

IN THE COURT OF APPEALS OF IOWA

No. 3-142 / 12-1207
Filed May 15, 2013

CITY OF WATERLOO,
Plaintiff-Appellant,

vs.

TIM EVERETT,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge.

The City of Waterloo appeals the district court's conclusion it is not entitled to reimbursement from a police officer's settlement with a third party tortfeasor.

AFFIRMED.

Kevin R. Rogers of Swisher & Court, P.L.C., Waterloo, for appellant.

Craig Ament of Ament Law Firm, Waterloo, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

This case involves the City of Waterloo's efforts to be reimbursed under Iowa Code section 411.22 (2011) for its payment of medical expenses and temporary disability benefits on behalf of an injured police officer. The district court rejected the city's indemnification claim to proceeds of the officer's settlement of his tort claim against third parties. Because section 411.22 only contemplates subrogation and indemnification rights for the Municipal Fire and Police Retirement System of Iowa (retirement system), and not individual cities, we affirm the district court.

I. Background Facts and Proceedings

Timothy Everett is a police officer for the City of Waterloo. On January 7, 2008, a car hit Everett, crushing his knee. The injuries caused him to miss work from January 9 through June 8, 2008, and from October 31 until November 28, 2008.

Because Everett was on duty when the accident occurred, the city paid \$41,642 (corrected from an original amount of \$43,854.59) toward his hospital, nursing, and medical costs, and \$23,959.84 in temporary disability pay. On March 6, 2009, the statewide system effectively retired Everett for "total and permanent accidental disability."¹ Seven months later, Dennis Jacobs, the

¹ In May 2011, Everett petitioned the statewide system to be reinstated as an officer. An independent medical evaluation found that, by wearing a knee brace while on duty, Everett could fully function as a police officer. He returned to the force in June 2011, wearing the brace throughout his shifts.

executive board director of the retirement system signed a document expressly waiving its subrogation interest under chapter 411.²

Meanwhile, Everett filed a personal injury claim against Elvis and Mukadesa Alicic, the driver and owner of the car that struck him. Nationwide Insurance Company, as the Alicics' insurer, offered to settle for its \$100,000 policy limit. The city learned of Nationwide's offer and asked to receive \$45,232.22 as reimbursement for the \$67,814.43³ paid minus the one-third share of Everett's attorney fees. In January 2010, Nationwide settled with Everett for \$100,000. Everett and the city agreed to place those funds into a trust account pending resolution of the city's subrogation claim.

The city then filed a petition against Everett seeking reimbursement for its disability and medical payments. The parties submitted stipulated facts, exhibits, and testimony. On May 31, 2012, the district court ruled in favor of Everett, concluding Iowa Code section 411.22 did not entitle the city to a portion of proceeds from Everett's settlement with Nationwide. The court did determine that section 411.15 "imposes a duty to indemnify the city," but the city did not prove the amount of the deduction under that provision. The city now appeals.

II. Scope and Standard of Review

We review statutory interpretation for legal error. *Krupp Place 1 Co-op, Inc. v. Bd. of Review of Jasper Cnty.*, 801 N.W.2d 9, 13 (Iowa 2011).

² In a March 10, 2011 document, Jacobs advised that his earlier letter was not intended to release any of the city's subrogation rights.

³ This amount represented the city's original claim of \$43,854.59 in medical costs, plus the \$23,959.84 in temporary disability benefits.

III. Analysis

The city seeks to recover the amounts it spent on Everett's medical expenses and temporary disability benefits from his damage settlement with the responsible third parties. The city stakes its right to recovery on section 411.22, which cross references sections 411.6(5) and 411.15.

As its primary focus, the city asserts the history of chapter 411 signals the legislature's intent to allow a city subrogation and indemnification rights to recover disability and medical payments from an officer's third-party settlement. Before the statewide system was in place, cities provided their own individual retirement systems for their police officers and firefighters. *Bd. of Trs. of Mun. Fire & Police Ret. Sys. of Iowa v. City of West Des Moines*, 587 N.W.2d 227, 228 (Iowa 1998). But in 1992, our legislature amended chapter 411, terminating individual retirement systems and requiring each city to participate and transfer funds into the statewide system. *Id.*

Before this change, the legislature defined "retirement system" as "either the fire or the police retirement system of the said cities." Iowa Code § 411.1(1) (1989). When the statewide system replaced the individual systems, the legislature redefined "retirement system" as "the statewide fire and police retirement system established by this chapter." Iowa Code § 411.1(17) (1993).

Chapter 411⁴ aims to "promote economy and efficiency in the municipal public safety service" by providing for the orderly payment of pensions and a comprehensive disability program. Iowa Code § 411.1A. Cities pay a set

⁴ All future references will be to the 2011 Iowa Code unless otherwise specified.

amount into the statewide retirement fund based on annual actuarial valuations. Iowa Code § 411.8(1)(a). But cities remain obligated to provide two forms of payments from their city fund. If an officer is injured on duty, a city must provide full pay and benefits until he recovers or is deemed permanently disabled. *Id.* § 411.6(5)(b) (entitled “Accidental disability benefit”). And a city must pay costs associated with “hospital, nursing, and medical attention” arising from the on-duty injury. *Id.* § 411.15 (entitled “Hospitalization and medical attention”).

A. Does the City of Waterloo Have Indemnification or Subrogation Rights under Section 411.22?

The city challenges the district court’s holding that individual cities have no subrogation or indemnification rights under section 411.22. If a police officer or fire fighter who is a member of the retirement system suffers injury or death, for which a third party would be liable, section 411.22(1) provides the “retirement system” with a subrogation interest in that member’s rights of recovery against the third party. The provision also states the retirement system “may maintain an action for damages against the third party for lost earnings and lost earning capacity.” Iowa Code § 411.22(1). If the retirement system declines in writing to file suit against the third party, subsection 2 authorizes a member to maintain an action against the third party. Iowa Code § 411.22(2).

The city argues because the amended chapter requires cities to participate in the statewide system, the term “retirement system” includes each participating city. Based on its inclusive reading of the term “retirement system”

plus the statutory language providing the system indemnification rights, the city concludes it enjoys the right of indemnity set out in section 411.22(2)(a).

The legislature explained the retirement system's right to indemnity: "The retirement system shall be indemnified out of the recovery of damages to the extent of benefit payments paid or awarded by the retirement system, with legal interest, except that the plaintiff member's or estate's attorney fees may be first allowed by the district court." Iowa Code § 411.22(2)(a). This right encompasses benefits paid at the time judgment is entered plus future payments under which the retirement system will be liable. *Id.*

Section 411.22(1) provides the retirement system's subrogation rights. The 2011 version refers to sections 411.6 and 411.15, which direct cities to pay benefits to members:

If a member receives an injury or dies for which benefits are payable under section 411.6, subsection 3, 5, 8, or 9, or section 411.15, and if the injury or death is caused under circumstances creating a legal liability for damages against a third party other than the retirement system, the retirement system is subrogated to the rights of the member or the member's beneficiary entitled to receive a death benefit and may maintain an action for damages against the third party for lost earnings and lost earnings capacity.

Iowa Code § 411.22(1). The version of the statute predating the statewide system also included references to sections 411.6(5) and 411.15. *See id.* § 411.22(1) (1989).

The city seizes on the enduring cross references to sections 411.6 and 411.15 to argue an individual city's previous indemnification and subrogation rights under section 411.22 remain despite the creation of the statewide system. The city contends the district court's interpretation of section 411.22 as not

extending rights of recovery to individual cities renders the incorporation of the other statutory provisions superfluous.

Like the district court, we are unpersuaded by the city's interpretation of section 411.22. If the language in a statute is clear and unambiguous, we apply a plain, rational meaning consistent with the statute's subject matter. *City of Fairfield v. Harper Drilling Co.*, 692 N.W.2d 681, 684 (Iowa 2005).

The definitions in chapter 411 distinguish between the statewide retirement system and individual cities. A "retirement system" means "the statewide fire and police retirement system established by this chapter for the firefighters and police officers of the cities described in section 411.2, its board of trustees, and its appointed representatives." Iowa Code § 411.1(20). A "city" in chapter 411 means any city "participating in the statewide fire and police retirement system as required by this chapter." Iowa Code § 411.1(8). The terms are not used interchangeably in chapter 411.

We also find it significant that cities and the retirement system have opposed each other in litigation. See, e.g., *City of West Des Moines*, 587 N.W.2d at 227; *City of Cedar Rapids v. Mun. Fire & Police Ret. Sys. of Iowa*, 526 N.W.2d 284 (Iowa 1995). The statutory definitions, coupled with the separate roles and identities of the statewide retirement system and individual cities, defeat the city's effort to read the term "retirement system" as synonymous with the term "city."

We also find it possible to reconcile the cross references to sections 411.6 and 411.15 with the district court's reading of the statutory scheme. The first clause of the opening sentence of section 411.22(1) qualifies the manner in which the statewide system's subrogation rights apply:

If [1] a member receives an injury or dies[;]
 [2] for which benefits are payable under section 411.6,
 subsection 3, 5, 8, or 9, or section 411.15[;]
 and if [3] the injury or death is caused under circumstances
 creating a legal liability for damages against a third party other than
 the retirement system[;]
 [then] the retirement system is subrogated to the rights of the
 member . . . and may maintain an action for damages against the
 third party for *lost earnings* and *lost earning capacity*.

Iowa Code § 411.22(1) (alterations and emphasis added).

The end of that sentence restricts recovery to “damages . . . for lost earnings and lost earning capacity.” Because section 411.15 relates to “hospital, nursing, and medical attention,” it is beyond the scope of recovery for “lost earnings and lost earning capacity.” The remainder of the statute restricts any recovery to previous and future payments made by the “retirement system.” See *id.* § 411.22(1)(a)–(b), (2)(a). No language in chapter 411 suggests the term “retirement system” includes an individual city. And at no point does section 411.22 invoke a city's rights. In context, referral to sections 411.6(5) and 411.15 classifies the member's injury for the purpose of restricting the statewide system's right of recovery, rather than creating additional subrogation rights to a city for damages.

Faced with an uphill battle given the current wording of the statute, the city continues to stress legislative history. The city relies on an Iowa Supreme Court

case concluding a police officer should receive credit for his years of service before the statewide system was in place. See *Patton v. Mun. Fire & Police Ret. Sys. of Iowa*, 587 N.W.2d 480, 484 (Iowa 1998). The city draws an analogy between the holding in *Patton* and its contention that section 411.22 still offers subrogation and indemnification rights to individual cities.

Contrary to the city's claims, section 411.22 did substantially change subrogation and indemnification rights. The 1989 version authorizes the system to collect against a third party "for damages." The 2011 version limits recovery to damages "for lost earnings and lost earning capacity." This change aligns with the legislature's substitution of the statewide system for the city. The statewide system—which provides permanent disability and retirement benefits once supplied by cities—now holds indemnity and subrogation rights to damages paid for those purposes.

We find no error in the district court's interpretation of section 411.22.

B. Can the City of Waterloo Recover Amounts Paid for Everett's Hospitalization and Medical Costs under Section 411.15?

Section 411.15 requires cities to pay for "hospital, nursing, and medical attention" for their police officers and firefighters injured in the line of duty. This provision directs that "any amounts received by the injured person from any other source for such specific purposes shall be deducted from the amount paid by the city." Iowa Code § 411.15.

The district court read this section as affording the city a right of indemnification for hospital and medical expenses. But the court observed "no

evidence was presented about the terms of [Everett's] settlement other than that Nationwide Insurance Company paid its policy limits of \$100,000 to the defendant in full settlement of all claims against Elvis and Mukadesa Alicic. Whether the settlement included or excluded payment for hospital, nursing, and medical attention is unknown." In the absence of proof, the court found the city could not recover the \$41,642 that it expended under section 411.15.

The city contests the district court's interpretation of section 411.15. Because section 411.15 does not mention indemnification, the city contends the provision does not create a right to recover, but designates the city as the "payor of last resort" when no other sources are available. The city insists that its right to recover is embedded in section 411.22.

Assuming without deciding the district court was correct in deriving a right of indemnification based on the "deducted from" language of section 411.15, we agree the city did not offer evidence that the \$100,000 settlement compensated Everett "for such specific purposes"—that is hospital, nursing, or medical attention. Without such proof, the city was not entitled to reimbursement.

C. Is Everett Entitled to Attorney Fees?

Everett requests we award him \$13,334 in attorney fees "pursuant to the contingent fee clause of his attorney fee contract." Everett cites no authority for his attorney fee request. Because no right to recover attorney fees existed at common law, we do not award fees without express statutory or contractual authority. *Van Sloun v. Agans Bros.*, 778 N.W.2d 174, 182 (Iowa 2010). Everett's attorney fee contract shows he must compensate his own attorneys; it

does not obligate a third party to shoulder the expense. Absent any statutory authority to award Everett's fees, we decline his request.

AFFIRMED.