No. 125062

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

MAGARET DYNAK,	)	
	)	**Appeal from the Appellate**
Plaintiff-Appellant,	)	**Court of Illinois, Second**
	)	**Judicial District**
v.	)	**Case No. 2-18-0551**
	)	
BOARD OF EDUCATION OF	)	**Appeal from the Circuit**
WOOD DALE SCHOOL DISTRICT 7,	)	**Court of DuPage County**
	)	**Case No. 2016-MR-001368**
Defendant-Appellee.	)	**Hon. Bonnie M. Wheaton**
	)	

BRIEF OF DEFENDANT-APPELLEE BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7

JOHN E. FESTER (jfester@edlawyer.com) – ARDC: 6229233
ADAM DAUKSAS (adauksas@edlawyer.com) – ARDC: 6301578
SCARIANO, HIMES AND PETRARCA, CHTD.
180 N. Stetson, Suite 3100
Chicago, Illinois 60601
Attorney No. 75640
(312) 565-3100

Attorneys for Defendant-Appellee

E-FILED
12/16/2019 11:11 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

ARGUMENT

This case involves competing interpretations of Section 24-6 of the *Illinois School Code*, 105 ILCS 5/24-6. This provision addresses the granting of sick leave benefits by local public school districts to full-time teachers and other school staff members. In pertinent part, Section 24-6 provides:

> The school boards of all school districts, including special charter districts, but not including school districts in municipalities of 500,000 or more, shall grant their full-time teachers . . . sick leave provisions not less in amount than 10 days at full pay in each school year. If any such teacher or employee does not use the full amount of annual leave thus allowed, the unused amount shall be allowed to accumulate to a minimum available leave of 180 days at full pay, including the leave of the current year.
>
> Sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases.
>
> 105 ILCS 5/24-6.

Plaintiff, Margaret Dynak ("Dynak"), argues that this statutory language vests her with the ability to use 30 paid sick days at any time and in any increment so long as she claims such use is connected to the fact that she gave birth. Therefore, Defendant, the Board of Education of Wood Dale School District 7 ("School District"), should have allowed her to use 28.5 sick days for "birth" at the start of the 2016-2017 school year because she was only able to use 1.5 sick days at the end of the 2015-2016 school year due to the timing of the birth of her child. Dynak's argument primarily rests upon her claim

that "the statutory language of Section 24-6 does not contain any explicit temporal limitation – other than that the use of leave must be for 'birth' – on when sick leave for birth may be used or otherwise limit the use of leave in relation to *when* the birth takes place." Appellant's Br., p. 9 (emphasis in original); *see Id.* at p. 10 ("Thus, based on the plain language of Section 24-6, the statute contains *no express* limitation on when the 30 days of sick leave for birth must be used . . . .") (emphasis in original); *Id*. ("On its face, Section 24-6 does not impose any requirement that the use of sick leave for birth must commence *immediately* after the birth.") (emphasis in original).

That is, Dynak contends sick leave use for "birth" does not need to be connected to the actual event of a child's birth. In practical effect, as held by the appellate court majority, "adopting plaintiff's and the dissent's construction would tend to confer upon teachers and teachers alone a sort of *sub rosa* paid parental leave based on the fortuity of the timing of birth." *Dynak v. Board of Education of Wood Dale School District 7*, 2019 IL App (2d) 180551, ¶ 56. In other words, according to Dynak, though conspicuously titled "Sick leave," Section 24-6 of the *Illinois School Code* inconspicuously doubles as a landmark paid parental leave statute (but only for certain public school employees). However, as also held by the appellate court majority, "[t]here is no textual support for such an intention. If the legislature had intended to confer paid parental leave, it would not have hijacked a sick-leave provision to do so." *Id*. Dynak's argument has been rejected by the circuit court and the appellate court.

Meanwhile, the School District presents a common-sense interpretation of the law that adheres to longstanding rules of statutory construction. That is, the School District argues, when read as a whole, Section 24-6 provides that when one of the events qualifying

as "sick leave" (*i.e.* illness, death, birth or adoption) requires an employee to miss work due to that event's occurrence, he or she may use one or more accumulated sick days to be absent from work and still be paid. In other words, sick leave must be used at a time when an employee is unable to attend work because of illness or another qualifying event, such as birth. Simply put, as the School District explained to the circuit court during oral argument on the parties' dueling motions for summary judgment:

> . . . the District's [interpretation of Section 24-6] places a reasonable and rational restriction on using sick leave, sick leave for childbirth or for illness or for any of the other qualifying events under that statute. And that's that there is a need to miss work. And that usually follows immediately after or there's a proximate . . .nexus to that qualifying event.
>
> I'm sick. I need sick leave.
>
> There's a death in the family. I need sick leave.
>
> I have a child. I need sick leave.
>
> It's not that event vests you with an unfettered right to somehow use sick leave later on down the line at some point during your employment.

A.84-85.

On August 18, 2016, when the 2016-2017 school year began and more than two months after Dynak gave birth, she was able to teach and attend work. Accordingly, her request to use paid sick leave was denied. Dynak was allowed to be absent without pay on the 28.5 days in question pursuant to the federal *Family and Medical Leave Act of 1993* ("FMLA"), which expressly allows a parent up to twelve weeks of unpaid leave during the first twelve months of a healthy newborn's life for "bonding." 29 C.F.R. § 825.120(a)(2). Neither the circuit court nor the appellate court found the School District's denial of paid

sick leave to have violated Section 24-6. And, for the reasons and arguments set forth below, neither should this court.

I. STANDARD OF REVIEW

This case comes to the court on appeal of the circuit court's order granting summary judgment in favor of the School District. "Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34. This court has long held that "[t]he standard of review for the entry of summary judgment is *de novo*." *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill.2d 307, 315 (2004). "We may affirm a grant of summary judgment on any basis appearing in the record, regardless of whether the lower courts relied upon that ground." *Id*.

II. LONGSTANDING STATUTORY CONSTRUCTION RULES FAVOR THE SCHOOL DISTRICT'S INTERPRETATION OF SECTION 24-6 OF THE *ILLINOIS SCHOOL CODE*

"When construing a statute, the cardinal rule, to which all other rules and canons are subordinate, is to ascertain and give effect to the true intent of the legislature." *Nelson v. Kendall County*, 2014 IL 116303, ¶ 23. "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain, ordinary and popularly understood meaning." *Id*. "The statute should be evaluated as a whole, with each provision construed in connection with every other relevant section." *Id*. "If the language of the statute is clear, it must be given effect without resort to other interpretive aids." *Id*.

"If the meaning of an enactment is unclear from the statutory language, the court may consider the purpose behind the law and the evils the law was designed to remedy." *Palm v. Holocker*, 2018 IL 123152, ¶ 17. "We have an obligation to construe statutes in a manner that will avoid absurd, unreasonable, or unjust results that the legislature could not have intended." *Id*.

A. Plain Language

The key provision of Section 24-6 provides that "[s]ick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases." 105 ILCS 5/24-6. Dynak plucks the "30 days for birth" language from the second sentence to claim "Section 24-6 unequivocally grants Dynak the right to use up to 30 days of accumulated paid sick leave 'for birth.'" Appellant's Br., p. 6. And, so goes Dynak's argument, since the law "does not place any explicit restriction on the time period when leave for birth may be used," she was entitled to paid sick leave for "birth" more than two months after giving birth and, by her logic, at any later time as well. *Id*. at p. 10. But that is an incorrect reading of the law for several reasons.

i. Dictionary Definition of "Birth"

First, this court has held that "[w]hen the statute contains undefined terms, it is entirely appropriate to employ a dictionary to ascertain the plain and ordinary meaning of those terms." *People v. McChriston*, 2014 IL 115310, ¶ 15. Thus, Dynak spends

considerable time in her brief attempting to define various terms contained in Section 24-6 (*i.e.* "absence," "leave," "basis for pay" and "days"). *See* Appellant's Br., pp. 14-18. But she does not attempt to define "birth," which is the critical term in dispute.

Significantly, in *Poole v. Clausen (In re Estate of Poole)*, this court stated "[t]he Paternity Act does not contain a definition of the word 'birth.' In such cases, when interpreting statutes, this court gives undefined words their plain and ordinary meaning. Webster's Dictionary defines 'birth' as 'the act of coming forth from the womb' (Webster's Third New International Dictionary 221 (1986)) . . . ." 207 Ill.2d 393, 406 (2003) (internal case citation omitted). Likewise, Black's Law Dictionary defines "birth" to mean "[t]he complete extrusion of a newborn baby from the mother's body." Black's Law Dictionary 179 (8th ed. 2004).[1]

Accordingly, per this court's direction, "30 days for birth" means 30 days for "the act of coming forth from the womb" or "the complete extrusion of a newborn baby from the mother's body." In this case, however, Dynak gave birth on June 6, 2016, but sought to use 28.5 days of sick leave for that birth more than two months later, long after "the act of coming forth from the womb" or "the complete extrusion of a newborn baby from the mother's body" (and, as discussed below, long after the normal postpartum period). In other words, by the plain language of Section 24-6, Dynak's sick leave request was not for

[1] The Illinois Legislature added the words ", or birth, adoption, or placement for adoption" to Section 24-6 in 2007. 2007 Ill. Legis. Serv. P.A. 95-151 (H.B. 1877). Then, in 2009, the Legislature added the words "or 30 days for birth" to the statute. 2009 Ill. Legis. Serv. P.A. 96-51 (S.B. 35). *See Corbett v. County of Lake*, 2017 IL 121536, ¶ 25 (noting that "when using a dictionary to help determine statutory meaning, it is appropriate to use one in existence at the time of the statute's enactment.").

"birth" at all. Rather, she sought paid parental leave, which the statute does not contemplate. Her case fails on this basis alone.

Sick leave must be used at a time when an employee is unable to attend work because of the birth (or illness, or other qualifying event) at issue. Or, as the circuit court succinctly put it, "[i]n order to adopt the interpretation of the statute urged by the plaintiff, the Court would have to find that the conditions set forth in the definition of sick leave create a vested right in the plaintiff and other similarly situated persons regardless of when those conditions occurred. The accident of giving birth in the summertime, I don't believe creates any kind of a right in the plaintiff to sick leave at a future period in time that is not covered by the Act." A.90. It cannot plausibly be argued that being sick creates a vested right to take time off long after the illness has passed, and there is no evidence the Legislature intended the act of giving birth to be treated any differently. This is where the absurdity of Dynak's interpretation is revealed.

ii. Medical Certification (Context of Language)

Furthermore, the sentence from which Dynak selectively pulls out "30 days for birth" states "[t]he school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases." 105 ILCS 5/24-6. That is, this sentence deals not with an amount of leave available for birth, but with a school district's ability to require medical certification (*i.e.* a doctor's note) "as a basis for pay during leave after an absence of . . . 30 days for birth . . . ." *Id.* In other words, after three days of absence for illness, a school district may require a doctor's note in order for paid sick days to be available for day four, five and all subsequent absences for

that illness. The Legislature set a longer absence period of thirty days for "birth" before a doctor's note could be required to justify the use of paid sick leave for day 31 and all subsequent absences due to the birth. The question becomes why is that? *See Corbett*, 2017 IL 121536, ¶ 27 ("It is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'") (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993)); *Id*. at ¶ 30 ("As we have stated, unless a word in a statutory sentence is defined in the statute, it must be read in context in order to determine its meaning.").

As the School District has maintained throughout the course of this litigation, the answer can be found in the definition of the puerperium, or postpartum, period. *See* The American Heritage Medical Dictionary (2007) (defining the puerperium period as "[t]he approximate six-week period lasting from childbirth to the return of normal uterine size"); Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (7th ed. 2003) (defining the puerperium period as "the period from the end of the third stage of labor until involution of the uterus is complete, usually lasting between 3 and 6 weeks.").[2] In other words, the postpartum period typically spans the six weeks, or 30 work days, immediately following childbirth.

Accordingly, providing full-time teachers and other school staff members with the ability to use accumulated sick days during the six weeks immediately following childbirth during the postpartum period, before a doctor's note can be required to justify further paid absences, represents a reasonable and rational benefit conferred by the Legislature and

[2] These definitions can be found online at https://medical-dictionary.thefreedictionary.com/puerperium (last visited on December 3, 2019).

aligns with the dictionary definition of "birth," as described above. Moreover, Section 24-6 states that after this medically recognized six-week period, a school district may require a doctor's note from an employee to support the use of additional sick leave days. By comparison, Dynak offers no such coherent rationale.

To her, "the right to use sick leave for birth is not determined by the time period during which the employee is physically affected by the childbirth. Such a period may extend into a new school year, even if the employee is not, or is no longer, physically affected by the birth of a child." Appellant's Br., p. 29. But such a reading distorts not only the context of the sentence in which the words "30 days for birth" appear but also the fundamental purpose of sick leave.

In her brief, Dynak cites this court's decision in *In re Marriage of Abrell*, 236 Ill.2d 249, 264 (2010), for the proposition that "[s]ick days and vacation days are alternative wages meant to be paid when the wage earner is unable to work or decides to take a vacation." *Id*. at p. 20 (emphasis added); *see Id*. at p. 16 ("Thus, the use of the terms 'absence' and 'leave' in Section 24-6 shows that the statute must refer to the use of sick leave as a substitute for pay on days that an employee would have worked, but for the condition causing the need for use of sick leave.") (emphasis added). Which is exactly the School District's point: after an approximately 10-week summer break, Dynak was no longer unable to work (or presumed to be unable to work) due to the June 6, 2016 birth of her child. In other words, Section 24-6's sick leave must be used at a time when an employee is unable to work because of the birth (or other qualifying event) at issue. And that time is immediately upon or following those events, not months or perhaps years later.

iii. Adoption Reference

In her brief, Dynak points to Section 24-6's inclusion of the terms "adoption" and "placement for adoption" to support her argument with respect to birth. Appellant's Br., pp. 27-29. For instance, she claims that "[a]pplying the doctrine of *noscitur a sociis* to the use of the word 'birth' in Section 24-6 provides yet further proof that the right to use sick leave for birth is divorced from any medical need, as 'birth' must be interpreted in light of its grouping with the terms 'adoption' and 'placement for adoption.'" *Id*. at p. 28. This assertion is incorrect for several reasons.

First, as described above, the sentence containing the phrase "30 days for birth" states "[t]he school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases." 105 ILCS 5/24-6. This sentence clearly applies to a school district's ability to require a doctor's note in cases involving an employee's "personal illness" or "birth," and does not address cases involving an employee's "adoption" or "placement for adoption." Instead, Section 24-6 expressly states "[f]or paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative." *Id*. (emphasis added). Accordingly, not only does this latter sentence eviscerate Dynak's "grouping" argument, but by its plain language demonstrates that sick leave must be used when "the formal adoption process is underway" (*i.e.* not at a time disconnected from the qualifying events

of "adoption" or "placement for adoption," such as adoption agency interviews, travel, medical appointments, court dates, etc.).

Dynak's interpretation would in fact vest school employees who give birth with 30 days of sick leave to be used at the employee's discretion, long after the event of birth, while the plain language of Section 24-6 would grant adoptive parents only such sick leave as necessary while the adoption process was "underway." In other words, Dynak's interpretation would allow the use of paid sick leave for a longer period of time following the arrival of a child to the home for employees giving birth, but the plain language of the statute would restrict those adopting a child to using sick leave only while the adoption process was underway. This would be yet another absurd effect of adopting Dynak's position.

Furthermore, Dynak's reliance on the canon of *noscitur a sociis* is misplaced. As this court has held, "[w]hen construing a series of terms . . . we are guided by the commonsense principle 'that words grouped in a list should be given related meaning.'" *Corbett*, 2017 IL 121536, ¶ 31 (quoting *Third National Bank in Nashville v. Impac Ltd.*, 432 U.S. 312, 322 (1977)). In this case, the list at issue encompasses "personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption." 105 ILCS 5/24-6. But Dynak divides this list in two in order to reach her desired result. In doing so, she turns the canon of *noscitur a sociis* on its head. *See Corbett*, 2017 IL 121536, ¶ 30 ("Accordingly, a word such as 'trail' in section 3-107(b) 'must be read in the context of the entire sentence in which it appears.'") (quoting *Skolnick v. Altheimer & Gray*, 191 Ill.2d 214, 229 (2000)) (emphasis added).

Additionally, this court has stated "[t]he canon of *noscitur a sociis* is particularly useful when construing one term in a list, in order 'to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to [legislative acts].'" *Id*. at ¶ 32 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (internal quotations omitted)). However, in this case, Dynak seeks to do just that: broaden the word "birth" to mean paid parental leave that, unlike its accompanying words, may be used in a wholly different manner. But the language of the statute treats "birth" differently only in the context of how many days a school district must wait before a doctor's note may be required to justify additional use of paid sick leave. It does nothing to disconnect the use of paid leave from the event necessitating the absence from work.

B. Statute to be Evaluated as a Whole

This court has long held that "[t]he words and phrases in a statute must be construed in light of the statute as a whole, with each provision construed in connection with every other section." *People v. Webb*, 2019 IL 122951, ¶ 17 (internal quotations omitted); *see Corbett*, 2017 IL 121536, ¶ 27 ("Rather, the words and phrases in a statute must be construed in light of the statute as a whole, 'with each provision construed in connection with every other section.'") (quoting *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill.2d 273, 291 (2004)); *Paris v. Feder*, 179 Ill.2d 173, 177 (1997) ("The statute should be evaluated as a whole, with each provision construed in connection with every other section."). Dynak, the appellate court majority and dissent all disregard this principle in portions of their respective analyses of Section 24-6. Rather than connecting the statute's provisions, they each attempt to divide them.

That is, they contend that Section 24-6 contains not one, but two very different kinds of leave. *See* Appellant's Br., pp. 24-26. Specifically, according to them, because the Legislature included the term ", or" before the words "birth, adoption, or placement for adoption" there now exists two "distinct" categories of sick leave: one pertaining to illness and incapacity (*i.e.* traditionally what is known as sick leave); and the other pertaining to an entirely different subject, family adjustment and bonding. *Id*. This analysis is incorrect for several reasons.

First, the words "family adjustment" and "bonding" appear nowhere in Section 24-6. *See People v. Roberts*, 214 Ill.2d 106, 116 (2005) ("Further, a court may not inject provisions that are not found in a statute."); *Barnett v. Zion Park District*, 171 Ill.2d 378, 389 (1996) ("We must not depart from the plain language of the Act by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent."). By its plain language, Section 24-6 addresses "birth," not "family adjustment" and "bonding," and on this basis alone the appellate court majority's conclusion that sick leave for "birth" must mean something other than presumed incapacity should be rejected.

The School District maintains that an employee in the postpartum period is not "ill" and is not "quarantine[d] at home," and, therefore, neither of those terms in the pre-amendment Section 24-6 would cover an absence due to "birth." *See Winks v. Board of Education*, 78 Ill.2d 128, 140 (1979) ("We thus conclude that the General Assembly did not intend to include normal pregnancy and childbirth within the sick pay coverage of section 24-6 of the School Code.").[3] It is entirely reasonable to conclude that the term "birth" was added because the pre-amendment terms in Section 24-6 (*i.e.* "personal illness,

[3] This case is discussed more fully at pp. 26-28, *infra*.

quarantine at home, or serious illness or death in the immediate family or household") were inadequate to cover the event of birth. *Id.* The Legislature certainly expanded the permissible uses of sick leave for school employees, but there is no evidence from the language of the statute that the Legislature intended to disconnect any of the new reasons from the event (*i.e.* birth) or the process (*i.e.* adoption or placement for adoption) giving rise to the need to be absent from work.

Furthermore, the sentence containing the words ", or birth, adoption, or placement for adoption" cannot be read in isolation. Per the above statutory construction principle, Section 24-6's next sentence (*i.e.* "The school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases."), among others, must be taken into account as well. 105 ILCS 5/24-6. As detailed above, this latter sentence deals with a school district's ability to require a doctor's note "as a basis for pay during leave after an absence of . . . 30 days for birth . . . ." *Id.* Surely, had the Legislature intended to provide 30 days of "distinct" leave for family adjustment and bonding, it would not have granted such a benefit in the midst of language speaking to a school district's ability to require medical certification (which, obviously, relates to illness and incapacity). Instead, the Legislature recognized illness and the event of giving birth as two sick leave uses that an employer may verify a continued medical need for after a set time period. Far from creating two distinct categories of leave, the Legislature put them in the same sentence and connected them as having a medical basis.

Dynak's interpretation that 30 days of paid sick leave can be used at any time after an employee gives birth (or an employee's spouse gives birth) begs the question of what

would be the purpose of requiring a doctor's note after 30 days of absence if the leave is being used a day or week at a time six, nine, twelve, or more months after the event of birth? This further illustrates Dynak's true position: that giving birth vests a school employee with the ability to convert paid sick leave into 30 days of quasi-(if not actual) vacation time to be used at the employee's discretion so long as the employee claims to be using the days for "birth."

Compare, for instance, the FMLA, which explicitly states "[e]ligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows: (1) [b]oth parents are entitled to FMLA leave for the birth of their child. (2) [b]oth parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth . . . ." 29 C.F.R. § 825.120(a)(1-2) (emphasis added). That is, the FMLA regulations treat "birth" and "bonding" as two different issues. Yet, Dynak, the appellate court majority and dissent treat them as one based on nothing more than the inclusion of the term ", or" in one sentence of a sick leave statute.

Moreover, Section 24-6 makes clear that sick leave must be used when "the formal adoption process is underway." Thus, with respect to "adoption or placement for adoption," which Dynak, the appellate court majority and dissent put into the category of family adjustment and bonding with "birth," the statute's plain language refutes that idea. In fact, if the formal adoption process is not underway, whether because it has not started or because it has been completed, then sick leave use may be lawfully denied. Which aligns with the School District's interpretation of Section 24-6 as to all (not just some) of the enumerated qualifying events, in that sick leave must be used at a time when an employee is unable to work because of the event in question. And that time is immediately

upon or following those events, not months or perhaps years later (which bonding could entail). That is, sick leave use cannot be divorced from the triggering event if the statute is to be read as a whole.

C. Absurd Result

This court has stated "'[i]n determining legislative intent, we may consider the consequences of construing the statute one way or another, and we presume that the legislature did not intend to create absurd, inconvenient, or unjust results.'" *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 19 (quoting *People v. Bradford*, 2016 IL 118674, ¶ 25). As the School District has maintained throughout the course of this dispute, and the appellate court majority ultimately found, Dynak's interpretation of Section 24-6 would produce an absurd result. *See Dynak*, 2019 IL App (2d) 180551, ¶ 29 (holding that Dynak's argument "would lead to an absurd result.").

As noted earlier, Dynak argues "the statutory language of Section 24-6 does not contain any explicit temporal limitation – other than that the use of leave must be for 'birth' – on when sick leave for birth may be used or otherwise limit the use of leave in relation to *when* the birth takes place." Appellant's Br., p. 9 (emphasis in original); *see Id.* at p. 10 ("Thus, based on the plain language of Section 24-6, the statute contains *no express* limitation on when the 30 days of sick leave for birth must be used . . . .") (emphasis in original); *Id*. ("On its face, Section 24-6 does not impose any requirement that the use of sick leave for birth must commence *immediately* after the birth.") (emphasis in original). In other words, she claims that sick leave use for "birth" does not need to be connected or

tethered to the actual event of a child's birth. But such an argument, if accepted by this court, would produce absurd results (and not just with respect to Dynak).[4]

First, Dynak fails to appreciate that her interpretation of Section 24-6 cannot be confined to just sick leave use for "birth." Again, the sentence containing the phrase "30 days for birth" states "[t]he school board may require a certificate from a physician licensed in Illinois . . . as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases." 105 ILCS 5/24-6. Thus, her argument must equally apply to sick leave use for "personal illness." The appellate court majority astutely picked up on what would ensue:

> Suppose that an employee becomes ill on the final two days of a school year, is then ill for seven calendar days, makes a complete recovery, and obtains a medical certificate. Following the illness, the employee experiences no other health disturbances and is fit and able to return to work on the first day of the following school year. As we have seen above, the employee would be entitled to illness-related sick leave for the final two days of the previous school year. Under plaintiff's construction, because the illness lasted longer than the 3-day threshold and was certified, that employee could also claim one more day of sick leave on the first day of the new school year. However, such a claim would divorce sick leave from the event requiring the leave. Thus, plaintiff's construction of section 24-6 in this scenario would lead to an absurd result.

Dynak, 2019 IL App (2d) 180551, ¶ 30 (emphasis added). The appellate court majority went on to further state "[a]s the subject of section 24-6 is sick leave, due to a triggering event of either illness or birth, the leave granted should be interpreted in the same manner

[4] Though, it must be pointed out that Dynak also claims "the right to use accumulated sick leave 'for birth' is temporally self-limited by the statute." Appellant's Br., p. 30. However, Dynak offers no objective bases that a school district could use to determine whether a claimed use of sick leave was "for birth." Any absence to do anything with an employee's child could be "for birth" once the leave is disconnected from the event of birth.

in each case. Thus, if it would be an absurd result for an illness-related sick leave to be divorced from the triggering event of an illness, it would likewise be an absurd result for birth-related sick leave to be divorced from the triggering event of a birth." *Id*. at ¶ 33; *see Id*. at ¶ 42 ("Because the requirements for illness-related leave and birth-related leave must be interpreted similarly (see *Iwan Ries*, 2018 IL App (1st) 170875, ¶ 23), plaintiff's construction would also have to apply to illness-related leave, and this would cause an absurd result, as explained above."). This has long been the School District's position. *See* A.85-86.

Moreover, even if Dynak's argument could be considered just in the narrow context of "birth" (and read apart from the rest of the statute), it would still yield absurd results. For instance, if the "30 days for birth" could be disconnected from the event of birth, and with no temporal limitation, an employee could ostensibly take off one day a week for 30 weeks or 60 half-days throughout a school year as "sick leave" in order to be with their child. Or, perhaps, such an employee could delay using the "30 days for birth" until the following school year to take the child on trips to visit relatives, to have the child baptized, or to take a day off to celebrate the child's birthday. Any of those purposes would be permitted under Dynak's interpretation of a sick leave statute. While paid absences for these purposes could be granted by the Legislature in the form of a parental leave law, they cannot find support in a consistent reading of Section 24-6 as a whole.

III. DYNAK'S INTERPRETATION OF SECTION 24-6 OF THE *ILLINOIS SCHOOL CODE* IS UNSUPPORTED BY EITHER LEGISLATIVE HISTORY OR CASE LAW

As noted above, "[i]f the language of the statute is clear, it must be given effect without resort to other interpretive aids." *Nelson*, 2014 IL 116303, ¶ 23. Section 24-6's

language is clear and, for the reasons and arguments set forth above, Dynak's interpretation of that language should be rejected. Nevertheless, to the extent this court determines the statute to be ambiguous, "other interpretive aids" only further belie Dynak's position.

A. Legislative History

"Where statutory language is ambiguous, it is appropriate to examine the legislative history." *Kunkel v. Walton*, 179 Ill.2d 519, 534 (1997). With respect to this case, the Legislature added the words ", or birth, adoption, or placement for adoption" to Section 24-6 in 2007. 2007 Ill. Legis. Serv. P.A. 95-151 (H.B. 1877). Then, in 2009, the Legislature added the words "or 30 days for birth" to the portion of the statute addressing the grace period an employee enjoys before an employer may require a doctor's note. 2009 Ill. Legis. Serv. P.A. 96-51 (S.B. 35). The timing of these separate changes is critical.

When the ", or birth, adoption, or placement for adoption" language was added, the "or 30 days for birth" language did not exist and was not added until two years later. Therefore, the notion that "birth" is somehow "distinct" and separate from "personal illness, quarantine at home, serious illness or death in the immediate family or household" (and in its own family adjustment and bonding category, no less) because of this later added "or 30 days for birth" language is incorrect. In 2007, the Legislature simply added additional reasons that allow school employees to use paid sick leave.

Moreover, in 2009, when the "or 30 days for birth" language was added to the sentence dealing with "personal illness" and a school district's ability to require a doctor's note (as discussed above), the Legislature also added the following: "[f]or paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave

is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative." 2009 Ill. Legis. Serv. P.A. 96-51 (S.B. 35). In other words, the Legislature could have, but did not, write separate language for "birth," as it did for "adoption or placement for adoption." The Legislature specifically connected "birth" with "personal illness."

Furthermore, on March 25, 2009, when state senator Susan Garrett (D., 29th Dist.) ("Garrett") was asked to explain her bill that would add the "or 30 days for birth" language to Section 24-6, she remarked only:

> . . . As amended, Senate Bill 35 allows school boards and schools to require a certificate from a physician or other medical professional as a base - - basis for paid leave after an absence of thirty days for birth. For adoption, school boards may require a teacher or employee to provide evidence that the adoption is underway. Those leaves are limited to thirty days unless a bargaining unit has negotiated a longer period.
>
> Ill. S. 96th General Assembly, 30th Legislative Day, p. 15 (2009).

No questions or discussion followed Garrett's statements. Noticeably absent from Garrett's comments is any indication that the Legislature intended to confer the type of paid parental leave benefit now claimed by Dynak. Surely, had Garrett and/or the rest of the Legislature desired to provide full-time teachers and other school staff members the ability to use 30 sick leave days in a manner that is untethered from the actual event of birth, in essence creating a paid parental leave benefit for hundreds of thousands of public school employees, someone would have said something to that effect.

i. Illinois' Department of Central Management Services' "Parental Leave"

In fact, the Illinois Legislature knows exactly how to provide for paid parental leave when it chooses to do so. Title 80, Section 303.130 of the *Illinois Administrative Code*, which pertains to the Department of Central Management Services, is labeled "Parental Leave." 80 Ill. Admin. Code § 303.130. This regulation states:

> All employees will be eligible for 10 weeks (50 work days) of paid parental leave, per twelve (12) month period which begins upon birth, for each pregnancy resulting in births or multiple births. The State shall require proof of pregnancy at least 30 days prior to the expected due date, as well as proof of the birth. In addition, employees will be required to provide proof of a parent-child relationship such as a birth certificate or other appropriate documentation.

80 Ill. Admin. Code § 303.130(a). The regulation goes on to provide "[e]mployees using leave under this Section must use the leave benefit in weeklong increments (5 consecutive working days)." 80 Ill. Admin. Code § 303.130(c). The regulation also treats "birth" as a discreet event from which a 12-month period into the future is measured, further supporting the School District's use of the dictionary definition of "birth." *See*, *supra*, pp. 5-7.

Unlike Section 24-6, this regulation both contains the words "paid parental leave" and sets forth clear guardrails to protect against the absurd results that would directly flow from Dynak's argument. For instance, this paid parental leave must be taken within 12 months of the birth and must be taken in weeklong increments. Moreover, "[a]ll employees will be eligible" for this paid parental leave benefit, not just those who have been fortunate enough to accumulate 30 sick leave days. Contrast that with Dynak's interpretation of Section 24-6, which would certainly deny the full 30-day benefit to first or second year school employees who give birth but who have yet to earn 30 sick days, and would fully

deny the benefit to any school employee unable to accumulate sick leave days due to a chronic illness of the employee or those in the employee's household. There is no interpretation or legislative history to suggest the Legislature intended to grant 30 days of paid parental leave only to those school employees who have worked long enough to earn 30 sick days, and who have been fortunate enough not to need them for other qualifying events.

ii. Paid Family Leave Laws of Other States

It must also be pointed out that a handful of states, including California, New Jersey and New York, currently provide employees with the type of paid leave Dynak proposes for full-time teachers and other school staff members. *See* 735 ILCS 5/8-1003 ("Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States."). Notably, these paid family leave laws are generally funded through mandatory employee payroll deductions, administered through a State's disability insurance program and, during the period of leave, the employee receives an amount that is less than his or her regular wages.

Moreover, such laws apply to a significant portion of a State's workers, not just a select subset of public employees (who happen to have accumulated enough sick leave days to span the leave period, no less). *See* Cal. Unemp. Ins. Code §§ 3300-3306; State of California Employment Development Department, "About Paid Family Leave," http://www.edd.ca.gov/Disability/About_PFL.htm (last visited on December 6, 2019) ("More than 18 million California workers are covered by the PFL program, paid for by California workers that pay State Disability Insurance taxes in the past 5 to 18 months . . . If eligible, you can receive about 60 to 70 percent (depending on income) of wages earned

5 to 18 months before your claim start date for up to six weeks within any 12-month period."); N.J. Stat. Ann. § 43:21-25, *et seq.*; State of New Jersey Department of Labor and Workforce Development, "Guide to Family Leave Insurance for Employers," http://www.nj.gov/labor/forms_pdfs/tdi/PR-142%20(2-18)%20%20.pdf (last visited on December 6, 2019) ("Family Leave Insurance (FLI) provides benefits to workers who need to care for a seriously ill family member or bond with a newborn or newly adopted child. The FLI program complements the Temporary Disability Insurance program, which partially replaces wages during an employee's own injury, illness or other disability, including pregnancy. Claimants can collect FLI benefits for a maximum of 6 weeks in a 12-month period."); N.Y. Workers' Comp. Law § 200, *et seq.*; New York State, "Paid Family Leave: Cost and Deductions," https://paidfamilyleave.ny.gov/cost (last visited on December 6, 2019) ("New York Paid Family Leave is insurance that may be funded by employees through payroll deductions. Each year, the Department of Financial Services sets the employee contribution rate to match the cost of coverage.").

But, in this case, Dynak argues that the Illinois Legislature has provided an even more generous (*i.e.* full pay) paid parental or family leave benefit, but only to full-time teachers and other school staff members who have accumulated 30 sick leave days to use. Her argument also requires this court to accept that such a groundbreaking benefit was enacted, without explanation from its chief sponsor, via two simple amendments made years apart to Section 24-6. In light of the complex and elaborate paid family leave schemes of other States, Dynak's argument must be rejected.

iii. FMLA Regulations

Dynak also asserts that by granting her 12 weeks of unpaid FMLA leave at the beginning of the 2016-2017 school year (*i.e.* 10 weeks after the birth of her child), the School District "admitted that the use of unpaid FMLA leave at the beginning of the 2016-17 school year was *for birth*, but then denied, absent explanation, that the use of paid sick leave *over that very same time period* was 'for birth,' as required by the School Code." Appellant's Br., p. 31 (emphasis in original). Dynak adds "[s]uch a position is indefensible." *Id*. What is indefensible is Dynak's red herring argument that ignores the School District's obligation to grant unpaid FMLA leave to eligible employees for "bonding" purposes within the first twelve months following the birth of a child.

Dynak ignores that the FMLA regulations, as noted above, expressly provide that "[b]oth parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth." 29 C.F.R. § 825.120(a)(2) (emphasis added). Significantly, unlike Dynak's proposed interpretation of Section 24-6, the FMLA regulations also make clear that "[a]n employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth." *Id*.[5] Thus, there was nothing inconsistent or unlawful in granting Dynak unpaid FMLA leave to bond with her child at the start of the 2016-2017 school year, while simultaneously denying her request to use paid sick leave "over that very same time period." In fact, what would have been illegal was denying Dynak her right to unpaid FMLA leave during the first twelve months of her child's life.

[5] Here is yet another statute that treats "birth" as a discrete event.

In other words, as the appellate court majority appropriately concluded "because the purpose behind the FMLA, and the execution of that purpose, differs from the purpose of section 24-6, defendant's acceptance of plaintiff's FMLA leave 'for birth' neither contradicts its denial of plaintiff's request to use birth-related sick leave nor is it indefensible." *Dynak*, 2019 IL App (2d) 180551, ¶ 45 (emphasis added). However, it should be noted that Dynak's FMLA leave was actually for bonding with a healthy newborn, not for birth.

iv. Illinois' *Child Bereavement Leave Act*

Dynak also claims "the legislature knows how to establish time limits for employees to use statutory rights to leave. In contrast with the Child Bereavement Leave Act, in Section 24-6 of the School Code the legislature placed no such limit (or proximity requirement) for using accumulated paid sick leave in connection with the birth of a child." Appellant's Br., p. 33. The problem with Dynak's position, however, is that the Illinois Legislature did not prescribe a specific period of time within which sick leave, pursuant to Section 24-6, may be taken for any of the qualifying events, including personal illness.

Thus, to accept Dynak's argument in the context of birth, this court would also have to accept it in the context of all of the other Section 24-6 qualifying events, which would unquestionably produce absurd results. Under Dynak's interpretation of the law, simply experiencing one of these qualifying events vests an employee with the unfettered right to miss work without a loss in pay at some future, unspecified date (at the employee's choosing no less). Any employee could simply work despite the condition, or experience the condition during summer break, and then claim paid days off at some undetermined future date.

Moreover, unlike Section 24-6, Illinois' *Child Bereavement Leave Act* also places clear restrictions on the use of such unpaid bereavement leave. For instance, an employee must provide his or her employer with at least 48 hours' advance notice of the employee's intention to take unpaid bereavement leave and an employer may require reasonable documentation supporting the need for its use. *See* 820 ILCS 154/10. The Legislature surely would have included similar reasonable restrictions in Section 24-6 had it intended to provide the type of paid parental leave benefit now claimed by Dynak. Appropriately, the appellate court majority declared "[t]he direct comparison is inapt because, unlike the '30 days for birth' provision in section 24-6, section 10(b) [of the *Child Bereavement Leave Act*] defines not the benefit but the time period for its use." *Dynak*, 2019 IL App (2d) 180551, ¶ 41.

B. *Winks v. Board of Education*

Finally, Dynak relies on this court's 1979 decision in *Winks v. Board of Education* to support her interpretation of Section 24-6. 78 Ill.2d 128 (1979). Such reliance is misplaced. First, *Winks* dealt with a previous version of Section 24-6 that did not include any of the relevant language at issue here. *Id*. at 131 (noting that, at the time, Section 24-6 read "[s]ick leave shall be interpreted to mean *personal illness*, quarantine at home, or serious illness or death in the immediate family or household. The school board may require a physician's certificate, or if the treatment is by prayer or spiritual means, that of a spiritual advisor or practitioner of such person's faith, as a basis for pay during leave after an absence of 3 days for personal illness, or as it may deem necessary in other cases.") (emphasis in original). As this court stated in *Winks*, "[t]his controversy involves the

meaning of 'personal illness' as that term is used in section 24-6 and in the defendant's sick leave policy." *Id*. at 133. Dynak's case, meanwhile, involves the meaning of "birth."

Further, unlike Dynak, it was the plaintiff's position in *Winks* that the phrase "personal illness" "encompasse[d] medical incapacity due to pregnancy and childbirth which prevents the employee from performing the duties of her position." *Id*. (emphasis added); *see Id*. at 141 ("The plaintiffs urge this court to consider the purpose of section 24-6 of the School Code and to find that reimbursement for the economic loss due to inability to teach because of pregnancy and childbirth falls within the purpose of that section.") (emphasis added). In fact, the plaintiff in *Winks* gave birth on December 8, 1973. She was released from the hospital on December 11, 1973, and resumed her teaching duties as authorized by her doctor on January 3, 1974. *Id*. at 142. Unlike Dynak, the plaintiff in *Winks* did not attempt to use sick leave in a way that was disconnected from the event of birth but, rather, during "the period of time that she did not work following delivery . . . ." *Id*. (emphasis added). Simply put, *Winks* involved a different version of the law and substantially different facts from those at issue here, and Dynak offers no specific evidence that the Legislature ever considered the *Winks* ruling when it first amended Section 24-6 nearly 30 years later.

Nevertheless, to the extent *Winks* applies here, it must be pointed out that this court merely "conclude[d] that the General Assembly did not intend to include normal pregnancy and childbirth within the sick pay coverage of section 24-6 of the School Code." *Id*. at 140. That is, this court construed Section 24-6 narrowly, and nowhere close to the broad manner now suggested by Dynak. Moreover, in *Winks*, this court turned to the dictionary definition of "illness" to reach its conclusion. *Id*. at 137, 139. As explained above, this

court should now similarly turn to the dictionary definition of "birth" to reject Dynak's argument. Furthermore, in *Winks*, this court also looked to how other States had dealt with the issue in question. *Id*. at 137-39. As explained above, this court should now similarly look to how other States have dealt with the paid paternity leave Dynak seeks from this case instead of the Legislature. None of these principles support Dynak's position in this case. Hence, her reliance on *Winks* is misplaced.

IV. DYNAK IS NOT ENTITLED TO ANY PAYMENT OF WAGES, ATTORNEYS' FEES AND/OR OTHER DAMAGES

Dynak contends, under Illinois' *Attorneys Fees in Wage Actions Act* ("*Act*"), she is entitled to attorneys' fees because the School District "did not pay her for 28.5 days of her leave at the beginning of the 2016-17 school year." Appellant's Br., p. 49. Dynak's understanding of the *Act* is incorrect. The *Act* provides:

> Whenever a mechanic, artisan, miner, laborer, servant or employee brings an action for wages earned and due and owing according to the terms of the employment, and establishes by the decision of the court or jury that the amount for which he or she has brought the action is justly due and owing, and that a demand was made in writing at least 3 days before the action was brought, for a sum not exceeding the amount so found due and owing, then the court shall allow to the plaintiff a reasonable attorney fee of not less than $10, in addition to the amount found due and owing for wages, to be taxed as costs of the action.

705 ILCS 225/1 (emphasis added); *see Bill v. Bd. of Educ.*, 351 Ill.App.3d 47, 65 (1st Dist. 2004) ("As a result, the Act changed the common law 'by permitting victorious employees to recover their attorney fees in cases where wages were earned and due and owing,' and must therefore be strictly construed.") (quoting *Scoby v. Civil Service Comm'n*, 253 Ill.App.3d 416, 417 (5th Dist. 1993)); *Swanson v. Lake in Hills*, 233 Ill.App.3d 58, 67 (2nd Dist. 1992) ("Our analysis is governed by the well-accepted rule that the attorney fees act

at issue must be considered in derogation of the common law and is therefore to be strictly construed.").

In this case, Dynak indisputably did not work on the 28.5 days in question and, therefore, did not earn any wages. The School District simply denied her the use of sick days during those 28.5 days when she was taking an unpaid FMLA leave. The School District did not unilaterally take sick days away from Dynak and refuse to pay her their worth in wages. Provided a qualifying reason exists, Dynak may use those 28.5 sick leave days at some future date and, if they remain unused at separation from employment, they will be reported to the Teachers' Retirement System of the State of Illinois ("TRS") for retirement service credit. Dynak has suffered no harm in this regard and her attorneys' fees claim should be rejected irrespective of how this court decides the Section 24-6 interpretation issue. *See Bill*, 351 Ill.App.3d at 65-66 ("The courts have unequivocally and without dissent construed this provision of the Act as not applicable to claims for back pay in wrongful discharge actions because, contrary to the requirements of the statute, such cases do not involve wages owed for work actually performed.") (emphasis added).

CONCLUSION

For all of the reasons and arguments detailed above, the circuit court's decision and grant of summary judgment in favor of the School District was correct, and the decision of the appellate court should be affirmed by this court.

BOARD OF EDUCATION OF
WOOD DALE SCHOOL DISTRICT 7,
DEFENDANT-APPELLEE

One of Defendant-Appellee's Attorneys

JOHN E. FESTER (jfester@edlawyer.com) – ARDC: 6229233
ADAM DAUKSAS (adauksas@edlawyer.com) – ARDC: 6301578
SCARIANO, HIMES AND PETRARCA, CHTD.
180 N. Stetson, Suite 3100
Chicago, Illinois 60601
DuPage County Attorney No. 75640
(312) 565-3100

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ILLINOIS SUPREME COURT RULE 341(c)

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 30 pages.

Respectfully submitted,

One of Defendant-Appellee's Attorneys

CERTIFICATE OF FILING AND SERVICE

To: Michael Slutsky, Esq.
Allison, Slutsky & Kennedy, P.C.
230 W. Monroe, Suite 2600
Chicago, IL 60606
slutsky@ask-attorneys.com

Ryan Thoma, Esq
Illinois Education Association
230 W. Monroe, Suite 2640
Chicago, IL 60606
Ryan.Thoma@ieanea.org

On December 16, 2019, Defendant-Appellee, Board of Education of Wood Dale School District 7, caused to be filed with the Clerk of the Illinois Supreme Court its **Brief of Defendant-Appellee** via electronic filing through the Odyssey eFileIL system, a copy of which is hereby served upon you.

The undersigned counsel of record, certifies that he caused a true and correct copy of the foregoing **Brief of Defendant-Appellee** to be served upon those identified above by email and depositing the same in a U.S. Mailbox at 130 E. Randolph St., Chicago, Illinois 60601 with proper postage prepaid on December 16, 2019.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

BOARD OF EDUCATION OF
WOOD DALE SCHOOL DISTRICT 7,
DEFENDANT-APPELLEE

One of Defendant-Appellee's Attorneys

JOHN E. FESTER (jfester@edlawyer.com) – ARDC: 6229233
ADAM DAUKSAS (adauksas@edlawyer.com) – ARDC: 6301578
SCARIANO, HIMES AND PETRARCA, CHTD.
180 N. Stetson, Suite 3100
Chicago, Illinois 60601
(312) 565-3100