

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, ex rel.	:	
Vanessa Withers, f.k.a. Vanessa C. Kadalie,	:	
	:	
Relator-Appellant,	:	No. 17AP-124
	:	(C.P.C. No. 15CV-8484)
v.	:	
	:	(REGULAR CALENDAR)
State Teachers Retirement System	:	
of Ohio Board et al.,	:	
	:	
Respondents-Appellees.	:	

D E C I S I O N

Rendered on September 28, 2017

On brief: *Lyman Law Offices, and Chester T. Lyman, Jr.*, for appellant. **Argued:** *Chester T. Lyman, Jr.*

On brief: *Loren L. Braverman*, for appellee Columbus City School District, Board of Education. **Argued:** *Loren L. Braverman*.

On brief: *Michael DeWine*, Attorney General, *John J. Danish*, and *Mary Therese J. Bridge*, for appellees State Teachers Retirement System of Ohio Board and Ohio Public Employees Retirement Systems. **Argued:** *John J. Danish*.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Relator-appellant, Vanessa Withers, f.k.a. Vanessa C. Kadalie, appeals from a decision and entry of the Franklin County Court of Common Pleas granting the motion to dismiss of respondent-appellee Ohio Public Employees Retirement Systems ("OPERS"). Withers additionally appeals from a decision and entry of the trial court granting the motions for summary judgment of respondents-appellees State Teachers

Retirement System of Ohio Board ("STRS") and Columbus City Schools Board of Education ("CCS"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} From August 2002 to May 31, 2013, CCS employed Withers as a school nurse. Additionally, from October 5, 1992 until September 25, 2013, the Ohio State University ("OSU") hospital system also employed Withers as a nurse. During her employment with CCS, Withers was a contributing member of STRS and accumulated 10.03 years of service credit. Meanwhile, during her employment with OSU, Withers was a contributing member of OPERS and accumulated 23.587 years of service credit.

{¶ 3} A collective bargaining agreement ("CBA") between CCS and Withers' union governed Withers' employment with CCS. The CBA provided for a severance payment if an employee retired within 120 days of ending his or her employment. Withers asserted she had unused sick and personal leave totaling \$7,412.58 at the time she retired.

{¶ 4} When a public employee with membership in more than one state retirement system seeks to retire, the General Assembly has provided a means for coordinating membership and combining contributions and service credits. R.C. 145.37(A)(4) directs that the "paying system" be the state retirement system in which the member has the greatest service credit. Because Withers had the greatest service credit with OPERS, she applied for retirement from OPERS on September 25, 2013. Following the provisions of R.C. 145.37 and 3307.57, Withers elected to combine her STRS service credit and contributions with her OPERS service credit and contributions.

{¶ 5} As pertinent here, R.C. 145.37(B)(1) additionally provides that "[a]ge and service retirement shall be effective on the first day of the month immediately following * * * [t]he last day for which compensation was paid." Because her last day of employment with OSU was September 25, 2013, OPERS determined Withers' effective date of retirement to be October 1, 2013. Following OPERS's determination of her retirement date, CCS then denied Withers a severance payment on the grounds that her retirement date was more than 120 days after the termination of her employment with CCS.

{¶ 6} On September 25, 2015, Withers filed a petition for a writ of mandamus against STRS and CCS, asking the trial court to require STRS to declare her retirement

date as September 25, 2013. STRS and CCS filed answers, and STRS subsequently filed a motion for summary judgment on June 30, 2016. Before responding to the motion for summary judgment, Withers filed a motion for leave to file an amended petition, which the trial court granted in an October 20, 2016 decision and entry. Withers then filed an amended petition on October 25, 2016 adding OPERS as an additional defendant-respondent.

{¶ 7} On November 7, 2016, both CCS and STRS filed answers to Withers' amended petition. In lieu of an answer, OPERS filed a Civ.R. 12(B)(6) motion to dismiss Withers' amended petition on November 22, 2016, asserting R.C. 145.37(B)(1) controlled OPERS's determination of Withers' retirement date and, thus, OPERS had no legal duty or authority to establish an alternate retirement date.

{¶ 8} CCS filed its own motion for summary judgment on July 1, 2016. Withers filed a memorandum opposing CCS's motion for summary judgment on July 19, 2016, outside of the 14-day response period set forth in Civ.R. 56(C) and Loc.R. 21.01 of the Franklin County Court of Common Pleas, General Division. Because Withers' memorandum was untimely, the trial court declined to consider it. However, at the October 31, 2016 hearing on the pending motions for summary judgment, the trial court did consider Withers' oral arguments.

{¶ 9} Following the hearing, in a December 23, 2016 decision and entry, the trial court granted the motions for summary judgment of STRS and CCS, concluding there remain no genuine issues of material fact and that it is clear Withers has no legal right to the requested severance payments. Thus, the trial court concluded Withers was not entitled to either the writ of mandamus or a declaratory judgment establishing her retirement date as her last day of employment with OSU. Subsequently, on January 19, 2017, the trial court issued a decision and entry granting OPERS's motion to dismiss Withers' claims against it. Withers timely appeals.

II. Assignments of Error

{¶ 10} Withers assigns the following errors for our review:

- [1.] The trial court abused its discretion and erred in sua sponte striking the reply of plaintiff to the motion for summary judgment.

[2.] The trial court erred in granting summary judgment in favor of CCS when there were insufficient facts in favor of CCS to make such a determination.

[3.] The trial court erred in ignoring the precedential case of *Featherstone*, and in failing to follow it as precedent.

[4.] The trial court erred in granting summary judgment in favor of CCS based on its application of the 120-day rule because it misunderstood and therefore misapplied the rule.

[5.] The trial court erred in determining that the date of retirement should be calculated as of the date the retirement benefits begin for a member of OPERS.

[6.] The trial court erred in determining that appellant retired from the State Teachers Retirement System.

[7.] The trial court erred in granting summary judgment in favor of OPERS and STRS.

III. First Assignment of Error – Consideration of Memorandum Contra

{¶ 11} In her first assignment of error, Withers argues the trial court erred in sua sponte striking her replies to CCS's and STRS's motions for summary judgment.

{¶ 12} "It is well-established that the control of the docket and consideration of motions by the trial court rests within the sound discretion of the court," and a reviewing court will not disturb those decisions absent an abuse of discretion. *Jarvis v. Hasan*, 10th Dist. No. 14AP-578, 2015-Ohio-1779, ¶ 55, citing *Catudal v. Catudal*, 10th Dist. No. 12AP-951, 2013-Ohio-2748, ¶ 26. "The Rules of Civil Procedure and local rules operate to limit that discretion." *Id.*, citing *Lucas v. Gee*, 104 Ohio App.3d 423, 429 (10th Dist.1995) ("[t]he control of the docket and consideration of motions by the trial court rests within the trial court's sound discretion and in accordance with the civil rules of procedure"). An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 13} Pursuant to Civ.R. 56(C), an adverse party to a motion for summary judgment ordinarily has 28 days to serve responsive arguments and opposing affidavits "[u]nless otherwise provided by local rule or by order of the court." As applicable here,

Loc.R. 21.01 of the Franklin County Court of Common Pleas gives a party responding to a motion, including a motion for summary judgment, 14 days to serve a responsive brief. STRS filed its motion for summary judgment on June 30, 2016 and CCS filed its motion for summary judgment on July 1, 2016. As the trial court noted, in order to comply with Loc.R. 21.01, Withers' responses to these motions were due within 14 days of June 30 and July 1, 2016, respectively. However, Withers did not file her memorandum in opposition until July 19, 2016, making it untimely under Loc.R. 21.01. Because it was untimely, the trial court stated it would not consider it.

{¶ 14} Based on a review of the record, we conclude the trial court did not abuse its discretion in enforcing the time limits set forth in the local rules. Though Withers argues the trial court should not have acted to sua sponte strike Withers' memorandum in opposition, Withers points to no authority indicating the trial court must wait for a motion to strike from the opposing party before exercising its discretion to enforce the local rules. We find no abuse of discretion in the trial court enforcing the time limits set forth in Loc.R. 21.01 and refusing to consider Withers' memorandum contra the motions for summary judgment as untimely. Accordingly, we overrule Withers' first assignment of error.

IV. Second, Third, Fourth, Fifth, Sixth, and Seventh Assignments of Error – Motions for Summary Judgment and Motion to Dismiss

{¶ 15} Withers' second, third, fourth, fifth, sixth, and seventh assignments of error are interrelated and we address them jointly. Taken together, Withers asserts through these six assignments of error that the trial court erred in granting CCS's and STRS's motions for summary judgment and in granting OPERS's motion to dismiss.

A. Motion for Summary Judgment Standard of Review and Applicable Law

{¶ 16} An appellate court reviews summary judgment under a de novo standard. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41 (9th Dist.1995); *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994). Summary judgment is appropriate only when the moving party demonstrates (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to

the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶ 17} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). However, the moving party cannot discharge its initial burden under this rule with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of the type listed in Civ.R. 56(C) affirmatively demonstrating that the nonmoving party has no evidence to support the nonmoving party's claims. *Id.*; *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). Once the moving party discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

{¶ 18} In her second, third, fourth, fifth, sixth, and seventh assignments of error, Withers argues the trial court erred in granting summary judgment in favor of CCS and STRS. More specifically, Withers argues the trial court erred in determining her retirement date to be October 1, 2013 and in concluding she was not entitled to the severance payment contemplated under the CBA.

B. STRS's and CCS's Motions for Summary Judgment – Mandamus

{¶ 19} Withers sought a writ of mandamus compelling STRS to "provide a correct determination of her retirement effective date" that would allow Withers to obtain her unused and accrued sick and personal leave benefits from CCS. (Am. Petition at ¶ 55.) Additionally, Withers sought a writ of mandamus compelling CCS to pay her unused and accrued personal and sick leave benefits. To be entitled to a writ of mandamus, a relator must show a clear legal right to the requested relief, a clear legal duty on the part of the respondent to provide such relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Brown v. Indus. Comm.*, 10th Dist. No. 14AP-722, 2015-Ohio-2923, ¶ 10, citing *State ex rel. Gen. Motors Corp. v. Indus. Comm.*, 117 Ohio St.3d 480, 2008-Ohio-1593, ¶ 9.

{¶ 20} R.C. 145.37 controls coordinating membership in state retirement systems. The version of R.C. 145.37 in effect in 2013 provided "[t]he board of the state retirement system in which the member had the greatest service credit, without adjustment, shall calculate and pay the total retirement or disability benefit." Prior R.C. 145.37(B)(1)(d). (2011 S.B. No. 343, effective Jan. 7, 2013.) Similarly, the version of R.C. 3307.57 in effect in 2013, the STRS statute governing coordinating membership in state retirement systems, directed that "[t]he board of the state retirement system in which the member had the greatest service credit, without adjustment, shall calculate and pay the total benefit." Prior R.C. 3307.57(B)(4). (2011 S.B. No. 342, effective Jan. 7, 2013.) Thus, "[w]hen a state employee has service credit in more than one retirement system, the board of the retirement system in which the employee had the greatest service credit calculates and pays the benefit." *State ex rel. Simpson v. State Teachers Retirement Bd.*, 143 Ohio St.3d 307, 2015-Ohio-149, ¶ 20.

{¶ 21} Here, there is no factual dispute that when Withers applied to retire she had more service credit with OPERS than with STRS—23.587 years of service credit with OPERS and 10.03 years of service credit with STRS. Thus, pursuant to the version of R.C. 145.37 in effect in 2013, OPERS was responsible for calculating and paying Withers' retirement benefits, not STRS.

{¶ 22} The version of R.C. 145.37 in effect in 2013 additionally provides:

(B) To coordinate and integrate membership in the state retirement systems, the following provisions apply:

(1) Subject to division (B)(2) of this section, at the election of a member, total contributions and service credit in all state retirement systems, including amounts paid to restore service credit under sections 145.311, 3307.711, and 3309.261 of the Revised Code, shall be used in determining the eligibility and total retirement or disability benefit payable. When total contributions and service credit are so combined, the following provisions apply:

(a) *Age and service retirement shall be effective on the first day of the month immediately following the later of:*

(i) *The last day for which compensation was paid;*

(ii) The attainment of minimum age or service credit eligibility for benefits provided under this section;

(iii) Ninety days prior to receipt by the board of the member's completed application for retirement.

* * *

(c) Eligibility for a disability benefit shall be determined by the board of the state retirement system that will calculate and pay the benefit, as provided in division (B)(1)(d) of this section. The state retirement system calculating and paying the disability benefit shall certify the determination to the board of each other state retirement system in which the member has service credit and shall be accepted by that board as sufficient for granting a disability benefit.

(Emphasis added.) Prior R.C. 145.37(B)(1)(a) through (c). (2011 S.B. No. 343, effective Jan. 7, 2013.)

{¶ 23} Withers' last day for which compensation was paid as a state employee was September 25, 2013. Under the statute, OPERS had a duty to determine Withers' effective retirement date to be October 1, 2013, the first day of the month immediately following the last day for which compensation was paid. Because OPERS, not STRS, was charged with calculating and paying Withers' retirement benefit, and because OPERS was statutorily bound to make Withers' retirement effective date the first day of the month immediately following the last day for which Withers was paid compensation, STRS had no legal authority to set a different effective date for Withers' retirement or to subsequently change the effective date.

{¶ 24} In both her complaint and amended complaint, Withers seeks severance benefits pursuant to the CBA between Withers and CCS. In relevant part, Article 810.01 of the CBA provides:

Members of the bargaining unit who have been employed by the Board for at least five (5) consecutive years may, at the time of their separation from service with the Columbus City Schools, elect to be paid in cash for the value of their accrued but unused sick leave and personal leave credit in accordance with Section 810.02 below. The following stipulations shall apply:

A. Only those members of the bargaining unit whose effective date of retirement with the State Teachers Retirement System is no later than one hundred twenty (120) calendar days after the last paid day of service, the last day of an unpaid leave of absence with the Columbus City Schools or while on layoff status as defined in Article 704 of this Agreement, shall be eligible to be paid for such accrued but unused sick leave/personal leave credit.

(CBA at 89-90, attached to Pfeiffer Aff., Ex. C.)

{¶ 25} As the trial court noted, there is no dispute that Withers' last day of employment with CCS was May 31, 2013. Under the terms of Article 801.01 of the CBA, Withers was only entitled to severance pay if she had an "effective date of retirement" within 120 days of May 31, 2013. Because Withers continued to work for OSU until September 25, 2013, and because Withers elected to combine her STRS and OPERS retirement service credits, OPERS was statutorily required, as we explained above, to determine Withers' effective retirement date to be October 1, 2013. Since 122 days elapsed between May 31, 2013 and October 1, 2013, Withers was ineligible to collect the severance payment under the express terms of the CBA. *Featherstone v. Columbus City School Dist. Bd. of Edn.*, 10th Dist. No. 98AP-889 (Mar. 30, 1999) (where a retired teacher's last paid day of service was not within 120 days of his retirement, he was not eligible for severance pay under the terms of the CBA).

{¶ 26} Withers argues the trial court ignored the precedential case of *Featherstone*. We disagree. In *Featherstone*, there was no dispute that the employee's effective date of retirement was November 1, 1996. Instead, the issue related to the employee's last date of paid service. The employee argued he was on paid leave up to November 1, 1996, such that November 1, 1996 should have been his last date of paid service. Our court disagreed and found January 31, 1996 was the employee's last date of paid service, making his November 1, 1996 effective date of retirement well past the 120-day deadline in the CBA to be eligible for severance benefits. In explaining our decision, this court wrote, "at the very latest, appellant would have had to retire no later than one hundred twenty days after January 31, 1996, appellant's last paid day of service. Such date would have been May 30, 1996." *Featherstone*.

{¶ 27} Withers asserts this court's reference to May 30, 1996 created something she deems the "*Featherstone* rule," which she argues requires that the date of filing an application for retirement benefits should be used to calculate the effective date of retirement under the CBA rather than the effective date of retirement under R.C. 145.37(B). Withers applied for retirement benefits on September 25, 2013, which was 117 days after her last day of paid service with CCS, and thus she asserts application of *Featherstone* would bring her claim for severance benefits from CCS within the 120-day deadline in the CBA. We disagree. There is no indication in *Featherstone* that this court intended to ignore or override the statute requiring the effective date of retirement under the CBA to be the first day of the month following the last day for which compensation was paid.¹ That issue was not before the court in *Featherstone*, and we will not interpret the case and its reference, simply as a matter of illustration, to May 30, 1996 as overriding the statutorily imposed date. Because Withers' argument related to the application date for retirement benefits relies on a misinterpretation of both *Featherstone* and the CBA, we reject this argument.²

{¶ 28} Withers additionally argues that she did not actually retire from STRS but instead retired only from OPERS and that her effective date of retirement relates only to her OPERS retirement so she should still be eligible for the severance benefits under the CBA. We note that Withers' does not fully develop this argument and offers no explanation for STRS's transfer of her contributions and service credits to OPERS if she did not actually retire from STRS. Further, even assuming *arguendo* she did not actually retire from STRS, Withers unequivocally would not be entitled to the severance benefits under Article 810.01 of the CBA which, by its plain language, predicates the payment of severance benefits on an effective retirement date with STRS. This argument lacks merit.

¹ As a matter of clarification, we note that the CBA and R.C. 145.37(B) use slightly different language to describe the same thing. R.C. 145.37(B) refers to "[t]he last day for which compensation was paid," while the CBA refers to "the last paid day of service." These two phrases both refer an employee's last day of work.

² We additionally note that within her argument related to *Featherstone*, Withers asserts she relied to her detriment on advice she received from Betty Arey, CCS's payroll administrator, when she sought help determining what date should be her last day of employment with CCS. However, any advice she may have received from an employee of CCS lacks the authority to override the plain language of the controlling statute and the express language of the CBA regarding the effective date of retirement.

{¶ 29} Accordingly, we agree with the trial court that it was OPERS that was responsible for calculating and paying the retirement benefits, not STRS, and STRS lacked the authority to impose a different effective date of retirement other than what is required by R.C. 145.37. As there remains no genuine issue of fact as to whether Withers has a clear legal right to the requested relief or that STRS has a clear legal duty to provide such relief, we agree with the trial court that STRS is entitled to summary judgment as a matter of law on Withers' petition for a writ of mandamus. Additionally, we agree with the trial court that OPERS correctly calculated Withers' effective retirement date as October 1, 2013 and, therefore, Withers is not eligible for the severance pay she seeks under the CBA as her effective date of retirement was 122 days after her last paid day of service with CCS. Because there remains no genuine issue of fact as to whether Withers has a clear legal right to severance payment from CCS, we agree with the trial court that CCS is entitled to summary judgment as a matter of law on Withers' petition for a writ of mandamus.

C. STRS's and CCS's Motions for Summary Judgment – Declaratory Judgment

{¶ 30} Withers alternatively seeks a declaratory judgment that "sets forth the proper distinction between a retirement date and a benefit commencement date" and declares the "submission of her retirement documents was timely and that she is entitled to the [severance] benefits" from CCS. (Am. Petition at ¶ 5, 6.) We note that R.C. 4117.10(A) expressly provides that laws pertaining to the retirement of public employees prevail over conflicting provisions of a CBA. R.C. 4117.10(A)(1)(e).

{¶ 31} "A declaratory judgment action is a civil action and provides a remedy in addition to other legal and equitable remedies available." *Burge v. Ohio Atty. Gen.*, 10th Dist. No. 10AP-856, 2011-Ohio-3997, ¶ 7, citing *Victory Academy of Toledo v. Zelman*, 10th Dist. No. 07AP-1067, 2008-Ohio-3561, ¶ 8. "The essential elements for declaratory relief are (1) a real controversy exists between the parties, (2) the controversy is justiciable in character and, (3) speedy relief is necessary to preserve the rights of the parties." *Id.*, quoting *Walker v. Ghee*, 10th Dist. No. 01AP-960 (Jan. 29, 2002). "A trial court properly dismisses a declaratory judgment action when no real controversy or justiciable issue exists between the parties." *Id.*, quoting *State v. Brooks*, 133 Ohio App.3d 521, 525 (4th Dist.1999).

{¶ 32} "For purposes of a declaratory judgment action, a 'justiciable issue' requires the existence of a legal interest or right, and a 'controversy' exists where there is a genuine dispute between parties with adverse legal interests." *Festi v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1372, 2005-Ohio-3622, ¶ 11, citing *Wilburn v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-198 (Nov. 27, 2001). Having already determined Withers has no legal right to the severance payment under the CBA because OPERS complied with R.C. 145.37(B) in calculating her effective retirement date as October 1, 2013, there remains no genuine issue of fact as to the existence of a justiciable issue appropriate for resolution by declaratory judgment. Thus, we agree with the trial court that both STRS and CCS are entitled to summary judgment on Withers' claim for declaratory judgment.

D. OPERS'S Motion to Dismiss

{¶ 33} Under her seventh assignment of error, Withers additionally argues the trial court erred in "granting OPERS' motion for summary judgment." The record indicates, however that OPERS never filed a motion for summary judgment and instead filed a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, which the trial court ultimately granted. Thus, we construe Withers' argument to be that the trial court erred in granting OPERS's motion to dismiss.

{¶ 34} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992), citing *Assn. for Defense of Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). In ruling on a motion to dismiss, pursuant to Civ.R. 12(B)(6), the court must construe the complaint in the light most favorable to the plaintiff, presume all factual allegations in the complaint are true, and make all reasonable inferences in favor of the plaintiff. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). A trial court properly dismisses a complaint for failure to state a claim when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him to relief. *Coleman v. Columbus State Community College*, 10th Dist. No. 15AP-119, 2015-Ohio-4685, ¶ 6, citing *Celeste v. Wiseco Piston*, 151 Ohio App.3d 554, 2003-Ohio-703, ¶ 12 (11th Dist.). An appellate court reviews a decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be

granted under a de novo standard of review. *Foreman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-15, 2014-Ohio-2793, ¶ 9.

{¶ 35} Pursuant to her amended petition, Withers sought a writ of mandamus ordering OPERS to "record [her] retirement effective date" as September 25, 2013, aligning with her last day of employment with OSU, and to "record [her] benefit effective date as October 1, 2013." (Am. Petition at ¶ 1, 2.) However, for the reasons outlined above, under R.C. 145.37(B), OPERS was compelled to calculate Withers' effective retirement date as October 1, 2013, the first day of the month immediately following her last day for which compensation was paid. Therefore, we agree with the trial court that Withers can prove no set of facts entitling her to relief, and the trial court did not err in granting OPERS's motion to dismiss Withers' petition for a writ of mandamus.

{¶ 36} Withers also alternatively sought a declaratory judgment against OPERS "that sets forth the proper distinction between a retirement date and a benefit commencement date." (Am. Petition at ¶ 5.) Again, for the reasons outlined above, Withers is not entitled to a declaratory judgment because Withers does not have a legal right to the severance benefits under the CBA, and Withers can prove no set of facts entitling her to such relief. Accordingly, we find the trial court did not err in granting OPERS's motion to dismiss Withers' claim for a declaratory judgment.

{¶ 37} In summation, because the trial court did not err in granting STRS's motion for summary judgment, CCS's motion for summary judgment, and OPERS's motion to dismiss, we overrule Withers' second, third, fourth, fifth, sixth, and seventh assignments of error.

V. Disposition

{¶ 38} Based on the foregoing reasons, the trial court did not abuse its discretion in refusing to consider Withers' memorandum contra, and the trial court did not err in granting STRS's motion for summary judgment, CCS's motion for summary judgment, and OPERS's motion to dismiss. Having overruled Withers' seven assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
