

RENDERED: JULY 6, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

**KENTUCKY SUPREME COURT GRANTED DISCRETIONARY REVIEW:
APRIL 16, 2008
(FILE NO. 2007-SC-0540-DG)**

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001389-MR

BOB LAWSON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-01478

KENTUCKY RETIREMENT SYSTEMS,
BOARD OF TRUSTEES OF KENTUCKY
RETIREMENT SYSTEMS; and
KENTUCKY STATE TREASURER

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

DIXON, JUDGE: Bob Lawson appeals from a Franklin Circuit Court order denying declaratory relief and affirming the decision of the Board of Trustees of the Kentucky Retirement Systems. After reviewing the record, we affirm.

On August 2, 2004, Lawson met with a retirement counselor at the offices of Kentucky Retirement Systems (“Retirement Systems”) regarding his state employee retirement benefits. Lawson filled out paperwork to begin his retirement on September 1, 2004. During counseling, Lawson executed Form 6010, and selected “life with 15 years certain” as the benefit payment option. Form 6010 also stated:

I CERTIFY THAT I HAVE SELECTED THE OPTION OF MY CHOICE. I REALIZE THAT AFTER MY FIRST RETIREMENT ALLOWANCE PAYMENT HAS BEEN ISSUED BY THE STATE TREASURER THAT I CANNOT CHANGE TO ANOTHER PAYMENT OPTION OR CHANGE MY BENEFICIARY.

Another document, Form 6011, advised:

Based on a retirement date of 09/01/2004, you are scheduled to receive your first monthly benefit on or around 09/27/2004 if you have completed and returned all necessary paperwork no later than 08/31/2004. Failure to return this required paperwork by this deadline will result in a delay of health insurance and monthly benefits.

In the days following his counseling session, Lawson determined he selected an incorrect payment option on Form 6010. He had intended to provide lifetime benefits for his wife in the event he predeceased her. Instead, “life with 15 years certain” would provide benefits to Lawson's wife for only fifteen years. Although he realized the error shortly after the August 2 meeting, Lawson did not contact Retirement Systems to change the payment option until September 16, 2004. At that time, a Retirement Systems employee explained that the payment option could not be changed because Lawson's first retirement check had been issued by the state treasurer. Lawson opined he had not yet

received his first retirement check and sought a hearing to appeal Retirement Systems' decision.

At the administrative hearing, Lawson testified he believed, pursuant to Form 6011, he had until September 27, 2004, to change his payment option. Lawson argued the documents he signed during counseling were unclear and led him to believe he could change his payment option any time before he received his first retirement check. On May 6, 2005, the hearing officer dismissed the appeal and found Lawson without recourse pursuant to Kentucky Revised Statutes (KRS) 61.590(3). The statute states:

The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" [Form 6010] after he has checked the plan of his choice, signed the document and had his signature witnessed. A member or beneficiary may not select a different plan after the first retirement allowance payment has been issued by the State Treasurer.

The Board of Trustees of the Kentucky Retirement Systems ("Board") adopted the hearing officer's opinion as a final order on September 8, 2005.

On October 25, 2005, Lawson petitioned the Franklin Circuit Court for review of the Board's decision and also sought a declaration of rights, contending KRS 61.590(3) was unconstitutional. Retirement Systems filed an answer to the complaint.¹ Lawson subsequently moved for a temporary injunction which was denied by the trial court. The parties extensively briefed the substantive issues and submitted the case to the court for final adjudication on January 17, 2006. The court rendered an opinion and

¹ Based upon our review of the record, it does not appear the Kentucky State Treasurer took part in the litigation below or on appeal.

order on June 19, 2006, affirming the final order of the Board and denying Lawson's substantive claims. This appeal followed.

First, Lawson asserts Retirement Systems negligently misled him to believe he had until September 27, 2004, to change his payment option. We disagree. The record is devoid of any evidence Retirement Systems was negligent, and we agree with the trial court's assessment of the issue:

Retirement Systems makes available a Summary Plan Description, both in print and on the internet; it has field service counselors who go around the state holding retirement seminars and answering individual questions; it has a website full of information and contact information; a call center with counselors available; and counselors available for appointments. In fact, Lawson met with Counselor Jim Davis on August 2, 2004 to set up the details of his retirement for August 31, 2004. He had the opportunity to ask questions and plenty of time to change his request. In other words, Retirement Systems provided Lawson with all of the information and resources he needed to make an informed decision. There is no evidence that the [information] provided was erroneous. A mere subjective misinterpretation of that information does not amount to being negligently misled.

Lawson next contends KRS 61.590(3) is unconstitutionally vague, thereby violating his right to due process and equal protection. He specifically takes issue with the sentence: "A member or beneficiary may not select a different plan after the first retirement allowance payment has been issued by the State Treasurer." KRS 61.590(3). Lawson urges that the legislature plainly intended the phrase, "has been issued by the State Treasurer," to mean "after the first retirement allowance payment has been cashed by the payee." He contends the meaning given by Retirement Systems is illogical

because it allows the state treasurer to arbitrarily determine when initial retirement checks are issued, thereby cutting off a retiree's right to change payment options. We disagree.

Despite Lawson's protestations, we do not find KRS 61.590(3) vague or ambiguous. “As long as an ordinance or statute can be reasonably understood by those affected by the ordinance and they can reasonably understand what the statute requires of them, it is not unconstitutionally vague.” *Lexington Fayette County Food and Beverage Ass'n v. Lexington-Fayette Urban County Govt.*, 131 S.W.3d 745, 753 (Ky. 2004). Under the facts presented, it is apparent Lawson subjectively misunderstood the plain language of KRS 61.590(3). Consequently, we are not persuaded that the statutory language is unconstitutionally vague.

In his final argument, Lawson claims Retirement Systems violated KRS 13A.100 because the agency failed to promulgate an administrative regulation interpreting the phrase, “payment has been issued by the State Treasurer.” We disagree. “Where the words used in a statute are clear and unambiguous and express the legislative intent, there is no room for construction and the statute must be accepted as it is written.” *Griffin v. City of Bowling Green*, 458 S.W.2d 456, 457 (Ky. 1970). Because we find that KRS 61.590(3) is plainly written, an explanatory administrative regulation would be unnecessary.

For the reasons stated herein, the order of Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE
Kentucky Retirement Systems:

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No Brief for Appellee
Kentucky State Treasurer