

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

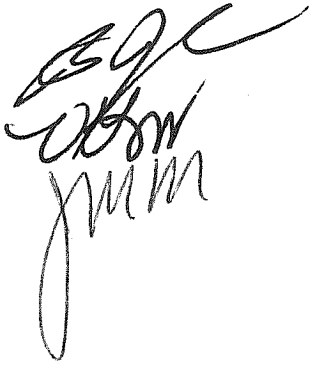
NO. 2006 CA 0848

LEONARD DUNBAR

VERSUS

EAST BATON PARISH SCHOOL BOARD

Judgment Rendered: February 9, 2007.



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On Appeal from the
19th Judicial District Court,
in and for the Parish of East Baton Rouge
State of Louisiana
District Court No. 533,169

The Honorable Wilson Fields, Judge Presiding

* * * * *

Leonard E. Dunbar
Baton Rouge, La.

Plaintiff/Appellant,
In Proper Person

Shelton Dennis Blunt
Baton Rouge, La.

Counsel for Defendant/Appellee,
East Baton Rouge Parish School
Board

* * * * *

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

CARTER, C.J.

Plaintiff, Leonard E. Dunbar, appeals the trial court judgment granting defendant, East Baton Rouge Parish School Board's, peremptory exceptions raising the objections of no right of action and no cause of action and dismissing plaintiff's petition with prejudice.¹ For the following reasons, we affirm.

FACTS

Plaintiff was employed by the East Baton Rouge Parish (EBRP) School System and was a member of the Louisiana School Employees' Retirement System (LSERS). In December 2003, Plaintiff suffered a stroke and applied for disability retirement benefits. While his application for disability retirement benefits was pending, plaintiff filed an application for early retirement. The application for early retirement was approved, and plaintiff began receiving service retirement benefits.

Alleging that his disability retirement benefits would have been larger than his benefits for service retirement, plaintiff filed suit against the EBRP School Board. It is plaintiff's position that a delay in the execution of a "12B form" by employees of the EBRP School Board resulted in the denial of his disability retirement benefits.

In response, the EBRP School Board filed peremptory exceptions raising the objections of no right of action and no cause of action and declinatory exceptions raising the objections of vagueness and nonconformity of the petition. On January 19, 2006, the trial court signed a

¹ Judge Leon Cannizzaro, sitting for Judge Wilson Fields, presided over the hearing on defendant's exceptions and signed the January 19, 2006, judgment.

judgment sustaining the peremptory exceptions and dismissing plaintiff's suit with prejudice. Plaintiff appeals.

APPELLATE MOTIONS

The EBRP School Board has filed two motions for this court's consideration. First, the EBRP School Board has filed a motion to strike plaintiff's brief as non-compliant with Rule 2-12.4 of the Uniform Rules of Louisiana Courts of Appeal. The second motion filed by the EBRP School Board is a motion to strike numerous "amendments" filed by the plaintiff in the district court record after the district court entered its final judgment of dismissal.

Plaintiff is a non-attorney who conducted this litigation on his own behalf. Plaintiff must realize that, when he decided to represent himself, he assumed all responsibility for his lack of knowledge of procedural and substantive law. See Murray v. Town of Mansura, 06-355 (La. App. 3 Cir. 9/27/06), 940 So.2d 832, 845. The trial court and opposing counsel have been extremely tolerant throughout this litigation; plaintiff has not been held to the same standards of skill to which an attorney would have been held. Extending this same consideration to plaintiff on appeal, the EBRP School Board's motion to strike plaintiff's brief due to a violation of the Uniform Rules is denied.

However, we grant the EBRP School Board's motion to strike the amendments filed in district court after the trial court entered its final judgment of dismissal on January 19, 2006. The trial court did not grant Mr. Dunbar leave under LSA-C.C.P. art. 934 to amend his petition; therefore, these filings are not properly part of the record on appeal.

DISCUSSION

Because the peremptory exception raising the objection of no cause of action raises a question of law and the trial court's decision is based only on the sufficiency of the petition, an appellate court conducts de novo review. **Ramey v. DeCaire**, 03-1299 (La. 3/19/04), 869 So.2d 114, 119.

The function of the peremptory exception raising the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. No evidence may be introduced to support or controvert the exception raising the objection of no cause of action. LSA-C.C.P. art. 931; **Ramey**, 869 So.2d at 118. Well-pleaded allegations of fact are accepted as true. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. See Ramey, 869 So.2d at 118.

If the court finds that the exception of no cause of action should be granted, but the grounds of the objection may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. LSA-C.C.P. art. 934. However, if the grounds of the objection cannot be removed, the action shall be dismissed. Id.

Mr. Dunbar acknowledges that he voluntarily switched his application with LSERS from one for disability retirement to one for regular service retirement. However, he maintains that his decision was based in part on the failure of EBRP School Board employees to timely complete the necessary form for disability retirement.

The legislature fulfilled its constitutionally imposed duty to provide for the retirement of employees of the public education system through the establishment of LSERS in LSA-R.S. 11:1001A. See LSA-Const. art. 10, §29A. Louisiana Revised Statutes 11:1161 further provides that the general administration and responsibility for the proper operation of the retirement system is vested in a board of trustees. Mr. Dunbar has not cited, nor is this court aware of, any duty imposed on the EBRP School Board to assure its employee's paperwork is properly filed with LSERS or to regulate an employee's voluntary selection of a retirement package. Moreover, the EBRP School Board has no authority to determine the characterization of the retirement benefits to be paid to an employee by LSERS or, for that matter, whether any benefits are to be paid.

Mr. Dunbar admits that he voluntarily filed an application for service retirement benefits. In a separate suit, Mr. Dunbar sued LSERS for refusing to change his status to disability retirement. This court noted that, because Mr. Dunbar had received and cashed his retirement checks, his claim for disability retirement benefits was precluded under LSA-R.S. 11:1141A. **Dunbar v. Louisiana School Employees' Retirement System**, 05-2524 (La. App. 1 Cir. 11/3/06) (not designated for publication).

Following a de novo review, we conclude that, even accepting the allegations of Mr. Dunbar's petition as true, Mr. Dunbar fails to state a cause of action against the EBRP School Board. While it is true that under LSA-C.C.P. art. 934, where a petition fails to state a cause of action, a plaintiff should be allowed to amend his demand if the grounds of the objection can be removed by amendment, we conclude that no amendment could possibly

cure the deficiencies in Mr. Dunbar's claims. Accordingly, Mr. Dunbar's petition was properly dismissed with prejudice. See Ferrington v. Louisiana Board of Parole, 03-2093 (La. App. 1 Cir. 6/25/04), 886 So.2d 455, 459, writ denied, 04-2555 (La. 6/24/05), 904 So.2d 741.

Finding Mr. Dunbar has failed to state a cause of action, it is unnecessary for this court to decide whether a right of action exists. See Comm-Care Corp. v. Bishop, 96-1711 (La. 1/21/98), 706 So.2d 425, 427.

CONCLUSION

For the above stated reasons, the trial court judgment sustaining the peremptory exception of no cause of action and dismissing plaintiff's suit with prejudice is affirmed. Costs of this appeal are assessed to plaintiff, Leonard E. Dunbar.

MOTION TO STRIKE BRIEF DENIED; MOTION TO STRIKE AMENDMENTS FILED AFTER JANUARY 19, 2006, GRANTED; JUDGMENT AFFIRMED.