

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Kathleen Baird,	:	
Relator-Appellee,	:	
v.	:	No. 10AP-825
State Teachers Retirement System of	:	(C.P.C. No. 08 CVH-07-10417)
Ohio et al.,	:	(REGULAR CALENDAR)
Respondents-Appellants.	:	
	:	

D E C I S I O N

Rendered on April 7, 2011

Fisher, Skrobot & Sheraw, LLC, and Brett R. Sheraw, for appellee.

Michael DeWine, Attorney General, and John E. Patterson, for appellants.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} The State Teachers Retirement System of Ohio ("STRS") is appealing from a decision of the Franklin County Court of Common Pleas in which the court ruled that Kathleen Baird could still make an election to participate in a defined benefit plan of STRS. A single assignment of error is presented for our review:

Appellants State Teachers Retirement System of Ohio and State Teachers Retirement Board of Ohio did not abuse its discretion when it concluded that Appellee Kathleen Baird had made a never to be changed, irrevocable selection.

{¶2} The facts in this case do not seem to be in serious debate. Kathleen Baird went to work for the Pickerington Local School District in 1987 as a safe and drug-free school coordinator. As a result, she became a member of the School Employees Retirement System ("SERS"). Because she had no teaching license she was not immediately eligible for membership in STRS. Despite this, she was deemed to have accrued .03 years of STRS credit because she attended a workshop during the 1988-89 school year and served as a substitute teacher for nine days during the 1996 school year. Although she could not otherwise be a member of STRS, she was deemed to have accumulated \$73.47 in the fund.

{¶3} In 2001, STRS set up two new retirement plans and informed Baird that she would need to choose which of the three plans would apply to her. If she wished to stay in the originally offered defined benefits plan, she would be assessed a \$10 per month service charge due to her small balance. In other words, her funds with STRS would last less than eight months and there would be no funds to collect upon her retirement. Baird chose to have her minimal funds sent to her and by the time the funds were actually sent, the administrative fees decreased her check to \$44.12.

{¶4} In 2003, the legislature changed Ohio law and guidance counselors were permitted to become members of STRS with no prior teaching licensure. Baird chose to become a guidance counselor and therefore qualified for membership in STRS.

{¶5} Normally persons who have service credit in more than one retirement system in Ohio can combine these service credits upon retirement. Baird began thinking about retirement and planned on combining her SERS credits from her years as a safe and drug-free school coordinator with her newly earned STRS credits from her time as a guidance counselor. STRS took the position that she could not do so because she irrevocably chose a defined contribution plan and accepted a refund of the earlier funds deemed to have been earned when she could not otherwise be a member of STRS. STRS continues to take that position in this appeal.

{¶6} STRS correctly asserts that Baird was a member of STRS when she chose to have some of the funds deemed to be hers sent to her. She was a member solely because she had funds in a STRS account. She was not otherwise a member. When she received those funds from STRS, she stopped being a member of STRS, years before she became a guidance counselor. To set forth the pertinent statutory definition, "Member" of STRS is defined by R.C. 3307.01(C) as including teachers, contributors and disability benefit recipients. Certain exceptions, not applicable here, are itemized.

{¶7} Kathleen Baird was a member for a while solely because she was deemed to be contributor. "Contributor" is defined in R.C. 3307.01(D) as follows:

"Contributor" means any person who has an account in the teachers' savings fund or defined contribution fund.

{¶8} Again, when she stopped having funds on deposit with STRS, she stopped being a member.

{¶9} The trial court could reasonably find that when Baird became a full member of STRS upon taking a position as a guidance counselor, she began accruing service

credit towards a defined benefit retirement. She did not then and does not now seek credit for the substitute teaching time and seminar time for which she received a refund. See R.C. 3307.252.

{¶10} STRS asserts in its brief that Baird voluntarily elected something other than the defined benefit plan when seeking the minimal funds remaining with STRS. Nothing in the statutes governing STRS bars a person who has previously been deemed to be a member of STRS but has received a de minimis refund from rejoining STRS. Under these circumstances, a person such as Kathleen Baird is to be treated as a new member of STRS.

{¶11} We are aware of R.C. 3307.251, which includes:

(A) A member of the state teachers retirement system who, as of the thirtieth day of June immediately preceding the date on which the system establishes a plan under section 3307.81 of the Revised Code, has less than five years of total service credit is eligible to make an election under this section.

* * *

(D) An election under this section shall be irrevocable at the end of the election period described in division (A) of this section.

{¶12} However, paragraph (A) clearly applies to individuals who are members and continue to be members, not to persons who are deemed to be members of STRS and then lose that status as a result of receiving a minimal "refund" of money attributed to them.

{¶13} The trial court carefully analyzed the facts and law which apply to Baird's case and reached the correct resolution.

{¶14} The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
