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2019 IL App (5th) 190039-U

NOTICE
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NO. 5-19-0039

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

POLICEMEN’S BENEVOLENT LABOR)	Appeal from the
COMMITTEE,)	Circuit Court of
)	Randolph County.
Plaintiff-Appellant,)	
)	No. 17-MR-52
v.)	
)	
THE CITY OF SPARTA,)	Honorable
)	Eugene E. Gross,
Defendant-Appellee.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse the circuit court’s judgment denying the appellant’s motion for summary judgment and also reverse the court’s judgment granting the appellee’s cross-motion for summary judgment where the appellee’s evaluation policy of its full-time police officers at the Sparta police department violated section 11-1-12 of the Illinois Municipal Code (65 ILCS 5/11-1-12 (West 2016)). We remand with instructions for the court to enter summary judgment in favor of the appellant on count I of the appellant’s complaint.

¶ 2 The appellant, the Policemen’s Benevolent Labor Committee (Union), filed a complaint for declaratory judgment against the appellee, the City of Sparta (City), seeking a declaration that the City’s activity points policy (evaluation policy or policy)

for evaluation of its full-time police officers violated section 11-1-12 of the Illinois Municipal Code (Code) (65 ILCS 5/11-1-12 (West 2016)) because it awarded points to officers who issued citations and, thus, established an unlawful quota. The trial court granted summary judgment in favor of the City, finding that the policy was not unlawful under section 11-1-12 because it did not establish a quota. For the following reasons, we reverse the trial court's order granting summary judgment in favor of the City on count I of the Union's complaint, reverse the court's denial of the Union's motion for summary judgment, and remand with directions.

¶ 3 The Union is the exclusive bargaining representative for all full-time patrol officers and dispatchers employed by the City. The evaluation policy went into effect on January 13, 2013, and thereafter, the Union assisted the City in codifying it in writing. The evaluation policy uses a system of monthly activity points to track and evaluate officers' performance in the Sparta Police Department (department). All full-time officers must meet the monthly activity points minimum, and officers may participate in any of the listed activities to achieve their point minimum. Some of the activities that produce points include, but are not limited to, cases, issuing citations, issuing traffic stop warnings, undertaking extra-duty assignments, undertaking drug task force duties, completing investigations that cannot be completed during a regular shift, participating in shooting range training, and court time. Each activity is worth a certain amount of points, and the officers have the discretion to determine how they want to accumulate points. For instance, issuing citations is worth two points, where issuing a verbal or written traffic stop warning is only worth one point. The City contends that the point value is

determined by the length of time that the task takes to complete; those tasks that take more time are worth more points. The City also contends that the officers could achieve a satisfactory monthly evaluation without issuing a single citation that month.

¶ 4 On September 19, 2018, the Union filed an amended complaint for declaratory judgment¹ in accordance with section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2016)), seeking a declaration that the evaluation policy established an unlawful ticket quota prohibited by section 11-1-12 of the Code (65 ILCS 5/11-1-12 (West 2016)). Section 11-1-12 instructs as follows:

“A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.

A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of contact. For the purposes of this Section, ‘points of contact’ means any quantifiable contact made in the furtherance of the police officer’s duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12 (West 2016).

¶ 5 The Union contended that the evaluation policy violated section 11-1-12 because it required the City’s police officers to issue a certain number of citations within a designated period of time, *i.e.*, it required all full-time officers to meet the monthly points standard and failure to reach that monthly minimum resulted in discipline. In addition,

¹The Union’s complaint asserted two counts: count I sought a declaratory judgment determination on whether the policy violated section 11-1-12 of the Code, and count II requested that the court confirm an unrelated arbitration award on the Union’s grievances with a new scheduling practice that the City had adopted. The summary judgment motions did not deal with count II and, thus, it is not part of this appeal. For clarity, we will not refer to count II any further in this decision.

the Union argued that the policy compared the number of issued citations by one officer to other officers by including the issuance of citations as a point of contact in its evaluation process. Thus, the Union argued that the policy violated the plain language of section 11-1-12. Attached to the amended complaint was the written policy, which detailed the evaluation policy.

¶ 6 On October 16, 2018, the Union filed a motion for partial summary judgment on count I of its complaint in which it contended that the following material facts were uncontested: that the officers were evaluated monthly, annually, or semi-annually; that the evaluation form indicated that the department compared the number of citations issued by peer officers when evaluating officer performance; and that although the officers were evaluated on their point totals of various activities, officers received two points for issuing citations. The Union also contended that section 11-1-12 was unambiguous and that the plain language prohibited the consideration of the number of citations issued in evaluations or in policies measuring points of contact. The Union further argued that the City's evaluation policy created an "indirect quota system" by counting and comparing citations issued among the officers and by considering citations as a point of contact.

¶ 7 Attached to the motion was a July 25, 2017, affidavit from Jeremy Kemper, the assistant chief of police for the department, in which he stated that the City's policy used a system of monthly activity points to track its officers' performance; that all full-time officers must meet a monthly point minimum; that points are accrued based on a variety of activities, one of which includes the issuance of citations; and that officers may choose

to participate in any of the activities to achieve their monthly point minimum (there was no requirement that the officers engage in specific activities). Kemper opined that the policy did not measure officers' points of contact nor did it set a points of contact quota. He noted that, if the trial court determined that the policy violated section 11-1-12, the City may be forced to retroactively reevaluate its officers' performance over the last 28 months to determine the impact, if any, that the citations had on their monthly performance scores. He noted that this reassessment would be administratively burdensome to the City and a detriment to the public. Also attached to the Union's motion for partial summary judgment was the department's activity points policy and a 2017 department evaluation form, which included the 2016 activity points logs for Officer Steve Miles.

¶ 8 Thereafter, the City filed a cross-motion for summary judgment in which it argued that under the policy, the officers were not required to issue any citations within a designated period of time and that the City did not compare the number of citations issued by an officer with the number of citations issued by any other officer who had similar job duties. The City disagreed that section 11-1-12 prohibited it from considering the issuance of citations in any evaluation system. The City acknowledged that section 11-1-12 prohibited a municipality from requiring officers to write citations but noted that this was only to the extent that a "specific number of citations" were required "within a designated period of time." As for the points of contact provision, the City argued that the prohibition against considering the issuance of citations in a points of contact evaluation merely precluded the department from comparing the number of citations

issued “within a designated period of time,” and that the language only clarified that municipalities could not establish points of contact systems that circumvented the general prohibition against ticket quotas. The City argued that a point of contact system that included citations did not violate that provision because it did not set any ticket quota “within a designated period of time.”

¶ 9 The City further argued that the legislative history of section 11-1-12 demonstrated that a municipality was permitted to require its officers to write tickets under appropriate circumstances and to give its officers credit for time spent writing a citation; a municipality had the authority to encourage and require officers to write citations as long as the municipality did not require a quota, *i.e.*, did not require officers to issue a certain number of citations within a designated period of time. The City argued that the department only tabulated and compared officers based on the aggregate number of activity points each month and did not consider whether any individual officer had written a single traffic citation during a single evaluation period. As there was no requirement in the policy that an officer write a certain number of tickets within a certain period of time, the City argued that the policy did not violate section 11-1-12.

¶ 10 Attached to the motion was Kemper’s July 2017 affidavit, the department’s activity points policy, and Kemper’s second affidavit dated October 15, 2018. Attached to Kemper’s second affidavit was the department’s 2016 activity logs and evaluations for Officer Steve Miles, which indicated that Officer Miles had satisfied the department’s activity points minimums each month in 2016, that he had earned the overwhelming majority of his activity points by engaging in activities other than issuing citations, that

between May 31 and July 17, 2016, he did not issue a single citation; and that the department did not consider the number of citations that he issued in his evaluations.

¶ 11 At the December 3, 2018, hearing on the cross-motions for summary judgment, the following colloquy occurred between the trial court and counsel:

“THE COURT: You said tickets in argument, but citation is the word. That’s the key word *** when I read the latest arguments you both have made, we’ve kind of now focused in on the last sentence that says, ‘Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.’ Is that the gist of your dispute? Would you agree with that?

[THE UNION’S COUNSEL]: I think that makes it very clear, and *** its our position that it’s still prohibited by the *** preceding sentences in that paragraph.

THE COURT: Okay. Now, here’s my problem I have in trying to make sense out of that sentence. I also agree with your authorities that you’ve cited which say that when the meaning’s clear that we don’t even go to the legislative history. I mean, if I can understand. If there was just one sentence that said points of—if you couldn’t include the issuance of citations or the number of citations, it would—that’s a pretty clear sentence, but what’s a citation? What is a citation? I’m asking.

[THE UNION’S COUNSEL]: Well, I take it to mean a traffic ticket, but I suppose it could mean just about anything. It could be an ordinance ticket or some other situation.

* * *

THE COURT: *** [A] citation is an arrest. Anytime you write a ticket you’re arresting somebody.

So the previous sentence in the paragraph I’m trying to interpret says points of contact means any quantifiable contact in the furtherance of a police officer’s duties including, but not limited to, the number of traffic stops. *** [A] citation’s always an arrest. So if you can count arrests, how can you not count a citation? And that’s *** where this paragraph starts getting infirm.

*** So they can create a system of evaluation based on points of contact, and they can use things like traffic stops completed, arrests, written warnings, crime prevention. Then it goes to say, ‘Points of contact shall not include issuance of citations or the number of citations.’ So because *** those two sentences completely contradict one another. So I think that makes us go to the legislative history. What am I missing on that?

[THE UNION’S COUNSEL]: Your Honor, I wouldn’t agree with that. I understand what you’re saying. *** Of course, anytime a person’s freedom is prohibited they’re arrested. You don’t need the arrest or the citation. So I agree

with that, and in a broad sense, they could all be arrests. Even a warning can start off as an arrest. *** But when I think the legislature uses these terms, that means that they intend something different when they use different terms. Had they just repeated arrests in the last sentence, and there's case law on this, when they use different terms, they mean something different. ***

* * *

[THE CITY'S COUNSEL]: *** Now, I will say that the final sentence, if you read it in conjunction, and that's another [maxim] statutory [construction], when there's unclear language you read different statutes together in unison. I think that last sentence modifies the first two sentences. When it talks about issuance of citations, *** what it should say is the issuance of citations over a given period of time, which based on the legislative history is what they're trying to address here.

So I agree with you. I think it's ambiguous. I think if you look at the legislative history, *** the legislature could have implemented a statute that says municipalities can't consider issuance of citations, period. But they didn't do that. ***"

¶ 12 The trial court then stated as follows:

“[T]here's a big array or spectrum of different types of citations that your police officers write on a daily basis all the way from *** seat belt citation, speeding citation to a DUI driving while revoked that could end up being a felony case, which clearly is an arrest and you *** go to jail on those. But they're still citations because they're traffic tickets.”

Thereafter, the court announced that it was going to deny the Union's motion for summary judgment on count I of the complaint and find that the system currently in place was not unlawful.

¶ 13 On December 19, 2018, the trial court entered a written order, in pertinent part, denying the Union's motion for summary judgment and granting summary judgment in favor of the City. The court found that the City's policy was not unlawful under the Code. The Union appeals. With leave of this court, the Illinois Association of Chiefs of Police filed an *amicus curiae* brief in support of the evaluation policy.

¶ 14 This case was decided in the context of cross-motions for summary judgment. Summary judgment is proper where the pleadings, depositions, and admissions on file, together with any affidavits, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20. Where, as here, the parties file a cross-motion for summary judgment, the parties agree that there is no genuine issue of material fact and that the case should be decided based on the presented record. *Id.* We review *de novo* a trial court’s decision to grant or deny a motion for summary judgment. *Id.*

¶ 15 The sole issue before us on appeal requires us to determine whether the City’s evaluation policy violates section 11-1-12 of the Code. On appeal, the Union does not argue that this policy requires an officer to issue a certain number of citations within a designated period of time. Instead, the question here is whether the consideration of the issuance of citations (by allocating two points to that activity) violates the provision that prohibits the inclusion of the issuance of citations in a point-of-contact officer evaluation.

¶ 16 An issue of statutory construction is reviewed *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41. The primary objective of statutory construction is to ascertain and give effect to the legislature’s intent. *Id.* “The language of the statute is the best indication of legislative intent, and our inquiry appropriately begins with the words used by the legislature.” *Brucker v. Mercola*, 227 Ill. 2d 502, 513 (2007).

¶ 17 All provisions of a statute should be viewed as a whole. *Id.* at 514. Accordingly, all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Sandholm*, 2012 IL 111443, ¶ 41. Statutes

are to be construed so that no word, clause, or sentence is rendered meaningless or superfluous. *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 397 (1994). Where the statutory language is clear and unambiguous, it must be applied as written without resort to extrinsic aids of statutory construction. *Brucker*, 227 Ill. 2d at 513. However, where a statute is susceptible to more than one equally reasonable interpretation, then the statute is ambiguous, and the court may consider extrinsic aids of construction to discern the legislative intent. *Id.* at 514. Statutory ambiguity is not created simply because the parties disagree, and where there is no ambiguity in the statutory language, there is no basis to delve into the legislative history. *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶ 11.

¶ 18 The City contends that the plain language of the statute reveals that the prohibition against using the issuance of citations as a point of contact relates back to the original prohibition, which instructs that a municipality cannot require an officer to issue a specific number of citations within a designated period of time. In other words, the City argues that the statute prevents a municipality from using the issuance of citations or the number of citations issued “within a designated period of time” as a point of contact in its evaluation process. As this sentence only clarifies that municipalities cannot establish points of contact systems that circumvent the Code’s general prohibitions against ticket quotas, and the evaluation policy at issue here does not set any ticket quota “within a designated period of time,” the City argues that its policy does not violate the statute.

¶ 19 In considering these arguments and applying the above principles of statutory construction, we find that the trial court erred in granting summary judgment in favor of

the City. As previously noted, section 11-1-12 prohibits a municipality from requiring a police officer to issue a specific number of citations within a designated period of time and from comparing, for evaluation purposes, the number of citations issued by a police officer to the number of citations issued by any other police officer who has similar job duties. 65 ILCS 5/11-1-12 (West 2016). However, the municipality is not prohibited from evaluating an officer based on the officer's points of contacts, which include the number of completed traffic stops, arrests, written warnings, and crime prevention measures. *Id.* The statute specifically provides that points of contact cannot include either the issuance of citations or the number of citations issued by a police officer. *Id.* Thus, under the plain language of the statute, when evaluating officers' performance based on points of contact, the city cannot consider the number of citations issued. There is no rule of statutory construction that empowers a court to declare that the legislature did not mean what the plain language of the statute imports. *American Buyers Club of Mt. Vernon, Illinois, Inc. v. Zuber*, 57 Ill. App. 3d 899, 902 (1978).

¶ 20 In granting summary judgment in favor of the City, the trial court found that the statute was ambiguous because a citation was an arrest, and an arrest was included as a permissible point of contact in an evaluation system. We note that the terms "citation" and "arrest" are not defined by this statute. Where a term is not defined by statute, we presume that the legislature intended the term to have its popularly understood meaning. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 75. To ascertain the ordinary and popular meaning of words, a court can appropriately use a dictionary as a resource. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 275 (2009).

¶ 21 An “arrest” is defined in Black’s Law Dictionary as follows:

“1. A seizure or forcible restraint, esp. by legal authority. 2. The taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge; specif., the apprehension of someone for the purpose of securing the administration of the law, esp. of bringing that person before a court.” Black’s Law Dictionary (11th ed. 2019).

A “citation” is defined as “a police-issued order to appear before a judge on a given date to defend against a stated charge, such as a traffic violation.” Black’s Law Dictionary (11th ed. 2019). Thus, an arrest is a seizure or forcible restraint or taking someone into custody as a result of a criminal charge where a citation is a charging document. An elementary rule of construction is where the legislature uses certain words in one instance and different words in another, it intends a different meaning. *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1092 (1992). In section 11-1-12, the legislature instructed that an arrest was a permissive point of contact where the issuance of a citation is not. Although we agree with the trial court that the same traffic stop can result in the issuance of a citation and an arrest, there is nothing in the plain language of the statute to indicate that the legislature meant to include the issuance of a citation as a permissive point of contact by using the term “arrest.” Thus, we find that the trial court erred when it found that this language was ambiguous.

¶ 22 Having interpreted the plain language of the statute, we next consider whether the City’s policy violates section 11-1-12. The policy at issue here states that the department uses a system of monthly activity points to track its officers’ performance and that the system sets forth the required standard of performance. The policy explains that all full-time officers must meet the required minimum monthly points; that the evaluation policy

will be used to determine awards, such as officer of the month and officer of the year; and that these awards will be based on the most points earned over the officer's monthly minimum standard. The officers are awarded points based on points of contact, such as by issuing traffic stop warnings and issuing citations, as well as extra-duty assignments. An officer obtains two points for issuing a citation. The policy indicates that dayshift officers are required to obtain 82 activity points and that nightshift officers are required to obtain 65 points. The averages for the dayshift officers and nightshift officers are reviewed each year, and new minimum point totals could be implemented after the review. A failure to reach the minimum monthly points results in discipline.

¶ 23 The 2017 department evaluation form indicates that a particular officer's monthly point totals are compared to the average monthly points of other officers working the same shift. The evaluation form indicates that there should not be more than a 20% difference in performance. The department also considers the overall average of point totals for a six-month period. Thus, this policy compares the activity point totals with that of other department officers with similar job duties in order to evaluate the department's officers.

¶ 24 Because the policy includes the issuance of a citation as a permissive point of contact for evaluation purposes, it violates section 11-1-12. Although it seems like an officer can achieve the monthly minimum points total without issuing a single citation, this policy still violates section 11-1-12 because it does exactly what is prohibited by the plain language of the statute, *i.e.*, it permits the department to evaluate its officers by

including the issuance of citations or the number of citations issued, among other things, as a point of contact.

¶ 25 Moreover, we do not find persuasive the *amicus*'s argument that we should affirm the trial court's ruling because this same points-based system is commonly utilized in police departments throughout Illinois, and the failure to include citation activity in the evaluation policies will impair the ability of the departments to thoroughly evaluate its officers and impair important public safety efforts. An evaluation system based on an officer's points of contact is not prohibited by section 11-1-12; the points of contact simply cannot include the issuance of citations. As the City argued that an officer can currently meet the monthly activity points total without issuing a single citation, we fail to see how our decision will impair the department's ability to evaluate its officers. Accordingly, the trial court erred in granting summary judgment in favor of the City and in denying the Union's motion for summary judgment on count I of the Union's complaint.

¶ 26 We reverse the trial court's order granting summary judgment in favor of the City on count I of the Union's complaint, reverse the court's denial of the Union's motion for summary judgment, and remand with instructions for the trial court to enter summary judgment in favor of the Union on count I of the complaint.

¶ 27 Reversed and remanded with directions.