Third District Court of Appeal

State of Florida, July Term, A.D. 2013

Opinion filed September 18, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-1150
Lower Tribunal No. 10-35799

City of Miami,
Appellant,

vs.

Jorge Martinez-Esteve,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Julie O. Bru, City Attorney, and Iliana Forte and John A. Greco, Assistant City Attorneys, for appellant.

Alice Elizabeth ("Betsy") Warwick, for appellee.

Before SHEPHERD, C.J., and ROTHENBERG and SALTER, JJ.

SALTER, J.

The City of Miami appeals a final judgment and summary judgment in favor of Jorge Martinez-Esteve regarding his employment classification and layoff in October 2009. We affirm.

Martinez-Esteve was initially hired by the City in 2002 as a project representative in the Department of Economic Development. He had an undergraduate and graduate degree in economics from the University of Miami, and he had worked for over thirty years in the areas of economic development and financial analysis. In November 2003, he became a permanent civil service employee. In December 2004, he was promoted by the City to the position of business development coordinator.

In December 2006, the City advised Martinez-Esteve (in a memo entitled "Return to Former Classification") that, "in accordance with Civil Service Rules and Regulations, you are being rolled back to Project Representative." Thereafter, however, Martinez-Esteve met with City officials, and the City rescinded the "roll back" memo effective June 1, 2007. Martinez-Esteve was transferred at that date from his former position as business development coordinator in the Department of Economic Development to a position as project manager in the City Building Department, at the same salary. Throughout his years of service, Martinez-Esteve received positive evaluations and reviews. After his first year of work for the City, he was recommended for the highest possible merit increase.

In a City layoff in October 2009, however, Martinez-Esteve was notified that his employment was terminated. The letter advising him of this made no reference to his civil service status or to any "roll back" right to be restored to his former position. The letter also did not provide a written statement of reasons for the layoff within five days, and an invitation to respond to that statement, as required by the Miami City Charter for "classified" employees.[1]

Martinez-Esteve requested a grievance hearing before the City's Civil Service Board. At that hearing (October 20, 2009), the City denied the request, asserting that Martinez-Esteve was an unclassified employee whose position had been abolished (and not because of any disciplinary reason). Martinez-Esteve's entitlement to such a hearing was considered by the Civil Service Board in November 2009. The Board voted unanimously to restore Martinez-Esteve to his position as project manager with back pay, concluding that Martinez's position as a project manager was a classified, not an unclassified, position for purposes of the City Charter. The Board's written decision was rendered in December 2009.

Over five months later, the City Manager rejected the Board's ruling, asserting that the position could not be characterized as "classified" because it had

[1] Under section 36(c) of the City Charter, civil servants occupy "unclassified" or "classified" positions. Unclassified positions are specifically listed in section 36(c)(1) (including the City Manager and staff, department heads and assistants, certain police and fire officials, and City attorneys, for example). City employees who are not in "unclassified" positions are, by definition and in section 36(c)(2), in "classified" positions.

not been filled from an eligibility list. Martinez-Esteve established, and the City did not dispute, that the City itself had treated his project manager position as if it was unclassified and had never created an eligibility list for the position.

A month after receiving the City Manager's ruling, Martinez-Esteve filed a complaint for declaratory judgment, injunctive relief, and monetary damages against the City in the circuit court. Martinez-Esteve and the City ultimately filed cross-motions for summary judgment. Martinez-Esteve's motion was granted and final judgment[2] was entered in his favor in April 2012. The City's cross-motion for summary judgment was denied. The City then initiated this appeal.

Analysis

Each of the City's arguments on appeal is an issue of law appropriate for summary judgment below and de novo review here. The City's first argument is that Martinez-Esteve's circuit court lawsuit should have been dismissed, and that the exclusive venue for his claims of wrongful termination by the City Manager would have been the appellate division of the circuit court. If the quasi-judicial determination by the Civil Service Board had been the controlling ruling, the City would be correct that the determination should be reviewed by the appellate division of the circuit court. Miami-Dade Cnty. v. Moreland, 879 So. 2d 23 (Fla.

[2] The final judgment awarded back wages, accrued sick leave and vacation hours, wages through the time of reinstatement, prejudgment interest, medical and dental expenses incurred for Martinez-Esteve and his spouse, and pension benefits calculated for the period between layoff and reinstatement.

3d DCA 2004). But the Board's ruling was not the governmental action that precipitated Martinez-Esteve's independent lawsuit.

Rather, the City Manager's executive action—the unfounded rejection of, and refusal to abide by, the Board's ruling—was the subject matter of the independent lawsuit, as in City of Miami v. Huttoe, 38 So. 2d 819 (Fla. 1949). Had the City Manager and City sought review of the Board's quasi-judicial action by the circuit court appellate division, the City's argument would be persuasive, and an independent lawsuit by Martinez-Esteve would have been subject to dismissal. But that is not what happened.

The City's second argument is that Martinez-Esteve cannot be rolled back to a "classified" position because he never applied for, and was never placed on, the eligibility register for a classified position. Section 36(d) of the City Charter requires the City to establish an eligibility list for certain "competitive" classified positions. No such list is required for "noncompetitive" and "labor" classified positions.[3] In the present case, the City simply failed to characterize the position of project manager as competitive or noncompetitive, and it never advised

[3] Section 36(c)(2) of the City Charter provides that "competitive" classified positions are those "for which it is practicable to determine the merit and fitness of applicants by competitive examinations." "Noncompetitive" classified positions are those "requiring peculiar and exceptional qualifications of a scientific, city managerial, professional, or educational character, as may be determined by the rules of the board." Finally, "labor" classified positions are those for "ordinary unskilled labor."

Martinez-Esteve that he would need to apply or be placed on an eligibility list for the position. This fact distinguishes Martinez-Esteve's case from the holding in Bloodworth v. Suggs, 60 So. 2d 768 (Fla. 1952) (finding that employees placed into positions in violation of competitive hiring process accrue no rights or entitlement to benefits). In Martinez-Esteve's case, the position was noncompetitive because the City made it noncompetitive.[4] The City offered, and Martinez-Esteve accepted, the position of project manager in 2007 as a solution to Martinez-Esteve's concern about the City's memo returning him to his prior position of project representative in the Department of Economic Development.

Over five years before Martinez-Esteve received his termination notice from the City, the circuit court had ruled in another case that, as a matter of law, the City Charter required the specification of positions that are to be treated as "unclassified," and that all other positions are "classified." § 36(c), Miami City Charter. In that case, the court warned the City that it was impermissibly treating many classified positions as unclassified. The City did not amend the pertinent Charter provisions after that ruling, and it did not include Building Department "project manager" in the list of unclassified positions.

[4] Martinez-Esteve is also correct that this is not a case in which other applicants for the "project manager" position, having been determined to be eligible, are appealing the employment of an applicant who was not eligible.

Because the Charter did not and does not list the position in question, "project manager," as an unclassified position, it is a classified position. Id. The Civil Service Board found that Martinez-Esteve was entitled to be rolled back to his position as project manager, and that right (section 8.13, Civil Service Rules and Regulations) applies even if the employee is later promoted into an unclassified position.

So the real question before the trial court and this Court is whether, having failed to comply with its own Charter, the City may now refuse to afford Martinez-Esteve the benefits of the classified position because of the City's lapses. We agree with Martinez-Esteve that the City is estopped from claiming any advantage based on its own acts and omissions. Timoney v. City of Miami Investigative Panel, 990 So. 2d 614, 620 (Fla. 3d DCA 2008).

Conclusion

The City is obligated to comply with its own Charter provisions. Martinez-Esteve properly invoked the jurisdiction of the circuit court to address executive action by the City Manager in contravention of the applicable Charter provisions and the Civil Service Board's determination. Martinez-Esteve's improper termination has now been revoked, and he has been reinstated to a position that the City Charter concedes is a classified position.

Accordingly, the final judgment and summary judgment in favor of Martinez-Esteve are affirmed, as is the order denying the City's cross-motion.

SHEPHERD, C.J., concurs.

ROTHENBERG, J. (concurring, in part, dissenting, in part).

The majority affirms the final judgment and summary judgment entered in favor of Jorge Martinez-Esteve ("Martinez-Esteve") in his circuit court lawsuit against the City of Miami ('City") regarding his layoff in October 2009. Although I agree with the majority's conclusion that Martinez-Esteve properly invoked the jurisdiction of the circuit court, I disagree with the majority's affirmance of the trial court's ruling that requires the City to "roll back"[5] Martinez-Esteve to the position of project manager or to a comparable position within the City.

The primary issue addressed in the trial court was whether Martinez-Esteve was entitled to the benefits afforded classified employees after he was laid off by the City from a classified position he obtained without complying with the requirements specified by the City of Miami Charter ("City Charter"). Despite Martinez-Esteve's failure to comply with the City Charter's requirements for placement in a non-competitive classified position when he was placed in the classified position of a project manager, the trial court entered a final judgment in favor of Martinez-Esteve, granting him the benefits of a qualifying classified

[5] The trial court "reinstated" Martinez-Esteve to the position he held when laid off in October 2009 (project manager) or to a comparable position at the same rank and pay. In addition to reinstatement, the trial court awarded Martinez-Esteve monetary relief, such as back pay.

employee, and ordering the City to reinstate him to the classified position he held when he was laid off as a project manager, and, if that position was not available, to reinstate him to a comparable position at the same rank and pay grade.

In addressing this issue, the majority determined, and I agree, that the position of project manager in the City's Building Department is a "classified," not an "unclassified," position because the position is not listed as "unclassified" in section 36(c)(1) of the City Charter, and therefore, by default, the position is deemed to be "classified." § 36(c), City of Miami Charter ("*Unclassified and classified service.* The civil service of the city is hereby divided into the unclassified and the classified service."); § 36(c)(1), City of Miami Charter (specifically listing positions included in the unclassified service); § 36(c)(2), City of Miami Charter ("The classified services shall include all positions not specifically included by this City Charter in the unclassified service. . . .").

Pursuant to the Civil Service Rules and the City Charter, to be considered for a classified position, the applicant must comply with certain eligibility requirements, which include submission of an application, screening, and if the applicant is determined to be qualified and "eligible," placement on an "eligibility register," which remains active for one year. Competitive classified positions also require a written examination and the eligibility register for classified positions places the list of qualified applicants in the order of how well the applicant

performed on the written examination. If the classified position is a non-competitive classified position, the ranking and order of the names appearing on the eligibility list is determined by the scores assessed during the interview process. The position Martinez-Esteve held as a project manager was a non-competitive classified position. Thus, he was required to go through the interview process, be ranked, and placed on a noncompetitive eligibility list in order to be considered for and placed in the classified position of project manager. It is undisputed that Martinez-Esteve did not go through the interview process, he was not scored and ranked, and he was not selected from an eligibility list when he was placed in the project manager position. He was simply selected by the City Manager to serve in that capacity, and he served as a project manager for approximately two-and-one-half years before he was laid off.

Section 36(c)(2)(A)-(C) of the City Charter provides that "classified service" consists of three distinct and defined "classes"—competitive, noncompetitive, and labor. The majority correctly acknowledges that under the City Charter, the City is required to establish an "eligibility list" for "competitive" classified positions. The majority, however, incorrectly asserts that the City Charter does not require the City to establish an "eligibility list" for "noncompetitive" and "labor" classified positions. Section 36(d) of the City Charter provides that the "chief examiner shall . . . maintain lists of eligibles of **each class of the services** of those meeting the

requirements of said regulations," and the "[p]ositions in the classified service shall be filled from such eligible lists upon requisition from and after consultation with the city manager." (emphasis added). Section 36(d) does not distinguish between the three classes within the "classified service," and therefore, contrary to the majority's assertion, all classified positions, even "noncompetitive" and "labor" classified positions, are to be filled from an eligibility list.[6] Because Martinez-Esteve was never placed on an eligibility list, his placement into the position of project manager clearly violated the City Charter.

Thus, the question before this Court is whether Martinez-Esteve, who was placed in a classified position without satisfying the requirements of the City Charter, should receive certain benefits afforded to classified employees, which in this case are seniority credits, during the period he worked as a project manager. Based on the Florida Supreme Court's decision in Bloodworth v. Suggs, 60 So. 2d 768 (Fla. 1952), the answer to that question is "no." Martinez-Esteve, who did not comply with the City Charter when obtaining his classified position, is not entitled to the benefits afforded to classified employees, and therefore, the final judgment under review should be reversed.

In Bloodworth, the Florida Supreme Court addressed a similar situation. When the civil service rules were adopted, members of the police force, except for

[6] This interpretation is consistent with the testimony of the City's Senior Personnel Officer.

the Chief, were required to be selected from a "list of eligibles prepared by the civil service board." Id. at 768. However, in 1946, the Civil Service Board discontinued the examination process for the position of detective, and commencing in 1947, the City Manager, with the Civil Service Board's approval, assigned seventeen patrolmen to plain-clothes duty in the Detectives Bureau. Id. These plain-clothed patrolmen did not receive any additional pay, but they were provided with a monthly clothing allowance, and they were notified they "may at any time be assigned back to duty as a Uniformed Patrolman." Id.

In 1951, the Civil Service Board decided to re-establish the system of open competitive examinations for filling open detective positions and to abolish the City Manager's practice of assigning policemen to detective positions without selecting them from an eligibility list prepared by the Civil Service Board. Id. Thereafter, the City Manager informed the Executive Secretary of the Civil Service Board that he was granting "permanent detective appointment" to those individuals who had served as detectives for one year or more. Id. The seventeen policemen who had previously been assigned to the Detectives Bureau without being placed on an eligibility list or taking an examination had served for varying time periods of from one to four years in the Detectives Bureau.

In response, the Civil Service Board and J. P. Suggs, on behalf of civil service employees of the police department, filed suit against the City Manager,

Mr. Bloodworth, seeking invalidation of these appointments. Id. The trial court invalidated the appointments, and the City Manager appealed. Id.

In affirming the trial court's invalidation of the appointments, the Florida Supreme Court noted that the City Charter required that all "members of the police force, other than the Chief, shall be selected from the list of eligibles prepared by the civil service board . . . ," and that the City Manager acknowledged that the patrolmen he gave permanent detective status to, did not, as was required, take a competitive examination and they were not placed on an eligibility list prior to their assignment to the Detectives Bureau. Id. at 769. The Florida Supreme Court therefore concluded that, although the seventeen policemen involved demonstrated "outstanding proficiency and ability in the performance of the duties of detectives, and they could no doubt continue to perform these duties with the same degree of efficiency," id. at 770, because they received their positions without complying with the existing rules, they were not entitled to permanent appointment as detectives. Specifically, the Florida Supreme Court noted the following:

> This is, however, a government of laws and not of men, and we are compelled to recognize that, under the present law, these 17 policemen-regardless of their outstanding record of achievement-have not yet obtained a right to permanent appointment as 'detectives,' under the civil service laws and rules now existing and controlling.

Id.

Bloodworth and the instant case are factually similar in that the policemen in Bloodworth and Martinez-Esteve in the instant case were all given positions without requiring them to comply with the competitive hiring process specified in the City Charter. Specifically, in both cases, the employees were never placed on a "list of eligibles" prior to being placed into their respective positions. Thus, based on Bloodworth, because Martinez-Esteve obtained his classified position without complying with the hiring process required by the City Charter, he accrued no rights or entitlement to benefits generally granted to classified service employees. See also King v. Harris, 49 So. 2d 803 (Fla. 1951) (holding that a Panama City employee who was employed without qualifying for civil service status under Panama City's Civil Service Act, was not entitled to civil service status; noting that to hold that the employee "was entitled to civil service status would flout the mandatory requirements of [the Civil Service Act]").

The majority's reliance on Timoney v. City of Miami Investigative Panel, 990 So. 2d 614, 620 (Fla. 3d DCA 2008), for the proposition that the City should be estopped from denying Martinez-Esteve the benefits of the classified position he received without complying with the City Charter because the City offered Martinez-Esteve the position without requiring him to comply with the City Charter, is also respectfully misplaced. In King, the Florida Supreme Court concluded that, although King had served in his position as a civil service

employee for two years, and section 22 of the Civil Service Act of Panama City provided that if the employee was not discharged within a six-month probationary period, the employee's promotion, appointment, or employment in the civil service position would be deemed complete and entitle him to the associated benefits, because King did not comply with the qualifying requirements for such a position, he was not entitled to civil service status. In other words, although Panama City placed King in a civil service position without requiring him to comply with the eligibility requirements, and allowed him to stay in that position for two years, well past the six-month probationary period, Panama City was not estopped from raising King's ineligibility. Thus, Panama City's firing of King was upheld.

To conclude otherwise would ignore the fact that Martinez-Esteve knew he was required to be selected from an eligibility list to be placed in and to receive the benefits of a classified position. Because the City treated the project manager position as an unclassified position, when Martinez-Esteve accepted the position he believed it was an unclassified position for which he would not receive any of the benefits afforded employees serving in classified positions. Thus, Martinez-Esteve should be equally estopped from receiving benefits he did not qualify to receive and which he never expected to receive.

Accordingly, the trial court's final judgment reinstating Martinez-Esteve to the position of project manager or to a comparable position and awarding him

monetary relief was error, and it is in direct conflict with the Florida Supreme Court's holdings in Bloodworth and King. I, therefore, respectfully dissent from the portion of the majority's opinion which affirms the final judgment.