

Matter of Shields v Virts
2017 NY Slip Op 30872(U)
April 26, 2017
Supreme Court, Monroe County
Docket Number: 16-4826
Judge: William K. Taylor
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of:
JEFF SHIELDS, KEVIN COSTELLO,
ERIC MINISCE, and BRIAN RITCHIE,

Petitioners,

DECISION & JUDGMENT

vs.

Index #16-4826

BARY VIRTIS, in his official capacity as
Sheriff of Wayne County, WAYNE COUNTY
SHERIFF'S OFFICE, CHARLES DYE, in his official
capacity as Wayne County Human Resources Director,
WAYNE COUNTY OFFICE OF HUMAN RESOURCES-CIVIL SERVICE,
COUNTY OF WAYNE, JAMES J. DUNLAP, ANDREW J. ROSE,
THOMAS J. VANETTEN, BRANDON G. BURNETT,
ANTHONY J. SENEAL, LACEY L. HENDERSHOT,
THOMAS Z. MUNZERT, BRANDON C. LANTRY, and
SAMUEL J. ROSS,

Respondents.

Appearances:

Ennio Corsi, Esq. for Petitioners
Mark A. Costello, Esq. for Respondents

Taylor, J.,

At midnight on December 31, 2015 the Village of Lyons dissolved, which left Petitioners - members of its police department - out of a job. Petitioners now bring a proceeding pursuant to CPLR Article 78 and New York Civil Service Law §§ 70(2), (5) and 81(1), (2) seeking a judgment compelling the Wayne County Sheriff's Office to hire them as full-time Deputy Sheriffs without the need for further examination or qualifications or, in the alternative, to retroactively place them on a certified

preferred list for filling appropriate vacancies.

Where a party seeks mandamus to compel an action, there must exist a "clear legal right to the relief demanded and there must exist a corresponding nondiscretionary duty on the part of the [respondent] to grant that relief." Matter of Doorley v DeMarco, 106 AD3d 27, 34 (4th Dept 2013); Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs., 77 NY2d 753, 757 (1991). Here, Petitioners contend that under the New York Civil Service Law Respondents had a legal duty to transfer Petitioners into the role of Deputy Sheriffs with the Wayne County Sheriff's Office or place them on a certified preferred list to fill vacancies in said positions. Respondents disagree, arguing that the Civil Service Law does not establish such a duty under the circumstances presented.

Where a transfer of functions from one civil division of the state to another civil division of the state has occurred, Civil Service Law § 70(2) requires that provisions "shall be made for the transfer of necessary officers and employees who are substantially engaged in the performance of the function to be transferred." This section is only triggered in the context of a dissolved police department where "the functions of such department are assumed by another police agency by contractual agreement or payment or taxation therefor..." Civil Service Law § 70(5)(a) (emphasis added). Since the parties agree that this case does not involve a contractual agreement or payment,

Petitioners are entitled to relief only if the Wayne County Sheriff's Office assumed the functions of the former Village Police Department "by...taxation therefor" as provided in Civil Service Law § 70(5)(a).

Our Appellate Division has recently emphasized the preeminence of plain language when a court engages in statutory interpretation. See Int'l Union of Painters & Allied Trades ex rel. Stevens v N.Y. Dept. of Labor, 147 AD3d 1542 (4th Dept 2017). In describing the importance of plain language, the Court observed that

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature... As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof... In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning. Importantly, the function of the courts is to enforce statutes, not to usurp the power of legislation, and to interpret a statute where there is no need for interpretation [or] to conjecture about or to add to or to subtract from words having a definite meaning...are trespasses by a court upon the legislative domain."
Int'l Union of Painters & Allied Trades, 147 AD3d 1542, 1543-44 (4th Dept 2017) (internal quotations and citations omitted).

Thus, the task before this Court is to interpret the plain language of Civil Service Law § 70(5)(a).¹ Assuming, arguendo, that the Wayne County Sheriff's Office now performs the functions of the abolished agency,² the plain language of Civil Service Law § 70(5)(a) provides that for section 70(2)'s transfer provisions to apply the assumption of duties must have been precipitated "by...taxation therefor." Use of the word "by" before the words "taxation therefor" in this statutory context indicates that the "taxation" must either cause or be a mechanism of the assumption of the function. To find otherwise would ignore the use of the word "by" in the statute to mean "because of" or "through" and would thus render that language superfluous.

¹ "Generally, in the construction of statutes, the intention of the Legislature is first to be sought from a literal reading of the act itself...In this respect, the legislative intent is to be ascertained from the words and language used in the statute, and if language thereof is unambiguous and the words plain and clear, there is no occasion to resort to other means of interpretation. What the Legislature intended to be done can only be ascertained from what it has chosen to enact, and it is only when words of the statute are ambiguous or obscure that courts may go outside the statute in an endeavor to ascertain their true meaning." See McKinney's Cons Laws of NY, Book 1, Statutes 92 Comment at 182-83 (1971 ed).

² Under County Law § 650(1) the Sheriff is the "conservator of the peace within the County," and is therefore "required by law to provide services based on the need for police protection throughout the county, taking into consideration the availability of resources." 1993 Ops St Comp No. 93-13, citing 1988 Ops Atty Gen No. 188-38. Although the parties could - and do - quibble as to the level of police service now provided by the Wayne County Sheriff's Office as opposed to what was provided by the Lyons Village Police Department, there can really be no question that the Sheriff's Office now performs law enforcement duties it once provided concurrently with the Village Police Department. However, it performs those duties - now and before the Village dissolution - as a matter of legal obligation as opposed to "by contractual agreement or payment or taxation therefor."

Here, the duties of the Lyons Village Police Department were not assumed by the Wayne County Sheriff's Office by an act of taxation, but rather by the Village's unilateral dissolution coupled with the Sheriff's law enforcement duty that it performed before and after the Village's dissolution. See County Law § 650(1). The Sheriff's Office here simply filled the void as mandated by law and circumstance; no duties were assumed "by...taxation therefor." And for the statute to apply, there must have been an affirmative act of taxation not present in this case. To read the statute in the manner urged by Petitioners would require this Court to replace the words "by...taxation therefor" with the words "by default" or "by operation of law." However, it "is axiomatic that new language cannot be imported into a statute to give it a meaning not otherwise found therein, and a court cannot amend a statute by inserting words that are not there." Int'l Union of Painters & Allied Trades, 147 AD3d at 1544 (internal quotations and citations omitted).

This Court disagrees with Petitioners that the act of general municipal taxation by which the Sheriff's Office is funded - or even a general increase thereof - triggers the statute. Indeed, the word "therefor" in Civil Service Law § 70(5)(a) indicates that the "taxation" itself must be specifically linked to the function, such as where a specific tax is levied to fund a police district or police services.

Contrary to Petitioners' interpretation, the statute does not appear to be implicated where general taxation funds an increase in budgeted County-wide law enforcement costs, but rather when the function itself is assumed and funded by a specific "taxation therefor." To hold otherwise would ignore the import of the word "therefor" in modifying the word "taxation" in the statute.

While some portions of Civil Service Law § 70(5)'s legislative history evince a desire to provide broader employment protection to law enforcement officers in the wake of municipal or police agency dissolution, and reflect concerns by some about the breadth of that protection, this Court may not engraft such desires or concerns upon the plain language of the actual words used in the statute.³ "Inasmuch as 'the language of [the] statute is clear and unambiguous, [the Court] must give effect to its plain meaning'...and [the Court] may not 'resort to extrinsic material such as legislative history or memoranda.'" See Int'l Union of Painters & Allied Trades, 147 AD3d at 1546 (internal citations omitted). Indeed, at oral

³ This Court is mindful of the statutory interpretations suggested by the law's critics at the time of its passage that warn of broader applications that are now urged by Petitioner in this case. See Letter from the New York State Conference of Mayors and Other Municipal Officers, July 10, 1989, Bill Jacket, L. 1989, ch 483 at 18; Letter from the Association of Towns of the State of New York, July 18, 1989, Bill Jacket, L. 1989, ch 483 at 28; Letter from the New York State Assn of Counties, July 14, 1989, Bill Jacket, L. 1989, ch 483 at 31. These concerns as to the potential implications of the statute, which comport with Petitioners' view here, find no expression in the plain language of Civil Service Law § 70(5)(a). Indeed, the legislative history clearly promises broad employment protection for police officers in spirit yet the specific language of the law circumscribes that promise to three circumstances that are not present here.

argument Petitioners' counsel specifically disclaimed any reliance upon legislative history to assist in interpreting the statute, and urged this Court to resolve this matter per the plain language of Civil Service Law § 70(5)(a). In a supplemental brief Petitioners maintain that stance, but now adopt a fall-back position urging the Court to consider favorable portions of legislative history in the event the Court finds the language unclear and ambiguous. Ultimately, Petitioners' belated embrace of legislative history is unavailing. A statute is not rendered ambiguous because its plain language does not apply to the facts at bar. And this Court agrees with Petitioners and Respondents that the plain language controls, obviating the need to look to legislative history. In any event, to follow such an analytical path serves only one purpose that this Court rejects: to re-write the law.

Finally, from a practical standpoint Petitioners' interpretation of Civil Service Law § 70(5)(a) would result in every police officer in a dissolved town or village being automatically hired - or put on a preferred list to be hired - by the County Sheriff's Office upon the inferior municipality's unilateral act of dissolution. And if a similarly dissolved village is located within a town with a police department, under Petitioners' view the village police officers must also be hired or put on a preferred list for the town police department and the County Sheriff's Office. Setting aside whether these

results are laudable or not, if this broad stroke was the aim of the Legislature "such intent finds [no] expression in the language" of the statute. See Dean v United States, 2017 WL 1199461 at *7, 581 US __, __ (decided April 3, 2017) (Roberts, C.J.). "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v Madison, 5 US 137, 177 (1803). Correspondingly, it is not this Court's role to re-write the law; Civil Service Law § 70(5)(a) is not implicated here.⁴ And while this Court is mindful of the employment consequences to Petitioners wrought by the Village dissolution, the text of Civil Service Law § 70(5)(a) mandates the result herein.

Accordingly, it is hereby ADJUDGED that the Verified Petition is hereby DENIED and the proceeding is DISMISSED on the merits. Any relief requested by the parties but not specifically addressed herein is DENIED.

This constitutes the Decision and Judgment of the Court.

Honorable William K. Taylor
Supreme Court Justice
Dated: April 26, 2017

⁴ It necessarily follows from this ruling that the provisions of Civil Service Law § 81(1) and (2) were also not triggered, as Petitioners may not be put on a preferred list for employment absent a transfer pursuant to Civil Service Law § 70(2).