Nos. 127527 & 127594 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

JOHN O'CONNELL,

Plaintiff-Appellee,

v.

COOK COUNTY, *et al.*,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 20-1031
There Heard On Appeal From The Circuit Court Of Cook County, Illinois
No. 20-CH-288
The Honorable Neil H. Cohen, Judge Presiding

BRIEF OF AMICUS CURIAE FOREST PRESERVE DISTRICT OF COOK COUNTY IN SUPPORT OF THE APPELLANT COOK COUNTY

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INTEREST OF AMICUS CURIAE

The Forest Preserve District of Cook County (the "District") is a governmental entity located in Cook County, Illinois. It is organized under the Cook County Forest Preserve District Act, 70 ILCS 810/0.01 et seq. Physically contiguous with Cook County, it is governed by the District's Board of Commissioners and President of the District, who also serve as the Cook County Board of Commissioners and the President of the County Board. *Id.* at §§ 3, 5. The Mission of the District is: "To acquire, restore and manage lands for the purpose of protecting and preserving public open space with its natural wonders, significant prairies, forests, wetlands, rivers, streams, and other landscapes with all of its associated wildlife, in a natural state for the education, pleasure and recreation of the public now and in the future." 2021 District Annual Appropriation Ordinance, p. 7. *See also* 70 ILCS 810/7.

The District has a significant interest in this case because the District is governed by the same pension benefit rules as Cook County. The District has its own Employees' Annuity and Benefit Fund, which is created and partially governed by Article 10 of the Illinois Pension Code, 40 ILCS 5/10-101 through 5/10-109. For the most part, however, the fund for District employees is governed by the rules of Article 9 of the Pension Code, which governs the annuity and benefit fund for employees of Cook County. *See* 40 ILCS 5/10-101 ("a forest preserve district employees' annuity and benefit fund shall be created, set apart, maintained and administered for the employees of the forest preserve district, in the same manner as the fund created and set apart, maintained and administered for [Cook] county employees [under Article 9]"); 40 ILCS 5/10-102 (the retirement board for the Cook County fund is ex officio the retirement board for the District's fund).

Importantly, the benefits for District employees are identical to the benefits for Cook County employees. Section 10-103 provides:

> Members, contributions and benefits. The board shall cause the same deductions to be made from salaries and, subject to Section 10-109 [regarding felony convictions], allow the same annuities, refunds and benefits for employees of the district as are made and allowed for employees of the county.

40 ILCS 5/10-103.

Thus, the decision this court makes regarding benefits in this case will govern the benefits owed and payable under the District's fund, and this will impact the amount of annuity contributions the District is required to make. For any employee receiving ordinary disability benefits, the County, and hence the District, is required to continue making all amounts ordinarily contributed by it for annuity purposes during such disability period. See 40 ILCS 5/9-181.

If this court affirms the appellate court, then the District, too, will be bound to continue making annuity contributions on behalf of former employees who are deemed entitled to ordinary disability benefits. That could have a significant financial impact on the District. As of December 15, 2021, the District has 537 full-time, part-time and seasonal employees who are part of the pension system and from whom 8.5% pension deductions are taken on a bi-weekly basis. Based on a review of ordinary disability reports since June 2016, over the past approximately five and a half years, 40 District employees have been on ordinary disability leave.

This amicus brief will assist the court by providing these additional facts regarding the impact and scope of the decision to be made in the instant case and by providing the affected District's perspective on the legal issues.

ARGUMENT

Article 9 of the Pension Code governs Cook County employees and, as to the benefits provided, District employees as well. 40 ILCS 5/9-101; 40 ILCS 5/10-103. Section 9-157 of the Code establishes the right to "ordinary disability benefits" for employees. It provides in pertinent part that "[a]n *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." 40 ILCS 5/9-157 (emphasis added).

Section 9-108 defines "employee" for purposes of Article 9. In relevant part, the term "employee" means "Any employee of the county *employed in* any position in the classified civil service of the county." 40 ILCS 5/9-108(a)(emphasis added). In other words, to be an "employee," one must be employed by the County. Connell was terminated because he failed to provide a return-to-work date. C85. Thus, he was no longer employed in any position at the County and, accordingly, no longer a County employee.

As such, under the plain language of Section 9-157 of the Pension Code, O'Connell was no longer entitled to receive ordinary disability benefits. As this court has recognized: "It is a cardinal rule of statutory construction that we cannot rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations or conditions not expressed by the legislature." *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009).

This is especially true because, elsewhere in the Pension Code, the legislature fashioned a definition that allowed for former employees to receive disability benefits. In two cases under two different articles of the Pension Code governing firefighters, Article 4 (firefighters except those who work in the City of Chicago), 40 ILCS 5/4-101, and Article

6 (firefighters who work in the City of Chicago), 40 ILCS 5/6-101, the outcome differed based on whether or not the word "fireman" was defined to include former employees. *See Di Falco v. Board of Trustees*, 122 Ill. 2d 22 (1988); *O'Keefe v. Retirement Bd. of the Firemen's Annuity & Benefit Fund*, 267 Ill. App. 3d 960, 963-964 (1st Dist. 1994).

In *Di Falco*, this court found that in Article 4, "the applicable definition of "fireman" [was] 'any person *employed* by a city in its fire service as a fireman.'" 122 Ill. 2d at 27 (quoting 40 ILCS 5/4-106(c))(emphasis added in case). As a result, only those who were currently employed as a fireman could apply for disability benefits. *Id.* at 28. Article 6, by contrast, defines a "fireman" as "any person who (a) *was*, is or shall be employed by a City." *O'Keefe*, 267 Ill. App. 3d at 964 (quoting 40 ILCS 5/6-106 (emphasis added in case)). As the appellate court has recognized, "the difference in definitions," required a different result than in *Di Falco. Id.* "Since the definition of an article 6 fireman includes a person who *was employed* as a fireman, O'Keefe, even after discharge, is entitled to apply for a pension benefit." *Id.* While the specific question in *Di Falco* and *O'Keefe* was the ability to apply for disability benefits rather than to continue to receive them, the statutory analysis used in those cases is directly on point and should govern here.

Unlike Article 6, Article 9 does not include former employees as recipients of disability benefits. This omission is significant because a court should presume that, when the legislature uses certain language in one part of a statute and different language in another part, different meanings were intended. *People v. Chairez*, 2018 IL 121417, ¶18.

The legislature's intent that Article 9 not grant ordinary disability benefits to former employees is further indicated by the definitions it did and did not include in Article 9. Article 9 contains definitions for "employee," "present employee," and "future entrant,"

40 ILCS 5/9-108; 40 ILCS 5/9-109; 40 ILCS 5/9-110. It does not, however, contain any definition for "former employee" or "past employee" or "terminated employee," nor does it define "employee" to include former employees.

In concluding that Article 9 entitles former employees to ordinary disability benefits, the appellate court relied heavily on the fact that Article 9 lists a number of reasons that ordinary disability benefits shall be terminated, and termination from employment is not one of them, A1-17 at ¶¶18, 26, but this argument does not withstand scrutiny.

Section 9-157 provides in relevant part:

> 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.

40 ILCS 5/9-157 (emphasis added).

A review of these reasons demonstrates that (except for an end to the disability) each of these listed reasons for termination specially states that the person is still an employee, that is, a person who is employed in a position at the County. For example, disability payments cease when an *employee* reaches the age of 65 (and the disability commenced prior to reaching age 60 and after 1979). *Id.* Where the person is not an

employee, these reasons are not relevant. Thus, the list is simply not applicable to non-employees.

In addition, this court already rejected in *Di Falco* the appellate court's stated policy reason for allowing disability benefits after termination. The appellate court asserted that the County's statutory interpretation would lead to absurd results because it would allow the County to simply fire severely disabled employees shortly after a brief period of disability. A1-17 at ¶27. The same concern was raised in *Di Falco*, however, and this court rejected that argument because the plaintiff had not shown such abuse and there were safeguards in place that made such abuse highly unlikely. 122 Ill. 2d at 31-32 (pointing to statutory procedures for the discharge of firefighters and the obligation of good faith in discharging probationary officers).

Similarly, here, O'Connell was not terminated shortly after becoming disabled but instead exhausted all paid leave and then received ordinary disability benefits for approximately a year and a half prior to termination and the end of such benefits, *see* C10, ¶ 7; C15, ¶ 31; C30; C85; C10, ¶ 9, so there is no evidence of such abuse in this case. And, like the firefighters in *Di Falco*, Cook County's discharged employees are afforded procedural protections. *See* Rule 9.6 of the Cook County Personnel Rules (affording the right to appeal a discharge to an Employee Appeals Board to all Career Service employees who are not otherwise already protected by a collective bargaining contract). Employees of the District are similarly protected because the District adheres to the Personnel Rules of Cook County. *See generally* 70 ILCS 810/17 (providing that employees of the District are governed by the Cook County human resources ordinance). O'Connell was terminated only after he violated the County's Personnel Rules by failing to provide a return-to-work

date as requested when the time for disability leave ended. Thus, the reasoning in *Di Falco* should apply and this court should again reject the appellate court's policy argument and hold that former employees are not entitled to disability benefits.

Indeed, it is the appellate court's decision that will lead to "absurd results" and thus should be reversed. Under its decision, an employee could resign after becoming eligible for disability benefits with no intention of returning to the County and still be entitled to ongoing benefits. Alternatively, an employee could continue on ordinary disability leave for years, even knowing that he will never again be medically able to do the job, tying up the County's ability to fill the position, and thus burdening his co-workers and reducing the government's ability to deliver essential services.

Finally, the Pension Clause of the Illinois Constitution cannot save O'Connell's claims. The Pension Clause does not create any additional rights but protects only those rights granted by contract or statute. *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶59. There is no contract or statute that grants a former County employee the right to receive disability benefits, and thus the Constitutional provision has no applicability here.

CONCLUSION

For all of the foregoing reasons, this court should reverse the judgment of the appellate court.

Dated: January 11, 2022

Respectfully submitted,

FOREST PRESERVE DISTRICT
OF COOK COUNTY

By: _____
One of Its Attorneys

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CERTIFICATION 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) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 8 pages.

Mary Jean Dolan, One of the Attorneys for the
Forest Preserve District of Cook County

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on January 11, 2022, the undersigned served and filed by electronic means via Illinois Odyssey EFiling this **Amicus Brief** with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, IL 62701. I further certify that the same was served by email to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Amicus Brief bearing the Court's file-stamp will be sent to the above court.

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[x] Under penalties as provided bylaw pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, excepts as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforementioned that she verily believes the same to be true.

Mary Jean Dolan, One of the Attorneys
for Forest Preserve District of Cook County

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