

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE17-002456 (21)
JUDGE: RAAG SINGHAL

JEREMIAH BRUTUS,
Plaintiff,

v.

FORT LAUDERDALE POLICE AND FIRE
RETIREMENT SYSTEM BOARD OF TRUSTEES,
Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE came before this Court on Plaintiff's Motion for Summary Judgment, filed January 24, 2018, and Defendant's Cross Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, filed May 1, 2018. This Court, having considered the motions, having heard argument of counsel, having reviewed the court file, and being otherwise duly advised in the premises, rules as follows:

On December 10, 2013, Jeremiah Brutus ("Plaintiff") was employed full time by the City of Fort Lauderdale Police Department ("Police Department") to become a certified law enforcement officer in compliance with sections 943.13 and 943.1395, Florida Statutes. As a result, Plaintiff became a member of the Fraternal Order of Police, Lodge 31 ("FOP"), the collective bargaining representative of police officers. Plaintiff also began contributing to the Fort Lauderdale Police and Fire Retirement System, the Police Department's pension plan ("Pension Plan"). Plaintiff has since contributed \$14,475.96 to the Pension Plan, which the Board continues to hold. The Pension Plan is governed by certain provisions of Chapter 185, Florida Statutes, and

is codified in Division 3 “Police and Firefighters Retirement System,” Article IV “Pensions” of Chapter 20 of Fort Lauderdale’s Code of Ordinances (“City Code”).

On January 21, 2014, Plaintiff registered to attend the 291st Broward County Police Academy (“Police Academy”). On February 25, 2014, Plaintiff injured his right knee while participating in an obstacle course training exercise at the Police Academy. As a result of the injury, Plaintiff was placed on light duty and was transferred to the Evidence Unit. Thereafter, also in 2014, worker’s compensation authorized surgery for Plaintiff to have his right knee repaired as well as a manipulation of the knee. On September 1, 2015, Plaintiff underwent another surgery to further repair his right knee. On August 29, 2016, Plaintiff filed an in-line-of-duty permanent total disability application with the Defendant, Fort Lauderdale Police and Fire Retirement System Board of Trustees (the “Board”). The Board sent Plaintiff to be examined by the Board’s medical panel, which found Plaintiff to be permanently totally disabled because of the injury.

The Police Department then terminated Plaintiff’s employment on September 13, 2016, as he was unable to complete his training and graduate from the Police Academy. On October 14, 2016, Plaintiff’s application for disability retirement benefits was denied because Plaintiff was not certified as a law enforcement officer or capable of becoming certified and was therefore not a member of the Pension Plan. Instead, Plaintiff would be eligible to receive a return of his Pension Plan contributions. On January 9, 2017, the Board provided written notice of the denial of Plaintiff’s application for disability retirement benefits.

On January 24, 2018, Plaintiff filed the instant Motion for Summary Judgment for entitlement to in-line-of-duty permanent total disability benefits under section 112.66(5), Florida Statutes. Plaintiff also filed an Appendix to Motion for Summary Judgment (hereinafter “Pl. Supp. App.”). On May 1, 2018, the Board filed its Cross Motion for Summary Judgment and Opposition

to Plaintiff's Motion for Summary Judgment and an Appendix in Support of Motion for Summary Judgment and Opposition to City's Motion for Summary Judgment (hereinafter "Def. Opp'n App."). On May 21, 2018, this Court heard oral argument from counsel on both motions.

A motion for summary judgment should be granted "if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c). "The law is well settled in Florida that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought." *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985) (citing *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29 (Fla. 1977)); *see also Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966)). "[S]ummary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." *Morris*, 475 So. 2d at 668 (citing *Shaffran v. Holness*, 93 So. 2d 94, 97-98 (Fla. 1957)). In this case, the parties have stipulated that there are no factual issues in dispute and the actual controversy is concentrated on a limited legal issue. Therefore, summary judgment is appropriate because no genuine issue of material fact exists. *Id.*

This case involves the narrowed issue of whether Plaintiff meets the statutory definition of "police officer" pursuant to section 185.02(16), Florida Statutes, to be covered under the beneficiary and retirement act of section 112.66(5), Florida Statutes. The polestar of a statutory construction analysis is legislative intent. *See Borden v. E.-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006). "The Legislature's intent must be determined primarily from the language of the statute." *Palm Beach Gardens Police Pension Fund Bd. of Trs. v. Mitchell J. Beers, P.A.*, 842 So. 2d 911, 913 (Fla. 4th DCA 2003). To discern legislative intent, a court looks first to the plain and

obvious meaning of the statute's text, "which may be ascertained by reference to a dictionary definition." *Robinson v. State*, 205 So. 3d 584, 590 (Fla. 2016) (citing *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000)). "It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage." *Hechtman v. Nations Title Ins.*, 840 So. 2d 993, 996 (Fla. 2003). Even "[t]he title is more than an index to what the section is about or has reference to; it is a direct statement by the legislature of its intent." *State v. Webb*, 398 So. 2d 820, 825 (Fla. 1981); *see also Gulfstream Park Racing Ass'n v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 605 (Fla. 2006). If the language of the statute is "clear and unambiguous and conveys a clear and definite meaning" there is no need to resort to statutory construction. *Headley v. City of Miami*, 215 So. 3d 1, 7 (Fla. 2017) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). If, however, an ambiguity exists, a court should look to the rules of statutory construction to help interpret legislative intent. *See, e.g., Gulfstream Park Racing Ass'n*, 948 So. 2d at 606–07.

"The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005) (citing *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)). In ascertaining the legislative intent, a court must consider the plain language of the statute, give effect to all statutory provisions, and construe related provisions in harmony with one another. *See M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000). "Municipal ordinances are subject to the same rules of construction as are state statutes." *Rinker Materials Corp. v. N. Miami*, 286 So. 2d 552, 553 (Fla. 1973) (citing *Rose v. Hillsboro Beach*, 216 So. 2d 258, 259 (Fla. 4th DCA 1968)).

As such, this Court must consider Chapter 185, Florida Statutes, and the City Code, as a whole, when applying the definitions of “police officer” to the facts of this case.

Based on the clear language of section 185.01, Florida Statutes, which states “that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers . . . in such manner as to maximize the protection of police officers’ retirement trust funds,” a local ordinance is required to comply with Chapter 185, Florida Statutes, and provide minimum benefits and meet minimum standards. § 185.01(1)–(2), Fla. Stat.; *see also Kilpatrick v. Sklar*, 548 So. 2d 215, 218 (Fla. 1989) (noting that because of the inherent dangers in duties performed by police officers “special funds and programs have been established to compensate them in the event they suffer injury or death while acting in the course of their employment.”). The plain and ordinary meaning of section 185.01, Florida Statutes, is evident, the section is unambiguous, and the court need not go further in analyzing its’ meaning. In determining the meaning of “police officer” to decide the narrowed issue in this case, however, this Court must read section 185.02(16), Florida Statutes, as a whole and *in pari materia* with the definition of “police officer” in section 20-127., City Code. This Court must then reconcile that definition with the definitions of “employee” and “member,” as those terms are also used in the employment benefit context here.

Plaintiff argues that he is entitled to disability retirement benefits pursuant to a strict reading of the definition of the term “police officer” in section 185.02(16), Florida Statutes. Section 185.02(16), Florida Statutes, provides that the term “‘Police officer’ **means any person who is** elected, appointed, or **employed full time** by a municipality, **who is** certified or **required to be certified** as a law enforcement officer in compliance with s. 943.1395” § 185.02(16), Fla. Stat. (emphasis added). In particular, Plaintiff argues that the word “or” is disjunctive and permits a “police officer” to be someone who is not certified as a law enforcement officer. *Id.*

Additionally, the Notice of Appointment, dated December 18, 2013, specifies that Plaintiff was assigned the position of “Police Officer,” effective December 10, 2013, as a “regular full time” employee. (Pl. Supp. App. p. 5); *see also* (Def. Opp’n App. p. 44); *but see* (Def. Opp’n App. p. 43, 46–47) (describing the assigned position as “non-certified” police officer). The Board disagrees and asserts that Plaintiff is not an “employee” because he never became a “regular employee[] of the City” and he is not a “police officer” because he did not receive his “State Certification.” §§ 20-126. & 20-127., City Code. Additionally, the Board maintains that Plaintiff was not a “Member” because he was not an employee and he did not graduate from the Police Academy or “fulfill[] the prescribed participation requirements.” § 20-127., City Code. Furthermore, the City Code specifies that the Board has the sole responsibility to construe provisions of the Pension Plan and decide all claims. *See* § 20-132.(a), City Code (“The general administration and responsibility for the proper operation of the System and for making effective the provisions of this article are hereby vested in a Board of Trustees . . .”).

Section 185.06(4), Florida Statutes, provides that “[t]he sole and exclusive administration of . . . the proper operation of the [Pension Plan] and for making effective the provisions of this chapter are vested in the [B]oard” § 185.06(4), Fla. Stat. “The [Administrative Procedure] Act . . . contemplates that courts, not agencies, will authoritatively resolve ambiguities in statutes and regulations.” *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1211 (2015) (Scalia, J., concurring in the judgment); *see also* Administrative Procedure Act of 1926, 5 U.S.C. § 553(b)(A) (2018). “However, when a statutory term is subject to varying interpretations and that statute has been interpreted by the executive agency charged with enforcing the statute,” a reviewing court follows a deferential principle of statutory construction: an agency’s interpretation of the statute that it is charged with enforcing is entitled to great deference. *GTC, Inc. v. Edgar*, 967 So. 2d 781,

785 (Fla. 2007).¹ A reviewing court should “not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is ‘clearly unauthorized or erroneous.’” *Id.* (quoting *Level 3 Communs., LLC v. Jacobs*, 841 So. 2d 447, 450 (Fla. 2003)).² In light of the language of the statute and the City Code, the Board’s denial of Plaintiff’s application for disability retirement benefits was neither unreasonable nor clearly erroneous.

Here, Plaintiff had just begun his training in the Police Academy Basic Recruit Training Program when the injury occurred. *See* (Def. Opp’n App. p. 40). As a result of said injury, Plaintiff remained on light duty and was unable to complete his training, graduate from the Police Academy, or become certified as a police officer under section 943.13, Florida Statutes. *See* (Def. Opp’n App. p. 40–42). Despite the Court’s sympathy for Plaintiff and respect for his injury, under the terms of Chapter 185, Florida Statutes, and the City Code, a police officer must be certified pursuant to section 943.13, Florida Statutes, to be entitled to disability retirement benefits. Although Plaintiff had begun contributing to the Pension Plan, mere contribution to the Pension Plan does not entitle him to disability retirement benefits.³ Instead, Plaintiff should receive a return of his contributions to the Pension Plan.

Accordingly, it is:

ORDERED AND ADJUDGED that Defendant’s Cross Motion for Summary Judgment and Opposition to Plaintiff’s Motion for Summary Judgment is hereby GRANTED. Accordingly, Plaintiff’s Motion for Summary Judgment is hereby DENIED. Defendant, as the prevailing party,

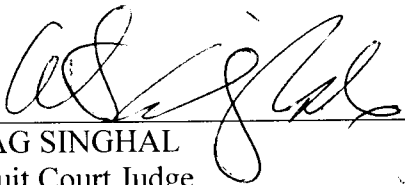
¹ *But see id.* at 1213 (Thomas, J., concurring in the judgment) (noting “constitutional concerns” raised by the legal precedent that “requires judges to defer to agency interpretations of regulations . . .”).

² *But see id.* at 1221 (Thomas, J., concurring in the judgment) (“When courts refuse even to decide what the best interpretation is under the law, they abandon the judicial check [of the check and balance system].”).

³ Plaintiff’s contribution to the Pension Plan amounts to \$14,475.96. *See* (Def. Opp’n App. p. 39). However, if entitled to disability retirement benefits, Plaintiff would receive a projected value of \$542,336.00 throughout his lifetime. *See* (Def. Opp’n App. p. 13–18).

is entitled to attorney's fees and costs pursuant to section 185.05(5), Florida Statutes. The Court retains jurisdiction to determine Defendant's reasonable attorneys' fees, pursuant to an evidentiary hearing to be set by this Court upon further notice.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on
July 19, 2018.



RAAG SINGHAL
Circuit Court Judge

cc: All persons listed on e-Portal Service List.