

STATE OF INDIANA

IN THE LAKE SUPERIOR COURT

COUNTY OF LAKE

CIVIL DIVISION ROOM ONE

HAMMOND, INDIANA

MARY BROWN,

Plaintiff,

Cause No. 45D01-1611-PL-124

v.

GREG ZOELLER, individually;
CURTIS HILL, in his official capacity as
Indiana Attorney General; and
PAUL JOYCE, individually and in his
official capacity as State Examiner of
the Indiana State Board of Accounts,
Defendants.

Filed in Open Court

JUN 25 2018

Mary Brown
CLERK OF COURT
CLERK LAKE SUPERIOR COURT

ORDER

The plaintiff, Mary Brown, appears in person and by her Attorney Clorius L. Lay, and the defendants Greg Zoeller, individually, Curtis Hill, in his official capacity as Indiana Attorney General, and Paul Joyce, individually and in his official capacity as State Examiner of the Indiana State Board of Accounts, appear by their Attorney, Jefferson S. Garn, for hearing on the defendants' Motion for Summary Judgment. The Court has reviewed the submissions of the parties and heard oral argument.

Brown has been a continuous employee of the Gary Sanitary District since 1995. She was elected to the Gary Common Council in 1999, took office in 2000, and has been re-elected five times to four year terms on the Council.

While Brown was serving her fourth term of office, IC 3-5-9 was enacted and took effect on January 1, 2013. I.C. 3-5-9-5 provides as follows:

Except as provided in section 7 [IC 3-5-9-7] of this chapter, an individual is considered to have resigned as a government employee when the individual assumes an elected office of the unit that employs the individual.

I.C. 3-5-9-7 provides as follows:

(a) Notwithstanding sections 4 and 5 [IC 3-5-9-4 and IC 3-5-9-5] of this chapter, a government employee who assumes or holds an elected office on January 1, 2013, may continue to hold the elected office and be employed as a government employee until the term of the elected office that the government employee is serving on January 1, 2013, expires.

(b) After the expiration of the term of the elected office that the government employee referred to in subsection (a) is serving on January 1, 2013, the government employee is subject to section 5 [IC 3-5-9-5] of this chapter with respect to assuming or holding an elected office and being employed by the unit that employs the government employee.

On October 14, 2016, the Indiana State Board of Accounts issued an Audit Report for the Supplemental Compliance of the City of Gary for the period of January 1, 2014 to December 31, 2014. The Audit Report stated, in part, as follows:

SUBSEQUENT EVENT-GOVERNMENT EMPLOYEE HOLDING OFFICE

Indiana Code 3-5-9-7 permits government employees who also hold elective office as of January 1, 2013 to continue holding elected office until the end of term of office. The Gary Common Council has an elected member, Mary M. Brown, who also works for the GSD as the Director of Customer Service.

The GSD was created by ordinance and is considered to be a department of the City. Indiana Code 36-9-25-3 states in part: "(a) A department of public sanitation is established as an executive

department of the municipality. Council Member Mary M. Brown's term of office affected by Indiana Code 36-9-25-3 expired as of December 31, 2015. Council member Brown was re-elected in November, 2015 and began a new term of office on January 1, 2016. Council member Brown, who was employed with the GSD during the previous term of office, has continued employment with the GSD in 2016 and has not complied with the requirements of Indiana Code 3-5-9-5. As a result, Mary B. Brown is deemed to have resigned her employment with the GSD on January 1, 2016. M. Brown subsequent to October 14, 2016, related to employment with GSD may be the personal responsibility of Council member Mary M. Brown.

Brown filed a Verified Complaint for Declaratory Judgment pursuant to I.C. 34-14-1, requesting that the Court declare that she does not violate I.C. 3-5-9-5 by working for the Gary Sanitary District and serving on the Gary Common Council together with an Order that she is not liable to repay any compensation she received from the District after October 14, 2016.

The defendants deny that Brown is entitled to any relief, and filed a Motion for Summary Judgment, asserting that Brown lacks standing to seek declaratory judgment, and that, even if she has standing, there is no material issue of fact and that I.C. 3-9-5 applies to her employment situation as a matter of law.

The initial burden is on the party moving for summary judgment to demonstrate the absence of any genuine issue of fact as to a determinative issue, at which point the burden shifts to the non-moving party to come forward with contrary evidence showing an issue for the trier of fact. *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). The trial court must ensure that the non-moving party was not improperly denied his day in court, *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009), *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

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Therefore, for the trial court to properly grant summary judgment, the moving party must have made a *prima facie* showing that their designated evidence negated an element of the non-moving party's claims, and, in response, the non-moving party, drawing all reasonable inferences in their favor, must have failed to designate evidence to establish a genuine issue of material fact, *Williams, id., Cox v. Mayerstein-Burnell Co., Inc.*, 19 N.E.3d 799, 804 (Ind. Ct. App. 2014).

To rule on the defendants' Motion, the Court must interpret and construe statutes. The first step in statutory interpretation is to determine whether the legislature has spoken clearly and unambiguously on the point in question. *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 157 (Ind. 2005). When a statute is clear and unambiguous, we need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary, and usual sense. *Young v. Hood's Gardens, Inc.*, 24 N.E.3d 421, 424-25 (Ind. 2015) (internal quotations and citations omitted.) We presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results. *State v. Evans*, 810 N.E.2d 335, 337 (Ind. 2004) (internal quotation and citation omitted).

I.C. 34-14-1-1 provides as follows:

Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding is open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. The declaration has the force and effect of a final judgment or decree.

The test to determine the propriety of declaratory relief is whether the issuance of a declaratory judgment will effectively solve the problem

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involved, whether it will serve a useful purpose, and whether or not another remedy is more effective or efficient. *Tramill v. Anonymous Healthcare Provider*, 37 N.E.3d 553, 557 (Ind. Ct. App. 2015), *trans. denied*. The determinative factor of this test is whether the declaratory action will result in a just and more expeditious and economical determination of the entire controversy. *Hood's Gardens, Inc. v. Young*, 976 N.E.2d 80, 84 (Ind. Ct. App. 2012); *Saylor v. State*, 81 N.E.3rd 228 (Ind. App. 2015).

The Indiana State Board of Accounts Audit Report issued a determination that Brown was deemed to have resigned her employment with the Gary Sanitary District effective January 1, 2016 as a result of the operation of I.C. 3-5-9-5. It even suggests that Brown may be personally liable to reimburse salary received after October 14, 2016.

Brown's status as an employee is in question. Either she is deemed to have resigned her employment effective January 1, 2016 or I.C. 3-5-9-5 does not apply to her. The issuance of a declaratory judgment will answer this question and "...effectively solve the problem..." and will be "... just and more expeditious and economical..." than waiting for the litigation that will ensue if the State takes action to remove her, particularly considering that Brown is continuing to draw a salary which may have to be reimbursed. Brown has standing to pursue this action.

I.C. 3-5-9-3 provides as follows:

As used in this chapter, "unit" means a county, city, town, or township.

I.C. 3-5-9-2 provides as follows:

As used in this chapter, "government employee" refers to an employee of a unit. The term does not include an individual who holds only an elected office.

I.C. 3-5-9-1 provides as follows:

As used in this chapter, "elected office" refers only to the following:

- (1) The executive or a member of the executive body of a unit.
- (2) A member of the legislative body or fiscal body of a unit.

The City of Gary is a unit as defined by I.C. 3-5-9-3, and Brown is a member of the legislative and fiscal body of the City of Gary. The key question to be construed is whether or not Brown, under I.C. 3-9-5-2, is an employee of the City of Gary.

The Gary Sanitary District was established pursuant to I.C. 36-9-25-3, which provides, in relevant part, as follows:

- (a) A department of public sanitation is established as an executive department of the municipality.

A sanitary district so established is not a separate municipality, *State Board of Tax Comm'rs v. State*, 198 Ind. 343, 153 N.E. 404 (1926). Specifically, the Gary Sanitary District is operated by a Board of Sanitary Commissioners, I.C. 36-9-25-9; that are, pursuant to I.C. 36-9-25-3, appointed by the municipal executive of the City of Gary, who is the mayor as defined by I.C. 36-1-2-5(4); and may be removed from office (after a hearing subject to judicial review) by the mayor, I.C. 36-9-25-5. Moreover, the Gary Sanitary District may sue or be sued in the name of the City of Gary, I.C. 36-9-25-10(18).

These statutes are clear and unambiguous. All of their words and phrases, when taken in their plain, ordinary, and usual sense, mean: The Gary Sanitary District performs its statutory functions as a department of the City of Gary, so Brown's employment, as defined by I.C. 3-5-9-2, is with the City of Gary.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The Motion for Summary Judgment of the defendants Greg Zoeller, individually, Curtis Hill, in his official capacity as Indiana Attorney General, and Paul Joyce, individually and in his official capacity as State Examiner of the Indiana State Board of Accounts is granted.

2. The relief requested in the Verified Complaint for Declaratory Judgment filed by the plaintiff, Mary Brown, that the Court declare that she does not violate I.C. 3-5-9-5 by working for the Gary Sanitary District and serving on the Gary Common Council together with an Order that she is not liable to repay any compensation she received from the District after October 14, 2016 is denied.

3. There being no just reason for delay, a final and appealable judgment is entered in favor of the defendants Greg Zoeller, individually, Curtis Hill, in his official capacity as Indiana Attorney General, and Paul Joyce, individually and in his official capacity as State Examiner of the Indiana State Board of Accounts, and against the plaintiff, Mary Brown.

Dated June 25, 2018



JOHN M. SEDIA, JUDGE
LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM ONE

Distribution: Attorneys Clorius L. Lay, Jefferson S. Garn

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