

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 2255

DR. RALPH SLAUGHTER

VERSUS

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

Judgment Rendered: DEC 04 2014

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
IN AND FOR THE PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER C612525, SECTION 24

HONORABLE R. MICHAEL CALDWELL, JUDGE

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**BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.**

*J. T. P. concurs. (by jmm)*

*ME  
McCleendon, J. dissents.*

**McDONALD, J.**

In this appeal, a state retirement system challenges a judgment declaring it was not entitled to reduce a retired employee's retirement benefits nor to seek recoupment for alleged overpayments. For the following reasons, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

In 2009, after thirty-five years of service, Dr. Ralph Slaughter retired from state employment. The last state position he held was President of the Southern University System (SUS) in Baton Rouge, Louisiana. Following Dr. Slaughter's retirement, based on information provided to it by SUS, the Louisiana State Employees Retirement System (LASERS) paid Dr. Slaughter retirement benefits of \$24,487.95 per month.

In September 2009, Dr. Slaughter filed suit against the Southern University Board of Supervisors (SU Board), for past due wages (wage suit).<sup>1</sup> Following an oral ruling by the trial court in the wage suit, Ms. Tracie Woods, SUS's executive counsel, informed Ms. Cindy Rougeou, LASERS' executive director, by letter dated January 22, 2010, that SUS had miscalculated Dr. Slaughter's retirement income base by including supplemental pay Dr. Slaughter had received from the Southern University Foundation. Ms. Woods requested that LASERS recalculate Dr. Slaughter's retirement benefit. In April 2010, referencing Dr. Slaughter's wage suit, LASERS filed a concursus proceeding, claiming that Dr. Slaughter and the SU Board had "conflicting and/or competing claims" regarding the amount of Dr. Slaughter's retirement benefit, and seeking to deposit the disputed amount of his benefit into the registry of the court. In July 2010, the trial court signed a judgment dismissing the concursus proceeding with prejudice based on an exception of no cause of action filed by Dr. Slaughter.

By letter dated April 27, 2012, LASERS notified Dr. Slaughter that his monthly retirement benefit had been recalculated due to Southern University's reporting error and indicated his adjusted monthly benefit was \$17,909.19 per month. Citing LSA-R.S. 11:192 as its authority, LASERS informed Dr. Slaughter that, effective June 1, 2012, it

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<sup>1</sup> The details of the wage suit are set forth in **Slaughter v. Board of Supervisors of Southern University and Agricultural and Mechanical College**, 10-1049 (La. App. 1 Cir. 8/2/11), 76 So.3d 438, 455, writ denied, 11-2110 (La. 1/13/12), 77 So.3d 970, wherein this court affirmed the trial court's judgment, finding "no error in the trial court's determination that [a] salary supplement [from the Southern University Foundation] should not be used in the leave pay calculation."

would adjust his retirement benefit and would further reduce the corrected benefit for sixty months to recoup overpayments made to him since 2009. Dr. Slaughter responded by filing the instant suit against LASERS, seeking a declaratory judgment that LASERS was not entitled to reduce his retirement benefits nor to recoup past benefits paid, and further seeking a writ of mandamus and injunctive relief against LASERS. In his petition, he argued that LASERS' right to reduce/recoup was barred by the res judicata effect of the judgment dismissing its concursus proceeding; he also mentioned that any action based on that right was prescribed. LASERS answered the suit. After a hearing, the trial court signed a judgment on July 24, 2012, denying permanent injunctive relief and mandamus and deferring the merits of the declaratory judgment action to a trial.<sup>2</sup>

The matter ultimately proceeded to a bench trial in September 2013. On October 3, 2013, the trial court signed a judgment: (1) declaring LASERS was not entitled to reduce Dr. Slaughter's retirement benefits nor seek recoupment of any alleged overpayments of retirement benefits to him; and (2) ordering LASERS to immediately return all sums withheld from Dr. Slaughter's retirement benefits to him. LASERS appealed from this adverse judgment, and Dr. Slaughter answered the appeal.

### **RES JUDICATA AND PRESCRIPTION**

In his answer to the appeal, Dr. Slaughter contends the trial court erred in failing to find that LASERS' right to reduce/recoup was barred by res judicata and/or prescription.<sup>3</sup> These contentions are without merit.

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<sup>2</sup> The trial court's July 24, 2012 judgment does not address res judicata or prescription. In its oral reasons for judgment, however, the trial court stated that the judgment in the concursus proceeding did not have a res judicata effect on LASERS' ability to reduce/recoup Dr. Slaughter's benefits. And, in its oral reasons for denying reconsideration of the judgment, the trial court stated that the question of prescription was not before it, because an exception pleading the objection of prescription had not been raised, and "unless and until LASERS file[d] suit to recover money," it did not see that prescription "comes into play."

<sup>3</sup> Under LSA-C.C.P. art. 927, the objection of prescriptions and res judicata are raised via a peremptory exception, and the objection of prescription shall be "specially pleaded." In this case, as presented to the trial court, Dr. Slaughter did not file formal written pleadings specifically captioned as exceptions, to raise his peremptory exceptions pleading the objections of prescription and res judicata. Rather, he incorporated arguments pertaining to these objections into his petition for declaratory judgment and into his memorandum in support of his request for a temporary restraining order and injunctive relief. However, an appellate court may consider a peremptory exception filed for the first time in that court, if pleaded prior to submission of the case for a decision, and if proof of the ground of the exception appears of record. LSA-C.C.P. art. 2163. Thus, premitting the issue of whether he properly asserted the exceptions below, we accept Dr. Slaughter's answer to the appeal as sufficient to assert the exceptions on appeal.

Regarding res judicata, the burden of proving the facts essential to sustaining a res judicata objection is on the party pleading the objection, in this case, Dr. Slaughter. **Landry v. Town of Livingston Police Department**, 10-0673 (La. App. 1 Cir. 12/22/10), 54 So.3d 772, 776. If there is any doubt as to its application, the exception of res judicata must be overruled. **Pierrotti v. Johnson**, 11-1317 (La. App. 1 Cir. 3/19/12), 91 So.3d 1056, 1063. The trial court determined the judgment of dismissal in LASERS' concursus proceeding did not have a res judicata effect on LASERS' right to seek reduction/recoupment of retirement benefits from Dr. Slaughter. As explained by the trial court, the concursus proceeding involved LASERS' desire to deposit disputed retirement funds into the registry of the court until the dispute between SUS and Dr. Slaughter was resolved. The concursus proceeding did not seek resolution of the underlying issue of whether or not there was an overpayment of retirement benefits to Dr. Slaughter, or whether his supplemental pay should have been considered in the calculation of those benefits. We agree with the trial court and find that Dr. Slaughter has failed to carry his burden of proving that res judicata is applicable here.

Regarding prescription, unless it is evident from the face of the pleadings, the party raising the objection of prescription, again Dr. Slaughter, bears the burden of proof. See **Milbert v. Answering Bureau, Inc.**, 13-0022 (La. 6/28/13), 120 So.3d 678, 684. Here, the applicable provision is LSA-R.S. 11:543, which provides that the right of the LASERS board of trustees to "collect any benefit paid to an individual to whom the benefit was not due shall prescribe after a period of three years has elapsed from the date of the payment, except in case of fraud." LASERS began paying retirement benefits to Dr. Slaughter following his retirement in 2009. By letter dated April 27, 2012, LASERS notified Dr. Slaughter his monthly retirement benefit had been recalculated due to Southern University's reporting error and that, effective June 1, 2012, it would adjust his retirement benefit and reduce the corrected benefit for sixty months to recoup overpayments made to him since 2009. Shortly thereafter, LASERS began making the adjusted payments to Dr. Slaughter. After reviewing the pertinent dates, we conclude Dr. Slaughter has failed to prove that LASERS' right to collect any overpayment is prescribed.

## DECLARATORY JUDGMENT

The trial court's basis for rendering the declaratory judgment in Dr. Slaughter's favor was LASERS' failure to prove its adherence to LSA-R.S. 11:192 and 11:407 before it sought to reduce/recoup Dr. Slaughter's benefits. These statutes provide as follows:

### **§ 192. Overpayment of benefits; corrections; repayment**

Whenever any state ... retirement system ... pays any sum of money or benefits to a retiree ... which is not due them, the board of trustees shall adjust the amount payable to the correct amount, and the board is hereby authorized to recover any overpayment by reducing the corrected benefit such that the overpayment will be repaid within a reasonable number of months. The board shall notify the [retiree] ... of the amount of overpayment in benefits and the amount of the adjustment in benefits, thirty days prior to any reduction from the benefit amount without the overpayment.

### **§ 407. Correction of administrative error**

Except as expressly provided otherwise in this Chapter [dealing specifically with LASERS], the director may, upon written documentation that an administrative error has occurred in the administration of this system, which documentation shall be submitted to the board of trustees at the next board meeting, whether such administrative error was committed by this system or otherwise, correct such administrative error and may make all adjustments relative to such correction.

Under these statutes, LASERS has the authority to reduce and recoup overpayment of retirement benefits: (1) upon written documentation that such an administrative error has occurred (whether such administrative error was committed by LASERS or otherwise); (2) when such documentation has been submitted to the LASERS board of trustees at its next board meeting; (3) when LASERS has notified the affected party, thirty days prior to any reduction, of the amount of the overpayment and the amount of the adjustment, and (4) when the reduction/recoupment is done within a reasonable number of months.

The trial court found that LASERS failed to comply with the second requirement above, that is, it did not establish that documentation of SUS's administrative error (i.e., Ms. Woods' January 22, 2010 letter) was submitted to the LASERS board of trustees. In oral reasons for judgment, the trial court explained:

[Louisiana Revised Statute 11:407] does not say what written documentation must entail, and I think the notice from Ms. Woods would probably have been sufficient. But in reading ... [LSA-R.S.] 11:407 ..., it says the director may, upon written documentation that an administrative error has occurred in the administration of this system, which

documentation shall be submitted to the board of trustees at the next board meeting. It goes on to say she may make all adjustments relative to such correction. LASERS offered no evidence in this trial. Ms. Rougeau, the executive director, was called by the plaintiff and testified ... about various committee meetings, the minutes of various committee meetings, and one set of minutes from one board [meeting] were admitted into evidence. Those don't address – and particularly the board meeting minutes – do not address whether or not this written documentation was presented to the board. Ms. Rougeau ... was not asked whether this information was ever presented to the board, and there was no evidence that it was presented to the board as required by [LSA-R.S.] 11:407. So ... I think LASERS may have been in a position to properly reduce [Dr. Slaughter's] benefits and seek recoupment. But inasmuch as they have not proven adherence to either [LSA-R.S.] 11:192 or 11:407, I must grant at this time the declaratory relief sought and declare that at this point in time LASERS is not entitled to reduce Dr. Slaughter's benefits or seek recoupment.

After a thorough review of the record, we conclude the trial court's reasoning is correct. The minutes from several LASERS Management Committee meetings were introduced at the trial. However, LASERS did not establish that its "management committee" has the authority to accept submissions that LSA-R.S. 11:407 mandates go to its "board of trustees"; thus the management committee meeting minutes are not proof that Ms. Woods' letter was submitted to the board of trustees. Even if LASERS management committee was a proper representative of the board of trustees, LSA-R.S. 11:407 requires that the documentation of administrative error be submitted to the LASERS board of trustees "at its next meeting." Ms. Woods' letter was dated January 22, 2010. LASERS has not established when the "next meeting" after receipt of the letter occurred. The March 26, 2010 management committee meeting minutes indicate there was a meeting on February 26, 2010, but there is no evidence establishing that Ms. Woods' letter was submitted at that time.

LASERS argues that "the administrative error was made known to the LASERS Board of Trustees, specifically through the Petition for Concursus filed by the Board of Trustees, the basis of which was the administrative error claimed by Southern University." However, we are unable to conclude that the filing of a petition for concursus, to which Ms. Woods' letter was attached, fulfills LSA-R.S. 11:407's requirement that written documentation of an administrative error be "submitted to the LASERS board of trustees at the next board meeting[.]" Thus, because LASERS failed to prove that it followed the proper procedure before initiating action to reduce/recoup

Dr. Slaughter's retirement benefits, we conclude the trial court correctly granted declaratory judgment in Dr. Slaughter's favor.

#### **ATTORNEY FEES**

In his answer to the appeal, Dr. Slaughter seeks an award of additional attorney fees in connection with this appeal. As a general rule, attorney fees are recoverable only when authorized by statute or expressly provided for by contract. **Stepore v. Masco Construction Company, Inc.**, 93-2064 (La. 9/18/94), 643 So.2d 1213, 1218; **Matherne v. Barnum**, 11-0827 (La. App. 1 Cir. 3/19/12), 94 So.3d 782, 792, writ denied, 12-0865 (La. 6/1/12), 90 So.3d 442. Dr. Slaughter has cited no statutory or contractual provision entitling him to additional attorney fees, and we have found no such authority. Thus, an additional award of attorney fees is not warranted.

#### **CONCLUSION**

For the above reasons, Dr. Slaughter's exceptions pleading the objections of res judicata and prescription, as well as his claim for additional attorney fees, are denied. Further, the October 3, 2013 judgment: (1) declaring LASERS was not entitled to reduce Dr. Slaughter's retirement benefits nor seek recoupment of any alleged overpayments of retirement benefits to him; and (2) ordering LASERS to immediately return all sums withheld from Dr. Slaughter's retirement benefits to him, is affirmed.

Costs of the appeal in the amount of \$2,106.00 are assessed to Louisiana State Employees Retirement System.

**EXCEPTIONS DENIED; ATTORNEY FEES DENIED; JUDGMENT AFFIRMED.**