Gilbert v. Guilford Cnty.

George GILBERT, Plaintiff, v. GUILFORD COUNTY; Guilford County Board of Commissioners; Linda O. Shaw, Chair; Bill Bencini, Vice–Chair; Alan Branson; Kay Cashion; Carolyn Q. Coleman; Bruce E. Davis; Hank Henning; Jeff Phillips; and Ray Trapp, each sued in her or his official capacity as a member of the Guilford County Board of Commissioners, Defendants.

767 S.E.2d 93
No. COA14–523.
Court of Appeals of North Carolina.
Decided December 16 2014

767 S.E.2d 94Smith, James, Rowlett & Cohen, LLP, Greensboro, by Seth R. Cohen, for Plaintiff-appellee.

Office of the Guilford County Attorney, by County Attorney J. Mark Payne, for Defendants-appellants.

* * *

¶1 Affirmed.

¶2 Appeal by Defendants from judgment entered 12 December 2013 by Judge William Z. Wood, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 7 October 2014.

¶3 DILLON, Judge.

¶4 Guilford County, the Guilford County Board of their official capacities ("Defendants") appeal from the trial court's judgment in favor of its former Director of Elections, George Gilbert, ("Plaintiff"), in the amount of $38,503.00, plus interest and costs. For the following reasons, we affirm the trial court's judgment.

¶5 I. Summary

¶6 Plaintiff was employed by Guilford County as its Director of Elections. He brought this action claiming that Defendants breached his employment contract because his salary did not comply with N.C. Gen.Stat. § 163–35(c). A county is afforded some measure of discretion to set the salary of its director of elections; however, the salary must be in accordance with State law. State law requires, in part, that the salary of a county director of elections "shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters." Id. We believe there was sufficient evidence in the record to sustain the decision of the trial court who, sitting as a jury, found for Plaintiff.

¶7 II. Background

¶8 Plaintiff brought this action claiming Defendants breached his employment contract by not meeting the requirements of N.C. Gen.Stat. § 163–35(c). At a bench trial on the matter, the evidence presented tended to show as follows: Plaintiff was Director of Elections for Guilford County for twenty-five years, from 1988 until his retirement in 2013. His salary was set by the Guilford County Board of Commissioners based on

a recommendation by the local board of elections after the local board performed a performance review of his work. From 2008 through 2012, Plaintiff received the highest rating in his performance reviews, a "5[,]" meaning that his work "[c]onsistently exceeds expectation for [his] job[.]"

¶9 Plaintiff presented evidence using eight tables he had prepared from data comparing salary information for the election directors of the seven largest counties in the state, which included Guilford County.

¶10 767 S.E.2d 95 Gary Bartlett, the former Executive Director for the North Carolina State Board of Elections, who served from 1993 to 2013, testified for Plaintiff. After counsel questioned him regarding his resume and qualifications, Mr. Bartlett was tendered as an expert in North Carolina elections law and procedure. He stated that during his tenure he had daily contact with various county election directors and opined that Plaintiff was the "best county director" in the State. Mr. Bartlett received numerous contacts from various county officials regarding the salary provision in N.C. Gen.Stat. § 163–35(c) and, in answering those concerns, he relied upon a 1987 opinion letter from the North Carolina Attorney General's Office which recited factors to be considered in setting the salary of a county election director. Mr. Bartlett applied these factors in making recommendations to county officials regarding the salaries of election directors and their adherence to G.S. 163–35(c). He opined that Guilford County was similar in complexity to Wake and Mecklenburg Counties. He stated that it was his opinion that Plaintiff's salary was paid much lower than it should have been paid.

¶11 Defendants did not present any evidence at trial.

¶12 On 12 December 2013, the trial court entered a written judgment finding that Plaintiff's salary was not commensurate with those of other directors in counties similarly situated and similar in population and number of registered voters for fiscal years 2010 through 2012, in violation of N.C. Gen.Stat. § 16335(c), and ordered Defendants to pay the amount of $38,503.00, plus interest and costs "as provided by law." Defendants filed timely notice of appeal from the trial court's judgment.

¶13 III. Standard of Review

¶14 The standard of review of a judgment rendered following a bench trial is "whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." Hanson v. Legasus of N.C., LLC, 205 N.C.App. 296, 299, 695 S.E.2d 499, 501 (2010) (citation omitted). "Findings of fact by the trial court in a non-jury trial are conclusive on appeal if there is evidence to support those findings. A trial court's conclusions of law, however, are reviewable de novo." Id.

¶15 Pursuant to N.C. Gen.Stat. § 1A–1, Rule 52(a), a trial court need not make "a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts[;]" however, "it does require specific findings of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached." Quick v. Quick, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982) (emphasis in original).

¶16 IV. N.C. Gen.Stat. § 163–35(c)

¶17 The key issue in this case is whether the trial court erred in its conclusion that Plaintiff's salary was not in accord with N.C. Gen.Stat. §

163–35(c), which sets forth mandatory guidelines which counties must follow in setting the compensation of their election directors.

¶18 G.S. 163–35(c) is divided into three paragraphs. The first paragraph provides that a county which maintains full-time registration (five days per week), such as Guilford, must provide a salary to its director of elections (1) "in an amount recommended by the county board of elections and approved by the Board of County Commissioners" and (2) which "shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters." N.C. Gen.Stat. § 163–35(c) (2013).

¶19 The second paragraph of G.S. 163–35(c) states, inter alia, that the compensation must be "at a minimum rate of twelve dollars ($ 12.00) per hour [.]" Id.

¶20 The final paragraph of G.S. 163–35(c) provides that a county shall also provide its election director with "the same vacation leave, sick leave, and petty leave as granted to all other county employees." Id.

¶21 767 S.E.2d 96 There is little case law interpreting G.S. 163–35, and no case law explaining the salary requirements of the current version of subsection (c).1 Accordingly, we must apply our rules of statutory interpretation. "The primary rule of construction of a statute is to ascertain the intent of the legislature and to carry out such intention to the fullest extent." Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 209, 388 S.E.2d 134, 137 (1990) (citation omitted). "When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and judicial construction of legislative intent is not required." Diaz v. Div. of Soc. Servs., 360 N.C. 384, 387, 628 S.E.2d 1, 3 (2006) (citation omitted). "However, when the language of a statute is ambiguous, this Court will determine the purpose of the statute and the intent of the legislature in its enactment." Id. (citation omitted).

¶22 We find the portion of subsection (c) of the statute in question to be clear and unambiguous; therefore, we will give effect to its plain meaning.

¶23 We agree with the trial court that an intent or "purpose of N.C.G.S. § 163–35[c] is to ensure the integrity of elections in North Carolina[ ]" by preventing fluctuations in election directors' salaries based on political reasons by requiring that the election director's salary be based on the salary of election directors in similar counties and setting a minimum salary for that position in the amount of $12.00 per hour. The language, counties "similar in population and number of registered voters[,]" has a clear meaning. While the term "similarly situated" is less clear, we believe that the factors in the Attorney General's 1987 opinion letter clarifying the term "similarly situated," which Plaintiff relied upon in his evidentiary presentation, is instructive. See Rainey v. N.C. Dep't of Pub. Instruction, 361 N.C. 679, 681–82, 652 S.E.2d 251, 252–53 (2007). We believe, therefore, that in adhering to the salary mandate of G.S. 163–35(c), counties should consider-in addition to comparison of county population and registered voters—other factors, which may include the county's electoral "situation [,]" including the "percentage of population registered; the unusual degree of transience of population; the relative strength of political parties and the level of dissention between or among them; the complexity of the electoral districts for state, county

and municipal offices; and generally speaking, the comparable sophistication, politically and otherwise, of population" and "the degree of experience, effectiveness of work, and level of dedication exhibited by particular affected supervisors in this and in all future situations."

¶24 The trial court considered many of these factors in making its ruling, as the judgment states it considered "specifically the testimony of [Plaintiff] and Mr. Bartlett, [P]laintiff's expert witness, Exhibit 3 (a series of tables generated by [Plaintiff]) and [P]laintiff's Exhibit 4, (an affidavit of Mr. Bartlett, which included his expert report and an opinion from the North Carolina Attorney General dated July 31, 1987.)"

¶25 767 S.E.2d 97 We note that the order contains findings which appear to be recitations of some of the evidence presented by Plaintiff or, at best, ultimate findings of fact without any specific findings of fact regarding the similarity of population or voter registration or any of the similarly situated factors from the opinion letter. See Quick, 305 N.C. at 452, 290 S.E.2d at 658. "[R]ecitations of the testimony of each witness do not constitute findings of fact by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented." In re Green, 67 N.C.App. 501, 505 n. 1, 313 S.E.2d 193, 195 n. 1 (1984) (emphasis in original). "Where there is directly conflicting evidence on key issues, it is especially crucial that the trial court make its own determination as to what pertinent facts are actually established by the evidence, rather than merely reciting what the evidence may tend to show." In re Gleisner, 141 N.C.App. 475, 480, 539 S.E.2d 362, 366 (2000) (citation omitted). However, "when a court fails to make appropriate findings or conclusions, this Court is not required to remand the matter if the facts are not in dispute and only one inference can be drawn from them." Green Tree Financial Servicing Corp. v. Young, 133 N.C.App. 339, 341, 515 S.E.2d 223, 224 (1999). The better practice would have been for the trial court to make specific findings regarding the evidence and testimony it considered. Here, however, Defendants did not present any evidence, and only one inference can be drawn from applying these factors to Plaintiff's evidence; therefore, we need not remand for further findings.

¶26 Regarding the evidence, Plaintiff presented a series of tables which compared the data from the seven largest counties in North Carolina, which includes Guilford County. One table showed that Guilford County was ranked third in both population and voter registration, behind Mecklenburg and Wake counties. Moving to the "similarly situated" factors, Plaintiff presented another table which showed that Guilford County ranked first in election complexity, and Mr. Bartlett added more complexity considerations relating to Guilford County that would support this conclusion. Evidence showed that Plaintiff ranked highest in years of service among the seven county directors, and Mr. Bartlett opined that Plaintiff was the "best" county director in the State. Evidence showed that Plaintiff was paid at the midpoint of his salary range and that five of the other compared directors were paid above the midpoint salary range. One of Plaintiff's tables showed that Guilford County ranked third for election director's salary in 2006–2007 but fell to fifth from 2008 until 2012. From 2006 until 2012, Guilford County ranked last in the

annual average salary growth over this period of time. Mr. Bartlett opined that Plaintiff was paid much lower than he should have been paid.

¶27 After considering Guilford County's population and the number of registered voters, and weighing the “similarly situated” factors, the evidence supports the trial court's ultimate finding that Plaintiff's “salary for fiscal years 2010–2012 was not commensurate with the salaries paid to directors in counties similarly situated and similar in population and number of registered voters” and the conclusion that Plaintiff's salary for 2010 to 2012 violated the requirements of G.S. 163–35(c).2

¶28 We are not persuaded by Defendants' argument that they were only required to pay Plaintiff the minimum $12.00 per hour as set forth in the second paragraph of G.S. 163–35(c) because there was no county which was “similar” enough to Guilford County to make a salary comparison. First, Defendant's interpretation goes against the plain meaning of the statute. “Similar” does not mean identical. Second, Defendants' interpretation would lead to absurd results: If a large county was determined to be far and away much more complex than any other, then that county could legally pay its director of elections $12.00 per hour, even if all other directors in large counties made substantially more.

¶29 Likewise, we are not persuaded by Defendants' argument regarding Plaintiff's car allowance not being considered as part of his salary. The trial court was free to consider this information and Plaintiff's explanation in making its determination as to whether Plaintiff's salary complied with the statute.

¶30 767 S.E.2d 98 Finally, we address Defendants' argument that G.S. 16335(c) gives each county discretion to set the compensation for its director of elections. We agree that a county is afforded some measure of discretion in that the statute does not provide the specific salary or a definitive formula for fixing the salary. However, a county's discretion must be exercised within the parameters set forth in the statute. See, e.g., Sanders v. State Personnel Director, 197 N.C.App. 314, 320–21, 677 S.E.2d 182, 187 (2009) (holding that the laws and regulations concerning State employees become part of the State employees' employment contracts), disc. review denied, 363 N.C. 806, 691 S.E.2d 19 (2010). For instance, no county has the discretion to pay its director less than $12.00 per hour since State law mandates that the salary must be at least $12.00 per hour. Here, the Defendants did not present any evidence showing how Plaintiff's salary complied with G.S. 163–35(c). Accordingly, Defendants' arguments are overruled.

¶31 For the foregoing reasons, we affirm the trial court's order. –14–

¶32 AFFIRMED.

¶33 Judge HUNTER, ROBERT C. and Judge DAVIS concur.

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¶35 Notes: