IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLATE DIVISION

Opinion filed April 3, 2024.
Not final until disposition of timely filed motion for rehearing.

CASE NO.: 2023-000037-AP-01

Pedro Cabrera, Sandra Ruiz, Juan Carlos Bermudez, and Michael DiPietro,
Petitioners,

vs.

Administrative Committee, City of Doral City Elected Officials Retirement Plan,
Respondent.

An Appeal from a May 1, 2023 decision of the Respondent.

Jose Javier Rodriguez, Esq., Robert Sugarman, Esq., and Pedro Herrera, Esq., for Petitioners.

Christopher J. Stearns, Esq. and Hudson C. Gill, Esq., for Respondent.

Before TRAWICK, BEOVIDES, and WATSON, JJ.

WATSON, J.

Introduction

Petitioners' Verified Petition for Certiorari Review challenges a May 1, 2023 decision by the Administrative Committee (the "Committee"), City of Doral City Elected Officials Retirement Plan (the "Plan") to suspend all pension compensation payments under the Plan effective immediately and to suspend all payments of health insurance and life insurance premiums effective June 30, 2023. Petitioners ask this Court to order the Committee to "take corrective action by setting aside the termination of Petitioners' benefits, paying benefits withheld to date with interest and restoring their benefit payments." Pet. at 8, 12.

After review of the parties' briefs and the record, and with the benefit of oral argument, we deny the Petition.

Background

On February 10, 2021, the City of Doral City Council (the "City" or the "Council") passed Ordinance Number 2021-02, creating the Plan and the Committee to administer it.

The Plan provided pension benefits, death benefits in the form of a life insurance policy, and a credit toward the cost of health insurance to former City of Doral elected officials who served at least two full terms of office or for a period of eight years, who had left office, and who applied for benefits after reaching the age of 60. The Plan provided that qualifying

individuals were entitled to a pension equal to 50% of the average of their last 3 years of compensation (salary and any additional emoluments) and those who served 12 or more years were entitled to a pension equal to 100% of the average of their last 3 years of compensation, plus health and life insurance benefits.

Petitioners are Pedro Cabrera, former elected vice-mayor and a former elected councilperson; Sandra Ruiz, former elected vice-mayor and former elected councilperson; Juan Carlos Bermudez, former elected mayor and former elected councilperson; and Michael DiPietro, former elected vice-mayor and former elected councilperson. All Petitioners met the criteria to receive benefits under the Plan and had begun to do so.

Respondent is the Committee created by the City Council to administer the Plan.

Florida law required that, prior to adopting the Plan, the City perform an actuarial review of the Plan and issue a corresponding statement of actuarial impact of the Plan, certifying that the Plan and its funding complied with both Article X, Section 14 of the Florida Constitution and section 112.64 of the Florida Statutes. The City was also required, under section 112.3(3), to provide a copy of the actuarial impact statement to the Florida Division of Retirement. The City failed to comply with these pre-adoption requirements. Resp. at 6; Pet. App. at 33.

On February 8, 2023, the Council unanimously authorized retaining outside counsel to evaluate the validity of the Plan. Resp. App. at 15 – 17 (Resolution No. 23-28). On April 4, 2023, outside counsel issued its summary of initial findings, concluding that many of the pre-adoption requirements applicable to the Plan were not complied with and many of the post-adoption requirements applicable to the administration and funding of the Plan had also not been adhered to. Pet. App. at 31 – 37; Resp. App. at 25 – 31.

At the April 23, 2023, public Council meeting, outside counsel's findings were presented to the Council. In response, the Council unanimously voted to recommend that the Committee "take action to suspend payments under the Plan, and to direct the City Attorney to prepare an ordinance repealing the Plan." Resp. App. at 71 (Ordinance No. 2023-15 at 2).

On May 1, 2023, the Committee, at a duly noticed public meeting, reviewed outside counsel's findings and found that that the manner in which the Plan was adopted and funded violated Section 14, Article X of the Florida Constitution and Part VII, Chapter 112, of Florida Statutes. The Committee further found that since its adoption, the Plan had not been administered or funded in accordance with Florida law. Accordingly, the Committee voted to suspend all pension compensation payments

under the Plan effective immediately and to suspend all payments of health insurance and life insurance premiums effective June 30, 2023. Petitioners received notices of suspension of benefits from the City Attorney on behalf of the Committee.

On May 10, 2023, the City Council held a public meeting and considered retroactively repealing the Ordinance which had created the Plan and Committee through proposed Ordinance 2023-13 (the "Repealing Ordinance"). On June 14, 2023, the City Council held a second public meeting and adopted the Repealing Ordinance. The agendas for both meetings show that an opportunity for public comments was provided. Resp. App. at 33, 51.

The Parties' Arguments

Petitioners argue that the Committee's challenged decision was quasi-judicial, and that this Court should find that procedural due process was not accorded to Petitioners and that the essential requirements of the law were not observed. Pet. at 8. Petitioners claim that they were not given notice of the May 1, 2023 meeting and were not given an opportunity to be heard on the Plan suspension. Pet. at 9. Petitioners also claim that the Committee was not empowered to suspend Petitioners' benefits. Pet. at 9 – 10.

Respondent contends that (1) section 112.66(5) of the Florida

statutes limits any challenge to the Committee decision to a direct civil action, (2) the Committee decision was not quasi-judicial and thus not subject to certiorari review, and (3) the Petitioners' due process rights were not violated because the meeting at which the challenged Committee decision was adopted was noticed and open to the public. Pet. at 11 – 18.

Legal Analysis

1. Section 112.66(5) Prescribes the Sole Method of Review

Administrative action, whether quasi-judicial or quasi-legislative, must be challenged in the manner, if any, provided for by a governing statute. The Florida Supreme Court has explained that "[t]he initial problem involved in deciding the appropriate method of obtaining relief against administrative action is to look first to the statute under which the administrative agency operates." *Teston v. City of Tampa,* 143 So. 2d 473, 475 (Fla. 1962). "If a valid method of review is there prescribed it should be followed." *Id.* Certiorari review is permitted only "[i]n the absence of specific valid statutory appellate procedures to review the particular order ...." *Id.* at 476.

Section 112.66(5), Florida Statutes (2023) provides:

> A civil action may be brought by a member or beneficiary of a retirement system or plan to recover benefits due to him or her under the terms of his or her retirement system or plan, to enforce the member's or beneficiary's rights, or to clarify his or her rights to future benefits under the terms of the retirement

system or plan.

Section 112.66(5) thus provides Petitioners with a valid method of review of the Committee decision they challenge through a civil action. Indeed, such a civil action seeking to enforce alleged rights and benefits under the Plan has been brought by Petitioners and is ongoing. *See Cabrera, Ruiz, Bermudez, and DiPietro v. City of Doral, Florida; City of Doral City Elected Officials Retirement Plan; and Administrative Committee, City of Doral City Elected Officials Retirement Plan*, Case No. 2023-18115-CA-01 (Fla. 11th Jud. Cir.) (filed June 13, 2023). Petitioners must follow that method of review, and not through a petition for writ of certiorari brought in this Court.

2. The Challenged Action Was Not Quasi-Judicial, so Certiorari Review Does Not Lie

Even absent a statute prescribing a civil action as the sole method of review, certiorari review would not be available here. Petitioners invoke this Court's jurisdiction for certiorari review of "quasi-judicial action of agencies, boards, and commissions of local government ...." Fla. R. App. P. 9.100(c)(2); *see also* Fla. R. App. P. 9.030(c)(3), 9.190(b)(3). If the Committee's challenged action is "quasi-judicial ... then it is subject to review by certiorari." *Teston,* 143 So. 2d at 476; *De Groot v. Sheffield*, 95 So. 2d 912, 915-16 (Fla. 1957) ("certiorari is a discretionary writ bringing

up for review by an appellate court the record of an inferior tribunal or agency in a judicial or quasi-judicial proceeding"). Respondent on the other hand contends that the actions of both the Committee and the City Commission were legislative and therefore not subject to certiorari review.

To determine whether the Committee and Commission's actions were legislative or quasi-judicial, we look to its nature. "Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy." *Bd. of Cty. Comm'rs of Brevard Cty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993). Building on this key distinction, Florida courts have identified four characteristics of a quasi-judicial decision:

> (1) quasi-judicial action results in the application of a general rule of policy, whereas legislative action formulates policy;
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> (2) a quasi-judicial decision has an impact on a limited number of persons or property owners and on identifiable parties and interests, while a legislative action is open-ended and affects a broad class of individuals or situations;
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> (3) a quasi-judicial decision is contingent on facts arrived at from distinct alternatives presented at a hearing, while a legislative action requires no basis in fact finding at a hearing;
>
> and
>
> (4) a quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions, while a legislative act prescribes what the rule or requirement shall be with respect to future acts.

Miami-Dade Cty. v. City of Miami, 315 So. 3d 115, 120 (Fla. 3d DCA 2020) (internal quotation marks omitted).

We apply those factors here. First, the challenged Committee action directed that *all* pension compensation payments and *all* other benefits under the Plan would be suspended. As a result, this decision established a "general rule or policy," not the "application of a general rule or policy to *specific* individuals." *Snyder*, 627 So. 2d at 471. (emphasis added). Second, the action affected a broad class of individuals (*i.e.*, all beneficiaries under the Plan). Third, the suspension decision was not contingent on fact-finding arrived at from distinct alternatives presented at a hearing. All of the beneficiaries here were similarly situated for purposes of the Plan. No individualized fact-finding was necessary or performed. Fourth, the decision prescribed what the rule or requirement was to be with respect to future acts. It was not backward-looking. No *further* payments under the Plan would be made.

In *Snyder*, the Florida Supreme Court applied a similar analysis and found that the action at issue there affected a large number of people and was thus legislative in nature. 627 So. 2d at 474. Here, the actions of the Committee and the Commission involved a comprehensive change of policy affecting the entire beneficiary population. The Committee's action was legislative, not quasi-judicial. It is therefore not subject to certiorari

review.

Conclusion

There are two independent bases for denying the Petition. First, Section 112.66(5) requires that Petitioners' challenge to the Committee decision be made only in a direct civil action. Second, the Committee decision is not subject to certiorari review because it was not quasi-judicial. Having so concluded, we need not reach the due process claim.

The Petition for Writ of Certiorari is DENIED.

TRAWICK and BEOVIDES, JJ., concur.