

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR LAUDERDALE,

Plaintiff-Appellant,

v

DETROIT GENERAL RETIREMENT SYSTEM,
and CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED

June 18, 1999

No. 195662

Wayne Circuit Court

LC No. 96-601959 CZ

ON REMAND

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

PER CURIUM.

This case is before this Court for the second time by order of the Supreme Court entered on February 25, 1999. 459 Mich 941 (1999). That order vacated this Court's July 25, 1997 decision granting plaintiff summary disposition pursuant to MCR 2.116(C)(7) and reversing summary disposition in favor of defendants.¹ This Court's decision found the trial court to have erred in considering whether plaintiff's pension benefits were subject to coordination where the worker's compensation bureau had determined the issue; thus, barring relitigation by collateral estoppel. We now affirm the decision of the trial court.

Because of the Supreme Court's order rejecting our resolution based on the doctrine of collateral estoppel, we now address plaintiff's claims filed in his original appellant's brief to this Court.² First, plaintiff claims the trial court erred in failing to find some genuine issue as to any material facts and improperly granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We disagree.

On appeal, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Spiek, supra*, 456 Mich at 337. Giving the benefit of reasonable doubt to the nonmoving party, the court must determine whether a record might be

developed which will leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). This Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998).

The charter of the City of Detroit indicates that the city's pension plan was established before March 31, 1982.³ Therefore, whether that plan is subject to coordination is dependent on a determination of whether the plan was renewed after March 31, 1982, pursuant to MCL 418.354(14); MSA 27.237(354)(14). In determining if a disability pension plan has been renewed for coordination purposes, this Court has stated, "that changes in a pension plan as a result of collective bargaining constitute renewal of the plan within the meaning of § 354(14)." *Murphy v City of Pontiac*, 221 Mich App 639, 643; 561 NW2d 882 (1997).

In support of its motion for summary disposition, the City of Detroit submitted a supplemental agreement, dated April 2, 1990, to the collective bargaining agreement between plaintiff's union and the City of Detroit, covering sickness, accident and long term disability benefits. A provision in the agreement provides that a monthly extended disability benefit will be reduced by an amount equal to the total of various other benefits to which an employee was entitled, including, "[a]ny government paid income benefits paid as a result of City service." Thus, it appears that the pension plan was "renewed" within the meaning of MCL 418.354(14); MSA 27.237(354)(14). Since the renewed pension plan did not expressly prohibit the coordination of worker's compensation benefits with duty disability pension benefits, plaintiff's worker's compensation benefits could properly be coordinated with his duty disability pension benefits. *Murphy, supra*, 221 Mich App at 644.

In *Tyler v Livonia Public Schools*, 459 Mich 382; ___ NW2d ___ (1999), our Supreme Court addressed the question of whether § 354(14) applies to a statutorily created pension plan. The Court determined that a disability pension awarded under the Public School Employees Retirement Act ("PSERA") was not shielded from coordination with worker's compensation benefits because statutorily created pensions are not subject to § 354(14). *Id.* at 390-391. We decline to extend the Court's holding to the facts of this case because here plaintiff's duty disability pension was the subject of a collective bargaining agreement between plaintiff's union, American Federation of State County and Municipal Employees (AFSCME), and GRS. Thus, the pension was not statutorily created.

Next, plaintiff claims the trial court erred in denying his motion to amend his complaint. This Court reviews a trial court's grant or denial of a motion for leave to amend a pleading for an abuse of discretion. *Horn v Dep't of Corrections*, 216 Mich App 58, 65; 548 NW2d 660 (1996). Plaintiff amended his complaint twice in the 36th District Court. After the amendments, the case was removed to Wayne Circuit Court. There the court denied plaintiff's motion to amend his complaint for a third time. The rules pertaining to the amendment of pleadings are designed to facilitate amendment unless prejudice to the opposing party would result. *International Brotherhood of Electrical Workers, Local 58 v McNulty*, 214 Mich App 437, 447; 543 NW2d 25 (1995). Leave to amend a pleading shall be freely given when justice so requires. MCR 2.118(A)(2). Accordingly, a motion to amend should ordinarily be denied only for particularized reasons. *International Brotherhood of Electrical Workers, Local 58, supra*, 214 Mich App at 447. Such reasons include undue delay, bad faith or a

dilatory motive on the part of the movant, repeated failure to cure deficiencies through previous amendments, undue prejudice to the opposing party, or futility of an amendment. *Horn v Department of Corrections*, 216 Mich App 58, 65; 548 NW2d 660 (1996).

Plaintiff argued eloquently in his motion to amend his complaint for the third time that “during the course of discovery and the numerous hearings before the court, it has become apparent to Plaintiff that, in order to address all of the issues which form the fabric of conflict between the parties, the interests of justice require Plaintiff to amend his Complaint.” However, in his brief in support of the motion, plaintiff simply reargued his assertion that defendants improperly coordinated his benefits, and the proposed amendment raised no new issues. Plaintiff had already amended his complaint twice, and the amendment proposed by plaintiff did not raise any new issues. Allowing plaintiff to amend his complaint for a third time would have resulted in an undue delay in the litigation. Accordingly, it does not appear that the trial court’s denial of plaintiff’s motion to amend his complaint for the third time constituted an abuse of discretion.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Roman S. Gribbs

¹ *Lauderdale v Detroit General Retirement System and City of Detroit*, unpublished opinion per curiam of the Court of Appeals, decided July 25, 1997 (Docket No. 195662).

² The factual history of this case has been set forth in our previous opinion and is revisited in pertinent part:

Beginning in 1979, plaintiff was employed by the City of Detroit as a bus mechanic. On December 5, 1989, while at work, plaintiff injured his right thumb. Plaintiff asserts that this injury was not disabling at that time, but that he became disabled due to hypertension and/or a heart disorder on April 10, 1990. In February 1992, plaintiff had surgery on his right thumb. The surgery was unsuccessful and resulted in a permanent disablement of plaintiff’s thumb. In July 1993, defendant General Retirement System (GRS), which was established by the City of Detroit charter for the purpose of providing retirement and death benefits for employees of the City of Detroit, began making monthly \$475 duty disability pension payments to plaintiff. Although defendants assert that the duty disability benefits were based only on plaintiff’s thumb injury, plaintiff argues that the benefits were based on his hypertension/heart condition.

In October 1993, the Bureau of Worker’s Disability Compensation determined that plaintiff was disabled due to the work-related thumb injury, and ordered that the City of Detroit pay plaintiff \$421.22 per week, retroactive to December 1989. The

order of the worker's compensation bureau further stated that "Defendant [City of Detroit] shall not coordinate the duty disability pension being received by plaintiff pursuant to MCL 418.354(14)." However, when GRS discovered that plaintiff was receiving both worker's compensation benefits and duty disability pension benefits for the thumb injury, it determined that plaintiff's benefits were subject to coordination pursuant to MCL 418.354(14); MSA 17.237(354)(14). GRS informed plaintiff that it was entitled to recover \$2,850 in pension benefits paid to him and, in February 1995, began deducting \$100 from each of plaintiff's monthly retirement checks.

Plaintiff filed the instant action against defendants, arguing that the deductions were improper because his benefits were not subject to coordination. Essentially, plaintiff sought enforcement of his worker's compensation award, which prohibited the coordination of his benefits. GRS moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The City of Detroit moved for summary disposition pursuant to MCR 2.116(C)(4), (7), (8), and (10). Defendants argued that no genuine issue of material fact existed, because plaintiff's worker's compensation benefits were subject to coordination with his duty disability benefits pursuant to MCL 418.354(14); MSA 17.237(354)(14). . . The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10), on the ground that coordination of plaintiff's benefits was permissible under MCL 418.354(14); MSA 17.237(354)(14). [*Lauderdale, supra* at slip pp 1-2.]

³ The charter indicates an effective date of July 1, 1938 for the city's pension plan.