COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP1597 **Cir. Ct. No. 2024CV8283**

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

KURT J. LACINA,

PLAINTIFF-APPELLANT,

MILWAUKEE POLICE ASSOCIATION, LOCAL #21,

INTERVENOR-APPELLANT,

V.

EMPLOYES' RETIREMENT SYSTEM FOR THE CITY OF MILWAUKEE, EMPLOYES' RETIREMENT SYSTEM ANNUITY AND PENSION BOARD AND CITY OF MILWAUKEE,

DEFENDANTS-RESPONDENTS.

APPEAL from orders of the circuit court for Milwaukee County: WILLIAM SOSNAY, Judge. *Affirmed*.

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Kurt J. Lacina appeals from a circuit court order denying his motion for declaratory judgment and dismissing his lawsuit against the Employe's Retirement System for the City of Milwaukee, Employe's Retirement System Annuity and Pension Board (collectively, "ERS"), and the City of Milwaukee ("City") with prejudice, as well as the order denying his motion for reconsideration. Lacina, a former police officer who is on 90% duty disability retirement ("DDR"), sought a declaration that, under the Milwaukee City Charter ("MCC" or the "Charter"), the Annuity and Pension Board (the "Board") could not subject him to re-examination by the Medical Panel.

¶2 On appeal, Lacina argues that MCC § 36-05-3-c-1-b[1] should be read as automatically exempting 90% DDR beneficiaries from Medical Panel re-examinations regardless of whether the Board approves a waiver of the re-examination. Additionally, Lacina argues that police officers receiving 90% DDR are not always required to undergo annual Medical Panel re-examinations until age 57 (the "minimum service retirement age" applicable to police officers under § 36-05-1-b) because the early retirement option for police officers in § 36-05-1-f qualifies as an alternative "minimum service retirement age." Medical Panel re-examinations are not required after the beneficiary reaches the "minimum service retirement age," and although Lacina is not age 57, as required by § 36-05-1-b, he meets the early retirement criteria set forth in § 36-05-1-f.

[1] The Charter is available at https://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/City-Charter/CH36.pdf

¶3 We conclude that MCC § 36-05-3-c-1-b does not automatically exempt 90% DDR beneficiaries from Medical Panel re-examinations. Under this section, the Board is empowered to waive re-examination by the Medical Panel, and if it does, the beneficiary is required to submit a report from their personal physician to the Board in lieu of re-examination by the Medical Panel. These beneficiaries are subject to this procedure to confirm their continued eligibility for benefits until the beneficiary reaches the "minimum service retirement age," which § 36-05-1-b unambiguously defines as "age 57" for police officers. We further conclude that the early retirement option for police officers in § 36-05-1-f is not an alternative "minimum service retirement age" for purposes of the re-examination requirement, but is instead an exception to the default rule that police officers must reach the minimum service retirement age of 57 before retiring. Accordingly, we affirm.[2]

[2] Lacina's brief-in-chief does not comply with WIS. STAT. RULE 809.19(8)(bm) (2023-24), which addresses the pagination of appellate briefs. *See* ***id.*** (specifying that when paginating briefs, parties should use "Arabic numerals with sequential numbering starting at '1' on the cover"). This rule was amended to its current form in 2021. *See* S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021). The reason for the amendment is that briefs are now electronically filed in PDF format, and are electronically stamped with page numbers when they are accepted for eFiling. The pagination requirements ensure that the numbers on each page "will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers" on every page of a brief. Supreme Court Note, 2021, RULE 809.19.

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

BACKGROUND

¶4 Lacina is a former Milwaukee Police Department officer.[3] In October 2020, following a motor vehicle accident, Lacina was placed on 90% DDR. DDR provides a pension allowance to employees who become incapacitated for duty as the result of a work-related injury. MCC § 36-05-3-a. All DDR beneficiaries are required to undergo "periodic medical examinations" by the Medical Panel to confirm their continued eligibility for benefits until they "attain[] the minimum service retirement age[.]" MCC § 36-07-1. Disabled police officers are subject to these examinations "at least once each year[.]" Sec. 36-05-3-c-1-a. However, under § 36-05-3-c-1-b, if the disabled police officer is receiving 90% DDR benefits, the Board "may waive the annual medical examination by the said panel or medical council of physicians; but in lieu thereof the disabled fire[fighter] or [police officer] annually shall submit a report from his [or her] personal physician to the board."

¶5 In March 2024, Lacina sent a letter to the Employe's Retirement System for the City of Milwaukee requesting that he be excused from Medical Panel re-examinations under MCC § 36-05-3-c-1-b because he had reached the minimum service retirement age. Under § 36-05-1-b, "minimum service retirement age" is defined as "age 57" for police officers. Although Lacina was not age 57, he claimed that he met an alternative "minimum service retirement age" set forth in § 36-05-1-f which states that a police officer becomes eligible for

[3] Relevant details about Lacina including his age, when he became a police officer, his years of creditable service, etc., are undisputed. These details affect what provisions of the Charter apply to him. For readability, we discuss only those provisions of the Charter that apply given these undisputed characteristics. We discuss provisions that do not apply to Lacina only to the extent necessary to understand and address party arguments.

a service retirement allowance if they were at least 52 years old and had completed at least 25 years of creditable service. The Board denied Lacina's request, asserting that he was required to reach age 57 before becoming exempt from Medical Panel re-examinations under § 36-05-3-c-1-a.

¶6 In October 2024, Lacina filed this lawsuit against ERS and the City seeking declaratory judgment. In addition to his argument regarding the alternative "minimum service retirement age" under MCC § 36-05-1-f, Lacina also argued that § 36-05-3-c-1-b should be read as automatically exempting 90% DDR beneficiaries from Medical Panel re-examinations regardless of whether the Board approves a waiver of the re-examination. Lacina moved for a declaratory judgment, the circuit court denied the motion, and it dismissed Lacina's lawsuit with prejudice. Lacina filed a motion for reconsideration, which the court also denied. Lacina appeals. Additional facts will be discussed as they become relevant.[4]

DISCUSSION

¶7 On appeal, Lacina makes two arguments. First, Lacina argues that the plain language of MCC § 36-05-3-c-1-b automatically exempts 90% DDR beneficiaries from Medical Panel re-examinations regardless of whether the Board approves a waiver. Second, Lacina argues that age 57 is not the only "minimum service retirement age" set forth in the Charter. He claims that although MCC

[4] Several months after Lacina filed this lawsuit, the Milwaukee Police Association ("MPA") moved to intervene, and the circuit court granted that motion without opposition from either party. MPA subsequently joined Lacina's motion for declaratory judgment without additional argument. On appeal, MPA adopts but does not add to Lacina's arguments. Accordingly, we will not discuss MPA's involvement in this litigation any further.

§ 36-05-1-b identifies a "minimum service retirement age" as "age 57" for police officers, § 36-05-1-f sets forth an alternative "minimum service retirement age" that can be met if the police officer is at least 52 years old and has completed at least 25 years of creditable service. Lacina asserts that he meets the "minimum service retirement age" set forth in § 36-05-1-f, and as a result, he is exempt from the Medical Panel re-examinations required under § 36-05-3-c-1-a.

¶8 Resolving the issues raised on appeal requires us to interpret the Milwaukee City Charter. Interpretation of the Charter is accomplished using the same rules that apply to statutory interpretation. ***Stoker v. Milwaukee Cnty.***, 2014 WI 130, ¶17, 359 Wis. 2d 347, 857 N.W.2d 102. This means that our interpretation will begin with the relevant language of the Charter, and if the meaning is plain, we "'ordinarily stop the inquiry.'" ***Id.***, ¶18 (quoting ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110). We give the language "its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Stoker***, 359 Wis. 2d 347, ¶18 (citation omitted). Further, we seek to avoid interpretations that reach absurd or unreasonable results. ***Id.*** Finally, like statutory interpretation, interpreting the Charter raises questions of law that we review de novo. ***Id.***

I. MCC § 36-05-3-c-1-b does not automatically exempt 90% DDR beneficiaries from annual Medical Panel re-examinations.

¶9 We first discuss Lacina's argument that the language of MCC § 36-05-3-c-1-b automatically exempts 90% DDR beneficiaries from annual Medical Panel re-examinations. Under § 36-05-3-c-1-a, police officers receiving DDR benefits are required to undergo re-examinations at least every year until they attain the "minimum service retirement age." This provision states that "[p]rior to [a police officer] attaining the minimum service retirement age, periodic medical examinations of such person shall be made at least once each year[.]" Sec. 36-05-3-c-1-a.

¶10 Lacina is receiving 90% DDR benefits, so his "periodic medical examinations" are partially governed by MCC § 36-05-3-c-1-b. Under that provision, "the [B]oard may waive the annual medical examination by the said panel or medical council of physicians; but in lieu thereof the disabled ... [police officer] annually shall submit a report from his [or her] personal physician to the [B]oard." ***Id.***

¶11 Lacina argues that MCC § 36-05-3-c-1-b gives the Board two options: (1) waive the re-examination by the Medical Panel and receive no substantiation of the beneficiary's ongoing disability; or (2) do not waive the re-examination, and rely on a report by the beneficiary's personal physician. Lacina misreads § 36-05-3-c-1-b.

¶12 The meaning of MCC § 36-05-3-c-1-b is plain. All police officers receiving DDR benefits are required to undergo re-examinations by the Medical Panel "at least once each year" under § 36-05-3-c-1-a. Under § 36-05-3-c-1-b, the Board can waive re-examination by the Medical Panel of police officers receiving

90% DDR benefits like Lacina. If it grants such a waiver, § 36-05-3-c-1-b provides for a different method of substantiating the beneficiary's qualifying disability, namely, "a report from [the beneficiary's] personal physician[.]"

¶13 Lacina asserts that the report from his personal physician is only required if the Board does not waive re-examination of the Medical Panel, but that argument is backwards. The report is only required if the Medical Panel waives re-examination. The report is required "in lieu of" the Medical Panel re-examination, not "in lieu of" the Board's waiver of such re-examination. The report from the beneficiary's personal physician is accepted as an alternative form of substantiation of the beneficiary's ongoing disability only if the Board chooses to waive re-examination by the Medical Panel, who would otherwise determine whether the beneficiary continues to qualify for DDR benefits.

¶14 In short, MCC § 36-05-3-c-1-b does not automatically exempt 90% DDR beneficiaries from Medical Panel re-examinations. Under this section, the Board is empowered to waive re-examination by the Medical Panel of police officers receiving 90% DDR benefits, and if it does, the beneficiary is required to submit a report from their personal physician to the Board in lieu of re-examination by the Medical Panel. If the Board "waives" under this provision, it is waiving re-examination by the Medical Panel, and in lieu of that re-

examination, it instead accepts a report from the beneficiary's personal physician substantiating the beneficiary's ongoing disability entitling them to DDR benefits.[5]

II. MCC § 36-05-1-f is not an alternative "minimum service retirement age" for purposes of Medical Panel re-examinations under § 36-05-3-c-1-a.

¶15 Having concluded that MCC § 36-05-3-c-1-b does not automatically exempt Lacina from Medical Panel re-examinations, we turn to Lacina's second argument. The parties agree that Medical Panel re-examinations are not required after a police officer receiving DDR benefits attains the "minimum service retirement age." ERS and the City argue that the Charter unambiguously defines "minimum service retirement age" as "age 57" for police officers under § 36-05-1-b, and because Lacina is not 57, he is required to continue with the annual Medical Panel re-examinations under § 36-05-3-c-1-a. Lacina contends that § 36-05-1-b is

[5] Because we find no ambiguity in the applicable language of the Charter, we would not normally consider the extrinsic sources submitted by Lacina, namely, two letters sent to Lacina on behalf of ERS and Common Council File #991585 summarizing the legislation that provided early retirement allowances for police officers with 25 years of creditable service regardless of age. *See* ***State ex rel. Kalal v. Circuit Ct. for Dane Cnty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 ("Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation[.]"). However, legislative history can sometimes be consulted "to confirm or verify a plain-meaning interpretation." ***Id.***, ¶51.

Although the letters from ERS to Lacina are not pieces of "legislative history," they nonetheless confirm rather than contradict our interpretation of the Charter. In the letters, ERS states that the Medical Panel "usually accomplishes the re-examination process," but the Board had previously approved acceptance of an evaluation from Lacina's personal physician "in lieu of certifications from a Medical Panel." These letters, like MCC § 36-05-3-c-1-b, unambiguously state that the personal physician report is submitted "in lieu of" Medical Panel re-examination, not "in lieu of" the Board's waiver of Medical Panel re-examination.

As for Common Council File #991585, that document states that the legislation creating early retirement allowances for police officers with 25 years of creditable service regardless of age would result in "[r]educed retirement age" for police officers. The document itself says nothing about resultant changes to the Charter's definition of "minimum service retirement age" set forth in MCC § 36-05-3-c-1-b.

not the only "minimum service retirement age" set forth in the Charter. According to Lacina, the early retirement provision set forth in § 36-05-1-f functions as an alternative "minimum service retirement age" that can be met if the policeman is at least 52 years old and has at least 25 years of creditable service. While Lacina does not meet the requirements of § 36-05-1-b, he does meet the requirements of § 36-05-1-f.

¶16 We agree with ERS and the City. When interpreting the Charter, we give the language "its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Stoker***, 359 Wis. 2d 347, ¶18 (citation omitted). "Minimum service retirement age" is a technical or specially defined term in Chapter 36 of the Charter, and its special definition is set forth in MCC § 36-05-1-b: "The minimum service retirement age shall be, in the case of fire[fighters] and [police officers], age 57[.]"[6]

¶17 Lacina asserts that other provisions in the Charter set forth conditions under which police officers may retire before they turn 57 years old. For example, MCC § 36-05-1-f states that a police officer "who has attained the age of 52 years and has completed 25 years of creditable service" is eligible for a service retirement allowance. Lacina reasons that § 36-05-1-b and § 36-05-1-f are in conflict because § 36-05-1-b purports to set a "minimum service retirement

[6] Lacina asserts that MCC § 36-05-1-b cannot "define" the term "minimum service retirement age" because it is not contained in Chapter 36's "Definitions" section, MCC § 36-02. Lacina cites no authority supporting the proposition that statutory terms cannot be defined outside of a statutory "definition" section if such a section exists. We therefore do not discuss this issue any further. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered.").

age" of 57 years old while allowing police officers younger than 57 years old to retire. According to Lacina, this conflict is resolved by interpreting § 36-05-1-f as an alternative "minimum service retirement age" for purposes of § 36-05-3-c-1-a.

¶18 We disagree with Lacina. One of the "cardinal rule[s]" of statutory interpretation is that courts should interpret statutes in ways that avoid rather than create a conflict. ***Wyss v. Albee***, 193 Wis. 2d 101, 110, 532 N.W.2d 444 (1995). Lacina's interpretation invites conflict between MCC §§ 36-05-1-b and 36-05-1-f, but ERS and the City's interpretation avoids conflict. We agree with ERS and the City that § 36-05-1-f, rather than establishing a competing or alternative "minimum service retirement age," should instead be interpreted as an exception to the general rule that city employees must meet the "minimum service retirement age" set forth in § 36-05-1-b before becoming eligible for a retirement allowance.

¶19 Other rules of statutory interpretation confirm that ERS and the City's interpretation is correct, and Lacina's interpretation is mistaken. For example, the term "minimum service retirement age" appears in MCC § 36-05-1-b as a specially-defined term, but § 36-05-1-f's early retirement criteria make no reference to a "minimum service retirement age." We typically assume that the absence of particular language in a statute is intentional. ***State v. Fitzgerald***, 2019 WI 69, ¶30, 387 Wis. 2d 384, 929 N.W.2d 165. Thus, we presume that the absence of the term "minimum service retirement age" in § 36-05-1-f is both intentional and meaningful.

¶20 Additionally, Chapter 36 repeatedly and explicitly delineates between the concepts of "minimum service retirement age" and "complet[ing] 25 years of service as a [police officer]." In MCC § 36-04-4-a, the Charter refers to a policeman who "has attained 25 years of creditable service in the retirement

system as a [police officer] ... or the minimum service retirement age under [MCC §] 36-05-1-b[.]" Likewise, § 36-05-3-c-3-f permits 75% DDR beneficiaries to convert to a service retirement at the earlier of the "minimum service retirement age" or "attainment of age 52 and completion of 25 years of creditable service[.]" When two phrases appear in the same section of a statute, courts presume the phrases were intended to have distinct meanings. ***Milwaukee Dist. Council 48 v. Milwaukee Cnty.***, 2019 WI 24, ¶29, 385 Wis. 2d 748, 924 N.W.2d 153. Interpreting the early retirement criteria in § 36-05-1-f as an alternative "minimum service retirement age" contravenes this canon of statutory construction. If the "52 with 25" criterion were to be interpreted as an alternative "minimum service retirement age," references to the "52 with 25" criterion in these Charter provisions would be surplusage. *See* ***Kalal***, 271 Wis. 2d 633, ¶46.

¶21 In sum, we agree with ERS and the City that the early retirement option for police officers in MCC § 36-05-1-f is not an alternative "minimum service retirement age" for purposes of the re-examination requirement under § 36-05-3-c-1-a. Instead, § 36-05-1-f is an exception to the default rule that policemen must reach the minimum service retirement age (i.e., age 57) before becoming eligible for a retirement allowance.

III. Lacina's other arguments are unpersuasive.

¶22 Before concluding, we briefly address the parties' other arguments. Lacina makes arguments related to his "vested rights" under the "terms and conditions of the Charter" and the City's collective bargaining agreement with the MPA. However, these arguments are subsumed by Lacina's statutory interpretation analysis that we rejected earlier in this opinion. In other words, Lacina's "vested rights" arguments assume the correctness of his statutory analysis, but having rejected Lacina's interpretation of the Charter, his "vested rights" arguments necessarily fail.

¶23 The parties briefly address that, depending on the police officer's date of hire, the police officer could become eligible for a service retirement allowance if the officer has 25 years of creditable service regardless of age under MCC § 36-05-1-f. Addressing Lacina's argument that § 36-05-1-f set forth alternative "minimum service retirement age[s]," the circuit court reasoned that a "minimum service retirement age" without any reference to the person's age would be absurd.

¶24 The distinction between these two early retirement paths does not affect our analysis. For all the reasons we explained earlier in this opinion, and assuming that the early retirement option applicable to Lacina requires him to be 52 years old with 25 years of creditable service (as opposed to simply having 25 years of creditable service regardless of age), Lacina would still not be entitled to relief because the requirement that the policeman be at least 52 years old does not transform the early retirement option into an alternative "minimum service retirement age" for purposes of the Medical Panel re-examination requirements.

¶25 Lacina asserts that the Charter provisions governing conversion from DDR to a service retirement are relevant to the analysis. We disagree. Section 36-05-3-c-3-f of the Charter is a general provision that states that police officers receiving DDR benefits will continue to receive them until they reach the "minimum service retirement age" (i.e., age 57) or they reach age 52 with 25 years of creditable service, at which point they convert to a service retirement allowance. However, this provision does not apply to police officers on 90% DDR. Section 36-05-3-c-3-g of the Charter states: "Notwithstanding any provision of subd. b to f to the contrary, a [police officer] or fire[fighter] receiving a duty disability allowance of 90% of current salary under this section shall continue to receive such allowance for life during their period of eligibility[.]" In other words, police officers on 90% DDR like Lacina do not convert to a service retirement because § 36-05-3-c-3-g expressly supersedes § 36-05-3-c-3-f.

¶26 Finally, the parties dispute whether the Board's interpretation of the Charter is entitled to "due weight" based on its specialized knowledge and experience implementing Chapter 36 of the Charter. We do not resolve this issue because our conclusions would be the same regardless of whether the Board's interpretation was entitled to due weight.

CONCLUSION

¶27 For the foregoing reasons, we affirm the circuit court's order denying Lacina's motion for declaratory judgment and dismissing this lawsuit with prejudice, and the order denying his motion for reconsideration.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.