Nos. 127527 and 127594 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

John O'Connell,	)	
	)	Petition for Leave to Appeal from
Plaintiff-Appellee,	)	the Appellate Court of Illinois
	)	First Judicial District
v.	)	No. 1-20-1031
	)	
Cook County and Board of Trustees	)	There Heard on Appeal from
of the County Employees' and	)	The Circuit Court of Cook County,
Officers' Annuity and Benefit Fund	)	No. 20-CH-288
of Cook County,	)	
	)	Honorable Neil H. Cohen,
Defendants-Appellants.	)	Judge Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT BOARD OF TRUSTEES OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Pursuant to Supreme Court Rule 315, Petitioner-Appellant, the Retirement Board ("Board") of the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Fund"), petitioned this Court for appeal from the judgment of the Appellate Court, First District, Fifth Division, reversing the decision entered on administrative review in the Circuit Court of Cook County, Illinois, that affirmed the Board's decision to deny O'Connell-Respondent's ("Respondent" or "O'Connell") application for reinstatement of his ordinary disability benefits because the Board found that he was ineligible for benefits under Article 9 of the Illinois Pension Code (40 ILCS 5/1 *et seq*.) due to his termination of employment by the County of Cook (the "County" or "Cook County").

On June 30, 2021, the Appellate Court of Illinois, First District, entered its decision reversing a judgment entered by the Circuit Court of Cook County, Illinois, on September 14, 2020, in favor of the Board and against O'Connell. Thereafter, the Board filed its petition for rehearing on July 21, 2021, and on July 22, 2021, the appellate court denied the Board's petition for rehearing from which this appeal was taken. On November 24, 2021, this Court granted the Board's Petition for Leave to Appeal and also ordered that this cause be consolidated with 127527 *O'Connell v. County of Cook*.

No questions are raised on the pleadings.

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Supreme Court Rule 315.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court's ruling that the Respondent has a right to receive ordinary disability benefits notwithstanding his termination from County employment is in direct conflict with the First District Decision of *DiFiore v. Retirement Bd. of Policemen's Annuity and Ben. Fund of City of Chicago*, 313 Ill. App. 3d 546, 729 N.E. 2d 878 (1st Dist. 2000).

2. Whether the appellate court deviated significantly from well-established principles of statutory construction and created a post-employment disability benefit in Article 9 of the Pension Code contrary to the intent of the legislature to authorize disability benefits only for employees.

3. Whether the expansion of ordinary disability benefits to terminated employees by the appellate court will have a significant detrimental economic effect on the administration of all pension funds throughout the State.

STATUTES INVOLVED

40 ILCS 5/9-108.

Sec. 9-108. "Employee", "contributor" or "participant".

(a) Any employee of the county employed in any position in the classified civil service of the county, or in any position under the County Police Merit Board as a deputy sheriff in the County Police Department.

Any such employee employed after January 1, 1968 and before January 1, 1984 shall be entitled only to the benefits provided in Sections 9-147 and 9-156, prior to the earlier of completion of 12 consecutive calendar months of service and January 1, 1984, and no contributions shall be made by him during this period. Upon the completion of said period contributions shall begin and the employee shall become entitled to the benefits of this Article.

Any such employee may elect to make contributions for such period and receive credit therefor under rules prescribed by the board.

Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article and the employee shall be entitled to the benefits of this Article.

(b) Any employee of the county employed in any position not included in the classified civil service of the county whose salary or wage is paid in whole or in part by the county. Any such employee employed after July 1, 1957, and before January 1, 1984, shall be entitled only to the benefits provided in Sections 9-147 and 9-156, prior to the earlier of completion of 12 consecutive calendar months of service and January 1, 1984, and no contributions shall be made by him during this period. Upon the completion of said period contributions shall begin and the employee shall become entitled to the benefits of this Article.

Any such employee may elect to make contributions for such period and receive credit therefor under rules prescribed by the board.

Any such employee in service on or after January 1, 1984, regardless of when he became an employee, shall be deemed a participant and contributor to the fund created by this Article and the employee shall be entitled to the benefits of this Article.

(c) Any county officer elected by vote of the people, including a member of the county board, when such officer elects to become a contributor.

(d) Any person employed by the board.

(e) Employees of a County Department of Public Aid in counties of 3,000,000 or more population who are transferred to State employment by operation of law enacted by the 76th General Assembly and who elect not to become members of the Retirement System established under Article 14 of this Code as of the date they become State employees shall retain their membership in the fund established in this Article 9 until the first day of the calendar month next following the date on which they become State employees, at which time they shall become members of the System established under Article 14.

(f) If, by operation of law, a function of a "Governmental Unit", as such term is defined in the "Retirement Systems Reciprocal Act" in Article 20 of the Illinois Pension Code, is transferred in whole or in part to the county in which this Article is in force and effect, and employees are transferred as a group or class to such county service, such transferred employee shall, if on the day immediately prior to the date of such transfer he was a contributor and participant in the annuity and benefit fund or retirement system in operation in such other "Governmental Unit" for employees of such Unit, immediately upon such transfer be deemed a participant and contributor to the fund created by this Article.
(Source: P.A. 90-655, eff. 7-30-98.)

40 ILCS 5/9-113.

Sec. 9-113. Disability.

"Disability": A physical or mental incapacity as the result of which an employee is unable to perform the duties of his position.
(Source: Laws 1963, p. 161.)

40 ILCS 5/9-157.

Sec. 9-157. Ordinary disability benefit. An employee while under age 65 and prior to January 1, 1979, or while under age 70 and after January 1, 1979, but prior to January 1, 1987, and regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in

the performance of an act of duty is entitled to ordinary disability benefit during such disability,after the first 30 days thereof. No employee who becomes disabled and whose disability commences during any period of absence from duty without pay may receive ordinary disability benefit until he recovers from such disability and performs the duties of his position in the service for at least 15 consecutive days, Sundays and holidays excepted, after his recovery from such disability. The benefit shall not be allowed unless application therefor is made while the disability exists, nor for any period of disability before 30 days before the application for such benefit is made. The foregoing limitations do not apply if the board finds from satisfactory evidence presented to it that there was reasonable cause for delay in filing such application within such periods of time. The first payment shall be made not later than one month after the benefit is granted and each subsequent payment shall be made not later than one month after the last preceding payment.

The disability benefit prescribed herein shall cease when the first of the following dates shall occur and the employee, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article: (a) the date disability ceases (b) the date the disabled employee attains age 65 for disability commencing prior to January 1, 1979. (c) the date the disabled employee attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979. (d) the date the disabled employee attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979. (e) the date the payments of the benefit shall exceed in the aggregate, throughout the employee's service, a period equal to 1/4 of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the employee received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded. Any employee whose duty disability benefit was terminated on or after January 1, 1979 by reason of his attainment of age 65 and who continues to be disabled after age 65 may elect before July 1, 1986 to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1985. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity. Any employee whose disability benefit was terminated on or after January 1, 1987 by reason of his attainment of age 70, and who continues to be disabled after age 70, may elect before March 31, 1988, to have such benefits resumed beginning at the time of such termination and continuing until termination is required under this Section as amended by this amendatory Act of 1987. The amount payable to any employee for such resumed benefit for any period shall be reduced by the amount of any retirement annuity paid to such employee under this Article for the same period of time or by any refund paid in lieu of annuity. Ordinary disability benefit shall be 50% of the employee's salary at the date of disability. Instead of all amounts ordinarily contributed by an employee and by the county for age and service annuity and widow's annuity based on the salary at date of disability, the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes as amounts

contributed by him. The county shall also contribute 1/2 of 1% salary deductions required as a contribution from the employee under Section 9-133. An employee who has withdrawn from service or was laid off for any reason, who is absent from service thereafter for 60 days or more who re-enters the service subsequent to such absence is not entitled to ordinary disability benefit unless he renders at least 6 months of service subsequent to the date of such last re-entry.(Source: P.A. 96-1466, eff. 8-20-10.)

STATEMENT OF FACTS

The facts of this case are largely undisputed. The Respondent began employment with Cook County in 1999. He worked for a number of years with accommodations due to his health. In early 2017, he took a leave from his position with the County. (C 9)[1] Sometime thereafter he applied to the County Employees' and Officers' Annuity and Benefit Fund of Cook County ("Fund") for ordinary disability benefits pursuant to 40 ILCS 5/9-157 of the Illinois Pension Code ("Pension Code"), which the Board granted. On May 2, 2019, the Board granted O'Connell's application for a continuation of his ordinary disability benefits for the period of December 1, 2018, through November 30, 2019. (C 10) At all times for which the Board approved ordinary disability benefits for the Respondent, he was an employee of the County as defined in 40 ILCS 5/9-108(a).

On May 16, 2019, the County advised Respondent that he needed to provide medical documentation of a return to work date or he would be separated from his employment with the County. (C 16) Respondent then contacted the Fund and was told that the ordinary disability benefits he had been receiving would immediately stop if he was terminated as an employee of the County. (C 16) After contacting the County, O'Connell was granted an extension of time until June 29, 2019, to provide the required

[1] "C_____" denotes the common law record and "A_____" denotes the appendix to this brief.

documentation to the County. On July 1, 2019, O'Connell was separated from his employment with the County due to his failure to produce the required documentation to the County. Following O'Connell's separation of employment, the County stopped making contributions to the Fund on his behalf. (C 16) O'Connell received one final payment, for July 1, 2019, from the Fund for ordinary disability benefits.

On January 9, 2020, O'Connell filed a five-count Complaint against the County and the Board. Thereafter, the County filed a Motion to Dismiss O'Connell's Complaint pursuant to 735 ILCS 5/2-619.1. (C 155-166) The Board filed its own Motion to Dismiss also pursuant to 735 ILCS 5/2-619.1. On September 14, 2020, the circuit court granted both of the motions to dismiss with prejudice pursuant to sections 2-619 and 2-615. (C 220-229) The circuit court specifically held that Article 9 did not contain language that supported the continuance of disability benefits following employment termination nor any language defining a former employee as an "employee" for disability benefit purposes. (C 228)

On June 30, 2021, the First District issued a decision reversing the circuit court's decision, finding that former employees are entitled to received ordinary disability benefits from the Fund and the County is statutorily obligated to continue contributions to the Fund on behalf of former employees who are receiving ordinary disability benefits. (A 001-017) The Board filed a petition for rehearing on July 21, 2021, which was denied by the First District on July 22, 2021. (A 018) On August 26, 2021, the Board filed its petition for leave to appeal which was granted by this Court on November 24, 2021. (A 019)

SUMMARY OF ARGUMENTS

ARGUMENT

I. INTRODUCTION

Respondent alleges that he is entitled to ordinary disability benefits under Article 9 of the Pension Code irrespective of the fact that he was terminated from employment by the County. In agreeing with O'Connell, the appellate court improperly found that the term "employee" under Section 9-108 includes both current and former County employees. 40 ILCS 5/9-108. The plain language of Sections 9-108 and 9-157 does not support the appellate court's holding that former County employees are entitled to ordinary disability benefits. In addition, the appellate court's holding is in direct conflict with Illinois caselaw and should be reversed.

II. STANDARD OF REVIEW

All of the issues presented for review are questions of law that pertain to the construction of relevant provisions of Article 9 of the Illinois Pension Code (40 ILCS 5/9-101 *et seq*.). Issues of statutory interpretation are reviewed *de novo*. *Kanerva v. Weems*, 2014 IL 115811.

A. Article 9 Of The Code Allows For The Payment Of Ordinary Disability Benefits Only To Persons Employed By The County.

The plain, express language of Section 9-157 of the Code provides, among other things, that: "An *employee*…who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof." It also states: "[t]he disability benefit prescribed herein shall cease when the first of the following dates shall occur and *the employee, if still disabled, shall thereafter be*

entitled to such annuity as is otherwise provided in this Article…" 40 ILCS 5/9-157 (emphasis added).

The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. Moreover, reviewing courts engaged in statutory instruction should consider a statute in its entirety, keeping in mind the subject it addresses, the legislature's apparent objective in enacting it, and avoiding constructions that would render any term meaningless or superfluous. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006).

Based on the plain language in Section 9-157, the legislature clearly expressed its intention that only individuals that are employees of the County would be entitled to receive ordinary disability benefits while they were employees. If they exhausted their entitlement to ordinary disability benefits and were still disabled, the employee could apply for a retirement annuity for which they otherwise qualified under Article 9. The clear and obvious purpose of the legislature in providing ordinary disability benefits is to assist those employees that become disabled by non-duty causes until they can either return to work or apply for a retirement annuity. It is not intended to subsidize those who are unable to work and are not employed by the County. Indeed, Article 9 further provides for benefits to be paid to "…[a]ny *employee* of the county *employed* in any position in the classified civil service of the county…" 40 ILCS 5/9-108(a) (emphasis added). The use of the word "employed" could not be more indicative of the legislature's intent that these benefits were meant to be substitute income for those individuals who were injured and unable to work while they were still employed by the County.

In expanding the definition of "employee" to include former employees, the appellate court relies on the fact that Article 9 does not include express language providing

that termination of employment disqualifies a participant from receiving disability benefits. That language, however, is completely unnecessary because the legislature expressly qualified the receipt of disability benefits to "employees" under Section 9-157. To further state that the benefit was not available to non-employees would be redundant. As previously noted, Section 9-108(a) limits the definition of employee, contrary to other Articles of the Pension Code, to those individuals actually *employed* in any position in the classified civil service of the County. Including a specific provision stating that termination from employment forfeits a participant's right to receive disability benefits would be superfluous and unnecessary based on the language already included in Sections 9-108 and 9-157.

Further, this Court has held that discharged public employees are not entitled to collect disability benefits, which were designed to assist current employees unable to work and collect a salary, and to allow otherwise would disrupt the pension scheme established by the legislature. *DiFalco v. Wood Dale Firemen's Fund*, 122 Ill. 2d 22, 30 (1988). That is the same purpose that the legislature intended to address when it created the ordinary disability benefits payable in Article 9. Evidence that the selective purpose of disability benefits is only meant for those employed is reflected in the provisions of Article 9 related to the receipt of disability benefits. For instance, Section 9-158 requires that each disabled employee be examined at least once a year, or a longer period of time as determined by the Board, by one or more licensed and practicing physicians appointed by the Board. 40 ILCS 5/8-158. When the disability ceases, the Board shall discontinue payment of the benefit. Again, this reinforces that disability payments are a substitute for salary until the disability ceases; it is not a post-employment benefit extended to former

employees. Similarly, Section 9-159 bars the payment of disability benefits for any time that the employee receives any part of his salary or if the employee refuses to submit to the Board's physician's examinations, which determine whether the disability has ceased. 40 ILCS 5/9-159. This disability benefit structure is similar to the one at issue in *DiFalco* under Article 4 and is meant to provide a benefit substitute for employees unable to work and collect a salary due to a disability while they are employed.

Here, it is undisputed that O'Connell is no longer an employee of the County and that he does not contest his termination by the County. By virtue of his terminated status, O'Connell is not entitled to continue to collect ordinary disability benefits which were designed to assist only current employees unable to work and collect a salary. In *Difalco*, this Court confirmed that a valid purpose exists for the legislature to create disability benefits for a particular class of employees that are linked to their employment status. That is the same purpose expressed by the legislature in the language of section 9-157 of the Code.

The appellate court's decision in this case does exactly what the *DiFalco* court said is forbidden: it relies on an unwarranted extension of the language of Article 9 to create an unconditional right to disability benefits that does not arise out of a contractual or statutory commitment. In the present case, the appellate court has created a right for O'Connell that does not exist by statute or by a contractual commitment. This decision has far reaching financial impacts on the Fund that must not be allowed to be implemented.

B. The Appellate Court's Improper Expansion of the Definition Of "Employee" Under Article 9 Must Be Rejected.

When a court is interpreting the language of a statute, the primary goal of the court is to ascertain and give effect to the intention of the legislature. When the language of the

statute is unambiguous, the only legitimate function of the court is to enforce the law as enacted by the legislature. *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 391 (1998). Specifically, a court is not at liberty to restrict or enlarge the meaning of an unambiguous statute. *Id.* However, in this instance, that is exactly what the appellate court did by enlarging the definition of "employee" in Article 9 to include former as well as current employees.

The appellate court ignores the plain and unambiguous language in section 9-108(a) that defines an "employee" as: "[a]ny employee of the County *employed* in any position in the classified civil service of the county…" 40 ILCS 5/9-108(a) (emphasis added). Instead, the appellate court holds that the use of the word "employed" can refer to past, present or future employees of the County. The legislature could have easily used those words, or comparable words, to define an employee, had that been its intent, but it did not do that. Indeed, the legislature has used language that includes terminated or separated participants when it intends to include former employees in other Articles of the Pension Code.

As the circuit court correctly pointed out in its ruling, where the legislature has intended former employees to be eligible to receive benefits it has done that with precise language. By way of example, in Article 6 of the Pension Code, the legislature defined a fireman as "any person who (a) *was*, is or shall be employed by a City…". 40 ILCS 5/6-106 (emphasis added). By using the word "was" in its definition of a fireman, the legislature intentionally expressed a desire to include a person who was no longer employed by the Chicago Fire Department in its definition of a fireman for all purposes under Article 6 of the Code. Since the definitions in Article 9 contain no such language,

the circuit court adhered to the statutory interpretation presumption that when the legislature uses certain language in one part of a statute and different language in another part, it is evidence that different meanings were intended by the legislature. *Gutraj v. Bd. of Trustees of Police Pension Fund of Village of Grayslake, Illinois*, 2013 IL App (2d) 121163, ¶ 8. The definitions in Article 9 contain no such language and, therefore, this Court should not expand the definition of employee to include former employees.

Perhaps the biggest problem with the appellate court's holding is that the inclusion of former employees in the definition of an employee is completely at odds with the definition of "disability" in Article 9. The term "disability" is defined as: "[a] physical or mental incapacity as the result of which *an employee* is unable *to perform the duties of his position*." 40 ILCS 5/9-113 (emphasis added). Obviously, former employees cannot be found to be unable to perform the duties of their position since they are no longer employed. This section reinforces that a person must be employed by the County in order to be eligible for and to ultimately receive disability benefits. Once O'Connell's employment was terminated by the County, he was no longer eligible to receive ordinary disability benefits. To hold otherwise and require the Board to interpret the language of Article 9 in the manner that the appellate court orders would result in the Board acting beyond its authority granted by statute. *Rossler v. Morton Grove Police Pension Fund*, 178 Ill. App. 3d 769 (1st Dist. 1989).

The appellate court held that the term "employee" in sections 9-157 and 9-108 of the Code provides disability benefits to individuals "such as O'Connell who began receiving disability benefits when they were actively working" irrespective of their continued employment status. That holding conflicts directly with the decision of the First

District appellate court decision in *DiFiore v. Retirement Bd. of Policemen's Annuity and Ben. Fund of City of Chicago,* 313 Ill. App. 3d 546, 729 N.E. 2d 878 (1st Dist. 2000).

The *DiFiore* case involves a police officer's right to disability benefits under Article 5 of the Pension Code. In reviewing the other Articles of the Pension Code, the appellate court in *DiFiore* focused on Article 3 of the Pension Code which provides that a police officer in a municipality of 500,000 and under who becomes disabled as a result of any cause other than the performance of an act of duty is entitled to a disability pension. 40 ILCS 5/3-114.2. Under that provision, the courts have held that a police officer who resigns or is discharged as a result of a disability, after having already applied for a disability pension, is not barred from receiving a disability pension after retirement. *Iwanski v. Streamwood Police Pension Bd*., 232 Ill. App. 3d 180; 596 N.E. 2d 691 (1st Dist. 1992); *Stec v. Oak Park Police Pension Bd*. 204 Ill. App. 3d 556, 561 N.E. 2d 1234 (1st Dist. 1990). In contrast to Article 3, Article 5 of the Code, which was at issue in the *DiFiore* case, lacks any provision for the continuation of ordinary disability benefits upon retirement.

In the *DiFiore* case, Justice Theis relied on the distinction between Article 3 and Article 5 to hold that the police officer was not entitled to ordinary disability benefits after his retirement based on the lack of express authority in the Article 5 for such benefit. *Id.* at 550. In reviewing the caselaw cited by the plaintiff in that case, Justice Theis noted that courts analyzing Article 3 have held that petitioners who resign or are discharged as a result of disability are not barred from receiving disability pensions after retirement under the

express authority provided in Article 3[2]. Justice Theis further noted that the provision in Article 3 expressly providing for the continuation of disability benefits is not provided in Article 5: "…[t]here is no provision in article 5 that allows plaintiff to receive ordinary disability benefits after he retires. Therefore, because plaintiff's pension rights are addressed by article 5, which does not specifically provide for the continuation of ordinary disability benefits upon retirement, we find the Board's finding to be in error." *Id* at 550.

To be consistent with Justice Theis and the *DiFiore* holding that annuitants are unable to continue to receive disability benefits post-employment without an express declaration for the continuation of those benefits in the governing statute, O'Connell may only receive ordinary disability benefits post-employment if that benefit is expressly provided in Article 9.

The appellate court fails to apply that analysis, however, as it is undisputed that there is no express declaration in Article 9 providing legislative intent to include "former employees" in the statutory framework for disability benefits. Justice Theis's opinion in the *DiFiore* case is clear that Fund participants are unable to receive disability benefits post-employment without an express declaration for the continuation of those benefits. In this case, Article 9 is wholly devoid of any express provision providing for the continuation of ordinary disability benefits after retirement from service or employment with the County

[2] Section 3-114.2 of the Pension Code provides that "[a] police officer who becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mental disabled so as to render necessary his or her suspension or retirement form police service in the police department, shall be entitled to a disability pension of 50% of the salary attached to the officer's rank on the police force at the date of suspension of duty or retirement."

ends. The appellate court's ruling with respect to O'Connell is in stark conflict with the *DiFiore* decision.

Moreover, the language of Section 9-157 specifically requires that participants complete a specified amount of service (six months) in order to be eligible for ordinary disability benefits upon re-entry of service after withdrawal[3] from service for any reason. 40 ILCS 5/9-157. Reviewing courts engaged in statutory instruction should consider a statute in its entirety, keeping in mind the subject it addresses, the legislature's apparent objective in enacting it, and avoiding constructions that would render any term meaningless or superfluous. *Fisher v. Waldrop*, 221 Ill. 2d 102, 112 (2006). The six-month service requirement for participants upon re-entry is rendered superfluous if the appellate court's holding is applied. For example, if the County re-employed O'Connell, Section 9-157 would require O'Connell to complete six months of service in order to be eligible for ordinary disability benefits notwithstanding the fact that O'Connell is currently receiving ordinary disability benefits.

Under the appellate court's ruling it would be impossible to apply the service requirement of Section 9-157 to a participant such as O'Connell receiving the continuation of ordinary disability benefits post-termination. The Section 9-157 provision is a stark example of the General Assembly's intent not to provide for a continuation of ordinary disability benefits under Article 9 to someone that is no longer employed by Cook County. It is not the function of the court to supply by judicial interpretation what the legislature has omitted, especially when the court's decision would affix fiscal responsibility on a

3 "Withdrawal" is defined in Section 9-116 as "discharge or resignation of an employee" and clearly covers participants such as Mr. O'Connell who was terminated by the County. 40 ILCS 5/9-116.

public body. *Suburban Cook County Regional Office of Educ. v. Cook County Regional Office of Education*, 282 Ill. App. 3d 560, 566 (1st Dist. 1996). In reaching its holding, the appellate court ignored this provision of Section 9-157 and construed the statute in such a manner that would render this provision meaningless for ordinary disability recipients who have withdrawn from service.

The appellate court essentially rewrote section 9-157 in a manner that leads to an anomalous result. Under the appellate court's decision O'Connell, and potentially other annuitants, will enjoy an enduring right to ordinary disability benefits which are intended as a substitute for an employee's salary, notwithstanding the fact that they are no longer employees. This is an inappropriate expansion of the language of Article 9 contrary to this Court's clear direction in *Hooker v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 2013 IL 114811 (that courts should refrain from creating benefits that the legislature did not intend).

C. The Additional Post-Employment Benefits Granted By The Appellate Court Will Have A Significant Detrimental Economic Effect On The Administration Of All Pension Funds Throughout The State.

One of the fundamental principles of statutory construction is to view all of the provisions of a statute as a whole. Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 422 (2002). Further, statutes should be interpreted and applied in the manner in which they are written, and may not be rewritten by a court. *In re Griffin* 92 Ill. 2d 48, 52 (1982). Contrary to those fundamental principles, the appellate court expanded the definition of "employee" in sections 9-157 and 9-108 to include terminated employees

such as O'Connell. Such a result arguably creates a right for all Fund participants, regardless of employment status, to be granted disability benefits without any authorization or direction in the statutory scheme to provide that benefit.

Further, the appellate court is unclear with respect to whether its review of the definition of "employee" in sections 9-157 and 9-108 includes those employees in receipt of duty disability benefits under section 9-156. The application of the appellate court's ruling to participants in receipt of duty disability benefits would have significant financial consequences to the Fund. While ordinary disability benefits are capped at a maximum of five years and the specific age of disabled employees (i.e. 65 years of age for disability commencing prior to the attainment of age 60 in service), there is no similar cap for duty disability recipients. If the appellate court's ruling is applied to duty disability recipients, a participant receiving duty disability benefits could be unilaterally terminated by the County (or even resign as the appellate court fails to make any distinction between termination and resignation) and receive benefits and the service credit associated with those benefits for an indefinite period of time. It is also unclear what responsibility the County would have, if any, with respect to remitting contributions to the Fund for duty disability participants who are subsequently terminated while receiving duty disability benefits.

Most importantly, virtually every fund created under the Pension Code administers the provision of disability benefits. The legislature predominantly used the same broad language in all of the definitions of "employee" for purposes of disability benefits with the exception of those Articles that expressly provide for disability benefits post-employment. As discussed above, if left to stand, the appellate court's decision will have a potentially

adverse consequence to those funds in their administration of disability benefits to former employees. Such an outcome manifestly deviates from the legislature's obvious intent to grant disability benefits as an employment benefit to employees who would be actively working if not for their disability.

In the *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 544 (2006) decision, the Illinois Supreme Court recognized that disability benefits are a statutory benefit available only under the conditions and requirements provided in the Code. The Supreme Court then stated that "perhaps the most important function of a pension board is to ensure that there are adequate financial resources to cover the Board's obligations to pay current and future retirement and disability benefits to those who qualify for such payments. An important part of this responsibility involves the screening of unqualified or fraudulent claims, so that funds are not unfairly diverted to undeserving applicants." *Marconi*, 225 Ill. 2d at 544 (2006). In essence, the appellate court is asking the Board to ignore its fiduciary duties, labeled as its "most important function" by the Illinois Supreme Court, and provide a disability benefit to former County employees without direction by the legislature to do so.

CONCLUSION

For these reasons, the Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County respectfully requests that this Court reverse the judgment of the Appellate Court of Illinois, First District.

Respectfully submitted,

THE RETIREMENT BOARD OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY AND EX OFFICIO FOR THE FOREST PRESERVE DISTRICT EMPLOYEES' ANNUITY AND BENEFIT FUND OF COOK COUNTY

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January 10, 2022

CERTIFICATE OF COMPLIANCE

I certify that this foregoing Defendant-Appellant Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this Brief of Defendant-Appellant, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the Petition under Rule 342(a) is 19 pages.

By:/s/Vincent D. Pinelli

CERTIFICATE OF FILING AND SERVICE

On January 10, 2022, I electronically filed the foregoing Brief and Appendix of Defendant-Appellant Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County (the "Brief") with the Clerk of the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I served each party by emailing from the Firm the Brief and Appendix directly to its attorneys (as indicated below) on January 10, 2022:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), I certify that to the best of my knowledge, information, and belief the statements in the Proof of Filing and Service are true and Correct.

By:/s/Vincent D. Pinelli

Nos. 127527 and 127594 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

John O'Connell,	)	
	)	Petition for Leave to Appeal from
Plaintiff-Appellee,	)	the Appellate Court of Illinois
	)	First Judicial District
v.	)	No. 1-20-1031
	)	
Cook County and Board of Trustees	)	There Heard on Appeal from
of the County Employees' and	)	The Circuit Court of Cook County,
Officers' Annuity and Benefit Fund	)	No. 20-CH-288
of Cook County,	)	
	)	Honorable Neil H. Cohen,
Defendants-Appellants.	)	Judge Presiding

NOTICE OF FILING

TO: See Attached Proof of Service

PLEASE TAKE NOTICE that on January 10, 2022, we caused to be filed with the Supreme Court of Illinois, Brief and Appendix of Defendant-Appellant Board of Trustees of the county Employees' and Officers' Annuity and Benefit fund of Cook County, a copy of which is attached hereto and served upon you by operation of the Court's Odyssey electronic filing system.

Respectfully submitted,

Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County

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	)	Honorable Neil H. Cohen,
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APPENDIX TO:
DEFENDANT-APPELLANT BOARD OF TRUSTEES OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY

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ORAL ARGUMENT REQUESTED

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APPENDIX

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FIFTH DIVISION
June 30, 2021

No. 1-20-1031

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN O'CONNELL, Plaintiff-Appellant, v. THE COUNTY OF COOK and THE BOARD OF TRUSTEES OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 20 CH 288 Honorable Neil H. Cohen, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court, with opinion.
Justices Hoffman and Rochford concurred in the judgment and opinion.

OPINION

¶ 1 BACKGROUND

¶ 2 John O'Connell, a longtime Cook County employee, developed multiple sclerosis and obtained ordinary disability benefits (disability benefits)[1] from defendant-appellant Board of Trustees of the County Employees' and Officers' Annuity and Benefit Fund of Cook County (pension board). While he was receiving disability benefits, Cook County terminated him from employment because he was unable to provide a physician's certification providing a return-to-work date. Put simply, Cook County fired him solely because he was unable to return to work because of his disabilities from multiple sclerosis. Shortly thereafter, the pension board terminated his disability benefits, and the county stopped making contributions on his behalf to the County Employees' and Officers' Annuity and Benefit Fund (pension fund). O'Connell filed a multicount complaint against both the county and the pension board, seeking reinstatement of his disability benefits and the continuation of contributions to the pension fund under various theories of relief. The circuit court dismissed the entire complaint with prejudice. O'Connell appeals only the dismissal of counts I, III, and V of his complaint. We reverse.

¶ 3 FACTS

¶ 4 The following recitation of facts is taken from the pleadings and exhibits of record. In 1999, O'Connell began working for Cook County and became a participant in the pension fund. The county deducted a portion of O'Connell's salary each month and transmitted those monies to the pension fund as his employee contribution. O'Connell was diagnosed with multiple sclerosis in 2001 but was still able to work, with accommodations, until 2016. In January 2017, he applied to the pension board for disability benefits, and the board granted his application. As required by

[1]The Illinois Pension Code (Code) distinguishes between "duty" disability benefits payable to Cook County employees who are injured in the course of their employment (40 ILCS 5/9-156 (West 2018)) and "ordinary" disability benefits payable to those, such as O'Connell, whose disability is not work-related (*id.* § 9-157). For ease of expression, this opinion will refer to O'Connell's benefits simply as "disability benefits."

section 9-158 of the Code (40 ILCS 5/9-158 (West 2018)), he reapplied for those benefits from time to time by submitting proof of his continued disability, and the pension board approved those applications. The last time this occurred was May 2, 2019, when the pension board approved his disability benefits for a period ending November 30, 2019. During this period, the county itself also made contributions to the pension fund on O'Connell's behalf as required by sections 9-157 and 9-181 of the Code (*id.* §§ 9-157, 9-181).

¶ 5 On May 16, 2019, Cook County sent O'Connell a letter requiring him to submit medical documentation with an expected return-to-work date by May 29, 2019. If he failed to do so, the letter warned, he would be fired. The pension board then told him that, if he were fired, his disability benefits would stop. O'Connell responded, stating that he was still medically unable to return to work.

¶ 6 The county terminated O'Connell from employment on July 1, 2019. The termination letter left no doubt as to the reason. It stated: "The Bureau of Human Resources has not received medical documentation indicating a projected return to work date. Nor has the Bureau of Human Resources received an authorization returning you to work with or without a reasonable accommodation. You have been separated from your position effective July 1, 2019." At that point, the county also stopped making contributions on his behalf to the pension fund, as it had been doing all along during his disability.

¶ 7 The pension board then terminated O'Connell's disability benefits without providing any hearing, on the stated basis that he was no longer a county employee. Because the county terminated O'Connell's employment before he reached the end of his disability benefit eligibility period, he also lost his ability to keep earning sufficient credits to maximize his retirement benefits by invoking a "credit purchase option" or "early annuity option" as provided by sections 9-174

and 9-160 of the Code (*id.* §§ 9-174, 9-160), respectively, for individuals whose disability benefit eligibility period had expired. O'Connell demanded that the pension board continue his disability benefits, but the pension board did not respond.

¶ 8 On January 9, 2020, O'Connell filed a five-count complaint against the county and the pension board. The three counts relevant to this appeal are counts I, III, and V. Count I sought a declaratory judgment that O'Connell was entitled to continued disability benefits, on the theory that an employee who begins receiving disability benefit payments while still employed may continue receiving those benefits even if he is terminated from employment, if he is still disabled. It also alleged that, because of O'Connell's termination from employment, the county improperly stopped making contributions to the pension fund on his behalf. The prayer for relief in count I explicitly sought a declaration that O'Connell's disability benefits were improperly terminated, and it requested an order requiring the pension fund to pay him retroactive disability benefit payments. The prayer for relief did not, however, explicitly request retroactive reinstatement of the county's contributions. However, one remedy necessarily follows from the other. Reading the allegations in count I as a whole and in context, it is clear that O'Connell was seeking relief in that count for retroactive reinstatement of the county's contributions, both on a declaratory and injunctive basis. Therefore, we deem such relief as encompassed by the portion of the prayer for relief that sought "such further relief as the Court deems just and proper." Count III sought relief in *mandamus* on the same theory but added a specific request for relief against the county to retroactively "reinstate all contributions" to the pension fund. Count V was pleaded only against the pension board. It alleged a violation of the due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) (as applied to the States) and federal

civil rights laws, based on the pension board's termination of O'Connell's disability benefit payments without a notice or hearing.

¶ 9 Both defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2018)). After briefing, the circuit court granted the motions and dismissed the complaint with prejudice.

¶ 10 The circuit court's memorandum and order first addressed Cook County's motion to dismiss. The court dismissed count I as to Cook County pursuant to section 2-615. *Id.* § 2-615. That count sought a declaration against Cook County that O'Connell was entitled to receive disability benefits, and as we have explained above, it also sought a declaration that he was entitled to county contributions during his period of disability. The circuit court found that Cook County had no authority to determine pension eligibility or to distribute pensions. In dismissing count I as to the county, the circuit court did not address the portion of count I relating to county contributions. The court dismissed count III pursuant to section 2-619. *Id.* § 2-619. It reasoned that O'Connell had no "protectable interest under either statute or common law which was injured by the termination of his employment and the cessation of the County's contributions to the Pension Fund". Therefore, he lacked standing to seek *mandamus* relief. It also dismissed count III pursuant to section 2-615 because O'Connell failed to allege facts demonstrating he had a right to continued employment by Cook County. Count V was not pleaded against Cook County.

¶ 11 As to the pension board, the circuit court dismissed counts I and III pursuant to section 2-619 on the basis that a former employee was not entitled to receive disability benefits under the Code. It also dismissed counts I and III pursuant to section 2-615 because, based on its interpretation of the Code, O'Connell had no legal tangible interest in continuing disability payments. The court dismissed count V pursuant to section 2-615 because, if O'Connell had no

protectable interest in continued employment with the county, he had no procedural due process rights that the board could have violated. The court dismissed these counts with prejudice as to both defendants. It also dismissed counts II and IV with prejudice as to both defendants. This appeal followed.

¶ 12 ANALYSIS

¶ 13 On appeal, O'Connell contends that the circuit court erred in dismissing counts I, III, and V. He offers no arguments regarding the dismissal of counts II and IV.

¶ 14 Section 2-619.1 of the Code of Civil Procedure (*id.* § 2-619.1) permits a defendant to file a combined motion to dismiss pursuant to sections 2-615 and 2-619 of that Code. "A section 2-615 motion to dismiss [citation] challenges the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). "In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts," and we "construe the allegations in the complaint in the light most favorable to the plaintiff." *Id.* (citing *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004)). Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.* at 429-30. However, "a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Id.* at 429. We review an order granting or denying a section 2-615 motion *de novo*. *Id.*

¶ 15 We review denial of a section 2-619 motion to dismiss *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Section 2-619(a)(9) allows dismissal if "the claim asserted against defendant is barred by other affirmative matter." 735 ILCS 5/2-619(a)(9) (West 2018). When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint

as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a court should not grant a motion to dismiss unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Id.*

¶ 16 Our analysis begins with the operative statutes. Article 9 of the Code (40 ILCS 5/9-101 *et seq.* (West 2018)) establishes a pension system for Cook County employees. Several sections in article 9 of the Code are relevant to this appeal. Section 9-108 of the Code defines "employee" as "[a]ny employee of the county employed in any position in the classified civil service of the county." *Id.* § 9-108.

¶ 17 Section 9-157 of the Code is the key section regarding "ordinary" disability benefits such as those that O'Connell had received. The section is quite lengthy, so we only set out the clauses relevant to this appeal. The main provision regarding eligibility for disability benefits states:

> "An employee *** regardless of age on or after January 1, 1987, who becomes disabled after becoming a contributor to the fund as the result of any cause other than injury incurred in the performance of an act of duty is entitled to ordinary disability benefit during such disability, after the first 30 days thereof." *Id.* § 9-157.

The disability benefit is "50% of the employee's salary at the date of disability." *Id.*

¶ 18 Section 9-157 elsewhere refers to an individual as an "employee" even though that person has been receiving ordinary disability payments for some time and is therefore *no longer working* as a county employee. For example, in the text listing five triggering events that require termination of disability benefits, the person receiving benefits is referred to as an employee. This provision states that a disability benefit:

"shall cease when the first of the following dates shall occur and *the employee*, if still disabled, shall thereafter be entitled to such annuity as is otherwise provided in this Article:

(a) the date disability ceases.

(b) the date the disabled *employee* attains age 65 for disability commencing prior to January 1, 1979.

(c) the date the disabled *employee* attains 65 for disability commencing prior to attainment of age 60 in the service and after January 1, 1979.

(d) the date the disabled *employee* attains the age of 70 for disability commencing after attainment of age 60 in the service and after January 1, 1979.

(e) the date the payments of the benefit shall exceed in the aggregate, throughout the *employee's* service, a period equal to ¼ of the total service rendered prior to the date of disability but in no event more than 5 years. In computing such total service any period during which the *employee* received ordinary disability benefit and any period of absence from duty other than paid vacation shall be excluded." (Emphases added.) *Id.*

¶ 19 Section 9-159 of the Code also lists three additional triggering events, in addition to the five events listed in section 9-157, that require that disability benefits be terminated. They are, in summary: (a) refusal to submit to a medical examination ordered by the pension board, (b) working for a tax-supported employer, and (c) receipt of workers' compensation benefits. *Id.* § 9-159.

¶ 20 Section 9-157(e) delineates a "years of service credits" option and limits the length of time an employee may receive ordinary disability benefits based on the length of time the employee worked in regular service. It is undisputed that, at the time O'Connell was terminated, he was entitled to receive disability benefits until August 2021, based on his years of service credits, which would have been about 4½ years after he left active service and began receiving disability benefits. As noted above, the pension board's decision to stop his disability payments at the time of his termination on July 1, 2019, left a two-year gap between his termination and the exhaustion of his disability benefit period.

¶ 21 Other clauses in section 9-157 address Cook County's obligation to continue making certain payments to the pension fund on behalf of disabled employees. These payments include a certain amount made through a payroll deduction from nondisabled employees' salaries (the employee contribution) and an additional amount (the employer contribution), which Cook County makes from its own funds. O'Connell relies on these clauses as the basis for his claims against Cook County. The clauses provide that

> "[i]nstead of all amounts ordinarily contributed by an employee *** the county shall contribute sums equal to such amounts for any period during which the employee receives ordinary disability and such is deemed for annuity and refund purposes *** contributed by him. The county shall also contribute ½ of 1% salary deductions required as a contribution from the employee under Section 9-133." *Id.* § 9-157.

Similarly, section 9-181 of the Code requires the county to "contribute all amounts ordinarily contributed by it for annuity purposes" for an employee receiving ordinary disability benefits "as though he were in active discharge of his duties during such period of disability." *Id.* § 9-181.

¶ 22 Two other sections of article 9 establish mechanisms for disabled employees to convert their disability pensions into retirement pensions once their disability eligibility period has expired. Section 9-160 of the Code, the "early annuity option," provides that

> "[a]n employee whose disability continues after he has received ordinary disability benefit *for the maximum period* *** prescribed by this Article, and who withdraws before age 60 while still so disabled, is entitled to receive the annuity provided from the total sum accumulated to his credit from employee contributions and county contributions to be computed as of his age on the date of withdrawal." (Emphasis added.) *Id.* § 9-160.

Section 9-174, the "credit purchase option," also provides that disabled employees whose credit for ordinary benefit purposes has expired and who continue to be disabled have the right to continue contributing to the pension fund at the "current contribution rate" for a period not to exceed 12 months and to receive annuity credit for those periods so paid. *Id.* § 9-174. These sections illustrate that, under most circumstances, a permanently disabled employee may enjoy an uninterrupted flow of benefits from the time of disability until conversion to a disability pension or the employee's death. As noted above, the board halted O'Connell's benefits when the county terminated him, before his disability benefit period expired and thus before he was able to qualify for either the early annuity option or credit purchase option.

¶ 23 This case presents a question of statutory interpretation. Two principles guide us. First, we follow the cardinal rule of statutory construction, which is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Roselle*

Police Pension Board v. Village of Roselle, 232 Ill. 2d 546, 552 (2009). "The statute should be evaluated as a whole, with each provision construed in connection with every other section." *Id.* If the statutory language at issue is clear and unambiguous, a reviewing court must interpret the statute according to its terms without resorting to aids of statutory construction. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995). Second, when there " 'is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.' " *Kanerva v. Weems*, 2014 IL 115811, ¶ 36 (quoting *Prazen v. Shoop*, 2013 IL 115035, ¶ 39); accord *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund*, 2018 IL 122793, ¶ 24.

¶ 24 The parties' arguments center on the temporal meaning of the word "employee" in section 9-157 and "employed" in section 9-108. O'Connell contends that section 9-157 does not require that the "employee *** who becomes disabled" continue to be an employee to receive disability benefits as long as the employee began receiving those benefits when he was an active employee. The defendants disagree, arguing that, under its common and ordinary meaning, the term "employed" plainly refers only to nonterminated employees. We disagree with the defendants. Applying the canons of liberal construction and the beneficial nature of pension laws, we find that the term "employed" is broad enough to encompass persons such as O'Connell who began receiving disability benefits when they were actively working. Nothing in the operative language suggests that the disabled employee must continue to be employed to remain eligible for disability benefits or for the county to be required to continue making contributions.

¶ 25 Even if we were to assume the terms "employed" or "employee" are ambiguous, the rules of statutory interpretation lead us to the same result.

¶ 26 We first examine article 9's specific enumeration of eight events that trigger termination of disability benefits. Since O'Connell's termination is not one of the eight listed triggering events under the Code, we may presume that the legislature did not intend to include termination as a triggering event under some other guise. When determining whether a listing in a statute is exclusive, courts use the rule of statutory construction known as *expressio unius est exclusio alterius*. The rule "is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written." *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (citing 2A Norman J. Singer, Statutes and Statutory Construction §§ 47.24, 47.25, at 228, 234 (5th ed.1992)). Simply put, "[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation." *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992) (citing *Department of Corrections v. Illinois Civil Service Comm'n*, 187 Ill. App. 3d 304, 310 (1989)). Applying this rule supports O'Connell's position.

¶ 27 It is also axiomatic that courts must construe statutes to avoid absurd results. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70. The purpose of the Illinois pension laws is beneficial. *Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund*, 95 Ill. 2d 211, 217 (1983) (citing *Colton v. Board of Trustees of the Firemen's Pension Fund*, 287 Ill. 56, 61 (1919)). The provisions cited above demonstrate a legislative intent to provide at least several years of benefits to disabled employees to ensure they have some income during their disability and to continue those benefits without a gap onwards into their retirement years, if need be. Under defendants' interpretation, the beneficial purposes of the disability provisions of article 9 would

be thwarted. The county could simply fire severely disabled employees even after a brief period of disability, thus saving the cost of its required contributions to the pension fund, and the pension board, in turn, would be able to terminate the employees' disability benefits. We therefore find that defendants' interpretation, that disability benefits end when an employee is terminated, leads inexorably to an absurd result and would undermine the beneficial purpose of the pension laws.

¶ 28 Our reading of the pertinent statutory provisions is also supported by the doctrine of *noscitur a sociis* ("a word is known by its companions"). As explained above, we do not find the statute ambiguous. But even if it were, this tool allows us to ascertain the meaning of an ambiguous statute by relating them to words or phrases associated with them in the statutory context. *Puritan Finance Corp. v. Bechstein Construction Corp.*, 2012 IL App (1st) 112261, ¶ 13. Article 9 often uses the term "employee" to refer to an individual who is receiving disability benefits. For example, section 9-135.1 (40 ILCS 5/9-135.1 (West 2018)) refers to a death benefit payable to "an employee in service or while receiving a retirement annuity". Section 9-161 (*id.* § 9-161) explains the calculation of annuities for an "employee who has withdrawn from service" then reenters service.

¶ 29 We conclude that, under the Code, O'Connell was entitled to disability benefits and continued county contributions to the pension fund because he was employed at the time of his application for disability benefits. We further find that his termination was not a triggering event causing the cessation of his disability benefits and county contributions to the pension fund. We now examine the circuit court's disposition of the various counts of the complaint in light of those findings. Only counts I, III, and V are at issue in this appeal. We again note that, since this appeal comes to us on dismissal pursuant to sections 2-615 and 2-619, we construe the allegations in the complaint as true.

¶ 30 The circuit court's dismissal of those counts was based entirely on its determination that O'Connell was no longer eligible for disability benefits and county contributions to the pension fund after the county terminated him. However, while the county may choose to terminate an employee who validly receives ordinary disability benefits, the pension board may not terminate the ordinary disability benefits solely because of that termination from employment, and the county may not refuse to make the required contributions to the pension fund in that instance. O'Connell seeks relief against the pension board for ordinary disability payments that would have been paid after his termination, relief against the county for contributions it should have made to the pension fund during the same period, and relief in that the payments and contributions continue according to the Code.

¶ 31 The elements of a declaratory judgment action are " '(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests.' " *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 26 (quoting *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003)). Based on our interpretation, O'Connell has a tangible pecuniary interest in his disability benefits and county contributions to the pension fund. Accordingly, the circuit court should not have dismissed O'Connell's declaratory judgment action.

¶ 32 Count III sought relief in the form of *mandamus* against both defendants. A valid complaint for *mandamus* "must allege facts which establish a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ." *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997) (citing *Dennis E. v. O'Malley*, 256 Ill. App. 3d 334, 340-41 (1993)). Again, based on our interpretation of the Code, we find that the circuit court erred in dismissing count III. Following O'Connell's termination,

each defendant had particular duties with respect to him. The pension board had a clear duty to make disability benefit payments, and the county had a clear duty to make contributions to the pension fund on his behalf. In particular, we note that, under section 9-160, the county was required to pay contributions toward O'Connell's early annuity option "for the maximum time prescribed by this Article," which in O'Connell's case was about 4½ years—*not* merely until the county terminated him from employment. See *supra* ¶ 20.

¶ 33 For the same reason, the circuit court should not have dismissed count III pursuant to section 2-619 on the basis of lack of standing. Standing is "some injury in fact to a legally recognized interest." *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 254 (1985). The claimed injury must be distinct and palpable, fairly traceable to the defendant's actions, and substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93 (1988). Since O'Connell had the right to continuation of his disability benefits and county contributions to the pension fund after his termination from employment, and the relief in count III would have made him whole for his losses, he had standing to bring his claim.

¶ 34 The circuit court dismissed count V, a due process claim against the board only, on the basis that O'Connell had no protectable right to a continuation of his disability benefits. However, because he did have such a protectable right, count V stated a valid cause of action for violation of his due process rights, and we reverse the dismissal of that count, as well. Taking the allegations of the complaint before us as true, we find that the circuit court erred in dismissing count V because that count stated a valid cause of action and was otherwise sufficient to survive a motion to dismiss. As this court explained in *Kosakowski v. Board of Trustees of the City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381, 387 (2009):

> "The receipt of a disability pension is a property right which cannot be diminished without procedural due process. [Citation.] The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard. [Citation.] In this case, the Board afforded the plaintiff neither. Without notice and without a hearing, the Board unilaterally attempted to modify the disability pension which it had previously awarded to the plaintiff. As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before modifying his pension." (Internal quotations marks omitted.)

¶ 35 This disposition renders it unnecessary for us to consider O'Connell's arguments that the Illinois Constitution's pension protection clause (Ill. Const. 1970, art. XIII, § 5) requires reversal. See *In re E.H.*, 224 Ill. 2d 172, 178 (2006) ("cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort").

¶ 36 CONCLUSION

¶ 37 Accordingly, we reverse the judgment of the circuit court of Cook County dismissing counts I, III, and V of the complaint and remand for further proceedings consistent with this opinion. Because O'Connell has presented no arguments on appeal regarding the dismissal of counts II and IV, those counts remains dismissed pursuant to the circuit court's order.

¶ 38 Reversed and remanded.

No. 1-20-1031

Cite as:	*O'Connell v. County of Cook*, 2021 IL App (2d) 201031
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 20-CH-288; the Hon. Neil H. Cohen, Judge, presiding.
Attorneys for Appellant:	Michael L. Shakman, Mary Eileen Cunniff Wells, and Rachel Ellen Simon, of Miller Shakman Levine & Feldman LLP, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Cathy McNeil Stein, Mona E. Lawton, and Colleen M. Harvey, Assistant State's Attorneys, of counsel), for appellee County of Cook. Vincent D. Pinelli and Sarah A. Boeckman, of Burke Burns & Pinelli, Ltd., of Chicago, for other appellee.

No. 1-20-1031

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN O'CONNELL, Plaintiff-Appellant, v. THE COUNTY OF COOK and THE BOARD OF TRUSTEES OF THE COUNTY EMPLOYEES' AND OFFICERS' ANNUITY AND BENEFIT FUND OF COOK COUNTY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 20 CH 288 Honorable Neil H. Cohen, Judge Presiding.

ORDER

This cause coming on to be heard on defendant-appellee's petition for rehearing, the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the petition for rehearing is denied.

DATED: ORDER ENTERED
JUL 22 2021
APPELLATE COURT FIRST DISTRICT

Mathias W. Delort
JUSTICE

JUSTICE

Mary K Rochford
JUSTICE

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

September 29, 2021

In re: John O'Connell, Appellee, v. The County of Cook, Appellant.
Appeal, Appellate Court, First District.
127527

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

APPEAL TO THE APPELLATE COURT OF ILLINOIS

JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

JOHN O'CONNELL

Plaintiff/Petitioner

v.

COOK COUNTY, ET AL.

Defendant/Respondent

Reviewing Court No: 1-20-1002

Circuit Court No: 2020CH000288

Trial Judge: NEIL H. COHEN

E-FILED
Transaction ID: 1-20-1031
File Date: 11/24/2020 2:54 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Common Law Record, containing 233 pages
0 Volume(s) of the Report of Proceedings, containing 0 pages
0 Volume(s) of the Exhibits, containing 0 pages

I do further certify that this certification of the record pursuant to Supreme Court Rule 324, issued out of my office this 24 DAY OF NOVEMBER, 2020

Dorothy Brown

(Clerk of the Circuit Court or Administrative Agency)

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FIRST JUDICIAL DISTRICT
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JOHN O'CONNELL
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