

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2524

LEONARD E. DUNBAR

VS.

LOUISIANA SCHOOL EMPLOYEE RETIREMENT SYSTEM

JUDGMENT RENDERED: NOV - 3 2006

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 530,255, DIVISION I
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE R. MICHAEL CALDWELL, JUDGE



LEONARD E. DUNBAR
BATON ROUGE, LA

PLAINTIFF/APPELLANT
IN PROPER PERSON

WARREN D. PONDER
BATON ROUGE, LA

COUNSEL FOR DEFENDANT/APPELLEE
LOUISIANA SCHOOL EMPLOYEES' RETIREMENT
SYSTEM

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

MCDONALD, J.

Leonard E. Dunbar was employed by the East Baton Rouge Parish School System (School System) as a custodian and was a member of the Louisiana School Employees' Retirement System (LSERS). The School System notified Mr. Dunbar that it was privatizing its maintenance and custodial operations and that his position would be eliminated in March of 2004.

Mr. Dunbar was on sick leave at that time as he had suffered a stroke in December of 2003. Mr. Dunbar applied for disability retirement; however, while his application for disability retirement was pending, he filed an application for early retirement based on his years of service, and this application was approved.

Mr. Dunbar thereafter began receiving retirement benefits and cashed the benefit checks, which were made retroactive to March 15, 2004. In October of 2004, Mr. Dunbar contacted LSERS and asked to withdraw his retirement application and change his status to disability retirement. This request was denied, and Mr. Dunbar thereafter filed suit against LSERS, asserting that he was entitled to monetary damages because he would have received more money from disability retirement than he received from retirement based on his years of service.

LSERS filed a motion for summary judgment asserting that since Mr. Dunbar had received and cashed his retirement checks, his claim for disability retirement benefits was precluded by La. R.S. 11:1141(A). The trial court granted the motion for summary judgment and dismissed the suit. Mr. Dunbar appealed that judgment.

MOTIONS TO SUPPLEMENT THE RECORD

Mr. Dunbar filed two motions to supplement the record on appeal. This court cannot consider evidence that was not part of the record made in the trial court in this suit. **White v. West Carroll Hospital, Inc.**, 613 So.2d 150, 154 (La. 1992). Thus, the motions to supplement the record are denied.

THE MERITS OF THE CASE

Louisiana Revised Statutes 11:1141 provides:

A. Any member may retire upon written application to the board of trustees, if the member at the time of application has attained the age of sixty years and has credit for ten years of accredited service or has attained the age of fifty-five years and has credit for twenty-five or more years of accredited service or at any age with thirty or more years of accredited service. An application for retirement shall be officially filed with the board when received in the office of the director. Retirement benefits shall become effective as of the date an application for retirement is filed in the office of the director or the day after the member terminates from service, whichever is later. A member may only cancel his application for retirement prior to negotiating, cashing, or depositing any benefit check including an estimated benefit check.

In support of its motion for summary judgment, LSERS submitted an affidavit from Patty Traylor, a Retirement Benefits Analyst 3 with LSERS. Ms. Traylor stated that she received an incomplete application for disability retirement from Mr. Dunbar on or about February 9, 2004; that she requested additional information in order to complete the application; that she received a disability report from the East Baton Rouge Parish School Board on or about March 9, 2004; that Mr. Dunbar asked that his application be completed by March 12, 2004, which could not be done because the matter would have to go before the medical review board; that Mr. Dunbar indicated that he would lose medical benefits if his employment lapsed; that on March 12, 2004, she received a second request from Mr. Dunbar changing his request to early retirement, rather than disability retirement;

that this application for early retirement was approved effective March 15, 2004; that monthly benefit checks had been sent to and cashed by Mr. Dunbar; and that LSERS had received a letter dated October 27, 2004, requesting that Mr. Dunbar's status be changed from early retirement to disability retirement.

The trial court gave the following reasons for judgment:

All right. This is a motion for summary judgment filed by the retirement system. Mr. Dunbar did file an opposition. I have reviewed his opposition. The basis of the summary judgment is that though Mr. Dunbar initially applied for disability retirement, for whatever reason he changed his application to a retirement based on years of service as opposed to disability and began receiving benefits for that, cashed those checks and then decided he wanted to pursue his application for disability retirement.

Under the provisions of R.S. 11:1141(A), once he has negotiated, cashed or deposited any benefit check he cannot withdraw his application. So based upon that I am going to grant the motion for summary judgment filed by the School Employees' Retirement System.

After a de novo review of the record, we find that the trial court was correct in granting summary judgment, and we affirm the judgment in accordance with Uniform Rules - Courts of Appeal, Rule 2-16.1.B. Costs are assessed against the appellant, Mr. Leonard E. Dunbar.

APPELLANT'S MOTIONS TO SUPPLEMENT THE RECORD DENIED; JUDGMENT AFFIRMED.