2017 IL App (4th) 160377-U

NO. 4-16-0377

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 15, 2017
Carla Bender
4th District Appellate
Court, IL

BRIAN BERTONI, SARAH IAIENNARO, and WENDELL KURT BANKS,	)	Appeal from
	)	Circuit Court of
Plaintiffs-Appellants,	)	Sangamon County
v.	)	No. 13MR702
SPRINGFIELD POLICE PENSION BOARD,	)	
Defendant-Appellee.	)	Honorable
	)	Rudolph M. Braud, Jr.,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the circuit court properly granted summary judgment in favor of defendant, a pension board, after finding defendant maintained jurisdiction to alter its calculation of plaintiffs' military-service credit because it had not yet entered a final decision.

¶ 2 In early 2012, plaintiffs, Brian Bertoni, Sarah Iaiennaro, and Wendell Kurt Banks, purchased two years of military-service credit as part of a pension "buy-back" option available to the Springfield police department under the Illinois Pension Code (Pension Code) (40 ILCS 5/3-110(b-5) (West 2012)). However, in June 2012, defendant, the Springfield Police Pension Board (Board), discovered it had miscalculated the contributions required for the purchase of military-service credit, and that plaintiffs had paid only their respective portions of the pension contribution despite the Pension Code requiring plaintiffs to also pay the City of Springfield (City) portion with interest.

¶ 3 Plaintiffs filed a motion for declaratory judgment and injunctive relief, asserting the Board lacked the jurisdiction to increase their buy-back contributions because the Administrative Review Act precluded the Board from seeking review of its final decisions after 35 days. 735 ILCS 5/3-103 (West 2012). In April 2016, the circuit court granted the Board's motion for summary judgment after finding the Board had not yet issued a final decision subject to a 35-day review period when it discovered plaintiffs had underpaid their respective buy-back portions.

¶ 4 Plaintiffs appeal, asserting the circuit court erred by granting the Board's motion for summary judgment because the Board lacked jurisdiction to increase their military-service contribution amounts. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In October 2011, the Board advised all police officers employed by the City's police department of an opportunity to buy back up to two years of time spent in military service that would be credited toward the service-time pension requirements and factored into the calculation of the officer's eligibility to receive full retirement benefits.

¶ 7 A. The Board Proceedings

¶ 8 The Board calculated Iaiennaro would need to pay the pension fund $17,611.20 to buy back two years of military-service credit and, on December 31, 2011, she made the requested payment. On January 11, 2012, the Board acknowledged receipt of Iaiennaro's contribution, but the Board took no vote to formally accept Iaiennaro's payment in return for two years of military-service credit.

¶ 9 The Board calculated Bertoni would need to pay the pension fund $28,814.82 to buy back two years of military-service credit and, on January 5, 2012, he made the requested

payment. On January 11, 2012, the Board acknowledged receipt of Bertoni's contribution, but the Board took no vote to formally accept Bertoni's payment in return for two years of military-service credit. On the same date, the Board also acknowledged the military-service-credit contribution of Jeffery Rettig (not a party to this appeal).

¶ 10 The Board calculated Banks would need to pay the pension fund $18,010.06 to buy back two years of military-service credit and, in April 2012, he made the requested payment. On April 10, 2012, the Board acknowledged receipt of Banks' contribution, but the Board took no vote to formally accept Banks' payment in return for two years of military-service credit. The same day, the Board acknowledged military-service-credit payments from Phillip Hoff, James Henry, and Ronald Williams (not parties to this appeal). In his deposition, the Board president stated the Board did not vote to approve these contributions, as such a vote would normally occur when officers submitted applications for retirement.

¶ 11 Following an audit, the Board learned it had miscalculated the contribution amounts necessary for officers to buy back two years of military-service credit. Specifically, the Board's original calculations included only the amount each officer would have contributed to the pension fund. The original calculation improperly omitted the amount the City would have contributed to the pension fund during that time, with interest, as set forth by the Illinois Department of Insurance December 2010 bulletin, *The Siren*, and by the Pension Code (40 ILCS 5/3-110(b-5) (West 2012)). In accordance with the calculation set forth by *The Siren* and the Pension Code, in July 2012, the Board voted to increase the required contribution from plaintiffs before crediting them with two years of military service. Plaintiffs were also given the option of accepting military-service credit for less than two years of service. Under the new calculation, the Board required Iaiennaro to pay an additional $23,339.61; Bertoni to pay an additional

$37,896.15; and Banks to pay an additional $30,996.50. Hoff, Henry, and Rettig, who retired prior to July 10, 2012, were not required to increase their contributions.

¶ 12 In January 2013, plaintiffs presented evidence and argument to the Board, challenging the Board's decision to increase their military-service-credit contribution. In April 2013, the Board denied plaintiffs' request and proposed three options for plaintiffs: (1) make the additional contribution to receive the full two years of military-service credit, (2) accept a full refund and receive no military-service credit, or (3) receive a portion of the military-service credit based on the contribution already made.

¶ 13 B. Circuit Court Proceedings

¶ 14 In September 2013, plaintiffs filed a complaint for declaratory and injunctive relief against the Board. Generally, the complaint alleged the Board lacked jurisdiction to modify its final administrative decisions to accept plaintiffs' military-service contributions issued on January 11, 2012 (Iaiennaro and Bertoni), and April 10, 2012 (Banks), because the Board failed to review its decision within 35 days as required under the Administrative Review Act. 735 ILCS 5/3-101, 103 (West 2012). Therefore, plaintiffs asserted the Board's decision to increase plaintiffs' military-service contribution was void. The Board, on the other hand, claimed in its October 2013 answer that it entered no final administrative decisions on January 11, 2012, or April 10, 2012, where the Board did not vote or enter a written decision.

¶ 15 In January 2014, plaintiffs filed a motion for summary judgment, asking the circuit court to find the Board lacked the authority to raise plaintiffs' contribution amount because more than 35 days had lapsed since it had entered a final administrative order. The Board also filed a motion for summary judgment, asserting it retained jurisdiction because it did not enter a final administrative decision accepting plaintiffs' contributions.

¶ 16 In March 2016, the circuit court held oral arguments regarding the motions for summary judgment, but plaintiffs have provided no transcript or bystander's report of the hearing. In its eight-page order, the court carefully outlined the facts of the case and its legal reasoning. Ultimately, the court determined the Board did not issue a final decision—a decision voted upon and memorialized in writing—that would require the Board to modify its decision within 35 days under the Administrative Review Act. The court also determined equitable considerations did not favor plaintiffs because (1) plaintiffs were still active officers when the Board realized and corrected its calculation mistake, (2) the Board had not voted to approve plaintiffs' contributions, and (3) plaintiffs had not received any written verification from the Board that their contributions had been approved. Accordingly, the court denied plaintiffs' motion for summary judgment and granted the Board's motion for summary judgment.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, plaintiffs assert the circuit court erred by granting the Board's motion for summary judgment because the Board lacked jurisdiction to increase their military-service contribution amounts. However, before we reach the merits of the case, we address the Board's contention that plaintiffs' brief violates Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016).

¶ 20 A. Rule 341

¶ 21 The Board contends plaintiffs committed numerous violations of Rule 341(h)(6). Specifically, The Board argues plaintiffs' brief (1) is argumentative and states facts not in the record, (2) provides inadequate citations to the record in its Statement of Facts, and (3) cites the hearing on the motion for summary judgment but attaches no transcript or bystander's report.

The Board therefore asks us to strike or disregard the portions of the brief that violate Rule 341(h)(6).

¶ 22 "[T]he striking of an appellate brief, in whole or in part, is a harsh sanction and is appropriate only when the alleged violations of procedural rules interfere with or preclude review. [Citations.]" (Internal quotation marks omitted.) *In re Detention of Powell*, 217 Ill. 2d 123, 132, 839 N.E.2d 1008, 1013 (2005). In the present case, plaintiffs' brief substantially complies with Rule 341(h) and does not preclude our review. At the same time, we would be remiss if we failed to point out some of plaintiffs' citations—such as a citation to a 234-page portion of the record—are of no value to this court, as such citations fail to highlight the evidence that would support plaintiffs' claims. *Adams County Property Owners & Tenant Farmers v. Illinois Commerce Comm'n*, 2015 IL App (4th) 130907, ¶ 100, 36 N.E.3d 1019. By citing such a lengthy portion of the record, plaintiffs improperly expect this court to search the record for support for their assertions. That being said, because the facts in this case are undisputed and the record is easily reviewed, the Board's request to strike is denied. However, we will disregard any inappropriate statements or arguments made by plaintiffs in their appellant brief. See *Walk v. Illinois Department of Children & Family Services*, 399 Ill. App. 3d 1174, 1180, 926 N.E.2d 773, 779 (2010).

¶ 23 We next turn to the appropriate standard of review.

¶ 24 B. Standard of Review

¶ 25 In this case, the parties' central dispute is whether the Board entered a final decision subject to review. Plaintiffs filed a motion for declaratory judgment and injunctive relief, and the circuit court ultimately granted the Board's motion for summary judgment. Accordingly, we review whether the court properly granted summary judgment. "When parties

file cross-motions for summary judgment, they invite the court to decide the issues presented as a question of law." *Baldermann v. Board of Trustees of the Police Pension Fund,* 2015 IL App (1st) 140482, ¶ 20, 27 N.E.3d 170. Accordingly, our review is *de novo*. *Id*. Having established the standard of review, we address the merits of this appeal.

¶ 26 C. Pension Contribution

¶ 27 Plaintiffs assert the circuit court erred by granting the Board's motion for summary judgment after finding (1) the Board had jurisdiction to alter plaintiffs' military-service-credit contributions, and (2) equitable considerations did not require a ruling in plaintiffs' favor. We take these arguments in turn.

¶ 28 1. *The Board's Jurisdiction*

¶ 29 The Board asserts plaintiffs abandoned their argument that the Board entered a final administrative decision by not raising it on appeal. We disagree. Plaintiffs have simply reframed their argument as a jurisdictional matter, arising from the Board's failure to take any action within 35 days of their January 2012 and April 2012 board meetings wherein they acknowledged plaintiffs' pension contributions.

¶ 30 Under the Administrative Review Act, to which the Board is subject, an administrative decision is defined as "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101 (West 2014). When a board issues a final and binding administrative decision, an action to review that decision "shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date" in which the final decision issued. 735 ILCS 5/3-103 (West 2014). The central question, therefore, is whether the Board's acknowledgments of

plaintiffs' military-service contributions in January 2012 (Iaiennaro and Bertoni) and April 2012 (Banks) constitute final decisions subject to the Administrative Review Act.

¶ 31 During both the January and April 2012 Board meeting minutes, the minutes reflect the Board acknowledged plaintiffs' contributions for the purpose of buying back two years of military-service credit. Under the Open Meetings Act, "[a]ll meetings of public bodies shall be open to the public" unless certain exceptions apply. 5 ILCS 120/2(a) (West 2012). To issue a final decision, the Open Meetings Act requires the administrative body to take a majority affirmative vote and issue a written decision. See *Howe v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 2013 IL App (1st) 122446, ¶ 19, 996 N.E.2d 664. "A final and binding decision by an administrative agency *requires*, at the very least, that the agency has taken some definitive action with regard to the application before it and that the applicant has been informed of the action." (Emphasis in original and internal quotation marks omitted.) *Sola v. Roselle Police Pension Board*, 342 Ill. App. 3d 227, 232, 794 N.E.2d 1055, 1058 (2003).

¶ 32 As the circuit court correctly noted, nothing in the record demonstrates the Board approved or voted upon plaintiffs' military-service contributions or issued a written decision to plaintiffs. The record therefore fails to demonstrate a definitive action taken by the Board with respect to plaintiffs' contributions.

¶ 33 Nevertheless, plaintiffs rely on *Sola* in support of their position. In *Sola*, the widow of a deceased police officer requested pension benefits as the surviving spouse as well as annual cost-of-living increases. *Id.* at 229, 794 N.E.2d at 1056. The Roselle Police Pension Board (Roselle Board) made no written decision, though the minutes of a January 1996 meeting reflect it approved the 1993 grant of pension benefits. *Id.* The widow received those benefits and cost-of-living increases until January 2002, at which time the Roselle Board informed her

she had been erroneously granted cost-of-living increases to which surviving spouses were not entitled, leading to an overpayment of $1,963.60. *Id.* at 229, 794 N.E.2d at 1056-57. In March 2002, plaintiff filed a complaint for declaratory judgment and injunctive relief, asserting the Roselle Board lacked jurisdiction to modify plaintiff's benefits because it failed to timely review its original pension decision. *Id.* at 230, 794 N.E.2d at 1057. The circuit court and, later, the appellate court, agreed. *Id.* at 230, 232, 794 N.E.2d at 1057, 1059.

¶ 34 In reaching its decision, the *Sola* court concluded the Roselle Board rendered an administrative decision subject to the Administrative Review Act. *Id.* at 232, 794 N.E.2d at 1058. Even absent a written decision, the actions of the Roselle Board—voting upon increases, accepting pension calculations, sending a letter confirming the increase—constituted an administrative decision. *Id.* at 232, 794 N.E.2d at 1059. Accordingly, the *Sola* court determined the Roselle Board had 35 days to review its initial decision, and its failure to do so divested it of jurisdiction to reconsider the issue nearly a decade later. *Id.*

¶ 35 *Sola* is distinguishable from the present case. First, the plaintiff in *Sola* had already been receiving the pension benefits with the cost-of-living increases for nearly a decade when the Roselle Board attempted to recoup the overpayment of funds. In this case, plaintiffs have not retired and have therefore not started receiving pensions based on the erroneous calculation. Second, in *Sola*, the Roselle Board had taken numerous steps indicative of an administrative decision, including voting upon cost-of-living increases and sending written decisions to the plaintiff informing her that the increases had been approved. The record shows no such steps were taken by the Board in this case. Thus, the record in this case is devoid of any evidence indicating the Board had taken definitive action toward awarding plaintiffs their military-service credit other than acknowledging receipt of the payment. Plaintiffs were also not

informed of any decision made by the Board. Not even these minimal requirements under *Sola* are met in this case.

¶ 36 Plaintiffs contend the evidence demonstrates the Board's practice was to not take a formal vote or issue a written decision with respect to approving military-service credit. In other words, under the circuit court's analysis, plaintiffs argue the Board would never issue a "final" decision, which would allow the Board to make changes indefinitely while precluding plaintiffs from seeking review of its decisions. We disagree. In his deposition, the Board president stated the Board would vote to approve military-service credit at the time an officer applied for retirement benefits in anticipation of retirement. Thus, the Board could not make changes to the officer's pension contribution indefinitely, as a final decision would be rendered at the time the officer applied for retirement benefits.

¶ 37 We therefore conclude the Board did not issue a final decision subject to a 35-day limitation for review.

¶ 38 2. *Equitable Considerations*

¶ 39 Even if the Board did not issue a final decision subject to the Administrative Review Act, plaintiffs assert equitable considerations should prevent the Board from increasing the cost of plaintiffs' military-service credit. In support, plaintiffs rely on *Baldermann*, 2015 IL App (1st) 140482, ¶ 41, 27 N.E.3d 170, for the proposition that "equitable considerations might preclude a board from taking advantage of its own failure to abide by the rules in an appropriate case." However, *Baldermann* does not support plaintiffs' argument.

¶ 40 In *Baldermann*, the local police chief and deputy chief were presented with a "buy-out" provision that would provide them with a 20% raise on their last day of employment. *Id.* ¶ 3. When the two officers retired, the Village of Chicago Ridge secretaries certified the

pension amount that was calculated based on the officers' base salaries plus 20%. *Id.* ¶¶ 8, 10. However, shortly thereafter, the Illinois Department of Insurance issued an advisory opinion indicating the buy-out provisions (including the 20% raise) should not have been included in calculating the pensions, and the local police pension fund board (Village Board) issued a notice of hearing to investigate and determine the appropriate salary calculations. *Id.* ¶ 16. The officers filed a motion for declaratory judgment and injunctive relief to prevent the Village Board from taking any action to reduce their pension calculations. *Id.* The circuit court found the Village Board had not entered a final administrative decision and therefore had the jurisdiction to amend the officers' pension calculations. *Id.* ¶ 18.

¶ 41 The *Baldermann* court agreed the Village Board maintained jurisdiction as it had not entered a final decision as to the officers' pension benefits. *Id.* ¶ 33. The court noted the record reflected no public vote, nor any written decision to accept the erroneously calculated pension benefits as required to trigger an administrative decision. *Id.* ¶ 34.

¶ 42 Moreover, the appellate court found equitable considerations did *not* require the Village Board to honor its erroneous calculation. *Id.* ¶ 41. Particularly, in *Baldermann*, the officers were on notice that the Illinois Department of Insurance had previously found salary increases as part of a buy-out provision should not be considered in calculating benefits. *Id.* ¶ 42. Not only was there a lack of evidence that the officers received assurances that their "raises" counted as salary for pension purposes, nothing in the record demonstrated the officers relied on the salary increase in determining their retirement date. *Id.* ¶ 47.

¶ 43 Similarly, in the present case, plaintiffs received no assurances from the Board that their contributions had been approved, nor did the Board vote or issue a written decision granting plaintiffs their military-service credits. Moreover, like the officers in *Baldermann*,

plaintiffs were on notice regarding the method for buying back military-service credit. The Pension Code clearly states the employee must contribute (1) the amount of the employee's pension contribution during the period of military service, (2) the amount of the City's contribution to the officer's pension, and (3) the interest accrued over time. 40 ILCS 5/3-110(b-5) (West 2012). In this instance, plaintiffs only paid their own contribution, not that of the City or the accrued interest. Thus, the Pension Code placed plaintiffs on notice that they were inadequately compensating the pension fund for their military-service credit. Plaintiffs' suggestion that the Board will receive a windfall while benefitting from its own mistake is also unpersuasive. Rather, where plaintiffs ask us to find they should be required to pay less than half of their statutory share of their military-service contribution, *plaintiffs* would receive a windfall to the detriment of other officers who were paying into the pension fund.

¶ 44 Notably, several other individuals who bought back military-service credit at the incorrect rate and subsequently retired were not required to pay the additional funds, as their decisions to retire were based on the calculation of their pension that involved those two years of military-service credits. Plaintiffs assert this shows the Board treated their contributions differently from those who had already retired. However, the distinction is substantial. At the time the Board recalculated the requisite military-service contribution amount in July 2012, plaintiffs had not retired, their military-service contributions had not been voted upon by the Board, and they therefore suffered no ill effects from the miscalculation. Conversely, those who had retired had relied on the calculation of their military-service credit in choosing to retire, and their retirement benefits had been approved by the Board. Plaintiffs assert Iaiennaro suffered ill-effects because she took out a loan to pay for her contribution that would be subject to interest payments, but nothing in the record suggests she had to pay any interest. Although plaintiffs

argue the Board has had the ability to invest and collect interest on plaintiffs' money while this case has been pending, leaving the money in the Board's hands was plaintiffs' collective decision. The Board gave plaintiffs the option of recovering their contribution, an option plaintiffs rejected. Additionally, despite plaintiffs' argument to the contrary, nothing in the record suggests the Board's investment of their contributions placed their money at any risk, particularly because the pension amount received by an individual is subject to a statutory formula and is not based on the equity generated from investment. See 40 ILCS 5/3-110(b-5) (West 2012).

¶ 45 We therefore conclude the equitable considerations do not require a finding in plaintiffs' favor. Accordingly, the circuit court did not err in granting the Board's motion for summary judgment.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 48 Affirmed.