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Wade: The Supreme Court's final word on Section 3-115 of the Pension Code

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In 2004, the Supreme Court allowed the appeal of a First District decision in the matter of *Turcol v. Pension Board of Trustees of the Matteson Police Pension Fund*.¹ The First District in *Turcol* had confirmed the pension board's decision to deny Dwight D. Turcol, an officer with the Matteson police department, a line of duty disability because one of the three physicians selected by the pension board pursuant to Section 3-115 of the Pension Code declined to certify Turcol as disabled from his duties as a police officer. Following the First District's decision, Turcol filed a petition for leave to appeal which the Supreme Court allowed to resolve a conflict between decisions of the First District and the Third District regarding the requirements of medical certifications of disability. Those interested anticipated that the Supreme Court would end the debate of whether Section 3-115 requires that the three physicians selected by the board must unanimously certify that an officer is disabled from his duties as a police officer in order to be entitled to a disability pension.

A few months later in April 2005, the Supreme Court dismissed the appeal, however, concluding that leave to appeal was "improvidently granted" and noted that since the pension board, on an alternative ground, had found that Turcol failed to prove his disability, it would be unnecessary to examine Turcol's due process claims related to the requirement that the all three physicians be unanimous in their opinion regarding the officer's disability. The Supreme Court consequently remanded the case to the appellate court and directed it to issue a supplemental opinion on the issue of whether Turcol failed

to prove his disability, a question not considered by the appellate court when it authored its first decision.²

In August 2005, the First District issued its opinion pursuant to direction from the Supreme Court. The First District again affirmed the pension board's decision, withdrew its previous order, but pursuant to the doctrine of constitutional avoidance, declined to address Turcol's due process argument.³

This article examines the conflicting interpretations of Section 3-115, namely whether physicians retained by a pension board must all agree and certify that the officer is disabled, or whether it requires that the physicians simply address the issue of the officer's disability status in their certificates. Finally, this article addresses how the Supreme Court has resolved this conflict in its recent decision of *Wade v. City of North Chicago Police Pension Board*.⁴

Section 3-115 of the Pension Code states in relevant part as follows:

A disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to by the police officer if not under legal disability, or by a representative if the officer is under legal disability, and by the police surgeon (if there be one) and three practicing physicians selected by the board. The board may require other evidence of disability...

40 ILCS 5/3-115 (emphasis added).

The language of this provision seemingly mandates that in order for a disability pension to be granted, the officer, or his legal

representative, must first certify the officer is disabled. Secondly, the officer's disability must also be certified by a police surgeon if the department has one on staff. Lastly, three physicians chosen by the pension board must also file certificates of the officer's disability. While the board may require other evidence of disability, Section 3-115 does not indicate that such other evidence of disability may be submitted in lieu of the certificates required above. Rather, this other evidence may be of a supplemental nature such as evidence regarding the officer's departmental duties and the degree in which the officer is no longer able to meet those duties because of his disability.

The Second District initially discussed Section 3-115 while considering a constitutional challenge to a separate provision of the Pension Code in *Trettenero v. Police Pension Fund of the City of Aurora*.⁵ In *Trettenero*, the issue before the court was whether in terminating an officer's disability pension benefits under Section 3-116, it was necessary that three physicians certify the officer as no longer being disabled. Section 3-116 provides that "if a police officer retired from disability is found upon medical examination to have recovered from disability," the board must certify to the chief of police that the officer is no longer disabled.⁶ In response to *Trettenero's* due process arguments, the court stated that a procedure requiring only one medical evaluation to conclude the officer was no longer disabled, but three evaluations to determine she was entitled her to a disability pension was not inherently unfair. The court added that the legislature was justified in requiring more medical evaluations to grant a petition

than to terminate the pension.

Trettenero had also argued that since she had to have three certifications of disability to be granted a disability pension, the same number of certifications was necessary to terminate her disability pension lest her equal protection rights be violated. In rejecting Trettenero's argument regarding the disparity of the number of required medical evaluations in Sections 3-115 and 3-116, the court noted that the statute clearly required all potential disability pensioners to establish their entitlement to a pension by providing three medical certifications of their disability status and that all persons receiving a disability pension could lose such benefits based on one medical examination confirming termination of their disability.

The court also concluded that the legislature's different treatment of applicant's seeking disability pension and those already on a disability pension was based on "a rational distinction" and did not implicate equal protection concerns. The medical examination requirements in the Pension Code were antifraud provisions and served "the legitimate legislative goal of ensuring the integrity of the pension fund."⁷ Explicit in these statements was the court's belief that it was appropriate for the legislature to make it more difficult to first receive a disability pension than to lose it once the individual's disability ended. Consequently, the pension board's decision terminating Trettenero's disability pension was affirmed.

In *Rizzo v. Board of Trustees of the Village of Evergreen Park Police Pension Fund*,⁸ the First District affirmed the pension board's decision denying an officer's disability application because one of the three physicians selected by the pension board did not certify the officer had a disability. Unlike the court in Trettenero, the Rizzo court had to specifically decide whether Section 3-115 required unanimity of all three medical opinions rather than simply whether these three opinions addressed the officer's "disability status." Understandably, the officer argued that the physician certifications need not be unanimous in order to be awarded a disability pension, and that three certificates addressing his disability status is all that was required.

The Rizzo court engaged in a statutory interpretation analysis of Section 3-115 noting that the legislature's intent found in the plain and ordinary meaning of the language required an officer to receive three certificates

stating that the officer was disabled by the physicians selected by the board. Because one of the physicians examining Rizzo did not certify he had a disability, the court was satisfied that the pension board had correctly interpreted Section 3-115 when it denied Rizzo a disability pension.⁹ The court further reasoned that certificates of disability were only necessary if benefits were to be granted and disagreed with Rizzo's arguments to the contrary.

In contrast, the Third District in *Coyne v. Milan Police Pension Board* held that Section 3-115 did not require the unanimous declaration that an officer was disabled for police work, but rather "it merely required three medical certificates addressing an officer's disability status."¹⁰

Both the Rizzo and the Coyne pension boards considered medical evidence of more than the three physicians each board selected. In Rizzo, the pension board considered the opinions of seven physicians, some by way of reports, others by virtue of treatment records and deposition testimony. The record in Coyne showed that six physicians were involved. In both instances, a less than unanimous opinion between the physicians retained by the boards resulted in denial of benefits. As noted above, the Rizzo court considered the absence of unanimity fatal to the officer's claims that he should be awarded a disability pension, which was consistent with the pension board's interpretation. It should be noted, however, that the Rizzo court did not elaborate what the record before the pension board reflected in terms of the medical opinions of those physicians selected by the pension board and those that had been submitted by Rizzo in support of his petition. By comparison, the Coyne court delved deeper into the record before the pension board and noted that while one of the physicians retained by the board did not certify the officer as disabled, this physician's opinion was essentially outweighed by the opinions of physicians not retained by the board. In fact, the Coyne court noted that the opinions of two physicians not selected by the board were "noteworthy because, unlike the appointed evaluators, they had the benefit of assessing Coyne's situation through an extended course of treatment."¹¹ In addition, the chief of police supported the physicians' opinions that Coyne was unfit to work in the police department.

As noted by the Third District, "against

this evidence, [one board selected physician] stood alone in opining that Coyne was not disabled."¹² The Coyne court agreed with the trial court in finding that the pension board's interpretation of Section 3-115 requiring a unanimous disability certification by all three selected physicians was flawed. It also concluded that Section 3-115 was instead ambiguous and adherence to a unanimity requirement would yield an absurd and unconstitutional result. In the court's opinion, this could not have been the intent of the legislature when it drafted Section 3-115.¹³ The court further asserted that if the board's interpretation were carried to its logical conclusion, then, as a threshold matter in all disability cases, the three physicians retained by the board would each have to certify the officer was disabled, and the opinion of the lone minority dissenter would ipso facto defeat a pension claim, rendering section 3-115 a "virtual summary dismissal provision."¹⁴

In November 2007, the Supreme Court, no longer viewing its involvement as improvident, addressed these conflicting opinions in its *Wade* decision.¹⁵ In *Wade*, the police officer filed an application for a disability pension with the Board after injuring his right knee while escorting a prisoner. At the hearing, the pension board received into evidence without objection medical reports of the three physicians selected by it as well as medical records from the officer's treating physicians.

The evidence before the board had four out of five physicians who examined the officer opined that he was disabled. One physician selected by the board acknowledged the officer's medical history but found that the officer had degenerative bilateral arthritis of the knees and that these conditions pre-existed any duty related incident. This physician also found the officer could return to work without restriction. The board, giving greater weight to this physician's findings, denied the officer's line-of-duty disability application. The Supreme Court, just as the Third District had done in *Coyne*, delve deeper and pointed to additional evidence before the board offered by the other four physicians which supported that the officer was in fact disabled. The court found that the pension board erred in assigning greater weight to the one physician's opinion and that as a result its decision was against the manifest weight of the evidence.¹⁶

The Supreme Court then went on to ex-

amine Section 3-115 of the Pension Code. Since the statutory language of this Section was deemed sufficiently ambiguous to warrant resorting to other aids or tools of interpretations, the Court examined analogous provisions of the Pension Code regarding firefighters and court decisions interpreting the same. The Court determined that it was inconceivable that the legislature would have intended to treat firefighters and police officers differently for purposes of ascertaining disability because of their equal status as emergency responders and concluded that the board rather than individual physicians is the final arbiter of disability.¹⁷ Accordingly, the Supreme Court agreed with the decision of the appellate court in *Coyne* as requiring three certificates or reports simply addressing the issue of disability and rejected the First District's analysis in *Rizzo* and its interpretation of Section 3-115. The judgments of the circuit and Second District were reversed, the decision of the board was set aside, and

the cause was remanded to the board with directions that it grant Wade a line-of-duty pension in accordance with Section 3-114.1 of the Pension Code.

While the Supreme Court has now pronounced the board selected physicians need not be unanimous and has reiterated that a decision on disability rests wholly with the pension board, it has also set the stage for a future battle of the experts. Query whether the pension board's authority will be questioned in the one case where all three pension board selected physicians fail to certify an officer's disability contrary to the opinions of officer's treating physicians. The question will then become whether the pension board still remains the final arbiter on the question of disability. ■

1. 211 Ill.2d 617, 823 N.E.2d 979 (2004).

2. The Supreme Court also directed the Second District to vacate its judgment in *Wade v. City of North Chicago Police Pension Board*, 353 Ill.App.3d 852, 819 N.E.2d 121 (2nd Dist. 2004) in light of *Tur-*

col decision for the same reasons. On remand, the Second District found that Wade did not prove his disability and further concluded that because the board did not receive three certificates of Wade's disability, he was properly denied benefits under Section 3-115. See *Wade v. City of North Chicago Police Pension Board*, 359 Ill.App.3d 224, 833 N.E.2d 427 (2nd Dist. 2005).

3. 359 Ill.App.3d 795, 834 N.E.2d 490 (1st Dist. 2005).

4. 226 Ill.2d 485, 877 N.E.2d 1101 (2007).

5. 333 Ill.App.3d 792, 776 N.E.2d 840 (2nd Dist. 2002).

6. 40 ILCS 5/3-116.

7. 333 Ill.App.3d 800, 776 N.E.2d 848.

8. 338 Ill.App.3d 490, 788 N.E.2d 1196 (1st Dist. 2003).

9. 338 Ill.App.3d 495, 788 N.E.2d 1200.

10. 347 Ill.App.3d 713, 807 N.E.2d 1276 (3rd Dist. 2004).

11. 347 Ill.App.3d 723, 807 N.E.2d 1284.

12. *Id.* at 723, 807 N.E.2d 1284.

13. 347 Ill.App.3d 729, 807 N.E.2d 1288.

14. 347 Ill.App.3d 729, 807 N.E.2d 1289.

15. 226 Ill.2d 485, 877 N.E.2d 1101 (2007).

16. *Id.* at 507, 877 N.E.2d 1114.

17. *Id.* at 513, 877 N.E.2d 1118.

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