STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CW 1931

ERNEST ROGER TULLY

VERSUS

THE CITY OF BATON ROUGE

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 604,100, Division "D"
Honorable Janice Clark, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered DEC 1 0 2014

PARRO, J.

This appeal stems from a suit by a retired police officer, Ernest Roger Tully, against the City of Baton Rouge (CBR), for certain disputed retirement benefits. His claim was first considered at an adjudicatory hearing by the board of trustees of the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge (CPERS). When the board denied Mr. Tully's claim, he sought judicial review of the board's decision from the Nineteenth Judicial District Court. When the district court reversed the board, CBR filed the present appeal. For the following reasons, we convert this appeal to a supervisory writ; deny the writ in part, thus affirming the district court's ruling in part; grant the writ in part, thus reversing the district court's ruling in part; and remand to the district court for further proceedings in accord with this opinion.

BACKGROUND

Mr. Tully started working for the Baton Rouge Police Department (BRPD) in 1981. When he started with the BRPD, he also became a member of the local retirement system, now known as CPERS. Subsequently, the legislature changed state law to allow BRPD officers to voluntarily transfer from CPERS to the statewide Municipal Police Employees Retirement System (MPERS). In January 2000, Mr. Tully chose to make that transfer. In doing so, he entered into a fifteen-page agreement with CBR entitled "Agreement and Guarantee of Retirement Rights and Benefits" (guarantee agreement), which the Mayor-President also signed.

Viewed from a broad perspective, the guarantee agreement provides that MPERS will serve in a primary role to pay Mr. Tully's retirement benefits, and CBR will serve in a supplementary role. As the two systems differed in certain respects, the guarantee agreement served as a bridge between them. Generally, paragraph 2[1] of the agreement states that, if Mr. Tully's MPERS benefits should be less than what his CPERS benefits would have been if he had not transferred, then CBR would make up the difference. The parties to the guarantee agreement are CBR, Mr. Tully, and Mr. Tully's

[1] The numbered paragraphs in the guarantee agreement itself are numbered with Roman numerals. However, at other points in the record on appeal, the agreement's paragraphs are referred to using Arabic numerals. For convenience, we will use Arabic numerals.

spouse. Neither CPERS nor MPERS is a party to the agreement. Thus, the guarantees in the agreement are guarantees that CBR makes to Mr. Tully and his spouse.[2] The guarantee agreement starts from the premise that Mr. Tully is electing to transfer from CPERS to MPERS. The agreement notes that this transfer is also referred to as a "partial merger." Although, in normal use, the word "transfer" means leaving one entity and going to another, the guarantee agreement incorporates the concept that, upon or after transferring from CPERS to MPERS, Mr. Tully would retire from both.[3]

Later, on August 13, 2010, Mr. Tully ended his employment with the BRPD, and sought to retire from CPERS effective on that date. The next day, he went to work at the Alexandria Police Department (APD). Although Mr. Tully was eligible to retire from MPERS when he left the BRPD, his new job with the APD qualified him to remain a member of MPERS, and Mr. Tully chose to remain in MPERS.

By letter dated August 27, 2010, the retirement administrator for CPERS, Jeffrey Yates, advised Mr. Tully that CPERS had concluded that, in choosing not to retire from CPERS and MPERS simultaneously, Mr. Tully had violated the guarantee agreement. Mr. Yates further advised Mr. Tully that such a violation voided the guarantee agreement, and therefore Mr. Tully would not be entitled to certain benefits that the agreement would have provided. In addition, CBR deemed that Mr. Tully had not retired from CPERS, but instead had resigned from CPERS.

After working for APD for ten months, Mr. Tully's employment there ended on June 9, 2011, at which point he did retire from MPERS. Mr. Tully then filed suit in district court against CBR, seeking certain benefits under the guarantee agreement that he claimed he had been denied, and which he called "his full CPERS retirement benefit." Specifically, Mr. Tully sought: (1) separation pay for accrued sick leave, (2) interest earned on his DROP account from October 28, 2006, until the DROP account principal was rolled over in August 2010, and (3) health insurance benefits. The guarantee agreement provided that any disputes were to be taken first to the CPERS board for

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[2] The parties do not direct attention to any issue in this appeal on which the interests of Mr. Tully and Ms. Tully differ. We also note that the present litigation was filed by Mr. Tully only. While both Mr. Tully and his spouse are parties to the guarantee agreement, for convenience, we will generally use the term "Mr. Tully" here, even though at times we may be referring to what may be the interests of both Mr. and Ms. Tully.

[3] See guarantee agreement, paragraph 6.

resolution, and Mr. Tully's suit was put on hold in district court while the parties did so. Subsequently, the CPERS board held an adjudicatory hearing on Mr. Tully's claim, and issued a written decision denying the claim. Mr. Tully then filed a motion with the district court seeking judicial review of the board's decision. After a hearing in the district court, that court reversed the board's decision, which prompted CBR to file the present suspensive appeal. In it, CBR asserts three assignments of error:

A. The Trial Court erred in overturning the CPERS Board ruling. The finding of the Court did not satisfy La.R.S. 49:964(G) as required for judicial reviews of administrative hearings.

B. The Trial Court erred in finding that the [guarantee agreement] was [not] in accordance with the statutory provisions of La. R.S. 11:2225.

C. The Trial Court erred in finding that the [guarantee agreement] constituted an illegal forfeiture.

CPERS also has appeared in the appeal,[4] aligning itself with CBR, and it has put forward two assignments of error of its own:

1. The plain, unambiguous language of the Guarantee—specifically Sections [6] and [14]—dictate that Mr. Tully forfeited his [CPERS] benefits by failing to retire from MPERS when he became eligible to do so.

2. The CPERS Board ruled as follows[:] The [Guarantee] of Benefits contract entered into voluntarily by Mr. Tully meets the requirements of La. R.S. 11:2225(A)(11)(a) in providing to him "*additional benefits not payable under the Municipal Police Employees' Retirement System.*" Louisiana law did not mandate specific benefits nor specific terms. The parties were free to contract with regard to those benefits. Thus Mr. Tully's violation of that contract caused him to forfeit the benefits otherwise guaranteed. Has Mr. Tully met his burden of proving that his substantial rights have been prejudiced by the CPERS'[s] Board's ruling in this matter?

JURISDICTION

At the outset, we consider on our own motion the question of our subject matter jurisdiction over this appeal. Williams v. Int'l Offshore Servs., LLC, 11-1240 (La. App. 1st Cir. 12/7/12), 106 So. 3d 212, 217, writ denied, 13-0259 (La. 3/8/13), 109 So. 3d 367.

The path this lawsuit followed to reach this court has been unusual. This case began as an ordinary proceeding for a monetary award under the guarantee

[4] CPERS entered the case, at the district court, where it also aligned itself with CBR. As CPERS notes in the answer it filed in the present appeal, although it was not named as a party, it participated at the district court because it "has always operated with the understanding that it must satisfy any judgment regarding CPERS funds, whether or not it was a named party." Our review of the record reveals no objection by Mr. Tully to CPERS's participation in this appeal. Given the particular circumstances in this case, this court has accepted CPERS's filings and considered them fully.

agreement; then the parties agreed to place that suit on hold while they took the matter to the CPERS board for an adjudicatory hearing. As noted, such a procedure was set forth in the guarantee agreement. The board held an adjudicatory hearing, at which the parties entered into a detailed stipulation of facts, offered testimony, and adduced documentary evidence. After the hearing, the CPERS board issued a written decision and transmitted it and the entire hearing record to the district court. Mr. Tully then filed a motion with the district court, seeking a judicial review of that decision. That review procedure by the district court also was provided for in the guarantee agreement. The district court then heard oral argument and, at that hearing, noted that it was reviewing the case in its "appellate capacity," in accordance with the Administrative Procedure Act (APA). The district court then rendered a judgment, overturning the CPERS board's decision, and that judgment led to CBR's present appeal.

It appears that the parties and the district court assumed that the case arrived back at the district court from the CPERS board under the authority of the APA. However, we find that assumption to have been incorrect. The APA itself specifically excludes municipalities and their boards from the definition of an APA-covered "agency." Louisiana Revised Statute 49:951(2) defines what is an "agency" under the APA, and since 1979 that definition has contained the following exclusion: "except ... any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof ... ."[5] The statute's reference to Article VI, Section 44, incorporates the following definition of political subdivision: "a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." LSA-Const. art. VI, § 44(2).

The CPERS board is a board created by an ordinance of the consolidated government of the City of Baton Rouge and Parish of East Baton Rouge. City of Baton Rouge v. Comm'n on Ethics for Pub. Employees, 94-2480 (La. App. 1st Cir. 5/5/95), 655 So.2d 457, 459-60, writs denied, 95-1417 and 95-1423 (La. 9/22/95), 660 So.2d 472 and 473. As an entity of the consolidated City and Parish government, the CPERS

[5] 1979 La. Acts, No. 578, § 1, effective July 18, 1979.

board is among the entities statutorily excluded from coverage under the APA. Therefore, the parties and the district court were incorrect in believing that this case should have been treated as an adjudication governed by the APA.

As explained below, the path that this case should have taken was to be decided by the district court in its capacity as a court of original jurisdiction, not appellate jurisdiction. The parties, by their contract, were not free to make their own procedure, contrary to statutory law and the state constitution. See, e.g., Gary v. Witherspoon, 98-1810 (La. App. 3rd Cir. 6/2/99), 743 So.2d 708, 713. Moreover, subject matter jurisdiction may not be waived by the parties to a dispute. See, e.g., Boeing Co. v. Louisiana Dep't of Econ. Dev., 94-0971 (La. App. 1st Cir. 6/23/95), 657 So.2d 652, 659.

Because the APA specifically excludes entities such as the CPERS board from its coverage, the logical next question is: what was the proper procedure for this dispute? As a general rule, under LSA-Const. art. V, § 16(A), the state district courts' original jurisdiction encompasses all civil matters. Crockett v. State Through Dep't of Pub. Safety & Corr., 97-2528 (La. App. 1st Cir. 11/6/98), 721 So.2d 1081, 1083. While LSA-Const. art. V, § 16(B), does authorize district courts to exercise appellate jurisdiction, that constitutional provision restricts that appellate jurisdiction to instances "as provided by law." The parties have directed us to no law that would have authorized the district court to exercise appellate jurisdiction in this case, and we have found none.

Moreover, a civil suit against a municipality over the validity and enforcement of a contract has been held by our supreme court to be a civil matter within the original jurisdiction of the state district courts. Central La. Elec. Co. v. Louisiana Pub. Serv. Comm'n, 601 So.2d 1383, 1387 (La. 1992). Like the suit in Central La. Elec. Co., Mr. Tully's suit is a civil suit against a municipality over the validity and enforcement of a contract. Thus, we conclude that Mr. Tully's suit was an ordinary civil matter within the original jurisdiction of the state district court. Therefore, the proper procedure here would have been for the state district court to have heard and initially decided this dispute, instead of having the CPERS board hear it and render the initial decision. As the district court did not exercise its original jurisdiction in this case, that procedural error prevents this court from acquiring appellate jurisdiction of this appeal in its

present posture.

Nonetheless, considering the fact that there was a full hearing of this case by the CPERS board, that the parties entered into a detailed stipulation of facts at the CPERS board hearing, and that the parties did not argue about any factual disputes when the case was presented to the district court, the adjudicatory functions exercised by the CPERS board and the district court were arguably sufficient. Further, the record in this matter is already before us. Thus, while the oblique procedure used here was incorrect, under the particular circumstances in this case, we see no practical purpose that would be served by remanding the case to the district court and directing it to follow the proper procedure. The Louisiana Supreme Court has, at times, directed an appellate court to convert an appeal with procedural defects into an application for supervisory writs and decide the merits of the case. See, e.g., Miazza v. City of Mandeville, 10-0304 (La. 5/21/10), 34 So.3d 849. In Miazza, the supreme court instructed this court to exercise supervisory jurisdiction of an appeal of a district court's judgment reviewing an administrative decision by a municipal civil service board, as this court lacked appellate jurisdiction. Accordingly, in the interest of judicial economy, and in the interest of promoting a more expeditious resolution of the matter, we convert this appeal to a supervisory writ.

APPLICABLE LAW

Standard of Review

In our consideration of this matter, we will use the well-settled standard of review for a Louisiana appellate court examining issues of law, the de novo standard. Kevin Associates, L.L.C. v. Crawford, 03-0211 (La. 1/30/04), 865 So.2d 34, 43. Under that standard, the decision by a tribunal below about the interpretation or application of the law is not entitled to deference. Id. Therefore, on questions of law, which are the only type of questions before us in this appeal, we will accord no deference to the interpretation or application of law made by the CPERS board or by the district court.

Retirement Systems for Local Police

As noted above, this case involves not one, but two different retirement systems, whose participants include police officers: the local system for Baton Rouge, CPERS;

and the statewide system, MPERS. In addressing the issues here, we begin by taking note of the respective legal frameworks of those two systems, as well as the state statute that authorized Baton Rouge police officers to transfer from CPERS to MPERS.

CPERS

CPERS has been the local retirement system for the City of Baton Rouge and Parish of East Baton Rouge's consolidated government (Baton Rouge) since 1953, and BRPD officers have been members since 1956. Patterson v. City of Baton Rouge, 309 So.2d 306, 310 (La. 1975). This court summarized the legal underpinnings of CPERS almost twenty years ago, as follows:

> The City of Baton Rouge-Parish of East Baton Rouge is a home rule charter entity in accordance with Louisiana Constitution Article VI, Section 4. The charter grants power to the mayor and council to establish a pension plan and provides for the composition of the Board. In exercising its powers under the charter, the Metropolitan Council adopted an ordinance which further provides for the establishment of the retirement system and the composition of the Board.
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> [T]he plan of government for the City-Parish authorized the mayor and council to establish, by ordinance, a pension system for all full-time City-Parish employees. The plan also mandated the creation of a board to administer the system and to invest pension funds. The plan further provided that the council appropriate funds, in addition to the employees' contributions, to maintain the system on an actuarially sound basis.
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> Following the directives contained in the plan of government, the Metropolitan Council created the retirement system and the Board. In 1992, the council enacted ordinance 9426 which amends and re-enacts the code of ordinances relative to the employee retirement system. ... Under the ordinance, general administration and responsibility for operation of the retirement system is vested in the Board.

City of Baton Rouge, 655 So.2d at 459-61.

MPERS

By Act 189 of 1973, the legislature established MPERS, the Municipal Police Employees' Retirement System, to provide "retirement allowances and other benefits" for many municipal police officers in the state. 1973 La. Acts, No. 189, § 1;[6] LSA-R.S. 33:2371(A).[7] However, when first enacted, the statute creating MPERS expressly

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[6] Section 5 of the act provided its effective date. That section states: "[t]his Act shall not take effect or become operative until such time as the State Treasurer has determined that the initial method of funding this retirement system is actuarially sound." The act was approved by the Governor June 19, 1973.

[7] In 1991, the legislature redesignated the MPERS statute from Title 33 to Title 11 of the Revised Statutes, pursuant to 1991 La. Acts, No. 74, § 3, effective June 25, 1991.

excluded "members of the police department of the City of Baton Rouge." 1973 La. Acts, No. 189, § 1; LSA-R.S. 33:2373(A)(1). Subsequently, the statute was amended to allow Baton Rouge police officers to participate in MPERS.

Partial Merger of CPERS into MPERS

In 1998, the legislature amended the statute governing MPERS, removing the Baton Rouge exclusion, and making membership for Baton Rouge mandatory. 1998 La. Acts, 1st Ex. Sess., No. 15, § 1, effective April 24, 1998; LSA-R.S. 11:2214(A)(2)(b) and (c), 2225(A)(11)(a), 2252(9) and (10), and 2253(A)(1)(b).

The following year, the legislature further amended the MPERS statute, making several additions. The amendment modified the Baton Rouge merger into MPERS from a mandatory merger to only a partial merger. The amendment permitted Baton Rouge to merge into MPERS only those officers who chose to transfer during a one-month election period. 1999 La. Acts, No. 1320, § 1, effective July 12, 1999; LSA-R.S. 11:2225(A)(11)(a)(i) and (ii). The amendment also provided that, for each officer choosing to transfer to MPERS, Baton Rouge "shall guarantee by individual guarantee of benefits contracts with each individual employee electing to merge additional benefits not payable under the Municipal Police Employees' Retirement System." 1999 La. Acts, No. 1320, § 1, effective July 12, 1999; LSA-R.S. 11:2225(A)(11)(a)(ii). Mr. Tully chose to transfer from CPERS to MPERS, and his transfer was effective February 26, 2000.

DISCUSSION

The facts in this case are not in dispute. What the parties disagree on are questions of law: how the statute authorizing the partial merger should be interpreted, and how the guarantee agreement should be interpreted. As mentioned earlier, we review those questions of law de novo. See Kevin Associates, L.L.C., 865 So.2d at 43.

CBR's Assignments of Error

CBR's First Assignment

CBR's first assignment of error argues that the district court erred in failing to use the statutory standards for the review of an APA-covered agency's decision in LSA-R.S. 49:964(G). As already noted, municipal entities such as the CPERS board are outside the scope of the APA, because since 1979, the APA's definition of a covered

agency has expressly excluded "any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board ... thereof ... ." LSA-R.S. 49:951(2). The statute's reference to Article VI, Section 44, incorporates a definition of a political subdivision as being "a parish, municipality, any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions." LSA-Const. art. VI, § 44(2). The CPERS board was created by an ordinance of the consolidated government of the City of Baton Rouge and Parish of East Baton Rouge. City of Baton Rouge, 655 So.2d at 459-60. Thus, as an entity of the consolidated City and Parish government, the CPERS board is among the entities statutorily excluded from the APA's coverage. Therefore, this assignment lacks merit.

CBR's Second Assignment

As we read CBR's second assignment of error, it contends the district court erred by finding that the guarantee agreement went outside the limits imposed by the statute that authorized CPERS's partial merger into MPERS, namely, LSA-R.S. 11:2225(A)(11)(a)(ii). In its oral reasons for this part of its ruling, the district court concluded that the state statute that authorized the merger mandated that CBR must guarantee the benefits Mr. Tully seeks, and the guarantee agreement resulted in actions "contrary to clear statutory mandates resulting in an illegal forfeiture." In contrast to the view of the district court, the party aligned with CBR here, CPERS, argues in its brief to this court that "Louisiana law did not mandate specific benefits nor specific terms."

Our examination of this issue is a matter of statutory construction. In construing a statute, we are guided by Civil Code article 9, which directs that "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." Similarly, the supreme court has explained that statutory interpretation starts with the statute itself. Foti v. Holliday, 09-0093 (La. 10/30/09), 27 So.3d 813, 817. Therefore, in addressing this assignment, we first look to the language of the statute.

The relevant part of the MPERS statute provides: "[t]o each employee electing to avail himself of the provisions of this Item, the [CBR] shall guarantee by individual guarantee of benefits contracts with each individual employee electing to merge additional benefits not payable under the Municipal Police Employees' Retirement System." LSA-R.S. 11:2225(A)(11)(a)(ii). Thus, the language of the statute plainly states that CBR is to include in its guarantee agreement additional benefits not payable under MPERS; however, it just as plainly does not say what those additional benefits are to be. We find that the issue before us requires no further interpretation of the statute in search of the intent of the legislature. See LSA-C.C. art. 9. We conclude that the words of the statute make clear what the legislature meant: to have CBR guarantee some additional benefits to the transferring employee that he or she would not receive from MPERS, but also to leave open just what those additional benefits should be.

In his brief to this court, Mr. Tully argues that the statute mandated CBR to guarantee to the transferring officer three benefits that CPERS provided, but MPERS did not: accrued interest on his DROP account, payment for accrued sick leave, and retiree health insurance benefits. However, Mr. Tully's interpretation of the statute requires the insertion of new words into the statute, those being the specific benefits he mentions. Such interpolation of a statute is not the function of the judicial branch. See J. Reed Constructors, Inc. v. Roofing Supply Grp., L.L.C., 12-2136 (La. App. 1st Cir. 11/1/13), 135 So.3d 752, 756, writ denied, 14-1031 (La. 9/12/14), 148 So.3d 931. If a lack of specificity about the benefits to be guaranteed is a deficiency in the statute, then "it is for the legislative branch to remedy the deficiencies in the statutory scheme, if it should so desire." Foti v. Holliday, 27 So.3d at 821.

It would be beyond this court's authority to, in effect, take on the legislative role of further amending this statute by inserting the specific benefits that Mr. Tully's argument would require. Therefore, we find that it was an error of law for the district court to conclude that the MPERS statute mandated that CBR include the benefits in dispute here in the guarantee agreement. Thus, we find that CBR's second assignment has merit.

CBR's Third Assignment

CBR's third assignment contends that the district court erred in finding that the guarantee agreement constituted an illegal forfeiture. The district court found that the agreement's paragraphs 6 and 14 went beyond what the MPERS statute allowed; and, by exceeding the bounds of the statute, the agreement allowed CBR to impose an illegal forfeiture upon Mr. Tully. We start our analysis of this issue by looking at the two paragraphs in the guarantee agreement on which the district court focused.

In paragraph 6 of the agreement, CBR and Mr. Tully agreed as follows:

> Should an Eligible Police Employee elect to retire from CPERS on or after the Transfer Date, the City will pay or cause to be paid to that retiree, until such time that the retiree is eligible to receive benefits under MPERS, the benefit to which the retiree is otherwise entitled under CPERS. In this circumstance, the Eligible Police Employee shall make legal application for retirement and be retired under MPERS immediately upon becoming eligible to retire.

Then, in paragraph 14 of the agreement, CBR and Mr. Tully agreed as follows:

> The Eligible Police Employee acknowledges and agrees that, in the event of any breach or violation by such Eligible Police Employee of any of the terms or provisions of this Agreement, the Eligible Police Employee shall forfeit all rights and benefits which would otherwise have been payable under CPERS and/or this Agreement.

CBR contends that these paragraphs are within the bounds of the MPERS statute's merger provisions, and these paragraphs barred CBR from continuing to pay Mr. Tully the benefits he seeks.

As we have noted, although the MPERS statute requires that CBR guarantee to each transferring officer "additional benefits not payable under the Municipal Police Employees' Retirement System," the statute does not specify just what those benefits should be. See LSA-R.S. 11:2225(A)(11)(a)(ii). Those additional benefits were specified in the guarantee agreement. The guarantee agreement addresses those benefits, from a broad perspective, in the first sentence of paragraph 2:

> The City does hereby agree and covenant to guarantee that, after the transfer of the Eligible Police Employee into MPERS, such employee, or his survivors and/or beneficiaries, shall retain certain retirement rights or benefits to which such Eligible Police Employee would have been entitled under the provisions of CPERS had the transfer not taken place, except as specifically provided otherwise in this Agreement.

Testimony adduced at the board hearing shed light on the process that resulted in the provisions of the guarantee agreement, provisions that were the same for each officer who signed it. Mr. Tully testified that the agreement had been sought by the union representing Baton Rouge police officers. CPERS Assistant Retirement Administrator Barbara LeBlanc testified that the agreement was drafted by CPERS's legal counsel at the time. Both Ms. LeBlanc and Mr. Tully testified that CPERS held educational sessions on the proposed agreement, and Mr. Tully acknowledged that he participated in them. Mr. Tully also testified that the attorney for the union representing the police officers reviewed the guarantee agreement, and Mr. Tully testified that "[i]t was kind of the opinion universally that the union had sought it and agreed to it."

The MPERS statute does not say whether CBR and the officer might agree that the additional benefits would be subject to forfeiture under certain conditions, or what conditions might trigger such a forfeiture. The statute simply does not speak to those specific issues. If the omission of those specifics were to be seen as a deficiency in the statute, it is not within our province to remedy such a deficiency. See Foti v. Holliday, 27 So.3d at 821. Therefore, we disagree with the district court's conclusion that these two paragraphs in the guarantee agreement went outside the scope of the statute and resulted in an illegal forfeiture. So again, to that extent, CBR's second assignment of error was correct in asserting that the trial court erred in finding the guarantee agreement went outside the MPERS statute and thereby created an illegal forfeiture. However, that finding resolves only one aspect of the forfeiture issue.

One of Mr. Tully's arguments concerning forfeiture is based solely upon his interpretation of the contents of the guarantee agreement. He contends that the terms of the agreement itself did not prohibit his remaining in MPERS when he left CPERS, and therefore CBR mistakenly concluded that his doing so violated the agreement and caused him to forfeit his benefits. As Mr. Tully alleged in his petition: "[n]othing in the Guarantee conditions payment of the benefits claimed by petitioner on his having also retired from MPERS." This is an argument that the district court did not reach.

The guarantee agreement's paragraph 14 explicitly provides that, if an employee

were to breach any obligation under the agreement, then that employee "shall forfeit all rights and benefits which would otherwise would have been payable under CPERS and/or this Agreement." Therefore, we must determine, as a matter of law, whether the guarantee agreement obligated Mr. Tully to retire from MPERS at the same time he left CPERS. If the agreement did require that, then Mr. Tully's actions breached the agreement and resulted in a forfeiture of his rights under it.

"When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." Belle Pass Terminal, Inc. v. Jolin, Inc., 92-1544, 92-1545 (La. App. 1st Cir. 3/11/94), 634 So. 2d 466, 479, writ denied, 94-0906 (La. 6/17/94), 638 So. 2d 1094. Therefore, in interpreting a contract, as in interpreting a statute, we begin with the words of the contract to determine what the parties intended. Specifically, we will focus upon paragraphs 6 and 14, as those are the paragraphs CPERS cited in its letter to Mr. Tully, advising him that, by failing to retire simultaneously from CPERS and MPERS, he violated the guarantee agreement and forfeited his benefits.

We begin with paragraph 6, which, as we have noted, states the following:

> Should an Eligible Police Employee elect to retire from CPERS on or after the Transfer Date, the City will pay or cause to be paid to that retiree, until such time that the retiree is eligible to receive benefits under MPERS, the benefit to which the retiree is otherwise entitled under CPERS. In this circumstance, the Eligible Police Employee shall make legal application for retirement and be retired under MPERS immediately upon becoming eligible to retire.

The two sentences in this paragraph contain two separate, but related, provisions; with the second provision going into effect only if the first provision occurs.

The first sentence's initial phrase, "[s]hould an Eligible Police Employee elect to retire from CPERS on or after the Transfer Date," sets a condition upon which the rest of the sentence depends in order to go into effect. In this case, the record shows that the eligible police employee, Mr. Tully, elected to retire from CPERS on August 13, 2010. The record also shows that Mr. Tully had transferred from CPERS to MPERS on February 26, 2000. Thus, Mr. Tully did elect to retire from CPERS on or after the transfer date. Therefore, the condition at the start of this first sentence of paragraph 6 was met, and causes the balance of the sentence to go into effect.

The rest of the first sentence says: "the City will pay or cause to be paid to that retiree, until such time that the retiree is eligible to receive benefits under MPERS, the benefit to which the retiree is otherwise entitled under CPERS." The linchpin of that part of the sentence is the phrase "until such time that the retiree is eligible to receive benefits under MPERS." That phrase recognizes that there could be a period of time in which an employee has retired from CPERS, but is not yet eligible to retire from MPERS, and makes provision for that possibility. That period which could occur is a gap period: the employee has transferred from CPERS to MPERS, then retires from CPERS, but has not yet attained eligibility to retire from MPERS. If such a gap period does open up, this latter part of the first sentence states that CBR will then step in and pay, or cause to be paid, CPERS benefits to the employee. Put simply, CBR promises to fill the gap. We conclude that the first sentence of paragraph 6 has that meaning as a matter of law. See, e.g., Borden, Inc. v. Gulf States Utilities Co., 543 So.2d 924, 927 (La. App. 1st Cir.), writ denied, 545 So.2d 1041 (La. 1989) (explaining that "[c]ontracts, subject to interpretation from the instrument's four corners without the necessity of extrinsic evidence, are to be interpreted as a matter of law ... .").

We next apply the meaning of that first sentence to the facts here. As noted, Mr. Tully sought to retire from CPERS on August 13, 2010. The record also shows that MPERS' director, Kathy Bourque, testified at the CPERS board hearing that Mr. Tully was eligible to retire from MPERS on August 13, 2010. Ms. Bourque's testimony was uncontroverted. Thus, the same day Mr. Tully chose to retire from CPERS, he was also eligible to retire from MPERS. Therefore, when Mr. Tully sought to retire from CPERS, no gap opened up during which CBR would have had to step in and pay Mr. Tully his CPERS benefits. With no gap period occurring in Mr. Tully's case, the first sentence of paragraph 6 never went into effect.

As noted earlier, the second sentence of paragraph 6 is contingent upon that paragraph's first sentence's going into effect. As the first sentence did not go into effect in Mr. Tully's case, the second sentence was not triggered. Because the second sentence was not triggered, Mr. Tully was not obligated to do what it provided, which was to "make legal application for retirement and be retired under MPERS immediately

upon becoming eligible to retire." Because Mr. Tully was not obligated to do what the second sentence provided, he likewise did not breach that sentence's requirement that he retire from MPERS immediately upon becoming eligible to do so. Thus, Mr. Tully did not breach any obligation he had under paragraph 6, because, in his case, he was not obligated to do anything under paragraph 6.

Paragraph 6 was designed to apply to a particular set of circumstances that might occur. However, those circumstances did not arise in Mr. Tully's case. Having not breached paragraph 6, Mr. Tully likewise did not trigger the forfeiture provision in paragraph 14 of the guarantee agreement. The record shows that neither the CPERS board nor the district court interpreted the guarantee agreement in that fashion, and their failure to do so constituted legal error.

To summarize, we find that CBR's third assignment of error was correct, insofar as it asserted that the district court erred when it concluded that the guarantee agreement created an illegal forfeiture. However, the mere existence of a lawful forfeiture clause does not also mean that the forfeiture clause was triggered. The language in the guarantee agreement did not bar Mr. Tully from putting off his MPERS retirement until after his CPERS retirement. Therefore, Mr. Tully's decision to put off his MPERS retirement did not violate the agreement, and likewise did not trigger the agreement's forfeiture clause.

Thus, we disagree with the reasoning of the district court about why forfeiture of Mr. Tully's benefits was improper, and we take a completely different path in our analysis. Nonetheless, we do both arrive at the conclusion that the forfeiture of the benefits provided by the guarantee agreement to Mr. Tully was incorrect as a matter of law.

CPERS' Assignments of Error

As we have already noted, CPERS filed its own brief in this appeal and aligned its position with that of CBR. While the CPERS brief sets forth two assignments of error, our foregoing discussion has already addressed the issues raised by those assignments.

Specific Damages Sought by Mr. Tully

We now turn to the task of reviewing the specific damages that Mr. Tully seeks

in this case. He alleged in his petition that he was entitled to three benefits that CPERS had denied him: (1) payment for 731.61 hours of accrued sick leave, (2) interest on his DROP account from October 28, 2006, until a rollover of the principal occurred in August 2010, and (3) health insurance benefits due him under the provisions of the guarantee agreement. The district court judgment ruled that Mr. Tully was entitled to all the benefits he sought. We now examine the specific damages the district court awarded.

Accrued Sick Leave

Because we have found, as a matter of law, that Mr. Tully did not violate the guarantee agreement, and thus did not trigger the agreement's forfeiture paragraph, we now examine whether CBR obligated itself in the guarantee agreement to provide the benefit of accrued sick leave to Mr. Tully. At the CPERS hearing, the Assistant Retirement Administrator for CPERS, Barbara LeBlanc, testified that, for an officer who had entered into the guarantee agreement, one benefit the agreement would normally provide to that officer when he left the BRPD was payment for his accrued, unused sick leave. Ms. LeBlanc's testimony was uncontroverted. Thus, we conclude that CBR did obligate itself to pay Mr. Tully for his accrued sick leave.

At the CPERS hearing, the parties stipulated that Mr. Tully's pay upon his retirement from CPERS was $36.0636 per hour and that he had accrued 731.61 hours of unused sick leave at the time of his CPERS retirement. Multiplying the hourly pay rate times the number of hours of sick leave produces a total of $26,384.49. Accordingly, we find that CBR owes Mr. Tully $26,384.49 for his accrued sick leave.

DROP Account Interest

Paragraph 5 of the guarantee agreement states, in pertinent part: "[t]he City acknowledges and agrees that Eligible Police Employees transferred into MPERS under this Agreement shall be entitled to the payment of interest on the funds deposited into their DROP accounts." As we have found that Mr. Tully did not forfeit any benefits, we further find that CBR obligated itself to pay him the interest on his DROP account.

However, the record before us lacks specific facts about the calculation of the DROP account interest, which would enable us to establish the exact amount of interest

that CBR owes Mr. Tully. Therefore, we must remand this issue to the district court, for the limited purpose of ascertaining the exact dollar amount of DROP account interest owed.

Health Insurance Benefits

Regarding Mr. Tully's health insurance benefits, at the CPERS hearing, Ms. LeBlanc testified that, for an officer who had entered into the guarantee agreement, one benefit that the agreement would normally provide to that officer when he left the BRPD was continuation of his health insurance. This testimony by Ms. LeBlanc was uncontroverted. Thus, as we have found Mr. Tully did not forfeit any benefits under the guarantee agreement, we further conclude that CBR owes Mr. Tully the unpaid value of that benefit. However, as with the DROP account interest, the record before us lacks the factual basis upon which a calculation of the amount of this element of damages can be made. Therefore, we must also remand this issue to the district court for the limited purpose of determining the exact dollar amount of the health insurance benefits that CBR owes Mr. Tully.

Legal Interest

In addition the foregoing damages, Mr. Tully's petition also sought legal interest from the date his various benefits were "due." However, Mr. Tully has not stated the date he contends such legal interest was due. Our own review of the relevant authorities has found that legal interest on a contract is due from the date of default. Thomas B. Catchings & Associates v. City of Baton Rouge, 621 So.2d 768, 768-69 (La. 1993). Further, Civil Code article 1990 states, in pertinent part, that "[w]hen a term for the performance of an obligation is either fixed, or is clearly determinable from the circumstances, the obligor is put in default by the mere arrival of that term." As already noted, Ms. LeBlanc testified at the CPERS board hearing that the benefits owed under the guarantee agreement were normally provided to an officer when he or she left the BRPD. Based upon that testimony, we conclude that, in this case, the date of default was August 13, 2010, the date Mr. Tully ended his employment with the BRPD. The record reflects that CBR has never honored the particular guarantees to Mr. Tully that it should have honored under the agreement. Accordingly, we conclude that Mr. Tully is

entitled to have CBR pay him legal interest on all the damages owed from August 13, 2010, until paid. See id.

Attorney Fees

Mr. Tully's petition also sought attorney fees, and the judgment of the district court granted the request, stating "[r]easonable attorney fees shall be fixed by the Court upon motion of the plaintiff." However, the parties have pointed us to no legal authority addressing the district court's award of attorney fees to Mr. Tully, and we are aware of none. Additionally, our review of the guarantee agreement finds no attorney fees provision in it. The general rule is that attorney fees are not awarded absent a specific provision, in law or contract, providing for them. Campbell v. Melton, 01-2578 (La. 5/14/02), 817 So.2d 69, 80. Accordingly, we reverse the district court's award of attorney fees to Mr. Tully.

CONCLUSION

For the reasons stated above: (1) the City of Baton Rouge is ordered to pay Mr. Tully the sum of $26,384.49 for his accrued sick leave; (2) the City of Baton Rouge is ordered to pay Mr. Tully interest on his DROP account from October 28, 2006, until a rollover of the principal occurred in August 2010; (3) the City of Baton Rouge is ordered to pay Mr. Tully the value of the health insurance benefits due him under the guarantee agreement; (4) Mr. Tully is awarded legal interest, to be paid by the City of Baton Rouge from the date of default, August 13, 2010, until paid; and (5) no attorney fee is awarded to Mr. Tully from the City of Baton Rouge or from the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge.

The specific dollar amount of items (2) and (3) are to be determined by the district court on remand, in accordance with this judgment.

The City of Baton Rouge and the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge are to bear all costs in this appeal, which are $193.

APPEAL CONVERTED TO A SUPERVISORY WRIT, WRIT GRANTED IN PART AND DENIED IN PART, AND REMANDED.