COURT OF APPEALS DECISION DATED AND FILED

August 18, 2026

Samuel A. Christensen
Clerk of Court of Appeals

Appeal No. 2024AP1458

Cir. Ct. No. 2022CV2605

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT I**

JOHN R. NELSON,

PLAINTIFF-APPELLANT,

V.

COUNTY OF MILWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Reversed and cause remanded with directions*.

Before Donald, C.J., Geenen, and Petrashek, JJ.

¶1 DONALD, C.J. John R. Nelson appeals an order that dismissed his claims against Milwaukee County. Nelson sued the County claiming a vested contractual right to County-paid retiree health insurance premiums under the 2009-2012 collective bargaining agreement (CBA) between the County and the

Milwaukee Deputy Sheriff's Association (MDSA). The circuit court concluded that Nelson did not have a vested right under the CBA or under a related section of the Milwaukee County General Ordinances (MCGO). Therefore, the circuit court denied Nelson's motion for summary judgment and granted summary judgment in favor of the County, dismissing Nelson's breach of contract and declaratory relief claims. For the reasons discussed below, we reverse and remand for the circuit court to enter summary judgment in Nelson's favor.

BACKGROUND

¶2 The MDSA is a labor organization, or union, that represents the interests of its members in collective bargaining negotiations with the County on wages, hours, and working conditions, which may include retiree benefits. Nelson was first hired by the County on October 17, 1994, as a non-represented corrections officer. On April 14, 1995, Nelson was hired by the Milwaukee County Sheriff's Office as a deputy sheriff and became a member of the MDSA. The agreement at issue, entered into between the County and the MDSA, was effective between January 1, 2009 and December 31, 2012. CBA § 3.11(6) provides that:

> Employees hired prior to July 1, 1995, upon retirement shall be allowed to continue in the County Group Health Benefit Program and the County shall pay the full monthly cost of providing such coverage, in accordance with Chapter 17 of the General Ordinances of the County of Milwaukee, § 17.14 and any other applicable ordinance or section. To be eligible for this benefit, an employee must have fifteen (15) years or more of creditable service as a County employee. Employees hired on and after July 1, 1995 may upon retirement opt to continue their membership in the County Group Health Benefit Program upon payment of the full monthly cost.

While covered by the CBA, Nelson completed fifteen years of service with the County. On January 31, 2010, Nelson accepted a promotion to the rank of lieutenant and was no longer represented by the MDSA. On March 9, 2012, Nelson transferred to a non-represented position with the Milwaukee County Parks Department.

¶3 In 2020, while working for the Parks Department, Nelson contacted the County's Human Resources Benefits Division, about his eligibility for retiree health benefits. The Benefits Division did not review CBA § 3.11(6) to determine Nelson's eligibility and, instead, applied the eligibility criteria set forth in the then-current version of MCGO § 17.14(7)(*l*), which provided that the County will pay:

> the full monthly cost of providing county group health coverage under section 17.14 to the following individuals:
>
> (1) Upon retirement, employees who were non-represented as of December 31, 2011 … and who were hired prior to January 1, 1994, and who have fifteen (15) years or more of creditable pension service as a county employee[.]

The Benefits Division determined that Nelson was non-represented as of December 31, 2011, and had completed fifteen years of creditable service, but was not hired prior to January 1, 1994, and therefore was not eligible for premium-paid health insurance upon retirement.

¶4 After being informed that he would not be eligible for premium-paid health insurance in retirement, Nelson sued the County for breach of contract and also sought a declaratory judgment.[1] He alleged that, upon completing fifteen

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[1] Nelson's complaint also included claims for breach of implied duty of good faith and fair dealing, promissory estoppel, negligent misrepresentation, and injunctive relief. However, Nelson voluntarily dismissed those claims.

years of employment with the County, his contractual right to premium-paid health insurance under CBA § 3.11(6) became fully vested. Nelson and the County filed cross motions for summary judgment. In support of his motion, Nelson argued that the language of the CBA unambiguously vested his right to premium-paid retiree health insurance upon reaching fifteen years of County employment. Nelson further argued that, pursuant to CBA § 6.01, in the case of any conflicts between the CBA and MCGO § 17.14, the terms of the CBA control. Therefore, the conflicting dates of hire set forth in CBA § 3.11(6) and MCGO § 17.14(7)(*l*) were resolved in favor of the date in the CBA: prior to July 1, 1995.

¶5 Nelson also asserted that even if the circuit court found the CBA language ambiguous, the extrinsic evidence in the record supported his interpretation of the CBA, thus entitling him to summary judgment. Nelson submitted an affidavit from former MDSA President Roy M. Felber, who averred that he was involved in negotiating the CBA, and that the MDSA and the County intended CBA § 3.11(6) to fully vest "premium-free retirement health insurance benefits" to employees hired before July 1, 1995 once they have fifteen years of "creditable service as a County employee."

¶6 Nelson also submitted a 2018 memorandum (the "2018 Memo") from attorneys at the Milwaukee County Office of Corporation Counsel to a captain in the Internal Affairs Division of the Sheriff's Office, the Benefits Manager in the Human Resources Department, and the Interim Director of Retirement Plan Services. In the 2018 Memo, the Office of Corporation Counsel opined that retiree eligibility for premium-free health insurance is governed by MCGO § 17.14(7)(*1*), and that an employee who "was non-represented on December 31, 2011; originally hired as an MDSA member after January 1, 1994 but before July 1, 1995; and earned at least the required minimum 15 years of service credit as an MDSA member before becoming non-represented" has earned a "'vested' right to County-paid retiree health insurance." Since Nelson meets the eligibility criteria in the memo, he argued the County has admitted that he is entitled to the benefits he seeks.

¶7 In its summary judgment brief, the County argued that Nelson's right to premium-paid retirement health insurance was not controlled by the CBA because, pursuant the plain language of CBA § 3.11(6) and ***Monreal v. City of New Berlin***, 2015 WI App 24, 361 Wis. 2d 172, 861 N.W.2d 802, ***Schwegel v. Milwaukee County***, 2015 WI 12, 360 Wis. 2d 654, 859 N.W.2d 78, and ***Loth v. City of Milwaukee***, 2008 WI 129, 315 Wis. 2d 35, 758 N.W.2d 766, one must retire under a CBA to fully vest retirement health insurance benefits, and Nelson did not. The County asserted that Nelson's eligibility was instead controlled by the 2020 version of MCGO § 17.14(7)(*l*). The County also argued that even if CBA § 3.11(6) governed Nelson's eligibility, it "unambiguously adopts and incorporates by reference the terms and conditions of MCGO § 17.14," and therefore Nelson must also meet the eligibility criteria set forth in MCGO § 17.14(7)(*l*), which he cannot because he was not hired before January 1, 1994. In its response to Nelson's motion, the County asserted that Felber's affidavit should be disregarded as "self-serving" and that it does not "create a sufficient doubt" as to the CBA's meaning to create an issue of material fact for trial. The County also urged the circuit court to disregard the 2018 Memo on the grounds that: the manner in which Nelson presented it to the court violated the rules of civil procedure; the memo is protected by attorney-client privilege and should not have been disclosed; and the memo is merely "advisory," not authoritative, and does not address Nelson's specific circumstance.

¶8 The circuit court agreed with the County, finding that the 2020 version of MCGO § 17.14, and not the CBA, governed Nelson's right to health insurance in retirement, and that Nelson did not meet § 17.14(7)(*l*)'s eligibility criteria because he was not hired prior to January 1, 1994. The court reasoned that Nelson did not have a right to benefits under the CBA because: (1) "pursuant to ***Roth***[2] and ***Monreal***, any presumption of vested rights must arise out of the CBA in force at the time the employee retires"; and (2) according to "***Loth***, ***Monreal***, ***Schwegel***, and related cases," Nelson did not have a vested right to health insurance benefits under the CBA because he was not eligible for retirement during his service years and he did not retire when the CBA was in effect. Because it found Nelson did not have a right to the insurance benefits, the court also found that he was not entitled to declaratory relief. Accordingly, the circuit court denied Nelson's motion and granted the County's, entering summary judgement in favor of the County. The circuit court declined to consider the parties' arguments related to "contract interpretation of the CBA provisions."

¶9 On appeal, Nelson asserts that the circuit court erred by failing to analyze the language of the CBA, instead relying on a fictional "universal rule that individuals must retire under a CBA to obtain a vested right to its provisions." Nelson argues that under a proper analysis of CBA § 3.11(6)'s "unambiguous" language, he is entitled to County-paid health insurance premiums in retirement. Regarding MCGO § 17.14, Nelson contends that CBA § 6.01 operates to modify MCGO § 17.14(7)(*l*) to reflect the terms of CBA § 3.11(6) and therefore the hire date in MCGO § 17.14(7)(*l*) does not bar his eligibility for the benefits.

[2] ***Roth v. City of Glendale***, 2000 WI 100, 237 Wis. 2d 173, 614 N.W.2d 467.

¶10 The County argues that the "unambiguous" text of CBA § 3.11(6) and Wisconsin law require that in order for the retirement benefit to vest, Nelson had to retire while a member of the MDSA and prior to the CBA's expiration. The County also contends that the hire date in MCGO § 17.14(7)(*l*) applies to Nelson because it was incorporated into CBA § 3.11(6) and overrides § 3.11(6)'s hire date. Regarding the extrinsic evidence, Nelson argues that it supports his interpretation of the CBA, while the County criticizes Felber's affidavit as "self-serving" and argues that the 2018 Memo cannot be considered due to attorney-client privilege and, in any event, is not binding authority.

DISCUSSION

¶11 Summary judgment must be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2) (2023-24).[3] In reviewing a decision on summary judgment, "we apply the same methodology as the trial court and review de novo the grant or denial of summary judgment."[4] ***Pum v. Wisconsin Physicians Serv. Ins. Corp.***, 2007 WI App 10, ¶6, 298 Wis. 2d 497, 727 N.W.2d 346. In evaluating the evidence, we draw all reasonable inferences in favor of the non-moving party, ***id.***, and "evidentiary facts

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[3] All references to the Wisconsin Statutes are to the 2023-24 version.

[4] Because Nelson's claim for declaratory relief was dismissed for lack of justiciability due to the circuit court finding that Nelson does not have a vested right to the health insurance benefits, we also review dismissal of that claim de novo. ***Olson v. Town of Cottage Grove***, 2008 WI 51, ¶¶31-32, 309 Wis. 2d 365, 749 N.W.2d 211 (stating that the de novo standard of review applied to a grant of summary judgment when declaratory relief is sought and the underlying claim is determined to be not justiciable).

set forth in the affidavits or other proof are taken as true by a court if not contradicted by opposing affidavits or other proof," ***L.L.N. v. Clauder***, 209 Wis. 2d 674, 684, 563 N.W.2d 434 (1997).

I. Application of MCGO § 17.14(7)(*l*)

¶12 The parties disagree as to the application of MCGO § 17.14(7)(*l*). The County argues that Nelson must satisfy the prior-to-January 1, 1994 hire date contained in MCGO § 17.14(7)(*l*) because CBA § 3.11(6) states that "the County shall pay the full monthly cost of providing such coverage, *in accordance with* Chapter 17 of the General Ordinances of the County of Milwaukee, § 17.14." (Emphasis added.) The County interprets "in accordance with" to mean that all terms of the current version of MCGO § 17.14 are incorporated into CBA § 3.11(6), even if they conflict with § 3.11(6).

¶13 Nelson argues that he is not bound by the hire date of MCGO § 17.14(7)(*l*) because CBA § 6.01 operates to resolve any conflicts between the CBA and the MCGO in favor of the CBA. CBA § 6.01 states: "To the extent that the provisions of this Agreement are in conflict with existing ordinances or resolutions, such ordinances and resolutions shall be modified to reflect the agreements herein contained."

¶14 We interpret the relevant provisions of the CBA as we would any other contract, with the objective "to ascertain the intent of the contracting parties." ***Roth v. City of Glendale***, 2000 WI 100, 237 Wis. 2d 173, ¶15, 614 N.W.2d 467. "The best indication of the parties' intent is the language of the contract itself." ***Town Bank v. City Real Est. Dev., LLC***, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. "If the contract is unambiguous, our attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence." ***Id.*** (citation omitted). We conclude that the plain language of the CBA does not subject Nelson to the hire date requirement found in MCGO § 17.14(7)(*l*). CBA § 6.01 is clear and unambiguous: in the event of any conflict between the CBA and the MCGO, the CBA controls. Therefore, Nelson's claims are not barred by the hire date contained in MCGO § 17.14(7)(*l*).

II. Interpretation of CBA § 3.11(6)

¶15 The parties also disagree as to the proper interpretation of CBA § 3.11(6), which provides, in relevant part:

> Employees hired before July 1, 1995, upon retirement shall be allowed to continue in the County Group Health Benefit Program and the County shall pay the full monthly cost of providing such coverage, in accordance with Chapter 17 of the General Ordinances of the County of Milwaukee, § 17.14 and any other applicable ordinance or section. To be eligible for this benefit, an employee must have fifteen (15) years or more of creditable service as a County employee.

¶16 Nelson argues that the language of CBA § 3.11(6) unambiguously sets forth only two eligibility requirements for vesting: (1) hired by the County prior to July 1, 1995; and (2) at least fifteen years of creditable service as a County employee.

¶17 The County argues that the same language unambiguously also requires the employee to retire while still an MDSA member and prior to the expiration of the CBA. In support of its interpretation, the County parsed the phrase "*[e]mployees* hired before July 1, 1995, *upon retirement* shall be allowed to *continue* in the County Group Health Benefit Program." (Emphasis added.) Beginning with the word "employee," the County pointed to CBA § 1.01, which defines "employee" as "only those employees of the County of Milwaukee within the certified bargaining unit represented by the Association." Ergo, according to the County, since the benefit is for "employees," one must be a current MDSA member to qualify for it. Similarly, the County asserted that the word "continue" is proof that only active County employees are entitled to the benefit because to "continue" means to maintain something uninterrupted. The County also argues that the phrase "upon retirement" combined with "continue" means that one must retire under the CBA for the retirement benefit to vest.

¶18 In response, Nelson asserts that "upon retirement" means whenever the already-vested employee happens to retire, and does not require that the employee retire in order for benefits to vest in the first instance. Nelson also points out that § 3.11(6) does not include a set retirement date, and this court notes that other sections of the CBA *do* specify such a date. For example, CBA § 3.21(6), (9) and (10) confer various benefits on employees who "retir[e] on and after July 31, 1989," "retire on and after January 1, 1994" and "file[] an application for retirement benefits between November 1, 2011 and December 31, 2011," respectively.

¶19 Nelson further contends that the CBA definition of "employee" means that retirement cannot be an eligibility requirement because "employees" are not yet retired. This court also notes that other parts of the CBA suggest that the word "employee" is used to refer to both current and former MDSA members, and that when the agreement intends to refer only to active members, it says so explicitly. For example: CBA § 3.05(c) states "[a]n *active member of the bargaining unit* who accepts a position within the Sheriff's Department but is *no longer a member of the bargaining unit*, may continue to be eligible to receive benefits under this section when such *employee*…"; § 3.05(d) repeatedly refers to "active employees"; § 3.11(8) specifies "active employees"; and § 4.02(2) refers to "all active bargaining unit employees."

¶20 The County and Nelson also differ as to the proper understanding of Wisconsin law governing the interpretation of collective bargaining agreements. The County asserts that Wisconsin law requires retirement under the agreement for the contractual right to retiree health benefits to vest. Nelson counters that no such universal rule exists and argues that vesting is controlled by the language of the agreement. We agree with Nelson and note that any rule or presumption as to vesting can only be applied after examining the contract language, determining that the language is ambiguous, and the ambiguity is not resolved by extrinsic evidence.

¶21 While no Wisconsin case is directly on point, ***Roth*** is the most instructive. The issue presented in ***Roth*** was whether lifetime retiree health insurance benefits could vest under a collective bargaining agreement absent language explicitly vesting the benefits for life. ***Id.***, 237 Wis. 2d 173, ¶9. The City contended that the benefits terminated upon the expiration of the CBA, while the retirees claimed a vested right to fully-paid premiums for life pursuant to the terms of the CBAs in force at the time of their respective retirements. ***Id.*** The ***Roth*** court looked to ***Bidlack v. Wheelabrator Corp.***, 993 F.2d 603 (7th Cir. 1993) for guidance in interpreting the agreements at issue, and adopted the default rule articulated by the concurrence in that case. ***Roth***, 237 Wis. 2d 173, ¶¶24-26. The ***Bidlack*** concurrence advocated for a "weak" vest rule, which "would presume that benefits vest unless there is evidence of an agreement to the contrary. If the collective bargaining agreement is ambiguous, then consideration of extrinsic evidence is permitted to determine whether the parties did not intend the benefits to vest." ***Id.***, 993 F.2d at 611, 613 (Cudahy, J., concurring). The ***Bidlack*** court also explained that no presumption should be applied until after the contract language and extrinsic evidence have been considered, "[f]or until then, we do not know whether we have an intractable interpretive issue or merely an issue that cannot be resolved without testimony or other evidence besides the language and logic … of the contract." ***Id.*** at 609. After adopting the default rule that absent contract language or extrinsic evidence suggesting otherwise, retiree health benefits conferred by CBAs vest upon retirement, the ***Roth*** court did not decide the matter because the complete CBAs were not in the record. ***Id.***, 237 Wis. 2d 173, ¶39. Therefore, the case was remanded to the circuit court "for a determination of whether the collective bargaining agreements vested health benefits for the retirees." ***Id.***

¶22 Unlike in ***Roth***, a complete copy of the CBA at issue here is in the record, and thus we begin by examining the contract language. As with any contract, in interpreting a CBA, the objective is to ascertain the intent of the contracting parties. ***Id.***, ¶15. "We ascertain the parties' intentions by looking to the language of the contract itself." ***Seitzinger v. Community Health Network***, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426. If the terms of the contract are ambiguous, extrinsic evidence may be used to determine the parties' intent. ***Id.*** "A contract provision is ambiguous if it is fairly susceptible of more than one construction." ***Tufail v. Midwest Hosp., LLC***, 2013 WI 62, ¶27, 348 Wis. 2d 631, 833 N.W.2d 586. Furthermore, "[t]he general rule as to construction of contracts is that the meaning of particular provisions in the contract is to be ascertained with reference to the contract as a whole." ***Buchholz v. Schmidt***, 2024 WI App 47, ¶23, 413 Wis. 2d 308, 11 N.W.3d 212 (citations omitted). We interpret contractual language "according to its plain or ordinary meaning, consistent with what a reasonable person would understand the words to mean under the circumstances." ***Id.*** (citation modified).

¶23 Applying established principles of contract interpretation to the CBA here, we find it ambiguous as to whether one must retire as an active MDSA member and under the CBA to fully vest the health insurance benefit. The CBA definition of the word "employee" suggests active MDSA members, but the usage of the word in various sections of the agreement suggests that it refers to both active and former members. Similarly, the phrase "[e]mployees hired before July 1, 1995, upon retirement shall be allowed to continue in the County Group Health Benefit Program" could reasonably be interpreted to set forth retirement under the CBA as a vesting trigger, particularly if "employee" means an active employee, but "upon retirement" could also reasonably mean whenever the already-vested individual happens to retire. Furthermore, CBA § 3.11(6) does not include a required timeframe for retirement, whereas other sections do, suggesting that if the parties intended to limit the benefit to those who retire prior to the CBA's expiration date, they would have done so. Because the contract can be reasonably construed both ways, it is ambiguous.

¶24 The next step is to examine the extrinsic evidence. Nelson submitted an affidavit from former MDSA President Roy M. Felber, who averred that he was involved in negotiating the CBA, and that the MDSA and the County intended CBA § 3.11(6) to fully vest "premium-free retirement health insurance benefits" to employees hired before July 1, 1995 once they have fifteen years of "creditable service as a County employee."[5] Felber further averred that once fully vested, the parties intended that a member remained entitled to the health insurance benefit even if they subsequently left the MDSA.

¶25 The County did not submit any extrinsic evidence to contradict Felber's testimony as to the parties' intent regarding CBA § 3.11(6). Instead, it asserted—without explanation or citation to authority—that Felber's non-party affidavit should be disregarded as "self-serving." We reject this assertion, *see* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (discussing that this court does not consider undeveloped arguments offered without legal authority), and note that a party cannot survive summary judgment on an ambiguous contract by simply resting on the text and characterizing an uncontradicted, non-party affidavit as "self-serving." *See* ***Voss v. City of Middleton***, 162 Wis. 2d 737, 748, 470 N.W.2d 625 (1991) (stating that if the moving party has made a *prima facie* case for summary judgment, the opposing party must submit evidence showing the existence of a disputed or undisputed material fact from which alternative inferences may be drawn). Because the County has submitted no evidence to contradict Felber's testimony on intent, it is taken as true, *see* ***L.L.N.***, 209 Wis. 2d at 684, and there is no genuine issue of material fact as to the meaning of CBA § 3.11(6). Nelson has a fully vested right to County-paid health insurance premiums in retirement, and, accordingly, to summary judgment in his favor.

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[5] The 2018 Memo also supports this conclusion but the parties disagree as to its admissibility. We do not base our decision on the 2018 Memo and therefore need not determine its admissibility.

¶26 Finally, the County's reliance on ***Monreal***, ***Schwegel***, and ***Loth*** is misplaced. The County cites ***Monreal*** for the proposition that one must retire under a CBA in order to vest retiree health benefits, but ***Monreal*** was simply restating the vesting presumption adopted by our supreme court in ***Roth***. *See* ***Monreal***, 361 Wis. 2d 172, ¶11. There can be no universal vesting rule because vesting is controlled by the collective bargaining agreements entered into by the parties. Additionally, ***Schwegel*** and ***Loth*** are not controlling because they did not involve CBAs, only municipal ordinances. In ***Loth***, our supreme court determined that retirement health insurance benefits set forth in a municipal ordinance constituted a unilateral offer from the county, which explicitly required employees to retire by a particular date to accept the offer and enter into contract, thereby vesting the benefit. ***Id.***, 315 Wis. 2d 35, ¶¶14, 18. The ***Loth*** court distinguished ***Roth*** on the basis that ***Roth*** involved CBAs that created a contract between employee and employer, whereas no such prior agreement existed between Loth and the City of Milwaukee. ***Loth***, 315 Wis. 2d 35, ¶¶42-43. ***Schwegel*** also considered health insurance benefits arising from a municipal ordinance and relied on ***Loth*** for the proposition that the municipal ordinance constitutes a unilateral offer from the county, which explicitly required the employees to retire by a particular date to form a contract vesting the benefit. ***Schwegel***, 360 Wis. 2d 654, ¶¶39-42.

¶27 For the reasons stated above, we reverse and remand to the circuit court to enter summary judgment in Nelson's favor.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.

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