

STATE OF MICHIGAN  
COURT OF APPEALS

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LARNA KING,

Plaintiff-Appellant,

v

CITY OF YPSILANTI and YPSILANTI FINANCE  
DIRECTOR,

Defendants-Appellees.

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UNPUBLISHED

March 3, 1998

No. 197348

Washtenaw Circuit Court

LC No. 96-006379

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Plaintiff is the surviving spouse of former Ypsilanti fire fighter, Jay H. King. Plaintiff seeks the payment of pension benefits from defendants, the City of Ypsilanti and Robert Short, the city's finance director, pursuant to the Fire Fighters and Police Officers Retirement Act, MCL 38.551, *et seq.*; MSA 5.3375(1), *et seq.* Plaintiff appeals as of right the trial court's order denying such benefits to plaintiff. We conclude that we are precluded from deciding the issues raised by plaintiff under the doctrine of the law of the case and affirm.

Plaintiff argues that, based on a previous decision by the Ypsilanti Fire and Police Pension and Retirement Board, and the language of the Fire Fighters and Police Officers Retirement Act, she is entitled to Option I benefits pursuant to § 6(1) of the Act.

This specific issue, whether Larna King is entitled to Option I benefits, was raised and decided in *Ypsilanti v Ypsilanti Fire & Police Pension & Retirement Board*, unpublished opinion per curiam of the Court of Appeals, docket No. 118453, issued 7-25-94. A ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals as to that issue. *Poirier v Grand Blanc Twp (After Remand)*, 192 Mich App 539, 546; 481 NW2d 762 (1992). An appellate court lacks jurisdiction to modify its own judgments except on rehearing, *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988), regardless of the correctness of the prior decision. *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994). If a party objects to the law as stated by

the appellate court, it can only seek rehearing of the ruling or appeal to a still higher tribunal. *People v Whisenant*, 384 Mich 693, 702; 187 NW2d 229 (1971).

Here, even though plaintiff was not a named party in the previous action, the specific question she raises here was necessarily considered and resolved in the prior decision. See *Hawkins v State Treasurer*, 200 Mich App 453, 455; 505 NW2d 10 (1993); *Poirier, supra*, 192 Mich App 546. Therefore, this Court is precluded from considering the issue again.

Relying on the "Past Practices" clause of the collective bargaining agreement between the City and the Ypsilanti Firefighters' Association, plaintiff also argues that because defendants paid Option I benefits to Gladys Mallion, the widow of another retiree in a situation analogous to plaintiff's, defendants have established a past practice regarding the awarding of pension benefits and are required by the collective bargaining agreement to award benefits to plaintiff. Although this particular claim is not addressed in this Court's unpublished opinion, this Court did specifically decide the issue whether plaintiff was entitled to the benefits she seeks. Plaintiff does not present any new facts, as the Mallion case was decided by the board in 1961, long before plaintiff's action in this matter. *City National Bank of Detroit v Westland Towers Apts*, 152 Mich App 136, 148; 393 NW2d 554 (1986). Plaintiff simply poses a new argument which was not raised in the previous case before this Court. Because this Court specifically decided that plaintiff is not entitled to Option I benefits under either the clear language of MCL 38.556(2)(d); MSA 5.3375(6)(2)(d), or the provisions in the collective bargaining agreement, and plaintiff raises those identical arguments in this case, this Court is precluded from deciding plaintiff's claims.

Affirmed.

/s/ Roman S. Gribbs  
/s/ William B. Murphy

I concur in result only.

/s/ Hilda R. Gage