

[J-113-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ROBERT E. COLVILLE,	:	No. 7 WAP 2006
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered November
	:	28, 2005 at No. 498 C.D. 2005, affirming
v.	:	the Order of the Court of Common Pleas
	:	of Allegheny County entered February 15,
	:	2005 at No. GD01-17205.
ALLEGHENY COUNTY RETIREMENT	:	
BOARD,	:	888 A.2d 21 (Pa. Cmwlth. 2005)
	:	
Appellee	:	ARGUED: September 12, 2006

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: MARCH 26, 2007

The Majority today affirms the order of the Commonwealth Court. As I believe that the Commonwealth Court's order should be reversed, I must dissent.

The question with which this court is presented is whether former district attorney Robert E. Colville ("Appellant") is eligible for the pension benefits granted retired second class county employees per 16 P.S. § 4712(a). At the time of Appellant's retirement on January 2, 1998, state law provided that in calculating a second class county retiree's retirement benefits, compensation in excess of \$4,333.33 per month was not considered in making the computation. This statutory cap was removed via legislation enacted on October 30, 2000. Act No. 85 of 2000 ("Act 85"). The amendment provides, in pertinent

part, that an employee who retires “within” five years of the effective date of Act 85 may elect to remove the statutory cap. While Act 85 was enacted on October 30, 2000, the effective date of the cap removal was set retroactively to December 31, 1999.

Thus, the question is whether Appellant retired “within” five years of December 31, 1999 per 16 P.S. § 4712. This is a question of statutory construction. As with all matters of statutory construction, where the words of the statute are unambiguous, we must simply apply the statute. 1 Pa.C.S. § 1921. We are specifically constrained from ignoring the plain language of the statute “under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). Thus, where the language of a statute is clear, it is improper to analyze extraneous materials to determine any putative legislative intent.

The Retirement Board urges us to interpret the “within” five years phrase as meaning that only those employees who retire in the five year period **following** the effective date of Act 85 are eligible for the augmented retirement benefits. I find that interpretation to be erroneous. The Legislature placed no such restriction on the cap removal. It did not state, as it well could have, that only those employees who retired “after” or “following” the effective date of Act 85 were entitled to its benefits. Rather, the plain language simply states that an employee who retires “within” five years is eligible for the cap removal. There is no temporal restriction in this language. Thus, per the plain meaning of the statute, an employee who retires within five years of the effective date of Act 85 - whether that retirement occurred within the five years preceding Act 85’s effective date or within the five years following the effective date - is eligible for cap removal.

Furthermore, to the extent that the Retirement Board is urging us to look behind the plain meaning of the word “within” and divine that the Legislature’s ostensibly intended to place a temporal restriction on the “within” language, I reject its argument. The Statutory Construction Act specifically forbids us from ignoring the plain meaning of a statute under the “pretext of pursuing its spirit.” 1 Pa.C.S. § 1921. In my opinion, the words “within five (5)

years” are unambiguous and render employees such as Appellant, who retired within five years of the effective date of Act 85, eligible for cap removal. Any attempts to divine putative legislative intent would thus be in violation of the Statutory Construction Act.

Finally, I must respond to the Majority’s intimation that since each of the lower tribunals rejected Appellant’s argument that § 4712 unambiguously provides that retirees who retire within five years of the effective date of Act 85 (i.e., during either the five years preceding or proceeding the effective date), then we, too, are constrained to reject it. See M.O. at 11-12. This court does not abdicate its role as final arbiter of statutory construction issues. The fact that lower tribunals rejected a statutory construction argument does not force this court to reject it as well. This jurisprudential tenet remains true regardless of whether the lower tribunals are judicial or administrative bodies.

Yet, even though the plain terms of § 4712 render Appellant eligible for Act 85’s increased retirement benefits, I recognize that there remains the question of whether Appellant is nonetheless barred from receiving these benefits because he did not timely invoke his right. As noted by the Majority, there is an argument that Appellant does not qualify for cap removal because § 4712(a) states that a retiree is entitled to the expanded pension benefits only when “the required contribution is paid into the retirement system within ninety (90) days of the date of retirement.” 16 P.S. § 4712(a). As Appellant did not pay the required contribution into the retirement system within 90 days of his January 2, 1998 retirement, the Retirement Board’s argument goes, then he cannot enjoy the greater benefits allowed under Act 85.

The Retirement Board would have the analysis end at that point and conclude that since Appellant failed to meet the 90 day requirement he cannot partake of Act 85’s cap removal. While there is surface appeal to this rationale, I find it troubling. Adoption of the Retirement Board’s approach leads to the illogical construct of Act 85 whereby the act defines a certain set of employees as eligible for cap removal (i.e., those who retire within 5

years of the effective date of the act) but then makes it impossible for some of those eligible employees to invoke those provisions because they had no opportunity to pay the lump sum within 90 days of retirement.

This Catch-22 situation is not limited only to those employees who retired prior to December 31, 1999, the effective date of Act 85; it impacts even some of those employees whom the Retirement Board would agree are eligible to invoke the cap removal provisions. Specifically, I refer to those employees who retired during the period from December 31, 1999 to July 31, 2000. The Retirement Board would find that this subgroup of employees to be eligible for the cap removal as they retired within five years of and after the effective date of Act 85. Yet, as Act 85 was not enacted until October 30, 1999, those retirees would (pursuant to the Retirement Board's logic) nonetheless be unable to invoke the cap removal since they would not have tendered the lump sum payment within 90 days of retirement invoke the cap removal provisions. Even if such retirees had somehow been able to be waiting at the Retirement Board's offices with check in hand at the very instant the governor's pen lifted from signing this legislation into law, they would not have been able to satisfy the Retirement Board's interpretation of this provision as the 90 days would have already elapsed.

Common sense balks at such an interpretation. Furthermore, our Statutory Construction Act states that in enacting legislation, the judiciary must presume that "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable" 1 Pa.C.S. § 1922(1) (emphasis supplied). The Legislature has defined certain employees as eligible for cap removal. Yet, adoption of the Retirement Board's view regarding the 90 day provision renders it impossible for some of those eligible employees to invoke cap removal status. Accordingly, I believe that the sensible approach would be that where a retiree was eligible for cap removal (such as Appellant), that employee satisfies the conditions so long as that employee tenders the lump sum payment

within 90 days of when that employee could have possibly first known that Act 85 was enacted into law, namely, within 90 days of the enactment of Act 85.

Accordingly, for the foregoing reasons, I dissent.