

Duty v. Louisiana Firefighters' Retirement System

Court of Appeal of Louisiana, Third Circuit. | February 22, 2012 | Not Reported in So.3d | 2012 WL 555152

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2012 WL 555152

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
Third Circuit.

Jack L. DUTY

v.

LOUISIANA FIREFIGHTERS' RETIREMENT
SYSTEM and City of Natchitoches.

No. 11–1073.

|
Feb. 22, 2012.

Appeal from The Tenth Judicial District Court Parish
of Natchitoches, Docket No. 81,283, Honorable [Eric R.
Harrington](#), District Judge.

Attorneys and Law Firms

[Edwin Dunahoe](#), Dunahoe Law Firm, [Natchitoches](#), LA,
for Plaintiff/Appellant, [Jack L. Duty](#).

[Ronald E. Corkern, Jr.](#), Corkern, Crews, & Guillet,
L.L.C., Natchitoches, LA, [Steven M. Oxenhandler](#),
[Michael J. O'Shee](#), Gold, Weems, Bruser, Sues &
Rundell, Alexandria, LA for Defendant/Appellee, City of
Natchitoches.

Court composed of [SYLVIA R. COOKS](#), [ELIZABETH
A. PICKETT](#) and [PHYLLIS M. KEATY](#), Judges.

[COOKS](#), Judge.

FACTS AND PROCEDURAL HISTORY

*1 [Jack L. Duty](#), ([Duty](#)) is a retired firefighter who
worked for the City of [Natchitoches](#) ([Natchitoches](#)).
Duty's petition does not chronicle the dates or years
of his employment, or the date of his retirement
as a firefighter for [Natchitoches](#), but alleges he is
a retired firefighter receiving retirement benefits from
the Louisiana Firefighters' Retirement System (LFRS).
He asserts [Natchitoches](#) did not make the proper
contributions into the retirement system for him as its
employee, and, consequently, he is not receiving the

amount of retirement benefits he should be receiving.
Duty alleges [Natchitoches](#) “failed to take into account
regularly scheduled overtime,” which [La.R.S. 11:233\(B\)
\(2\)\(a\)](#) requires be used by [Natchitoches](#) in calculating the
contributions to be made to Duty's retirement fund with
LFRS. This alleged miscalculation also adversely affects
Duty's Deferred Retirement Option Plan (DROP) funds
which Duty alleges he is entitled to receive. Duty seeks
to represent the class of all persons similarly affected but
there has been no class certification to date.

As this litigation proceeded, [Natchitoches](#) filed an
exception of prescription asserting that any of Duty's
claims which arose more than three years prior to the
date suit was filed are prescribed. The trial court granted
[Natchitoches](#)' exception of prescription. In response to
discovery requests filed by Duty, [Natchitoches](#) thereafter
filed a motion for a protective order seeking to limit
discovery to three years prior to the filing of Duty's
suit. During the hearing on [Natchitoches](#)' motion for
a protective order, LFRS made an oral exception
of prescription asserting that any claims by Duty
for recovery of compensation benefits to be paid by
LFRS should be limited to three years prior to the
filing of this suit. The trial court sustained LFRS'
exception of prescription. Duty appealed the trial court's
judgment granting LFRS' exception. This court, in an
unpublished opinion, dismissed Duty's appeal as the
judgment appealed from was not certified as a final and
immediately appealable judgment. See [Duty v. Louisiana
Firefighters' Retirement System and City of Natchitoches](#),
10–1226 (La.App. 3 Cir. 12/1/10), 51 So.3d 909. The trial
court subsequently rendered written reasons for judgment
and certified the March 8, 2010 judgment on LFRS'
exception of prescription as a final judgment immediately
appealable. Duty now appeals that judgment alleging
one issue for our consideration. Duty asserts that his
claim against LFRS for improperly calculated retirement
benefits is subject to a ten year prescriptive period, not a
three year period as applied by the trial court.

DISCUSSION

This court recently addressed this issue in [Thibodeaux v.
City of Breaux Bridge](#), 11–851 (La.App. 3 Cir. 12/14/11)
(unpublished opinion). In [Thibodeaux](#), the plaintiff police
officers employed by the city sued Breaux Bridge, alleging
that it never made any contributions to the retirement

system on behalf of the plaintiffs therein. Plaintiffs asserted, therefore, they were not receiving any benefits from the Municipal Police Employee's Retirement System (MPERS). The plaintiffs in *Thibodeaux* argued that the matter was a contract dispute subject to the ten-year liberative prescription provisions found in [La.Civ.Code art. 3499](#). We rejected that argument.

***2** Duty argues that his claims are for both contributions improperly made and benefits which are being improperly paid to him. He acknowledges that what he identifies as his claim for “contributions” improperly made is subject to a three year prescriptive period. He argues, however, that his claim for “benefits” not being paid to him are subject to a liberative prescription of ten years as provided in [La. Civ.Code art. 3499](#). Duty argues, as did the police officers in *Thibodeaux*, that this claim for “benefits” is a personal action and that [La.Civ.Code art. 3499](#) provides: “Unless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years .”

Prescription concerning recovery of “compensation for services rendered” is provided for by other legislation, namely [La.Civ.Code art. 3494](#) (emphasis added):

The following actions are subject to a liberative prescription of three years:

- (1) An action for the recovery of *compensation for services rendered*, including payment of salaries, wages, commissions, tuition fees, professional fees, fees and emoluments of public officials, freight, passage, money, lodging, and board; ...

Retirement contributions and retirement benefits are deferred “compensation for services rendered.” *Fishbein v. State ex rel. La. State University Health Sciences Center*, 04–2482, p. 7, (La.4/12/05), 898 So.2d 1260, 1265.

This petition to recover underpaid “compensation for services rendered” is admittedly a personal action as defined by Louisiana Civil Code of Procedure article 422. However, the ten year prescriptive period set forth in [article 3499](#), is only applicable to personal actions “unless otherwise provided for by legislation.” [La.Civ.Code art. 3499](#). The prescriptive period for the instant consolidated suits for the recovery of underpaid wages is *otherwise provided for* in [article 3494](#) ..., for that article, as earlier indicated, provides a three

year prescriptive period for personal actions seeking “compensation for services rendered.”

Grabert v. Iberia Parish Sch. Bd., 93–2715, p. 2 ([La.7/5/94](#)), 638 So.2d 645, 647 (footnote omitted).

As the Louisiana supreme court stated in *Fishbein*, 898 So.2d at 1265–66 (emphasis added) (footnote omitted):

This court has recognized that *retirement contributions represent “an increasingly important part of an employee's compensation for his services.”* *Andrepoint v. Lake Charles Harbor & Terminal Dist.*, 602 So.2d 704, 708 (La.1992). Because of this, many courts have found in a variety of factual contexts *that retirement benefits are deferred compensation for services.* *Id.* In *T.L. James & Co., Inc. v. Montgomery*, 332 So.2d 834, 851 (La.1975) (on rehearing), this court concluded that an employer's contribution into a retirement-type plan “is not a purely gratuitous act, but it is in the nature of additional remuneration to the employee who meets the conditions of the plan. The employer expects and receives something in return for his contribution, while the employee, in complying, earns the reward. The credits to these plans, when made, are in the nature of compensation (although deferred until contractually payable).” Relying on this portion of *T.L. James*, the *Andrepoint* court concluded there is ample support for determining that contributions to retirement plans are among the emoluments of employment and can be considered deferred compensation. *Andrepoint*, 602 So.2d at 708.

***3** We reaffirm our previous statements that *contributions to retirement plans are a form of deferred compensation.* Consequently, we find that plaintiff's claim is one for compensation for services rendered. The applicable prescriptive period, then, is found in [La. C.C. art. 3494](#), which provides that an action for the recovery of compensation for services rendered is subject to a liberative prescription of three years.

Thus, both the “contributions” to Duty's retirement fund with LFRS and retirement “benefits” he is receiving are forms of deferred compensation for the services he performed and as such his claims concerning either are subject to the three year prescriptive period legislatively provided for in [La.Civ.Code art. 3494](#). We again reiterate that our holdings in *Deshotels v. Village of Pine Prairie*, 09–670 (La.App. 3 Cir. 12/9/09), 26 So.3d 975, writ denied,

10-429 (La.4/30/10), 34 So.3d 293, *Coker v. Town of Glenmora*, 09-1432 (La.App. 3 Cir. 5/5/10), 37 So.3d 532, writ denied, 10-1302 (La.10/1/10), 45 So.3d 1096, and the state supreme court's holding in *Fishbein*, 898 So.2d 1260, are applicable here. Finding no error in the trial court's ruling, we affirm the judgment. All costs of this appeal are assessed against Plaintiff/Appellant Jack L. Duty.

AFFIRMED.

All Citations

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