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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARY BAXTER,

Plaintiff and Respondent,

v.

RIVERSIDE COMMUNITY COLLEGE
DISTRICT,

Defendant and Appellant.

E052406

(Super.Ct.No. RIC500975)

OPINION

APPEAL from the Superior Court of Riverside County. Gary Tranbarger, Judge.
Reversed.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Arthur Cunningham, and
Brittany H. Bartold for Defendant and Appellant.

Trygstad, Schwab & Trygstad, Shanon Dawn Trygstad, Richard J. Schwab, and
Lawrence B. Trygstad for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Riverside Community College District (RCCD) appeals from judgment following the trial court's granting of the petition for writ of mandate filed by plaintiff Mary Baxter seeking reinstatement to her teaching position with RCCD. RCCD contends (1) the trial court erred in finding sufficient evidence that Baxter was ready, willing, and able to return to work on the date she filed her petition, and (2) Baxter should be precluded from reinstatement and from recovering back pay due to her unclean hands in receiving disability benefits after she claimed to be no longer disabled.

II. FACTS AND PROCEDURAL BACKGROUND

RCCD hired Baxter in 1989 as a counselor and associate professor of psychology. In 2003 Baxter suffered a work-related injury, and in October 2003 she requested reasonable accommodation. She contends RCCD did not grant the request.

In March 2005, Baxter applied for disability retirement with the California State Teachers' Retirement System (STRS). STRS approved the application, and Baxter began collecting disability retirement benefits. RCCD sent Baxter two letters in 2005 requesting that she complete leave of absence forms. Baxter never submitted the forms.

Baxter contends she believed she was a permanent employee with a right to return within 39 months. RCCD continued to list her as faculty and contacted her regarding her availability for counseling during the 2006 winter session.

Baxter faxed RCCD a document on August 31, 2005, stating she was disabled from August 22, 2005, through February 20, 2006, and she was authorized to return to work on February 21, 2006, a date six months in the future. Baxter sent RCCD a second

document dated February 9, 2006 (two weeks before the return-to-work date indicated in the previous certification) stating she was disabled from February 20, 2006, through July 30, 2006, and could return to work on July 31, 2006, another six months in the future. She provided similar doctor's certifications several more times. Each time, the document stated she was disabled for a period six months into the future and could return to work at the end of that future period. The final document, dated December 27, 2007, stated she could return to work on June 16, 2008. RCCD took no action in response to the documents, and Baxter remained on disability retirement.

Meanwhile, on January 5, 2007, RCCD's Human Resources Administrative Manager sent Baxter a letter informing her she could return to work if she obtained a return to work notice. On April 11, 2007, RCCD's Director of Diversity and Human Resources sent Baxter a letter informing her she had been placed on leave effective March 18, 2005, and her employment with RCCD was terminated.

Baxter filed a petition for writ of mandate on June 9, 2008, requesting reinstatement and back pay to February 21, 2006. Following briefing and a hearing, the trial court granted the petition and entered judgment ordering RCCD to reinstate her as a professor with back pay, effective June 9, 2008, the date she filed her petition for writ of mandate.

III. DISCUSSION

A. Sufficiency of Evidence

RCCD contends the trial court erred in finding sufficient evidence that Baxter was ready, willing, and able to return to work on June 9, 2008, the date she filed her petition.

B. Standard of Review

In reviewing the trial court's issuance of a writ of mandate, we defer to the trial court's findings of fact if they are supported by substantial evidence. (*Franzosi v. Santa Monica Community College Dist.* (2004) 118 Cal.App.4th 442, 447 (*Franzoni*).) When the facts are undisputed, we review de novo the trial court's interpretation of the Education Code (*ibid.*) and of contracts (*Roden v. AmerisourceBergen Corp.* (2007) 155 Cal.App.4th 1548, 1561.)

C. Analysis

1. Contractual Issue Raised in Trial Court

Baxter contends that RCCD raises a new issue on appeal, specifically, that Baxter's request for reinstatement and the format of her medical releases did not comply with the provisions of RCCD's contract with the California Teachers Association (CTA) (the contract), and having failed to raise the issue in the trial court, RCCD cannot assert the argument on appeal. (See, e.g., *Bialo v. Western Mutual Ins. Co.* (2002) 95 Cal.App.4th 68, 73.)

Baxter is mistaken. The contract was before the trial court as an attachment to Baxter's points and authorities in support of her petition for writ of mandate. Moreover, in response to the trial court's order that RCCD submit materials indicating the date upon which Baxter was cleared to work without restrictions, RCCD provided the declaration of RCCD's Human Resources Director, as follows: "Under the Contract between the California Teachers' Association and the District, employees who are returning from disability leave are to notify the District of the intended return date at least two weeks in

advance of the expiration date of their leave. The employee is to provide a statement from the employee's physician, indicating that the employee can return to full-time employment without detriment to the employee's health. Where good cause exists, the District may request that an employee undergo a fitness-for-duty examination by a licensed physician, at District expense. A true and correct copy of the pertinent portion of that contract . . . is attached as Ex. 5. A true and correct copy of the Physician's Disability Verification Form to be completed by the employee's physician is attached as Ex. 6." Finally, at the final hearing on Baxter's petition, RCCD's counsel argued that Baxter was required to follow RCCD administrative procedures before being reinstated. We conclude the issue was properly raised in the trial court.

2. Relationship between Contract and Education Code

Baxter next argues that the contract between RCCD and CTA does not alter her right to reinstatement. Under Education Code section 44924, a contract cannot waive the benefits of the Education Code. (*United Teachers—L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 1510, 1519-1520 [provisions of a collective bargaining agreement that contradict a statutory mandate are void].) Those benefits include the right to reinstatement under Education Code section 87789.

Reinstatement rights under Education Code section 87789 are not self-executing. The contract provisions do not contradict that section, but merely provide the mechanism whereby an employee demonstrates that her disability has ended and she is medically able to return. RCCD did not have "a clear, present and ministerial duty" (*Franzosi*,

supra, 118 Cal.App.4th at p. 447) to reinstate Baxter until she complied with the contractual provisions.

3. Baxter's Compliance with Contract

Baxter argues that she did in fact comply with the terms of the contract, because she “repeatedly gave RCC approximately six months notice of her intent and ability to return to work.”

However, at no time did Baxter show that she was presently able to return to work. Each of the physician statements was prospective, indicating she would be disabled for six months into the future. Each time, before the expiration of that six-month period, she obtained a new physician statement projecting another six months of disability. Thus, she failed “to provide a statement from the employee’s physician, indicating that the employee can return to full-time employment without detriment to the employee’s health,” as required by the contract.

4. Waiver of Claim of Error

Baxter claims RCCD waived any claim that the trial court erred when it ordered her reinstatement effective June 9, 2008, with back pay and benefits. She contends RCCD itself proposed that date. In its brief to the trial court “Re Date of Back Pay,” RCCD stated, “At the barest minimum, this court cannot award back pay prior to the date of filing of the writ (June 9, 2008), conditioned upon Baxter’s repayment of STRS for all sums paid to her for the back pay period, without creating a manifest injustice which this court, in equity, has a duty to avoid.”

A party that bears some responsibility for an error claimed on appeal is generally estopped from taking a different position on appeal. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.) In *Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302, the court explained: “The invited error doctrine is an application of the estoppel principle: ‘Where a party by his or her conduct induces the commission of error, the party is estopped from asserting it as a ground for reversal. . . . [Citations.]’ [Citation.] ‘At bottom the doctrine rests on the purpose of the principle, which is to prevent a party from misleading the trial court and then profiting therefrom in the appellate court. [Citations.] In light of this principle, . . . the doctrine has not been extended to situations wherein a party may be deemed to have induced the commission of error, but did not in fact mislead the trial court in any way—as where a party “endeavor[s] to make the best of a bad situation for which [it] was not responsible.”’ [Citation.]’ [Citations.]” (*Id.* at p. 1314.)

Here, RCCD never wavered from its position that Baxter failed to comply with appropriate procedures for reinstatement and never provided adequate medical documentation of her fitness to return to work. In context, RCCD did not invite error by its statement, but instead endeavored to make the best of a bad situation. (*Bonfigli v. Strachan, supra*, 192 Cal.App.4th at p. 1314.)

5. *Entitlement to Relief*

To be entitled to a writ of mandate under Code of Civil Procedure section 1085, subdivision (a), Baxter was required to show that RCCD had a clear, present, and ministerial duty to rehire her and she had a clear, present, and beneficial right to performance of that duty. (*Franzosi, supra*, 118 Cal.App.4th at p. 447.)

Education Code section 87789 provides: “The governing board of a community college district may grant a leave of absence to any academic employee who has applied for disability allowance, not to exceed 30 days beyond final determination of the disability allowance by the State Teachers’ Retirement System. If the employee is determined to be eligible for disability allowance by the system, the leave shall be extended for the term of disability, but not more than 39 months.”

Under the contract between CTA and RCCD, an employee returning from disability leave must “notify the District of the employee’s intended return date at least two (2) weeks in advance of the expiration date of the leave.” The request to return “shall be accompanied by a statement from the employee’s physician indicating that the employee can return to full-time employment without detriment to the employee’s health.” The trial court found that the petition itself was sufficient notice that Baxter was ready to return to work.

Baxter relies on *Veguez v. Governing Bd. of the Long Beach Unified School Dist.* (2005) 127 Cal.App.4th 406, in which a teacher requested reinstatement following sick leave after her personal physician determined she was medically able to return to work on September 4, 2002. The school district refused to reinstate her, however, contending that it would consider only the opinion of an agreed workers’ compensation medical examiner who had not formally released her to return to work. (*Id.* at p. 413.) The court held that the school district’s position was untenable, in that the employee’s ability to return to work was undisputed. (*Id.* at p. 424.) *Veguez* is distinguishable in that the teacher in that case had provided an undisputed medical determination that she was medically able to

return to work. Here, in contrast, Baxter provided only a series of overlapping medical statements, each of which projected a return to work date some six months into the future.

Baxter also relies on *Raven v. Oakland Unified School Dist.* (1989) 213 Cal.App.3d 1347, 1352, in which the court held that a tenured teacher on sick leave was entitled to reinstatement upon presentation of prima facie medical evidence of recovery sufficient to enable her to resume teaching. Based on our own reading of the case, however, we conclude it is far more helpful to RCCD's position. In that case, STRS *denied* the employee's application for retirement benefits after three psychiatrists who examined her concluded she had no medical or psychiatric disorder, and she could return to work. The court stated that under the controlling legislative scheme, "the STRS finding must be deemed a prima facie showing of fitness for return to work." (*Id.* at pp. 1357-1358.) In the current case, in contrast, STRS found that Baxter was disabled and therefore entitled to benefits.

Baxter argues that on February 21, 2006; July 10, 2007; January 25, 2008; and June 16, 2008, her treating doctor released her to return to work, and she provided those releases to RCC. However, as noted above, each of the "releases" was prospective, and before the putative return-to-work date indicated in each one had arrived, Baxter obtained a new statement showing she would be disabled for another six months into the future. Baxter failed to make a prima facie showing of ability to return to work.

The trial court reasoned, however, that RCCD was on notice as of the date Baxter filed her petition that she was ready to return to work. We disagree. The petition itself

did not constitute the required medical release. We therefore conclude the trial court erred in fixing the date of her reinstatement as of the date of her petition.

D. Unclean Hands

RCCD contends Baxter should be precluded from reinstatement and from recovering back pay due to her unclean hands in receiving disability benefits after she claimed to be no longer disabled.

“[T]he mere receipt of disability benefits, as well as representations made by an employee in obtaining them, do not necessarily mean the employee is unable to perform his or her job. [Citation.]” (*Davis v. Los Angeles Unified School Dist. Personnel Com.* (2007) 152 Cal.App.4th 1122, 1140.) Indeed, the Education Code appears to contemplate an employee’s returning to work while receiving disability retirement. Education Code section 24114, subdivision (d), states: “If a member receiving a disability retirement benefit under this part earns in excess of the limitation specified in subdivision (c) from all employment in any calendar year . . . his or her retirement allowance shall be reduced by the amount of excess in earnings. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the annual allowance payable under this part for the calendar year in which the excess compensation was earned.” Thus, if a recipient of disability retirement benefits exceeds the earnings limitation for employment, the remedy is repayment of the retirement benefits. We conclude the trial court did not err in rejecting RCCD’s unclean hands argument.

IV. DISPOSITION

The judgment is reversed. The parties are to bear their own costs.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.