

SUPREME COURT OF RHODE ISLAND

John A. Zambarano et al. v. The Retirement Board of the Employees' Retirement System of the State of Rhode Island

61 A.3d 432 (R.I. 2013) · No. 2012-155-Appeal; PC 11-2304 · Decided March 1, 2013

SUMMARY

The Rhode Island Supreme Court affirmed a Superior Court judgment requiring the Retirement Board to return John A. Zambarano's retirement contributions. The Court held that the Rhode Island Public Employee Pension Revocation and Reduction Act applies to judgments or orders for restitution, and that a federal criminal forfeiture order is not an order of restitution. The Court also concluded that the forfeiture judgment did not provide a statutory basis for withholding Zambarano's contributions.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Gilbert V. Indeglia; Frank A. Suttell, C.J.; Maureen McKenna Goldberg; Paul A. Flaherty; William P. Robinson III
JURISDICTION	Rhode Island
DECIDED	March 1, 2013
DOCKET	2012-155-Appeal; PC 11-2304
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Retirement Board appealed from a Providence County Superior Court judgment ordering it to return John A. Zambarano's retirement contributions despite his federal forfeiture judgment.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo, with the goal of effectuating legislative intent; plain statutory language is the best indicator of that intent.
PRECEDENTIAL VALUE	precedential
PARTIES	The Retirement Board of the Employees' Retirement System of the State of Rhode Island v. John A. Zambarano et al.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Rhode Island General Laws § 36-10.1-4(c) permits the Retirement Board to withhold a former public employee's retirement contributions until satisfaction of a federal forfeiture judgment.
2. Whether the phrase "for the payment of restitution" in § 36-10.1-4(c) modifies both "judgments" and "orders."
3. Whether a criminal forfeiture paid to the federal government constitutes restitution for purposes of § 36-10.1-4(c).

HOLDINGS

1. The phrase "for the payment of restitution" modifies both "judgments" and "orders," as do the other qualifying phrases in the provision.
2. A criminal forfeiture paid to the sovereign is not an order or judgment for restitution; therefore, the federal forfeiture judgment did not authorize the Board to refuse Zambarano's demand for a return of his retirement contributions.

KEY QUOTATIONS

"Simply stated, forfeiture is not restitution." (at -10-11)

"Having concluded that the trial justice correctly found that 'for the payment of restitution' modifies both 'judgments' and 'orders,' we hold that, because the federal court issued neither a judgment nor an order of restitution against Zambarano, § 36-10.1-4(c) provides the board no basis upon which it can refuse his demand for a return of his contributions." (at -11)

FACTUAL BACKGROUND

John A. Zambarano, a former North Providence Town Council member and Rhode Island Department of Corrections employee, pleaded guilty to felony offenses arising from public corruption. A federal court ordered him to forfeit \$46,000 to the federal government, in addition to imposing a fine and special assessment. After he resigned from the Department of Corrections, Zambarano sought refunds of retirement contributions he had made to the state and municipal retirement systems, but the Retirement Board refused, relying on the Rhode Island Public Employee Pension Revocation and Reduction Act.

PROCEDURAL HISTORY

Zambarano sued the Retirement Board in Superior Court seeking declaratory and injunctive relief and damages after the Board refused to process his request for a refund of retirement contributions. After a bench trial, the Superior Court revoked his Municipal Employees' Retirement System pension, awarded certain benefits to his innocent spouse, and ordered the Board to return Zambarano's contributions to the Employees' Retirement System and his contributions made during dishonorable municipal service. The Board timely appealed, and the Rhode Island Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record was remanded to the Providence County Superior Court.

CASES CITED

- McCain v. Town of North Providence, 41 A.3d 239, 243 (R.I. 2012)
- Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)
- DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011)
- Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011)
- Retirement Board of the Employees' Retirement System of Rhode Island v. DiPrete, 845 A.2d 270, 279 (R.I. 2004)
- Smith v. Retirement Board of the Employees' Retirement System of Rhode Island, 656 A.2d 186, 190 (R.I. 1995)
- United States v. Bajakajian, 524 U.S. 321, 332 (1998)