

STATE OF MICHIGAN
COURT OF APPEALS

SALLY STEELE-BROWN,

Petitioner-Appellee,

v

PUBLIC SCHOOL EMPLOYEES RETIREMENT
SYSTEM,

Respondent-Appellant.

UNPUBLISHED
November 29, 2016

No. 328351
Ingham Circuit Court
LC No. 15-000146-AE

Before: RONAYNE KRAUSE, P.J., and O’CONNELL and GLEICHER, JJ.

RONAYNE KRAUSE, P.J. (*dissenting*)

I respectfully dissent. One of the most venerable principles in our jurisprudence is that a person or entity who voluntarily assumes a duty that they did not otherwise have becomes obligated to execute that duty in a manner that is not negligent. *Hart v Ludwig*, 347 Mich 559, 563-565; 79 NW2d 895 (1956). Had petitioner merely “elect[ed] a course of action without an understanding of the consequences,” as the majority describes the situation, then of course petitioner would simply have to live with those consequences. The evidence, as the trial court found, is that the Office of Retirement Services (ORS) voluntarily and gratuitously undertook to educate petitioner and completely failed to do so competently or reasonably. Consequently, I am not “left with a definite and firm conviction that a mistake was made” by the trial court. *Vanzandt v State Employees’ Retirement Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005).

Furthermore, I would note, that the decision of the administrative law judge stated that the Public School Employees Retirement Board (PSERA) simply does not provide the retirement system with any discretion to change Petitioner’s elections. This is inaccurate. Petitioner’s election resulted in a change in the records of ORS, the change in records was directly related to ORS’s misleading information provided to petitioner. MCL 38.1345 states: “[i]f a change or error in the records of the retirement system results in a retirant . . . receiving from the retirement system more or less than the retirant . . . would have been entitled to receive had the records been correct, the retirement system shall correct the error.” Because this change resulted in petitioner receiving less than she would have been entitled had ORS provided her accurate information, ORS should correct the error. I would affirm.

/s/ Amy Ronayne Krause