grant a supplemental retirement benefit to Holman and other unrepresented EMS Supervisors; and
2. Whether the trial court erred in granting JNOV when it failed to consider whether the City was equitably estopped from raising the defense that the Mayor did not have the authority to grant the retirement benefit, and failed to instruct the jury on that issue.

In support of the first issue raised in this appeal, Holman initially argues that the trial court's grant of JNOV in favor of the City should be reversed

³ This Court's review as to whether judgment notwithstanding the verdict is appropriate is plenary. Thomas v. City of Philadelphia, 804 A.2d 97 (Pa. Cmwlth.), petition for allowance of appeal denied, 572 Pa. 728, 614 A.2d 679 (2002). A court may enter judgment notwithstanding the verdict only in a clear case where, after reviewing the evidence most favorable to the plaintiff, no two reasonable minds could fail to agree that the verdict was inappropriate and should have been rendered in favor of the movant. Id. An appellate court will reverse a trial court ruling only if it finds an abuse of discretion or an error of law that controlled the outcome of the case. Timbrook v. Foremost Insurance Company, 471 A.2d 891, 892 (Pa. Super. 1984).

because the court determined during trial that the Mayor had the authority to grant the enhanced pension benefits at issue. It was only after the trial court held as a matter of law that the Mayor had the authority, that the court then instructed the jury on the factual issue of whether the Mayor delegated that authority to Assistant City Solicitor Gentry. Holman contends that the trial court inexplicably reversed its own determination in disposing of the City's motion for JNOV that the Mayor had the authority without even acknowledging it had done so.

We reject Holman's argument on this point as meritless. It is well settled that the purpose of permitting post-trial motions is to provide the trial court with an opportunity to review and reconsider its earlier rulings and correct its own error. See Claudio v. Dean Macine Co., Inc., 574 Pa. 359, 368-69, 831 A.2d 140, 145 (2003); American Association of Meat Processors v. Casualty Reciprocal Exchange, 527 Pa. 59, 588 A.2d 491 (1991); Chalkey v. Roush, 757 A.2d 972 (Pa. Super. 2000), aff'd, 569 Pa. 462, 805 A.2d 491 (2002); Soderberg v. Weisel, 687 A.2d 839 (Pa. Super. 1997); Meeting House Lane, Ltd. v. Melso, 628 A.2d 854 (Pa. Super. 1993), petition for allowance of appeal denied, 537 Pa. 633, 642 A.2d 486 (1994); and Taylor v. Celotex Corporation, 574 A.2d 1084 (Pa. Super. 1990)). See also Riccio v. American Republic Insurance Co., 550 Pa. 254, 262, 705 A.2d 422, 426 (1997) ("[T]o . . . not allow a judge deciding post-trial motions to overrule legal errors made during the trial process (whether made by the reviewing judge or another judge who presided over the trial) would render the post-trial motion rules meaningless and the post-trial motion process would become nothing more than an exercise in futility.").

Next, Holman contends that the characterization of the benefit in this case as a "pension" enhancement is a red herring. Holman argues that in essence,

the enhancement to the retirement allowance is no different than a wage increase. Holman contends that it was conclusively established at trial that the City's Home Rule Charter grants the Mayor the power: (1) to grant salary, promotions and benefits to all employees; (2) to supervise all City employee and officers; and (3) to take such action as may be necessary to ensure that no inequities exist in any unit of City government. Holman argues that the benefit here is no different than other employment benefits because it was to be funded by the City rather than amendment to state law; therefore, the Mayor undisputedly had the authority to grant said a supplemental retirement benefit to Holman.

We reject Holman's equalization of the pension benefits he is seeking with a wage increase or other type of generic employment benefit. Holman is seeking to retire at age 55 rather than age 60, as mandated by the applicable laws and ordinances, with an exemption from the social security offset and a certain unspecified benefit to his surviving spouse. Accordingly, regardless of where the funds would originate from to provide the enhanced pension benefits Holman is seeking, the fact remains that he is not merely seeking a wage increase or an ordinary employment benefit. Undisputedly, he is seeking an enhanced pension benefit.

We also reject Holman's contention that Mayor Murphy was authorized to award Holman and the other EMS Supervisors an enhanced pension benefit via an agreement negotiated by Assistant City Solicitor Gentry and Romano. Herein, the trial court thoroughly and correctly analyzed this issue; therefore, we adopt the following reasoning by the court in resolving the issue of whether the City must change its pension plan by law or whether it may do so by

private contract between the Mayor and the person or persons to whom the Mayor wishes to extend the pension benefit without participation by City Council.

. . . It is of no small significance for a city to change its pension plan so that its employees are then able to retire at full pension at age 55. It should be self-evident that a city takes such actions by operating pursuant to law: that is by the city council acting in a formal and public manner to propose *legislation* to the mayor for his *approval* by signature. That this is true is both implicit in a basic understanding of the framework of government and is obvious through a cursory examination of the Home Rule Charter.

Under Pittsburgh's Home Rule Charter, "Article 3 Legislative Branch" § 301 states: "THE COUNCIL. *The legislative power of the city shall be vested in a council.*" (emphasis added).

Also under Article 3 § 316:

LEGISLATION. Council may legislate by ordinance or resolution. *Ordinances shall deal with general rules of continuing effect.* Resolutions shall deal with specific matters such as authorization of contracts, salaries, appropriations and budget transfers. *All ordinances and resolutions introduced shall be kept in a place accessible to the public at all reasonable times.* (emphasis added).

The Home Rule Charter also states: "Council shall give *public notice* of the introduction of legislation..." § 318; Council shall not take final action on the following types of legislation [such as appropriation or budget matters] without a *public hearing*. . . " § 319. (emphasis added).

The Home Rule Charter also specifies the manner in which a proposed ordinance becomes law. When council approves a proposed ordinance it must then be sent to the mayor. *See* § 321. "SUBMISSION OF

LEGISLATION TO MAYOR AND VETO POWER. Council shall submit all proposed legislation to the mayor for approval prior to its effective date. The mayor shall sign the legislation within ten days if approved, but if not, shall return it to council stating objections..."

Moreover, § 323 of the Home Rule Charter provides for the permanent and public recording of legislation: "RECORDING OF LEGISLATION. *All ordinances and resolutions shall be contained verbatim in permanent separate record books.* ...The ordinance book and resolution book shall be open *and available for inspection by the public during regular business hours.*" (emphasis added).

As the above makes clear, a government body such as a state or a city accomplishes its work through a formal and public process. So, when the Commonwealth of Pennsylvania wanted to set up a framework for the City of Pittsburgh to provide pension benefits to its employees, it did so through the formal and public passage of the Pension Act of 1975. Our General Assembly proposed this legislation and the Governor signed it into law. When the City of Pittsburgh wanted to establish a pension plan under that state law, it did so through a formal and public process: the City Council proposed legislation and the Mayor signed the ordinance into law. *See* Pittsburgh City Code Chapter 192.

Likewise, if the City wanted to change the way it pays out pensions it was required to do so through the formal process set forth in the Home Rule Charter. City-Council would propose legislation and the Mayor would sign it. And, by following the formal process set forth in the Home Rule Charter, the City government would thereby offer certain assurances to its citizens: it would allow for public notice and public comment on this significant expenditure of public money; it would provide a verbatim, permanent and public record of the precise proposed language regarding the proposed pension benefit.

[Holman] argues that the Mayor had the unilateral authority to bind the City to pay the subject pension benefits under the following provisions of the Home Rule Charter:

§ 204. Powers and Duties of the Mayor

... h. to supervise all city employees and officers except as otherwise provided by this chapter.

... j. to take such action as may be necessary to ensure that no inequities exist in any unit of city government and that each unit operates in a trimmer which provides every citizens full and equal access to government and a like opportunity to render goods and services to the City.

302 Pa. Code § 11.2-204 (h), (j). *See* Plaintiffs Trial Brief at p.8.

I find it to be utterly unpersuasive, however, that an executive's power "to supervise" or power to "ensure that no inequities exist in any unit of city government" can be read so broadly as to include the unilateral power to bind the city, *through private contract*, to pay additional pension benefits to any category of employees the mayor deems worthy to receive this added benefit.

For all of the reasons stated above, it is my view that where a city seeks to create or enlarge the pension benefits it provides to its employees, it accomplishes this through appropriate legislation, not through a contract entered into in some conference room outside the scrutiny of the public. However, even if [Holman] is correct that pension benefits may be extended to various employment categories by contract, such a contract could never be entered into by the unilateral actions of the Mayor. The Home Rule Charter is quite clear:

§ 510. Contracts. Every contract relating to city affairs shall be authorized by resolution of council. No contract shall be entered into or executed directly by council or any committee of council.

• ***Official Comment to § 510: Council approves contracts, but only the mayor can negotiate and execute a contract.***

302 Pa. Code §11.5-510[.] *See also Pittsburgh Baseball, Inc. v. Stadium Auth. Of Pittsburgh*, 630 A.2d 505, 508-9 (Pa. Cmwlth. 1993) (Oral contract with a city mayor was not binding on city where the relevant city code required all contracts with the city to be in writing and signed by the mayor and head of the proper department and where the Home Rule Charter required that contracts regarding city affairs be authorized by resolution of city council).

Trial Court Opinion at 11-14 (footnote omitted).

Holman argues that Section 5-510 of the Home Rule Charter, 302 Pa. Code §11.5-510, is not applicable herein because the next section of the Home Rule Charter, Section 511, provides that “All contracts shall be awarded to the lowest responsible bidder.” 302 Pa. Code §11.5-511. Holman contends that obviously the City does not “bid” with its employees and does not grant employment benefits to the “lowest responsible bidder.” Holman argues that construing these sections in their proper context, it is clear they do not refer to benefits of employment but rather to commercial contracts.

In light of our agreement with the trial court that the Mayor did not have the authority in the first place to bind the City, through private contract, to pay enhanced pension benefits to the EMS Supervisors, Holman’s argument that Section 510 of the Home Rule Charter only applies to commercial contracts is of no moment. It is irrelevant whether Section 510 of the Home Rule Charter applies only to commercial contracts or not if the Mayor did not have the authority to enter into an agreement in the first instance to extend enhanced pension benefits to certain categories of employees.

Holman argues further that it is clear that from the evidence that the Mayor intended to give EMS Supervisors the same benefit the City gave the union employees. Therefore, cases holding that government employees may not change statutory benefits are simply inapposite.

We reject Holman's argument on this point for the same reasons set forth above in rejecting his argument with respect to Section 510 of the Home Rule Charter. It is irrelevant what the Mayor's intention was in extending enhanced pension benefits to the EMS Supervisors because the Mayor did not have the authority to enter into an agreement in the first instance to extend such pension benefits to certain categories of employees.

In support of the second issue raised herein, Holman argues that the jury could have found for Holman on the basis of equitable estoppel; however, the trial court refused to charge the jury on this issue because the trial court determined that the Mayor *did* have authority to contract on the City's behalf. In disposing of the motion for JNOV the trial court failed to address whether the jury could have found for Holman on the alternative basis of equitable estoppel in light of the court's determination that the Mayor did not have authority to contract on behalf of the City. Holman contends that this is reversible error as the trial court should have affirmed the jury's verdict if there was any basis to support the award.

Holman argues further that the record supports that equitable estoppel is that basis as the evidence shows that all the elements of equitable estoppel are applicable herein. Holman contends that justice requires the application of equitable estoppel to preclude the City from being unjustly enriched by the benefit of Holman's labor.

The doctrine of equitable estoppel as applied to a municipality or governmental agency was explained by our Superior Court in Albright v. City of Shamokin, 419 A.2d 1176, 1178 (Pa. Super. 1980), as follows:

A municipality like a private corporation is subject to the doctrine of estoppel. It may be estopped to deny the authority of its agents and employees to act if it has the power to act. Ordinarily, a governmental agency will not be bound for an act of its agents in excess of its corporate powers. *Breinig v. Allegheny County*, 332 Pa. 474, 485-86, 2 A.2d 842, 849-50 (1938). However, "[t]here is a distinction between an act utterly beyond the jurisdiction of a municipal corporation and the irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional. The former are ultra vires in the primary sense and void; the latter, ultra vires only in a secondary sense which does not preclude ratification or the application of the doctrine of estoppel in the interest of equity and essential justice." *City of East Orange v. Board of Water Commissioners of East Orange*, 73 N.J. Super. 440, 464, 180 A.2d 185, 199 (1962); *Summer Cottagers' Ass'n of Cape May v. City of Cape May*, 19 N.J. 493, 504, 117 A.2d 585, 590-91 (1955). . . .

In *Ervin v. Pittsburgh*, 339 Pa. 241, 250, 14 A.2d 297, 300 (1940), the Court said: "The doctrine of estoppel is founded on considerations of sound public policy. . . . The rule of law is clear that where one by his words or conduct willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

Holman relies upon the Superior Court's decision in Albright as support for his assertion that equitable estoppel should be applied to his breach of

contract action. While it is true that the Superior Court determined that equitable estoppel applied in Albright, because the City of Shamokin failed to comply in all respects with the enabling legislation when it created a retirement plan for its employees, Albright is readily distinguishable from the instant matter.

In Albright, the City of Shamokin's retirement committee represented to the employee that he was entitled to a pension and authorized the payment of benefits to him. The City of Shamokin paid the authorized retirement benefits for eleven months after the employee had retired from his employment. When the City of Shamokin then attempted to discontinue the authorized retirement payments on the basis that its pension ordinance failed to comply with the requirements of the enabling legislation, the Superior Court held that the City of Shamokin was equitably estopped from doing so. The Superior Court stated that "[t]he [City of Shamokin] should not be permitted to thwart [the employee's] expectation of retirement payments which the City, by its own mistake, was responsible for creating." Albright, 419 A.2d at 1179.

Herein, Holman was not awarded the requested enhanced pension benefits in the first instance by the City's Pension Board. Instead, he was informed by the executive secretary of the City's Pension Board that there was no authority for the Pension Board to grant his request for full pension benefits at age 55 in the pension laws and ordinances governing the plan for any non-union employee. Hence, unlike the employee in Albright, Holman never began receiving the enhanced pension benefits to which he claimed he is entitled nor did the City's Pension Board determine that Holman would be ineligible in the future for retirement at age 60. We note that there is no allegation that Holman would not be

eligible to retire at age 60 with a full lifetime pension in accordance with the terms of the City's pension plan.

Upon, review, we conclude that because the Mayor's actions in extending enhanced pension benefits to the EMS Supervisors was utterly beyond the jurisdiction of his office and authority, his actions were ultra vires in the primary sense and void. Accordingly, equitable estoppel is not applicable and the trial court therefore did not err by not affirming the jury's verdict on this basis.

The trial court's order is affirmed.

JAMES R. KELLEY, Senior Judge

Judge Leavitt and Judge Brobson did not participate in the decision in this case.

Judge McCullough dissents.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| James D. Holman, | : |
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| Appellant | : |
| | : |
| v. | : |
| | : |
| | : |
| City of Pittsburgh, a | : |
| municipal corporation | : |

No. 2149 C.D. 2010

ORDER

AND NOW, this 5th day of August, 2011, the September 9, 2010 order of the Court of Common Pleas of Allegheny County granting the City of Pittsburgh's Motion for Judgment Notwithstanding the Verdict is affirmed.

JAMES R. KELLEY, Senior Judge