[Cite as *Walton v. Valley View Local School Dist.*, 2019-Ohio-4189.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

LIBERTY WALTON	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 28354
	:	
v.	:	Trial Court Case No. 2018-CVI-1956
	:	
VALLEY VIEW LOCAL SCHOOL DISTRICT	:	(Civil Appeal from Municipal Court)
	:	
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 11th day of October, 2019.

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TUCKER, J.

{¶ 1} Defendant-appellant Valley View Local School District hereinafter ("the District") appeals from a judgment of the Miamisburg Municipal Court awarding plaintiff-appellee Liberty Walton the sum of $466.87 as damages resulting from the breach of her 2018/2019 school-year contract with the District. For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Procedural History

{¶ 2} In 2016, the Valley View School District Superintendent submitted to the Board of Education ("the Board") a list of individuals whom the Superintendent recommended to fill various positions within the District for the 2016/2017 school year. Included therein was a recommendation that Walton be hired as an assistant cross-country coach, and that she be classified as a Category 5, Step 0 – 2 employee.[1] The Board issued a resolution in which it approved the recommendations. Thereafter, a one-page contract was produced by the office of the District treasurer. The contract listed Walton's category as level "X" and her step as "0 – 2."[2] The contract specified that Walton would be paid the sum of $2,311.06 for the 2016/2017 school year.[3] The contract was signed by Walton, the Board president, and the treasurer.

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[1] The evidence shows that the Board used an index setting forth nine different employee levels, labeled as categories, which were cross-indexed with the employees' years of experience, labeled as steps, in order to determine the appropriate salary for each employee.

[2] The salary index does not set forth a category "X."

[3] This salary corresponded to a Category 5, Step 0 – 2 employee on the salary index.

{¶ 3} In May 2017, the Board issued a resolution approving a contract hiring Walton for the 2017/2018 school year. The resolution approved a recommendation by the Superintendent that Walton be hired as a Category 5, Step 0 – 2 employee. The salary index shows that the salary for such an employee was, at that time, $2,334.19. However, the contract executed by Walton, the Board president and the treasurer provided for a salary of $2,801.03. The contract again stated that Walton's level was "X" and that she was a step 0 - 2. According to the index, the salary listed on the contract was commensurate with the salary for a Category 4 employee with 0 - 2 years of experience. There is no dispute that the error in the salary was the result of a unilateral mistake on the part of the treasurer's office. There is also no dispute that Walton fully performed her duties under the contract and that she was paid the sum of $2,801.03 in conformity with the terms of the contract.

{¶ 4} Finally, in May 2018, the Board issued a resolution approving a contract hiring Walton for the 2018/2019 school year with the same category and step enumeration as the prior years. In accordance with the index, Walton was entitled to be paid the sum of $2,369.19 as a Level 5, Step 0 - 2 employee. Again, Walton, the Board president and the treasurer signed a contract which stated that Walton was a category "X", step 0 – 2 employee. The contract also correctly specified the salary.

{¶ 5} Sometime thereafter, Walton contacted the treasurer seeking to determine why her salary for the 2018/2019 school year was lower than the prior year. At that point, the treasurer realized that a mistake had been made with regard to the contract for the 2017/2018 school year and that Walton had been overpaid for that year by $466.84.[4] In

[4] The evidence indicates that the mistake had been made by a prior treasurer.

September 2018, the treasurer sent Walton an email regarding the overpayment and informed Walton that the overpayment for the 2017/2018 school year would be recouped from the payment made under the 2018/2019 school year. Walton sent a reply indicating that she did not consent to a deduction from her 2018/2019 contracted salary. In October 2018, the treasurer sent a letter to Walton indicating that the District intended to deduct the overpayment and that it was entitled to do so under the authority of *Green Local Teachers Assn. v. Blevins*, 43 Ohio App.3d 71, 539 N.E.2d 653 (4th Dist.1987). In November 2018, payment was issued to Walton with the sum of the overpayment deducted therefrom.

{¶ 6} Walton filed a complaint in the Miamisburg Municipal Court seeking damages for breach of the 2018/2019 contract. In her complaint, Walton alleged that the District breached the contract when it withheld monies for the repayment of the monies overpaid during the prior contract year.

{¶ 7} The District filed a counterclaim which set forth the factual background as set forth above. The District did not expressly set forth its cause of action; however, in its prayer for relief, it asked that Walton's complaint be dismissed or, in the alternative, that the District be awarded judgment in the amount of $466.84, as a Board treasurer cannot expend public dollars except for an authorized purpose, and must recover unlawful expenditures. The District also stated that it was entitled to recover the overpaid funds in accordance with R.C. 9.39 and R.C. 117.28. Finally, the District asked that Walton be required to pay it the sum of $466.84, because "it is well-established under Ohio law that, when money is paid based upon a mistake of fact, and would not have been paid if the

facts had been known, it may be recovered."[5]

{¶ 8} A trial was conducted in January 2019. Thereafter, the magistrate entered a judgment in favor of Walton in the sum of $466.84 plus interest and court costs.

{¶ 9} The District filed objections in which it argued that it was entitled to recoup the monies paid in excess of the amount approved by the Board for the 2017/2018 school year and that it acted appropriately when it deducted the overpayment from Walton's salary for the subsequent contract year. In support, the District cited *Green Local*, 43 Ohio App.3d 71, 539 N.E.2d 653. The District also cited R.C. 3133.33(B) as support for its argument that the 2017/2018 contract was invalid because it was not authorized by the Board.

{¶ 10} The trial court overruled the objections, finding neither R.C. 3313.33(B) nor *Green Local* applicable to the 2018/2019 contract before it. The District appeals.

II. *Green Local Teachers Assn. v. Blevins* Analysis

{¶ 11} We begin with the District's third assignment of error, which states:

> THE TRIAL COURT ERRED IN NOT APPLYING THE HOLDING OF *GREEN LOCAL TEACHERS ASS'N V. BLEVINS*.

{¶ 12} The District cites *Green Local*, 43 Ohio App.3d 71, 539 N.E.2d 653, as authorizing it to deduct the overpayment of the 2017/2018 contract from the 2018/2019

[5] Arguably this counterclaim could be viewed as merely setting forth the District's justification for its actions with regard to the 2018/2019 contract. However, as a general rule, pleadings should be construed "liberally" for purposes of Civ.R. 8. *Crosby v. Beam*, 47 Ohio St.3d 105, 110, 548 N.E.2d 217 (1989). Thus, we will construe the counterclaim as stating a cause of action that brings the 2017/2018 contract into issue in this lawsuit.

contract. The District contends that the trial court erroneously determined that *Green Local* was not applicable to this case. Implicit in this argument was an assertion that Walton's claim for breach of contract must fail.

{¶ 13} In *Green Local*, Blevins was the treasurer of the Green Local Board of Education during the 1985/1986 school year. *Id.* at 71. During that school year, Blevins issued nine bi-weekly salary payments in accordance with the salary schedule effective July 1, 1985. *Id.* at 72. The salary schedule was replaced on November 29, 1985 by a new schedule which provided for an increase in teacher salaries. *Id.* The increase was made retroactive to July 1, 1985. *Id.* Blevins made an error in calculating both the lump-sum back-pay owed to the teachers and the amount due in future payments under the new yearly salary. *Id.* The errors resulted in actual overpayments, as well as prospective overpayments, to the teachers. *Id.* Blevins discovered the mistake in May 1986, at which time he reduced the payments made to the teachers for the remainder of the school year in amounts corresponding to the amount that they had been, or would have been, overpaid. *Id.* The teachers association then filed suit on behalf of its members, alleging that the Board of Education and Blevins did not have the right to recover the overpayments and that they could not recover the overpayments by unilateral deductions from future paychecks. *Id.* at 71. The trial court ruled in favor of the Board of Education and Blevins. *Id.* at 73.

{¶ 14} On appeal, the court noted that it did not condone the Board's resort to "self-help by deducting alleged overpayments from current salaries due." *Id*. at 77, fn. 1. However, the court concluded that the Board and Blevins had the "right to recover the overpayments and their mode of effectuating such recovery, through unilateral deductions

of remaining paychecks in the relevant year, was not contrary to state statutory law", because: 1) the calculation mistake was made during the contract year; 2) there was no evidence that each paycheck issued during the year was required to be a specific amount, and 3) there was no evidence that the teachers were not paid their full salary, *Id.* at 75 and 77, fn. 1.

{¶ 15} In the case before us, there is no dispute that the contract for the 2017/2018 school year had been completed by both parties, according to its terms, and that the treasurer attempted to unilaterally recoup the monies overpaid in the 2017/2018 contract year by deducting them from a wholly separate contract. Therefore, we agree with the trial court that the facts of this case are distinguishable from the facts of *Green Local*.

{¶ 16} Further, the *Green Local* court expressly limited its holding to "the peculiar circumstances" of that case. *Id.* at 77, fn. 1. We cannot find, and the District does not cite, any other statutory or case law that would permit the type of self-help the District undertook with regard to Walton's third contract. Thus, we reject the claim that the District was permitted to take the action it did in deducting monies from Walton's 2018/2019 contract. We also conclude that the District has not presented any argument that would lead us to reverse the trial court's judgment insofar as it awarded Walton damages for the breach of what was, undisputedly, a valid contract that was not related to the contract for which an overpayment was made.

{¶ 17} Accordingly, the third assignment of error is overruled.

III. R.C. 3313.33(B) Analysis

{¶ 18} The District's first and second assignments of error state:

THE TRIAL COURT ERRED IN DETERMINING THAT R.C. 3313.33(B) PERTAINS ONLY TO BOARD MEMBERS' PECUNIARY INTEREST IN CONTRACTS OF THE BOARD.

THE TRIAL COURT ERRED IN RULING A SCHOOL BOARD PRESIDENT CAN BIND THE BOARD OF EDUCATION TO A CONTRACT WITHOUT BOARD APPROVAL.

{¶ 19} The District contends that the trial court erroneously interpreted R.C. 3313.33(B), and thus erred in concluding that the statute had no bearing on this case. The District also contends that the trial court erroneously ruled that a Board of Education president can bind a Board to a contract that has not been approved by the Board.

{¶ 20} R.C. 3313.33(B) states that, "[e]xcept as provided in division (C) of this section, no member of the board shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which the person is a member. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board."

{¶ 21} The trial court appears to have determined that the entirety of R.C. 3313.33(B) is limited to situations involving board members who have a pecuniary interest in a contract. The court further concluded that the statute was not applicable because Walton was not a member of the Board.

{¶ 22} However, as noted by the Board, the Ohio Supreme Court and the First District Court of Appeals have rendered opinions in which they clearly considered the second sentence of R.C. 3313.33(B) as a stand-alone provision independent of the proscription on a board member's ability to have a contract with or be employed by the

board set forth in the statute's first sentence. *See Wolf v. Cuyahoga Falls City School Dist. Bd. of Edn.*, 52 Ohio St.3d 222, 556 N.E.2d 511 (1990); *Walker v. Lockland City School Dist. Bd. of Edn.*, 69 Ohio App.2d 27, 429 N.E.2d 1179 (1st Dist.1980). These two cases stand for the proposition that, regardless of whether a board member has a pecuniary interest, contracts made on behalf of the board must be authorized by a regular or special meeting of the board. In other words, a contract is not valid or binding unless authorized by the board. *Wolf* at 224. *Accord Tirpack v. Beavercreek Bd. of Edn.*, 2d Dist. Greene No. 91 CA 70, 1992 WL 172160 (July 24, 1992).

{¶ 23} Therefore, we agree that the trial court erred in its interpretation of R.C. 3313.33(B). Based upon the foregoing, we also agree that a Board president cannot bind the Board to a contract that has not been approved or ratified by the Board. *See Walker* at 29.

{¶ 24} Since the trial court erred with regard to its apparent interpretation of R.C. 3313.33(B), we must necessarily conclude that it erred in rendering judgment on the District's counterclaim. In other words, the trial court could not have properly examined the merits of the counterclaim, insofar as it related solely to the issue of recovery of the overpayment of the 2017/2018 contract, given that its analysis thereof consists solely of reaching the incorrect interpretation of R.C. 3313.33(B). Therefore, we must reverse the trial court's judgment insofar as it entered judgment against the District on its counterclaim; we remand the matter to the trial court so that the trial court, in the first instance, may consider the District's counterclaim regarding the 2017/2018 contract in light of the District's unilateral mistake, R.C. 3313.33(B), and any other appropriate consideration. In doing so, we do not comment on whether the Board has demonstrated

the right to recover the monies paid to Walton or whether those monies are owed by Walton.

{¶ 25} Accordingly, the first and second assignments of error are sustained.

IV. Conclusion

{¶ 26} The portion of the trial court's judgment awarding damages to Walton on her claim for breach of contract is affirmed. The portion of the judgment wherein the trial court entered judgment against the District on its counterclaim regarding the 2017/2018 contract is reversed and remanded for further proceedings.

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DONOVAN, J. and FROELICH, J., concur.

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