

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel., Janice Menzie, :
Relator-Appellee, :
v. : No. 09AP-1194
(C.P.C. No. 08CVH07-10468)
State Teachers Retirement Board of Ohio, : (REGULAR CALENDAR)
Respondent-Appellant. :

D E C I S I O N

Rendered on July 27, 2010

*Kalniz, Iorio & Feldstein Co. L.P.A., Christine A. Reardon and
Bethany German Ziviski, for appellee.*

*Richard Cordray, Attorney General, and John E. Patterson,
for appellant.*

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Respondent-appellant, the State Teachers Retirement Board of Ohio ("STRB"), appeals from a judgment of the Franklin County Court of Common Pleas that issued a writ of mandamus compelling STRB to permit relator-appellee, Janice Menzie, to purchase two years of service credit pursuant to R.C. 3307.771. For the following reasons, we reverse.

{¶2} During the 1976-77 school year, Menzie worked as a substitute teacher for the Toledo City School District. Menzie taught in the Toledo public schools for 14 days

between October 4, 1976 and January 7, 1977. In mid-January 1977, Menzie submitted a letter of resignation to the Toledo City School District. Menzie claims that she resigned because she was pregnant with her daughter, born August 21, 1977.

{¶3} Menzie returned to teaching in 1989, when the Sylvania City School District employed her as a full-time, regular teacher. In July 2007, Menzie met with a benefits counselor for the State Teachers Retirement System ("STRS"). According to Menzie, the benefits counselor told her that she could purchase two years of service credit because she resigned due to pregnancy.

{¶4} To request the option to buy service credit for an absence due to pregnancy or adoption, an STRS member must complete and submit to STRS a form entitled "Certification of Resignation or Leave of Absence Due to Pregnancy or Adoption." This form includes three parts: (1) a section for the member to supply his or her personal information, (2) a section for the school district who accepted the member's resignation or granted the leave of absence to certify the date on which the member's absence began and the reason for the absence, and (3) a section for the school district who hired the member after the absence to certify the date the member returned to regular employment.

{¶5} Although Menzie completed the first part of the form and the Sylvania City School District completed the third part of the form, the Toledo City School District refused to complete the second part of the form. Menzie submitted the partially completed form to her STRS benefits counselor, who contacted the Toledo City School District to find out why it refused to complete its part of the form. In a January 7, 2008

letter to the STRS benefits counselor, Richard A. Ferner, the Senior Accountant for the Toledo City School District, stated:

As a substitute teacher, Ms. Menzie was not under contract, with the Toledo City School District, but was paid on a daily per-diem basis of \$27.00 per day. Consequently, the purpose of the leave would not be required nor would there have been a request/notification of resignation required.

{¶6} STRB then sent Menzie a letter denying her request to purchase service credit. The letter explained:

To be eligible to purchase this type of service, the board of education must have taken an official action to grant a leave of absence or accept a resignation.

The letter received in our office states that you were not under contract with Toledo Public Schools and you were paid on a daily rate. As such, school board action granting a leave of absence or accepting a resignation was not needed. Based on this, you are not eligible to purchase credit for a period of absence due to pregnancy.

{¶7} Menzie engaged an attorney, who on Menzie's behalf sent a letter to STRB protesting its determination. STRB responded that:

According to a letter from Toledo Public Schools dated January 7, 2008, you were not under contract during the 1976-77 school year. For this time to be eligible to purchase under Section 3307.771 of the Ohio Revised Code, a leave of absence must have been granted or resignation accepted. * * * You may have provided a courtesy letter stating you were no longer available for sporadic substitute teaching[,] but this would not have been the same as a letter of resignation from a contracted employee. As a result[,] you are not eligible to purchase credit for a leave of absence due to pregnancy for this period of time.

{¶8} Menzie's attorney then sent STRB a second letter asking it to reconsider its position. Although STRB did not change its decision, it expanded its rationale for that decision, stating:

STRS Ohio maintains Janice Menzie was not under contract with Toledo Public Schools in the 1976-77 school year. Therefore, Ms. Menzie would not have a contracted position to resign. As a result, Ms. Menzie is not eligible to purchase credit for a leave of absence due to pregnancy for this period of time.

* * *

The fact that Ms. Menzie was not a contracted employee of Toledo Public Schools renders this leave of absence request ineligible. This fact is supported by Ms. Menzie's admission of being a substitute teacher at the time. Sporadic substitute teaching is not a contracted position. In addition, Toledo Public Schools concurs that Ms. Menzie was a non-contracted substitute teacher who would not have needed to request a leave or submit a resignation. * * *

{¶9} After receiving this third letter denying her request to purchase service credit, Menzie filed a petition for a writ of mandamus in the trial court. Menzie alleged that STRB's refusal to allow her to purchase service credit constituted an abuse of discretion.

{¶10} Menzie moved for summary judgment, and STRB responded with a cross-motion for summary judgment. On November 25, 2008, the trial court issued a decision and judgment granting Menzie's motion and denying STRB's motion. The trial court ordered STRB to determine the cost of two years of service credit for Menzie, provide Menzie with a cost statement, and permit Menzie to purchase the service credit.

{¶11} STRB now appeals the November 25, 2008 judgment to this court, and it assigns the following error:

THE COMMON PLEAS COURT ERRORED [sic] IN CONCLUDING THE APPELLANT [sic] RESIGNED FROM A POSITION.

{¶12} " '[M]andamus is an appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body.' " *State ex rel.*

Mager v. State Teachers Retirement Sys. of Ohio, 123 Ohio St.3d 195, 2009-Ohio-4908, ¶11 (quoting *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, ¶14). Here, because Menzie does not have a statutory right to appeal from STRB's decision to deny her the option to purchase service credit, Menzie may seek to remedy STRB's alleged abuse of discretion through a petition for a writ of mandamus. " 'An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable.' " *State ex rel. Ackerman v. State Teachers Retirement Bd.*, 117 Ohio St.3d 268, 2008-Ohio-863, ¶16 (quoting *State ex rel. Stiles v. School Emps. Retirement Sys.*, 102 Ohio St.3d 156, 2004-Ohio-2140, ¶13).

{¶13} In the case at bar, Menzie contends that STRB abused its discretion in refusing to comply with R.C. 3307.771. In relevant part, that statute provides that:

A member of the state teachers retirement system participating in the plan described in sections 3307.50 to 3307.79 of the Revised Code who prior to July 1, 1982, was granted a leave of absence for pregnancy or resigned due to pregnancy or adoption of a child may purchase service credit for a period for which the member did not make contributions under section 3307.26 of the Revised Code.

Thus, to be eligible to purchase service credit under R.C. 3307.771: (1) an STRS member must participate in the defined benefit plan, and (2) prior to July 1, 1982, the STRS member must have taken a leave of absence for pregnancy or resigned due to pregnancy or adoption of a child.¹

{¶14} The dispute over Menzie's eligibility to purchase service credit under R.C. 3307.771 centers on whether Menzie "resigned." Menzie argues that she resigned as a

¹ R.C. 3307.771 and Ohio Adm.Code 3307:1-3-08 contain additional eligibility requirements, none of which are relevant to this appeal.

substitute teacher when she submitted a letter of resignation to the Toledo City School District in mid-January 1977. In response, STRB argues that Menzie could not resign because she did not have an ongoing position to resign. According to STRB, Menzie's position as a substitute teacher terminated at the end of each school day she taught. Consequently, her position last terminated on January 7, 1977, and thus, she did not have a position to resign in mid-January.

{¶15} When interpreting a statute, a court must first examine the plain language of the statute itself to determine the legislative intent. *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 118 Ohio St.3d 400, 2008-Ohio-2618, ¶10; *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, 2007-Ohio-2203, ¶12. This task requires a court to " 'read words and phrases in context according to the rules of grammar and common usage.' " *Mager* at ¶14 (quoting *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, ¶23). See also R.C. 1.42. Where the legislature fails to define a particular statutory term, courts accord that term its common, everyday meaning. *Pruszynski v. Reeves*, 117 Ohio St.3d 92, 2008-Ohio-510, ¶8; *Davis v. Davis*, 115 Ohio St.3d 180, 2007-Ohio-5049, ¶14.

{¶16} Here, the General Assembly did not define "resign," so we resort to its ordinary definition. To "resign" is "to give up deliberately; esp: to renounce (as a right or position) by a formal act" and "to give up one's office or position: QUIT." Webster's Ninth New Collegiate Dictionary (1991). See also *State ex rel. Richard v. Springfield* (1990), 48 Ohio St.3d 65, 66 (relying upon this definition for the ordinary meaning of "resigns" as used in R.C. 124.50). Therefore, Menzie resigned if she gave up or quit a position.

{¶17} Both the parties and the trial court equate having a position with having an employment contract. Menzie argues, and the trial court held, that Menzie had a position to resign because she had an employment contract. We do not agree with this reasoning. Boards of education must extend contracts to all teachers, including substitute teachers. R.C. 3319.08 ("The board of education of each city * * * shall enter into written contracts for the employment and reemployment of all teachers."); *Crawford v. Bd. of Edn., Barberton City Schools* (1983), 6 Ohio St.3d 324, 326-27 (presuming that a substitute teacher had a contract pursuant to the dictate of R.C. 3319.08). However, even if we presume that Menzie had a teaching contract with the Toledo City School District, we do not know the parameters of that contract. Consequently, we do not know whether the contract provided Menzie an ongoing, year-long position or a sporadic, day-to-day position. While Menzie could give up or quit a position that lasted throughout the school year, she could not give up or quit a position that had already terminated at the end of the last day she taught. Thus, without evidence of the terms of Menzie's contract, we cannot determine whether the contract accorded Menzie a resignable position.

{¶18} To resolve whether Menzie had a position she could resign, we turn to the statutory provision governing substitute teachers and the scant factual record. R.C. 3319.10 states:

Teachers may be employed as substitute teachers for terms not to exceed one year for assignment as services are needed to take the place of regular teachers absent on account of illness or on leaves of absence or to fill temporarily positions created by emergencies; such assignment to be subject to termination when such services no longer are needed.

Thus, boards of education may employ and terminate substitute teachers on an as-needed basis. See also *State ex rel. Dennis v. Bd. of Edn. of the Hillsdale Local School Dist.* (1988), 39 Ohio St.3d 158, 161 ("It is a basic premise that substitute teachers are employed as their services are needed.").

{¶19} R.C. 3319.10 refers to two types of substitute teachers: (1) long-term substitute teachers, and (2) "casual or day-to-day" substitute teachers. See *State ex rel. Dennis v. Bd. of Edn. of the Hillsdale Local School Dist.* (1986), 28 Ohio St.3d 263, 266 (holding that the General Assembly used the phrase "casual or day-to-day" to distinguish between types of substitute teachers). Here, the evidence indicates that Menzie fell into the "casual or day-to-day" category of substitute teachers. She only worked periodically—14 days during an approximately three-month period. Moreover, she was paid on a per-diem basis, and not a regular salary.

{¶20} As a "casual or day-to-day" substitute teacher, Menzie was employed for each day the Toledo City School District needed her services. Her employment terminated when the day's final school bell rang because, at that point, the district no longer needed her services. Thus, Menzie's position as a substitute teacher terminated at the close of the January 7, 1977 school day.

{¶21} Because Menzie's position ended on January 7, 1977, she did not have a position to resign in mid-January. Accordingly, Menzie did not qualify to purchase service credit under R.C. 3307.771, and STRB did not abuse its discretion in refusing to allow Menzie to purchase that service credit.

{¶22} For the foregoing reasons, we sustain STRB's sole assignment of error, and we reverse the judgment of the Franklin County Court of Common Pleas.

Judgment reversed.

BRYANT and McGRATH, JJ., concur.
