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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-414

Filed 3 December 2024

Wake County, No. 22 CVS 9059

N.C. DEPARTMENT OF STATE  
TREASURER, RETIREMENT  
SYSTEMS DIVISION, Petitioner,

v.

MARK ANDREW PERRIGO, Respondent.

Appeal by Respondent from order entered 22 November 2022 by Judge Vince M. Rozier, Jr. in Wake County Superior Court. Heard in the Court of Appeals 31 October 2023.

*Mark Andrew Perrigo, Pro Se, for the petitioner-appellee.*

*Attorney General Joshua H. Stein, by Special Deputy Attorney Generals Mary W. Scruggs and Olga E. Vysotskaya de Brito, for the respondent-appellant*

STADING, Judge.

This case requires us to determine whether conduct underlying a felony conviction is directly related to Mark Andrew Perrigo’s (“Petitioner”) employment. The North Carolina Department of State Treasurer, Retirement Systems Division

(“Respondent”), appeals an order granting summary judgment for Petitioner. After careful review, we reverse the trial court’s order of summary judgment.

### **I. Factual and Procedural History**

Evidence tends to show that the Onslow County Sheriff’s Office employed Petitioner as a law enforcement officer from 12 July 1993 through 10 August 2018, where he earned twenty-five years and two months of membership service in the Local Governmental Employees’ Retirement System (“LGERS”). Petitioner purchased several years of creditable service in LGERS based on his prior military service. Petitioner applied for retirement from LGERS on 15 June 2018, with an effective date of 1 September 2018. Eleven months of unused sick leave then converted to creditable service at his retirement, resulting in thirty years and one month of creditable service in LGERS. Respondent calculated Petitioner’s retirement benefit, and Petitioner began receiving his benefit in September 2018.

On 5 November 2019, Petitioner was indicted for three charges of sexual exploitation of a minor in violation of N.C. Gen. Stat. § 14-190.17A (2023). According to the indictment, Petitioner committed these offenses on 7 August 2018 while still employed at the Onslow County Sheriff’s Office and serving as a school resource officer. “The conduct leading to the felony convictions did not occur at the school where [Petitioner] served as a school resource office[r] and did not involve students from the school.” However, Petitioner “had to maintain his certification as a justice

officer,” and such certification “must be revoked if the officer commits or is convicted of a felony.”

On 29 July 2020, Petitioner pleaded guilty to the charges. The trial court sentenced petitioner to 6–17 months of imprisonment for each conviction, suspended for 60 months, and “community punishment, with no fine.” Because of his felony convictions, Respondent found, under N.C. Gen. Stat. § 128-38.4A (2023), that Petitioner forfeited some of his retirement benefits based on limitations imposed by N.C. Gen. Stat. § 128-26(x) (2023). In particular, as required by Section 128-38.4A(a)(2), Respondent determined that the conduct leading to Petitioner’s felony convictions “directly related” to his employment because, by engaging in the underlying conduct, Petitioner became unfit to continue his employment as a law enforcement officer and could not have maintained the necessary certification.

Under Section 128-26(x), Respondent determined that Petitioner had vested prior to 1 December 2012 but forfeited all creditable service that he accrued after 1 December 2012. This forfeiture included the membership service Petitioner earned from 2 December 2012 through 10 August 2018 (5.75 years); one year of military service he purchased; and the service attributable to unused sick leave (0.9167 years). Respondent canceled 7.6667 years of Petitioner’s creditable service. Respondent recalculated Petitioner’s monthly retirement benefit based on the decreased amount of creditable service and determined that Petitioner received an overpayment of benefits. By letter dated 18 August 2021, Respondent informed Petitioner of a

forfeiture, which lowered his monthly retirement allowance, and the overpayment, which further lowered his retirement allowance.

Around 31 August 2021, Petitioner requested an administrative review of Respondent's application of the felony-forfeiture law to his retirement benefits. Specifically, Petitioner argued that the conduct that led to his felony convictions was not directly related to his employment. Respondent provided Petitioner with a final agency decision on 8 November 2021, affirming its application of the felony-forfeiture statute to Petitioner's retirement.

Petitioner applied for a contested hearing with the Office of Administrative Hearings on 6 January 2022. On 19 April 2022, Respondent moved for summary judgment. In a final decision entered on 29 June 2022, the administrative law judge denied Respondent's motion and granted summary judgment for Petitioner. The administrative law judge determined the conduct that resulted in the felony convictions was not directly related to Petitioner's employment as a school resource officer and granted summary judgment in Petitioner's favor.

On 21 July 2022 Respondent petitioned the Superior Court Division for judicial review under N.C. Gen. Stat. § 150B-43 (2023). The trial court conducted a *de novo* review and affirmed the administrative law judge's final decision on 22 November 2022. Respondent entered its notice of appeal on 22 December 2022.

## **II. Jurisdiction**

The trial court’s grant of summary judgment is a final order, and this Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b) and 150B-52 (2023).

## **III. Analysis**

Respondent argues the trial court erred in affirming the administrative law judge’s final decision. “When reviewing a trial court’s order affirming a decision by an administrative agency, the scope of review of this Court is the same as it is for other civil cases.” *Hilliard v. N.C. Dep’t of Corr.*, 173 N.C. App. 594, 596, 620 S.E.2d 14, 17 (2005). This Court “must examine the trial court’s order for errors of law and determine whether the trial court exercised the appropriate scope of review and whether the trial court properly applied this standard. As in other civil cases, we review errors of law *de novo*.” *Id.*

### **A. Trial Court’s Scope of Review**

Our preliminary consideration is whether the trial court applied the correct standard of review. “[W]here appellant contends legal error in the agency’s decision, the trial court must review *de novo*.” *Id.* In this case, the trial court applied the appropriate standard of review.

### **B. Trial Court’s Application of Standard**

“Summary judgment when sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

any party is entitled to a judgment as a matter of law.” *Majestic Cinema Holdings, LLC v. High Point Cinema, LLC*, 191 N.C. App. 163, 165, 662 S.E.2d 20, 22 (2008) (citation omitted).

Respondent argues the trial court erred by concluding the forfeiture provisions of N.C. Gen. Stat. § 128-38.4A did not apply to Petitioner’s felony convictions.

Section 128-38.4A of our general statutes provides:

(a) Except as provided in G.S. 128-26(x), the Board of Trustees shall not pay any retirement benefits or allowances, except for a return of member contributions plus interest, to any member who is convicted of any felony under federal law or the laws of this State if all of the following apply:

- (1) The offense is committed while the member is in service.
- (2) The conduct resulting in the member’s conviction is directly related to the member’s office or employment.

N.C. Gen. Stat. § 128-38.4A. In turn, Section 128-26(x) provides:

If a member who is in service and has not vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member shall forfeit all benefits under this System, except for a return of member contributions plus interest. If a member who is in service and has vested in this System on December 1, 2012, is convicted of an offense listed in G.S. 128-38.4A for acts committed after December 1, 2012, then that member is not entitled to any creditable service that accrued after December 1, 2012, regardless of whether that creditable service was earned by virtue of membership in the System, accrued by conversion of sick leave at the point of the member’s retirement, accrued by transfer of service from another retirement system, purchased by the member in accordance with this Article, or accrued by any other

means. For purposes of this subsection, creditable service attributable to the conversion of sick leave accrues in this System on the date of retirement, service transferred to this System from another system accrues in this System on the effective date of the transfer, and purchased service accrues in this System on the date of the purchase.

*Id.* § 128-26(x).

Here, there is no dispute that the criminal acts occurred while Petitioner was employed, but the dispute is whether the conviction for those criminal acts was directly related to his employment. *See id.* § 128-38.4A(a) (mandating that “the Board of Trustees shall not pay” if “[t]he offense is committed while the member is in service” and “the conduct resulting in the member’s conviction is directly related to the member’s office.”). In affirming the administrative law judge, the trial court found that “[t]he conduct leading to the felony convictions did not occur at the school where [Petitioner] served as a school resource office[r] and did not involve students from the school.”

Respondent argues that Petitioner could not have remained at his employment because of his felonious crimes. Respondent maintains that Petitioner was employed as a law enforcement officer, which is defined by statute as:

a full-time paid employee of an employer, who possesses the power of arrest, who has taken the law enforcement oath administered under the authority of the State as prescribed by G.S. 11-11, and who is *certified as a law enforcement officer* under the provisions of Article 1 of Chapter 17C of the General Statutes or *certified as a deputy sheriff* under the provisions of Chapter 17E of the General Statutes. . . .

*Id.* § 128-21(11d) (emphasis added). Further, sworn law enforcement officers employed by a county sheriff are considered “[j]ustice officer[s].” *Id.* § 17E-2(3) (2023). To be certified, a “justice officer” must not have committed a felony. 12 N.C.A.C. 10B.0301(a)(11) and 10B.0307(a)(1). And “[t]he Commission shall revoke . . . the certification of a justice officer when the Commission finds that . . . the certified officer has committed or been convicted of a felony.” *Id.* 10B.0204(a)(1). Thus, Respondent argues “[b]y virtue of engaging in the conduct leading to his felony convictions, Petitioner rendered himself unfit to continue his employment as a law enforcement officer.” Respondent thus contends that Petitioner was “precluded from maintaining the necessary certification for his employment,” and “[t]herefore, the conduct resulting in his convictions was directly related to his employment.”

This case presents a question of first impression for statutory interpretation, which “properly begins with an examination of the plain words of the statute.” *Correll v. Div. of Soc. Servs.*, 332 N.C. 141, 144, 418 S.E.2d 232, 235 (1992). Accordingly, our focus is whether “[t]he conduct resulting in the member’s conviction is *directly related* to the member’s office or employment.” N.C. Gen. Stat. § 128-38.4A (emphasis added). “Directly” is defined as “with no intervening agent.” Bryan A. Garner, *Garner’s Modern English Usage* 338–39 (5th ed. 2022) (ellipses omitted) (“direct, with no intervening agent”). “Related” means “[b]eing connected; associated.” *American Heritage Dictionary* (4th ed. 2000).



*Opinion of the Court*

The plain meaning of our statute’s text indicates the employment of language analogous to *correlation* rather than *causation*. That is, the words suggest there be a correlation of conduct and employment as opposed to an interpretation limited to conduct committed in the scope of employment. Therefore, our *de novo* review of the trial court’s order leads us to conclude “directly related” is not so narrow as to only include conduct arising out of the member’s employment. Under the unique facts presented here—where Petitioner’s conduct occurred during his employment, which precluded the certification necessary for continued employment—we conclude that the conduct underlying the convictions was directly related to his employment. We thus reverse the trial court’s summary judgment order.

REVERSED.

Judges ZACHARY and THOMPSON concur.

Report per Rule 30(e).