STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: November 26, 2018]

SANDRA M. TIERNAN	:	
	:	
v.	:	**C.A. No. PC-2009-7242**
	:	
SETH MAGAZINER, IN HIS CAPACITY AS GENERAL TREASURER OF THE STATE OF RHODE ISLAND and FRANK J. KARPINSKI, IN HIS CAPACITY AS EXECUTIVE DIRECTOR OF EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

KEOUGH, J. Before the Court is a Petition for Declaratory Judgment that was filed by Petitioner Sandra M. Tiernan (Petitioner or Ms. Tiernan). Respondents, Seth Magaziner[1], in his capacity as General Treasurer of the State of Rhode Island, and Frank J. Karpinski, in his capacity as Executive Director of the Employees' Retirement System of the State of Rhode Island (collectively, Respondents or ERSRI), have filed the instant Motion for Partial Summary Judgment.[2] Jurisdiction is pursuant to chapter 35 of title 42, the Administrative Procedures Act.

[1] Pursuant to Super. R. Civ. P. 25(d)(1), Seth Magaziner automatically is substituted as a party for his predecessor, Frank Caprio.

[2] The Court previously issued a Decision in this case concerning Count II of Plaintiff's Amended Complaint, which contained Plaintiff's appeal from the agency's decision. *See Tiernan v. Magaziner*, No. PC20097242, 2018 WL 3536362 (R.I. Super. July 10, 2018) (*Tiernan I*). The instant motion pertains to the two remaining counts of the complaint.

I

Facts and Travel

The facts in this case, which are not in dispute, are detailed in *Tiernan I*. On April 25, 2002, Petitioner sustained a work-related injury. *Tiernan I*, at *1. She thereafter applied for, and was granted, workers' compensation benefits through the Rhode Island Division of Workers' Compensation (DWC). Ms. Tiernan began receiving those benefits on April 26, 2002. *Id.* Subsequently, Petitioner applied to ERSRI for accidental disability benefits, which application was approved on March 9, 2005.[3] *Id.* On the following day, the DWC informed ERSRI that Ms. Tiernan was receiving benefits and because the total amount of her workers' compensation benefits exceeded the disability benefits awarded to her, ERSRI initially did not pay any disability benefits to Ms. Tiernan. *Id.*

Thereafter, DWC notified Petitioner that it intended to discontinue her supplemental benefits. In response, she filed a petition for continuation of benefits, and later a petition for coordination of benefits pursuant to G.L. 1956 § 28-33-45(a). *Id.* In February of 2009, the Workers' Compensation Court (WCC) entered a Pre-Trial Order coordinating Ms. Tiernan's workers' compensation benefits with her disability benefits, the purpose of which was to ensure that Petitioner would receive "compensation and retirement benefits equal to the greater of the compensation or retirement benefits for which [she] was otherwise eligible . . . ." Based upon certain agreed upon calculations, the Court, which had originally ordered DWC to supplement Ms. Tiernan's benefits in the amount of $21.27 per week, amended the Order to provide for supplemental benefits in the amount of $76.80 per week, beginning March 1, 2009.

[3] Although the record is not clear, it appears as though the accidental disability benefits were conferred pursuant to G.L. 1956 § 36-10-14, "Retirement for Accidental Disability."

Once ERSRI learned about the Suspension Agreement, it began paying Ms. Tiernan her disability retirement benefits retroactive to March 2, 2009. *Tiernan I*, at *2. When ERSRI was informed subsequently about the monthly supplement that DWC would be giving to Petitioner pursuant to the original February 25, 2009 WCC Order, it began deducting those benefits from the awarded disability pension. *Id.* As a result, counsel for Petitioner requested a clarification from ERSRI with respect to its position regarding the supplemental benefits and also filed a declaratory judgment action, pursuant to § 42-35-7. *Id.*

Thereafter, ERSRI received notice of the increase in benefits being paid to Ms. Tiernan and as a result, it notified her that effective immediately, it was going to offset her workers' compensation payments retroactive to March 1, 2009. *Id.* ERSRI offered to provide a hearing in the event that Petitioner objected to the determination and indicated that she was required to exhaust her administrative remedies before pursuing an action in the Superior Court. *Id.* Subsequently, the parties entered into a stipulation indicating that the declaratory judgment action would be held in abeyance until Petitioner had exhausted her administrative remedies. *Id.*

Thereafter, ERSRI issued a formal administrative denial of Ms. Tiernan's request to reconsider the decision to offset her workers' compensation benefits from her disability retirement benefits, but agreed to schedule a hearing on the matter. *Id.* At that hearing, counsel submitted a stipulation of facts, with attached exhibits, and agreed that the matter involved a narrow question of law; namely, whether the coordination of benefits provision of the Workers' Compensation Act is subject to the offset provisions contained in § 36-10-31, which allows for a deduction of amounts paid pursuant to the provisions of the workers' compensation law. *Id.* After hearing arguments of counsel and reviewing their post-hearing memoranda, the hearing

officer issued a final decision affirming the administrative denial of Petitioner's request to reconsider the decision to offset her workers' compensation payments. *Id.*

After the hearing but prior to the final decision, the executive director of ERSRI also informed Petitioner that the agency intended to recover overpayments made to her retroactive to March 1, 2009. *Id.* Specifically, because Petitioner had been collecting her pension since March 2, 2009, with no offset of the $76.80 per week she had been receiving in workers' compensation benefits, ERSRI believed that Petitioner had been overpaid by a total of $24,396.24 and indicated it would recover the overpayments in deductions from her disability allowance. *Id.* Furthermore, because she was still receiving the weekly workers' compensation supplement to her disability retirement benefits, ERSRI indicated that it intended to continue to offset her weekly payment of $76.80. *Id.* The combined effect of these actions would leave the Petitioner with a monthly disability pension benefit in the amount of $49.01 per month until such time as the overpayments were recouped. *Id.*

Thereafter, Petitioner filed an Amended Complaint adding an administrative appeal to the already existing declaratory judgment action. She then filed a Second Amended Complaint adding an estoppel claim. It is the Second Amended Complaint that is the operative pleading in this matter. Respondents moved for summary judgment as to Counts I and III of the Second Amended Complaint and it is this motion that is presently before the court.

II

Standard of Review

Our Supreme Court has declared that "[s]ummary judgment is 'a drastic remedy,' and a motion for summary judgment should be dealt with cautiously." *Jackson v. Quincy Mut. Fire Ins. Co.*, 159 A.3d 610, 612 (R.I. 2017) (*quoting Estate of Giuliano v. Giuliano*, 949 A.2d 386,

390 (R.I. 2008)). Before deciding any such motion, "[i]t is important to bear in mind that the 'purpose of the summary judgment procedure is issue finding, not issue determination.'" *Jackson*, 159 A.3d at 612-13 (*quoting Estate of Giuliano*, 949 A.2d at 391). It is well-settled that "'[i]n passing on a motion for summary judgment, the trial justice must determine whether there is a genuine issue of material fact, and if not, the trial justice must determine whether the moving party is entitled to judgment as a matter of law.'" *Correia v. Bettencourt*, 162 A.3d 630, 634–35 (R.I. 2017) (*quoting Ferreira v. Strack*, 652 A.2d 965, 969 (R.I. 1995)).

III

Analysis

A

Declaratory Relief

In support of her request for declaratory relief, Petitioner maintains that pursuant to § 42-35-7, she is entitled to a declaratory judgment regarding the validity or applicability of the rules being relied upon by ERSRI in support of its decision. Specifically, Ms. Tiernan maintains that ERSRI, by virtue of its interpretation and application of various offset provisions, has interfered with and impaired her legal rights and privileges "to the pension to which she is entitled." Similar to the argument she advanced with respect to her administrative appeal, it is Ms. Tiernan's contention that because § 28-33-45, which provides for the coordination of workers' compensation benefits with retirement benefits, was enacted subsequent to the offset provisions contained in § 36-10-31, it should be presumed that the Legislature intended for it to be applied in place of the offset provisions. Respondents have objected, arguing that by its terms, § 42-35-7 relates only to the validity of agency rules and regulations and no such provisions are implicated in the instant matter. Rather, it is Respondents' position that the sole issue at hand is the

interpretation of two statutes such that § 42-35-7 is inapplicable. Moreover, Respondents contend that the issues raised by Petitioner in her declaratory judgment claim are identical to those raised in her administrative appeal and that as a result, the Court should decline to exercise its discretion in granting the relief sought.

A declaratory judgment claim "'is neither an action at law nor a suit in equity but a novel statutory proceeding . . . .'" *Northern Trust Co. v. Zoning Bd. of Review of Town of Westerly*, 899 A.2d 517, 520 n.6 (R.I. 2006) (*quoting Newport Amusement Co. v. Maher*, 92 R.I. 51, 53, 166 A.2d 216, 217 (1960)). "The purpose of declaratory judgment actions is to render disputes concerning the legal rights and duties of parties justiciable without proof of a wrong committed by one party against another, and thus facilitate the termination of controversies." *Millett v. Hoisting Eng'rs' Licensing Div. of Dep't of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977). "The decision to grant or to deny declaratory relief . . . is purely discretionary." *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997). Nevertheless, "[i]n light of their highly remedial nature . . . declaratory judgment statutes should be liberally construed; they should not be interpreted in a narrow or technical sense." *Millett*, 119 R.I. at 291, 377 A.2d at 233.

When "the complaint seeks a declaration that [a] challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board had no jurisdiction," a party is not precluded from seeking declaratory relief. *Tucker Estates Charlestown, LLC v. Town of Charlestown*, 964 A.2d 1138, 1140 (R.I. 2009) (*quoting Kingsley v. Miller*, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978); *Berberian v. Travisono*, 114 R.I. 269, 273, 332 A.2d 121, 123 (1975)). Indeed, although "exhaustion of administrative remedies is a mandatory condition precedent to judicial review under § 42-35-15, th[e] Court has recognized that in certain instances a party may seek declaratory relief in the Superior Court. Such

circumstances generally arise in the context of a rule or practice of the agency that is challenged as unconstitutional or in excess of the agency's statutory authority." *Town of Richmond v. R.I. Dep't of Envtl. Mgmt.*, 941 A.2d 151, 156 (R.I. 2008). Accordingly, it is settled law that "[t]he validity or applicability of an agency rule or practice may be decided in an action for declaratory relief, notwithstanding the fact that an administrative hearing was requested." *Id.* (*See Newbay Corp. v. Annarummo*, 587 A.2d 63, 65–66 (R.I. 1991)). ("[I]f the adoption or application of an agency rule or practice interferes with or threatens to impair the rights or privileges of a party, a declaratory judgment is available pursuant to § 42–35–7").

Petitioner is seeking relief pursuant to § 42-35-7, entitled "Declaratory judgment on validity or applicability of rules," which provides:

> "The validity or applicability of any rule may be determined in an action for declaratory judgment in the superior court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question." Sec. 42-35-7.

Petitioner does not cite to a specific *rule* that she is challenging in her request for relief but rather, argues that the *statutory* provisions of § 28-33-45 are applicable and are not superseded by § 36-10-31. Accordingly, it does not appear as though provisions of § 42-35-7 are applicable. Nevertheless, even if the Court were to presume, for sake of this motion, that Petitioner is referring to a particular rule, *e.g.*, Section 4 of Regulation No. 9, which provides that the board "endeavors to interpret the language of all the accidental disability statutes consistently with one another," it is of no avail.[4] Clearly, this case involves ERSRI's interpretation of the statutory

[4] ERSRI's Regulations Section (4) of Regulation No. 9 states that

provisions of chapter 10 title 31, specifically § 36-10-31, in conjunction with certain provisions of the Workers' Compensation Act, not other disability statutes. For the reasons previously articulated in *Tiernan I*, this Court does not find ERSRI's application or interpretation of the statutory provisions to be erroneous and, therefore, does not interfere with or impair Petitioner's legal rights or privileges. Accordingly, Respondent's Motion for Partial Summary Judgment as to Count I of the Second Amended Complaint is granted.

B

Estoppel

In Count III of her Second Amended Complaint, Petitioner seeks to estop ERSRI from recouping retroactive benefits, as well as benefits into the future. She maintains that ERSRI complied with the terms of the Workers' Compensation Order in 2009 and with the January 7, 2010 Mutual Agreement[5] for approximately five years, such that it should now be estopped from unilaterally changing its position to Petitioner's detriment. ERSRI seeks summary judgment on this Count, asserting that Petitioner has not adduced any evidence that demonstrates ERSRI or its officers made any representations to cause her to act or refrain from acting in a detrimental manner. Accordingly, it contends that the estoppel doctrine is inapplicable to the facts of the instant case.

> "[a]lthough the language in the ordinary disability statutes (R.I.G.L. §§36-10-12, 16-16-14, 45-21-19, and 45-21.2-7) and the accidental disability statutes (R.I.G.L. §§36-10-14, 16-16-16, 45-21-21 and 45-21.2-9) differ slightly, the Retirement Board endeavors to interpret the language of all the accidental disability statutes consistently with one another, and the language of all of the ordinary disability statutes consistently with one another wherever possible."

[5] The Second Amended Complaint indicates that the "subsequent Mutual Agreement [is] dated January 7, 2010." (Pl.'s Second Am. Compl. ¶ 15.) However, the actual Agreement, which was submitted as part of the record on appeal, bears the dates of "6/6/09" and "6/10/09".

It is well-settled "that the doctrine of estoppel may be applied against public agencies to prevent injustice and fraud when the agency or its officers make representations that cause a person to act or refrain from acting in a particular manner to his or her detriment." *Caron v. Town of N. Smithfield*, 885 A.2d 1163, 1164 (R.I. 2005) (*citing Romano v. Retirement Bd. of the Emps.*' *Retirement Sys. of R.I.*, 767 A.2d 35, 39-40 (R.I. 2001)). Nevertheless, estoppel "is 'extraordinary' relief, which 'will not be applied unless the equities *clearly* [are] balanced in favor of the part[y] seeking relief.' This Court will not entertain an estoppel claim when a governmental employee's actions clearly are *ultra vires*." *Waterman v. Caprio*, 983 A.2d 841, 846 (R.I. 2009) (*citations omitted).* Additionally, an estoppel claim requires two elements:

> "first, an affirmative representation . . . on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such representation or conduct in fact did induce the other to act or fail to act to his injury." *Id.* at 847.

Finally, "[t]he key element of an estoppel is intentionally induced prejudicial reliance." *Id. (citations omitted).*

In the *Waterman* case, a correctional officer brought an action against the state, challenging a decision of the Rhode Island Employees' Retirement System to offset his workers' compensation settlement against disability retirement benefit payments. In so doing, plaintiff advanced several arguments based upon the undisputed fact that he had sought and was given advice from the assistant executive director of the retirement system regarding whether any workers' compensation settlement received by plaintiff would be offset against his disability retirement payments. 983 A.2d at 842-43. Specifically, the assistant director told plaintiff's counsel that as long as the settlement was not considered a workers' compensation payment or benefit, the offset provision of the retirement act would not apply. *Id.* at 843. Shortly after this

conversation, plaintiff amended his disability claim with the retirement system and settled the workers' compensation claim, receiving an award of $21,250. Thereafter, he was notified that his retirement payments would not commence until the entire $21,250 was offset against the pension benefits. *Id.*

With respect to his estoppel argument, plaintiff argued that defendants should be estopped from invoking the offset provision of § 36–10–31 because plaintiff relied to his detriment on the statements made by the assistant director to plaintiff's attorney. *Id.* at 846. The court rejected this argument, however, and determined that the assistant director's comments were both erroneous and *ultra vires*, such that plaintiff could not prevail on his claim of equitable estoppel. *Id.* Relying on its holding in *Romano*, 767 A. 2d at 38, the court held that "plaintiff's estoppel claim must fail . . . [because] [t]he statements made by the retirement system employees were not within their authority to make because they contradicted state law." *Id.* at 847. Moreover, the court concluded that record was devoid of any evidence to suggest that the assistant director "made his statement with the purpose of inducing plaintiff to act in reliance on the representation." *Id.* The plaintiff's counsel asked a question and the assistant director answered it, "albeit erroneously." *Id.* The court concluded that this alone was insufficient to conclude that he deliberately induced plaintiff into believing that the settlement would not be offset against the disability payments when state law clearly specifies otherwise. *Id.*

Likewise, in the instant matter, the present record does not support a conclusion that Respondent or any of its employees made an affirmative representation to Petitioner for the purpose of inducing her to act or fail to act in reliance thereon; or, that any such representation did in fact induce her to act to her injury. In fact, as soon as ERSRI received notice of the mutual agreement between DWC and Ms. Tiernan on January 7, 2010, it informed her that it

intended to offset her weekly $76.80 workers' compensation payments retroactive to March 1, 2009. To the extent that Ms. Tiernan has continued to receive that amount in her disability benefits in addition to receiving the same amount from DWC and has relied on those payments to her detriment, regrettably, it does not alter the conclusion. ERSRI and/or its employees had no authority to continue making these payments without the mandated offsets being applied because it is contrary to state law. Accordingly, Respondent's Motion for Partial Summary Judgment as to Count III of the Second Amended Complaint is granted.

Counsel should submit the appropriate order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Sandra M. Tiernan v. Seth Magaziner, in his capacity as General Treasurer of the State of Rhode Island, et al.

CASE NO: PC-2009-7242

COURT: Providence Superior Court

DATE DECISION FILED: November 26, 2018

JUSTICE/MAGISTRATE: Keough, J.

ATTORNEYS:

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