

Police Pension Fund of the City of East St. Louis (collectively the Pension Board), determined that Lorraine Fields was ineligible to receive survivor pension benefits on behalf of her husband, Lee Roy Fields. Lorraine filed an action for administrative review in the circuit court of St. Clair County. Lorraine died while her action was pending in the circuit court. The circuit court affirmed the Pension Board's decision.

¶ 3 The plaintiff, Joseph M. Yates, as executor of the estate of Lorraine Fields, appeals, arguing that Lorraine's previous waiver of survivor pension benefits was unenforceable upon her remarriage to Lee Roy, that Lorraine was denied her due process rights, and that the Pension Board cannot recover survivor pension benefits voluntarily paid to Lorraine pursuant to the voluntary payment doctrine. We reverse the circuit court's decision affirming the Pension Board's decision.

¶ 4 BACKGROUND

¶ 5 On October 9, 1979, Lorraine Fields and Lee Roy Fields, a police officer for the City of East St. Louis, were married in St. Clair County. Lee Roy retired on October 13, 1979, and began drawing retirement pension benefits. Approximately eight years later, on April 16, 1987, Lee Roy and Lorraine divorced. Later in 1987, Lorraine married Bill Hatley, whom she thereafter divorced.

¶ 6 In Lee Roy and Lorraine's 1987 judgment for dissolution of marriage, the circuit court incorporated by reference the parties' marital settlement agreement, executed on April 15, 1987. In the parties' marital settlement agreement, Lorraine "expressly waive[d] any and all rights to [Lee Roy's] pension and/or employee benefits which [were] available to him as a result of his employment."

¶ 7 On June 8, 1990, Lee Roy and Lorraine remarried. On April 9, 2002, Lee Roy died. On May 1, 2002, Lorraine began collecting survivor pension benefits, receiving \$1,723.97 monthly from the pension fund. She received these benefits until August 2010.

¶ 8 On August 26, 2010, the Pension Board suspended Lorraine's survivor pension benefits. In a letter sent on August 31, 2010, the Pension Board's attorney stated as follows:

"Due to the erroneous payments made by the pension fund, effective immediately, the board has decided to suspend your benefits, pending a formal hearing in this matter. A hearing will be conducted on the issue of termination of these benefits at the next meeting of the East St. Louis Police Pension Board on Thursday, September 30, 2010 at 10:15 a.m. at the First Illinois Bank Building ***. You may appear before the board at that time, if you so desire."

¶ 9 Lorraine did not appear at the hearing on September 30, 2010. Following the hearing, the Pension Board entered a written order dated October 25, 2010. In its written order, the Pension Board noted that it had mailed written notice to Lorraine but that she did not appear and did not present testimony on her behalf. The Pension Board further noted that the following exhibits were admitted into evidence at the hearing: Lee Roy and Lorraine's marriage license dated October 9, 1979, their judgment of dissolution dated April 16, 1987, and their marriage license dated June 8, 1990.

¶ 10 In its written order, the Pension Board found that as part of Lee Roy and Lorraine's divorce proceedings, Lorraine had entered into a marital settlement agreement whereby she had expressly waived any and all rights to Lee Roy's pension. The Pension Board found that Lorraine had received benefit amounts from the East St. Louis Police Pension Fund from May 2002 through July 2010 in the monthly amount of \$1,723.97 and identified the amount of payments made to her as totaling \$170,673.03. The Pension Board concluded that Lorraine was not entitled to a survivor benefit from the East St. Louis Police Pension Fund and terminated all further benefits. The Pension Board directed its attorney to recover the funds previously paid to Lorraine.

¶ 11 On November 23, 2010, Lorraine filed a complaint for administrative review, arguing

that the Pension Board's decision was contrary to law. The plaintiff argued that the Pension Board misinterpreted section 3-120 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/3-120 (West 2010)).

¶ 12 On June 6, 2011, Lorraine filed an affidavit stating that she had received notice of the Pension Board's hearing on September 30, 2010. Lorraine further stated that when she had called the Pension Board's attorney, he had told her that there was no need for her to appear. Lorraine stated that she therefore did not appear at the hearing and did not know that she had a right to be heard and present evidence at the hearing.

¶ 13 On December 6, 2011, the circuit court reversed the Pension Board's decision as contrary to prevailing law and ordered that Lorraine's pension benefits be restored. However, on December 19, 2011, the Pension Board filed a motion to reconsider, requesting the circuit court to vacate its order.

¶ 14 Because Lorraine died on November 1, 2011, the circuit court granted the plaintiff's motion to substitute himself as the proper party plaintiff on January 3, 2012. On July 7, 2012, the circuit court granted the Pension Board's motion to reconsider and affirmed the decision of the Pension Board. On July 17, 2012, the plaintiff filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 "In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007). The amount of deference we give to the administrative agency's decision "depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact." *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). "Rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence." *Wade*, 226 Ill. 2d at 504. "An

administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). We review questions of law *de novo*. *Marconi*, 225 Ill. 2d at 532.

¶ 17 A mixed question of law and fact "involves an examination of the legal effect of a given set of facts." *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). When the question presented is a mixed question of law and fact, we apply a clearly erroneous standard of review. *Marconi*, 225 Ill. 2d at 532; *Jones v. Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill. App. 3d 1064, 1068 (2008); *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 99-100 (2008). The Illinois Supreme Court has described this standard as "between a manifest weight of the evidence standard and a *de novo* standard so as to provide some deference to the [agency's] experience and expertise." *City of Belvidere*, 181 Ill. 2d at 205. An agency's decision presenting a mixed question of law and fact "will be deemed 'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.'" *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 18 Article 3 of the Pension Code involves the establishment and administration of police pension funds for the benefit of police officers in municipalities with less than 500,000 inhabitants. 40 ILCS 5/3-101 to 3-152 (West 2010). Section 3-148 of the Pension Code (40 ILCS 5/3-148 (West 2010)) provides that judicial review of the Pension Board's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2010)). Pursuant to the Administrative Review Law, the scope of our review extends to all questions of fact and law presented by the entire record. 735 ILCS 5/3-110 (West 2010); *Wade*, 226

Ill. 2d at 504. Section 3-110 of the Administrative Review Law further provides that the administrative agency's findings and conclusions on questions of fact shall be held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2010). The plaintiff bears the burden of proof in an administrative hearing. *Marconi*, 225 Ill. 2d at 532-33.

¶ 19 The Pension Code must be liberally construed in favor of the rights of the applicant. *Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 521 (1986). Section 3-112(a) of the Pension Code provides that "[u]pon the death of a police officer entitled to a pension under [s]ection 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled." 40 ILCS 5/3-112(a) (West 2010). However, section 3-120(a) of the Pension Code provides as follows:

"If a police officer marries subsequent to retirement on any pension under this Article other than a pension established under Section 3-109.3 [self-managed plan], the surviving spouse and the children of such surviving spouse shall receive no pension on the death of the officer, except provided in subsection (b)." 40 ILCS 5/3-120(a) (West 2010).

¶ 20 "The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature." *Wade*, 226 Ill. 2d at 509. "Although a court should first consider the language of the statute, a court must presume that the legislature, in enacting the statute, did not intend absurdity or injustice." *Id.* at 510. We must construe a statute or ordinance sensibly, even though such construction qualifies the universality of the statute's language. *Id.* "When a literal interpretation of a statutory term would lead to consequences that the legislature could not have contemplated and surely did not intend, this court will give the statutory language a reasonable interpretation." *Id.*

¶ 21 Lorraine was a "surviving spouse" upon Lee Roy's death. See 40 ILCS 5/3-112(a)

(West 2010) (upon death of police officer, "surviving spouse" shall be entitled to the police officer's pension). Yet, Lorraine, as a surviving spouse who married Lee Roy subsequent to his retirement, did not acquire surviving pension benefits on the basis of their remarriage alone. See 40 ILCS 5/3-120(a) (West 2010) ("If a police officer marries subsequent to retirement ***, the surviving spouse *** shall receive no pension on the death of the officer"); *Stec v. Board of Trustees of the Oak Park Police Pension Fund*, 355 Ill. App. 3d 974, 981 (2005) (where husband retired on a disability pension in 1988 and married wife in 1991, subsequent to his retirement, the plain language of the statute mandates that wife shall receive no pension upon husband's death). However, Lorraine first married Lee Roy prior to his retirement.

¶ 22 All pension benefits earned during the marriage are considered marital property and, upon dissolution, are subject to division. 750 ILCS 5/503(b)(2) (West 2010); *In re Marriage of Richardson*, 381 Ill. App. 3d 47, 52 (2008). Likewise, a survivor's benefit is a distinct property interest that, though contingent in nature, has a determinable value and is properly considered a marital asset. *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 302 (2000); *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1117 (2004); *In re Marriage of Lipkin*, 208 Ill. App. 3d 214, 219 (1991); but see *In re Marriage of Hannon*, 207 Ill. App. 3d 329, 335 (1991) (although earned during marriage, survivor benefits have no possibility of becoming available for employee's direct enjoyment and are not subject to division as marital property).

¶ 23 In this case, the pension benefits earned during Lee Roy and Lorraine's first marriage were properly considered marital property. Pursuant to Lee Roy and Lorraine's judgment of dissolution entered in 1987, Lorraine "expressly waive[d] any and all rights to [Lee Roy's] pension and/or employee benefits which [were] available to him as a result of his employment." The issue before us is what effect their remarriage had upon the judgment of

dissolution of marriage, including Lorraine's agreement to waive Lee Roy's pension benefits.

¶ 24 In *In re Marriage of Parks*, 258 Ill. App. 3d 479 (1994), this court addressed the effect that remarriage between parties to a prior divorce had upon their previous judgment of divorce. This court concluded that "the remarriage of the parties *** render[s] the prior divorce decree unenforceable." *Id.* at 484. This court stated as follows:

"[T]o the extent the prior divorce decree has been fully complied with, it has the full force and effect of any other judgment rendered by a court of competent jurisdiction. *** [A] division of marital property which has been effected, executed, and completed is not nullified by the remarriage of the parties. *** However, with respect to provisions of the divorce decree which have not been fully executed, upon remarriage of the parties, no action may be brought to enforce those provisions." *Id.* (Holding is consistent with sound public policy to strengthen integrity of marriage by preventing remarried parties from squabbling in court about their prior divorce decree.)

¶ 25 Accordingly, Lorraine and Lee Roy's 1990 remarriage rendered the prior divorce decree unenforceable with respect to the division of marital property that had not been fully executed, including Lorraine's waiver of survivor pension benefits that she had not yet received. See *id.* at 485. Because Lorraine's prior waiver became unenforceable once she remarried Lee Roy and because she was a "surviving spouse" when Lee Roy died, she was entitled to the survivor pension benefits. Accordingly, we reverse the circuit court's order affirming the Pension Board's decision to deny Lorraine the survivor pension benefits. Because we reverse on this basis, we need not address the plaintiff's remaining arguments.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, we reverse the order of the circuit court of St. Clair County, and we remand the cause for further proceedings.

¶ 28 Reversed; cause remanded.