

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE  
 WAKE COUNTY SUPERIOR COURT DIVISION

2018 NOV 20 12:11 FILE NO:

LAURA M. RIDDICK,  
 Petitioner,

v.

**PETITION FOR JUDICIAL  
 REVIEW  
 (Denial of Request for Declaratory  
 Ruling)**

DEPARTMENT OF STATE  
 TREASURER, Retirement  
 Systems Division; DALE  
 FOLWELL, State Treasurer (in  
 official capacity only); STEVEN  
 C. TOOLE, Director, Retirement  
 Systems Division (in official  
 capacity only); NORTH  
 CAROLINA RETIREMENT  
 SYSTEM COMMISSION  
 BOARD OF TRUSTEES (in  
 official capacity only),

Respondents.

Pursuant to North Carolina General Statutes §§ 150B-4 and -45, Laura M. Riddick petitions the court for judicial review of the November 2, 2018 decision of Steven C. Toole, Director, Retirement Systems Division, Teachers' and State Employees' Retirement System (TSERS), Local Governmental Employees' Retirement System (LGERS) and Register of Deeds Supplemental Pension Fund (RODSPF) denying Ms. Riddick's request for a declaratory ruling. The request for a declaratory ruling is attached as Exhibit B and the November 2, 2018 letter in response from Mr. Toole denying the request is attached as Exhibit C.

## GENERAL NATURE OF THE ACTION

1. On October 9, 2018, petitioner Laura M. Riddick requested Steven C. Toole (Toole), Director, Retirement Systems Division of TSERS, LGERS and RODSPF to issue a declaratory ruling pursuant to G.S. 150B-4 and 20 N.C. Administrative Code 01F.0201. The requested ruling would declare that the basis for terminating the payment of Petitioner's state retirement system pension to her and for demanding a repayment of all benefits received by Petitioner since her retirement as Register of Deeds for Wake County, N.C. on April 1, 2017 (as set forth in a letter dated September 25, 2018 sent by Toole to Petitioner and attached as Exhibit A) were in violation of the laws of North Carolina. As set forth in Exhibit C, Toole denied Petitioner's request for a declaratory ruling. By virtue of the letters set forth in Exhibit A and Exhibit C, Petitioner is an aggrieved party and entitled to appeal the denial of her request for a declaratory ruling immediately to Superior Court.

## PARTIES

2. Petitioner Laura M. Riddick is a citizen and resident of Wake County, N.C.; is retired from the elected office of Register of Deeds for Wake County, N.C.; and is a member of LGERS and previously a member of TSERS, retiring under LGERS on March 31, 2017 and began drawing a retirement pension under LGERS and a supplemental pension benefit under RODSPF.
3. Petitioner Laura M. Riddick is a "person aggrieved" within the meaning of G.S. 150B-2(6) in that she has been affected substantially by the respondent Toole's decision to deny the declaratory ruling requested. The retirement

system, through Respondents, has terminated the payment of Petitioner's retirement benefits to her, claiming that she did not have enough accrued years to retire on March 31, 2017 and has demanded the repayment of \$126,290.28 in overpayments made to her by LGERS and RODSPF since her retirement on March 31, 2017. The termination of Petitioner's retirement benefits is unlawful as is the claimed overpayments demand and in violation of Petitioner's rights under the laws of North Carolina as contended by petitioner in her declaratory ruling request and under the North Carolina Constitution.

4. Respondent Steven Toole is the Executive Director of the Retirement Systems at issue in this case including LGERS AND TSERS as well as the Register of Deeds Supplemental Pension Fund (RODSPF) and is the official to whom the request for declaratory ruling was addressed and by whom it was denied.
5. The Retirement Systems Division in the Department of State Treasurer is the agency responsible for administration of LGERS, TSERS AND RODSPF.
6. The Department of State Treasurer is the state governmental entity established by the General Statutes of North Carolina under which the Retirement Systems Division is placed.
7. Dale Folwell is the duly elected Treasurer for the State of North Carolina and the administrative head of the Department of State Treasurer.
8. The North Carolina Retirement System Commission Board of Trustees (BOT) is a statutorily created body vested by the statutes of North Carolina with "the general administration and responsibility for the proper operation of the

Retirement System”. Also, the BOT has the statutory authority to determine rights of a participant in the retirement systems pursuant to various statutes including G.S. 128-38.4A.

#### JURISDICTION AND VENUE

9. The denial of a request for declaratory ruling is a final agency decision subject to judicial review pursuant to G.S. 150B-4(1). Jurisdiction and venue is proper in Wake County Superior Court in that Petitioner is a citizen and resident of Wake County and G.S. 150B-45(a)(2) provides that a petition for judicial review is to be filed in the superior court of the county where the person aggrieved by the final decision resides.

#### FACTS

10. Petitioner, Laura M. Riddick was employed by the North Carolina Department of Cultural Resources from October 8, 1990 through November 30, 1996 and was a participating member of TSERS.
11. At the time of leaving the employment of the Department of Cultural Resources, Petitioner had accrued 6 years and 2 months of membership service in TSERS.
12. Having been elected by the citizens of Wake County, N.C. in November of 1996 as Register of Deeds, Petitioner began service as an elected official on December 1, 1996 for a four-year term and as a member of LGERS.
13. Subsequently, Petitioner was re-elected as Wake County Register of Deeds in 2000, 2004, 2008, 2012, and 2016, and continued as a member of LGERS.

14. On March 31, 2017, Petitioner retired as Wake County Register of Deeds having accrued 20 years and 4 months of creditable membership service in LGERS.
15. In March of 2017, Petitioner converted 2 years and 7 months of unused sick leave covering an extended time period of years of service as Register of Deeds to accrued creditable membership service time in LGERS.
16. In March of 2017, Petitioner transferred her previously accrued 6 years and 2 months of service time in TSERS to LGERS.
17. As a result of Petitioner's accrued membership service time from December 1, 1996 through March 31, 2017, Petitioner retired, effective April, 1, 2017 in LGERS with 29 years and 1 month of accrued service time and began drawing her pension.
18. Pursuant to state law, Petitioner while serving as Register of Deeds was entitled to and did contribute to and participate in the Register of Deeds Supplemental Pension Fund (RODSPF).
19. Upon Petitioner's retirement as Wake County Register of Deeds on March 31, 2017, Petitioner was entitled under state law to receive benefits from the RODSPF and did so.
20. On August 24, 2018, Petitioner plead guilty to 6 counts of G.S. 14-92, "Embezzlement by public officers and trustees", a class C felony, in Wake County Superior Court.
21. The Court consolidated all six counts for one judgement, and Petitioner was sentenced to a minimum term of 60 months imprisonment and a maximum

term of 84 months imprisonment and was ordered to pay restitution in the amount \$926,615.00 in full at the time of entry of judgment. No aggravating factors were found by the court at sentencing.

22. Petitioner paid the \$926,615.00 in restitution on August 24, 2018 and began serving her prison sentence at the N.C. Correctional Prison for Women where she continues to be imprisoned.
23. A copy of the "Judgment and Commitment Active Punishment – Felony (Structured Sentencing)" is attached as Exhibit D.

#### RELEVANT STATUTES

24. G.S. 128-38.4A is captioned "Forfeiture of retirement benefits for certain felonies related to employment or holding office."; was ratified by the General Assembly on June 28, 2012; and became effective December 1, 2012.
25. In his letter of September 25, 2018 (Exhibit A), Respondent Toole relied on G.S. 128-38.4A as the operative statute for concluding that Petitioner Riddick was subject to the loss of "credible service that accrued after December 1, 2012" called for in G.S. 128-26(x).
26. G.S. 128-38.4 is captioned "Forfeiture of retirement benefits for certain felonies committed while serving as an elected official."
27. G.S. 128-38.4 states: that retirement benefits shall not be paid to any member "who is convicted of any felony under...the laws of this State listed in subsection (c) of this section if all of the following apply: (2) The conduct on which the ...State offense is committed is directly related to the member's service as an elected government official."

28. Those “certain felonies” specifically listed in G.S. 128-38.4 do not include G.S. 14-92 to which Petitioner plead guilty.
29. At the time of the offenses to which Petitioner plead guilty under G.S. 14-92, Petitioner was “an elected government official”.
30. G.S. 128-38.4A upon which Respondents rely in this matter references “certain felonies” but lists no specific felonies, the only “certain felonies” being listed in G.S. 128-38.4.
31. Pursuant to G.S. 128-38.4A(a) in order for this statute to apply to a member “(2) The conduct resulting in the member’s conviction is directly related to the member’s office or employment.” In G.S. 128-38-4A(b) it states: “Subdivision (2) of subsection (a) of this section shall apply to felony convictions where the court finds under G.S. 15A-1340.16(d)(9) or other applicable State or federal procedure that the member’s conduct is directly related to the member’s office or employment.”
32. G.S. 15A-1340.16(d)(9) states in pertinent part: “Aggravating Factors” – The following are aggravating factors: ...(9) The defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment.”
33. The Judgment and Commitment Order entered by Judge Ridgeway and attached as Exhibit D, has no aggravating factors listed or found.
34. G.S. 161-50.4(a)(1) is a statute requiring that a Register of Deeds with at least 10 years of eligible service but who does not commence retirement with

the LGERS at that time, "shall have the right to receive a monthly pension" under RODSPF upon retirement with LGERS.

35. Petitioner had over 10 years of service as a Register of Deeds when she retired under LGERS on April 1, 2017.
36. G.S. 128-26A is captioned: "Reciprocity of creditable service with other State-administered retirement systems." Subsection (a) states in pertinent part: "Only for the purpose of determining eligibility for benefits accruing under this Article, creditable service standing to the credit of a member of...the Teachers' and State Employees' Retirement System shall be added to the creditable service standing to the credit of a member of this System."
37. Petitioner as previously alleged above had accrued 6 years and 2 months of creditable service in TSERS while an employee of the North Carolina Department of Cultural Resources from October 8, 1990 through November 30, 1996 and transferred that accrued creditable service time to LGERS pursuant to the authority of G.S. 128-26A.
38. G.S. 128-26(e) includes in relevant part: "...Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy....".
39. Petitioner pursuant to G.S. 128-26(e) gained 2 years and 7 months of accrued unused sick leave added to her previously accumulated creditable service upon her retirement.

## EXCEPTIONS

40. Petitioner excepts to the November 2, 2018, decision of Respondent Toole as set forth in Exhibit C and each of the grounds, specifically set out or included in Respondent Toole's letter (Exhibit A), cited for the denial of Petitioner's Request for a Declaratory Ruling (Exhibit B).
41. Petitioner excepts to the determination made by Respondent Toole that Petitioner's was not entitled to credible service time toward retirement from December 1, 2012 through March 31, 2017 based upon the application of G.S. 128-38.4A to her in that (a) that statute is not applicable to Petitioner in that the offenses she plead guilty to are not covered by the statute; (b) even if the statute could be determined to apply to Petitioner the requisite finding by the Trial Court under G.S. 15A-1340.16(d)(9) was not made in the Judgment and Commitment (Exhibit D).
42. Petitioner excepts to the determination by Respondent Toole that says Petitioner is "no longer entitled to the service that was credited to her LGERS's account after December 1, 2012. Therefore pursuant... General Statutes §128-38.4A we have removed 13 years and 1 month (13.0833) of credible service from your LGERS's account for the period covering December 1, 2012 through March 31, 2017..." as more specifically set forth below in paragraphs 43 – 45.
43. Petitioner excepts to the determination of Respondent Toole that Petitioner is no longer entitled to 4 years and 4 months of creditable service toward retirement which she accumulated between December 1, 2012 and March 31,

2017 while serving as Register of Deeds because G.S. 128-38.4A does not apply to Petitioner.

44. Petitioner excepts to the determination of Respondent Toole that Petitioner is no longer entitled to 6 years and 2 months of accrued creditable service toward retirement arising out of her employment in the Department of Cultural Resources from October 8, 1990 to November 30, 1996 based upon her transfer of those benefits from TSERS to LGERS at the time of her retirement because those years of service were accrued in a different system prior to her participation in LGERS and G.S. 128-38A does not apply to Petitioner's service during that time period and Petitioner was not an elected official or an employee of an elected official during that time period.
45. Petitioner excepts to the determination of Respondent Toole that Petitioner is no longer entitled to 2 years and 7 months of accrued creditable service toward retirement arising out of accrued and unused sick leave because G.S. 128-38.4A does not apply to Petitioner's accrued and unused sick leave time.
46. Petitioner excepts to the determination of Respondent Toole that Petitioner did not have sufficient accrued creditable time to retire on March 31, 2017 in that the determination is based upon the erroneous and illegal calculations set forth above as to Petitioner's accrued creditable service time toward retirement.
47. Petitioner excepts to the determination of Respondent Toole that Petitioner owes \$126,290.28 in retirement benefits overpayments based upon the erroneous and illegal calculations set forth above.

48. Petitioner excepts to the determination of Respondent Toole that Petitioner is ineligible for retirement benefits under RODSPF based upon the erroneous and illegal determinations set forth above that Petitioner was ineligible to retire from LGERS on March 31, 2017.

#### CONTINGENT CONSTITUTIONAL VIOLATIONS

49. Petitioner contends that she is entitled to judgment in her favor based solely upon the statutory violations alleged in the preceding paragraphs. However, should a ruling be granted in favor of Respondents on any or all of the statutory grounds set forth above, Petitioner contends as set forth below that such statutory application violates her rights under the North Carolina Constitution as more fully described below.

50. The deprivation of Petitioner's retirement benefits as set forth in Exhibit A, constitutes an unlawful taking of her property rights in violation of the North Carolina Constitution, Article I, Section 19, "Law of the Land; equal protection of the laws."

51. The deprivation of Petitioner's retirement benefits as set forth in Exhibit A, constitutes the infliction of excessive fines imposed and cruel or unusual punishment inflicted, in violation of the North Carolina Constitution, Article I, Section 27 "Bail, fines, and punishments."

52. The deprivation of Petitioner's retirement benefits as set forth in Exhibit A, constitutes the Ex post facto use of the law punishing Petitioner, in violation of the North Carolina Constitution, Article I, Section 16, "Ex post fact laws."

## GROUND FOR REVERSAL

The decision of Respondent Toole is purely a question of law and statutory interpretation and is affected by error of law. The conclusions by Respondent Toole interpreting and applying the statutes in question to deprive Petitioner of her vested rights to accrued creditable service in the North Carolina Retirement System and to determine that Petitioner was not eligible to retire on March 31, 2017 and thus owes the Retirement System a refund of benefits paid beginning April 1, 2017 is incorrect as a matter of law.

## RELIEF REQUESTED

Having stated her exceptions to Respondents' final agency decision and grounds for reversal, Petitioner asks that this Court reverse the November 2, 2018 final agency decision of Respondent Toole denying Petitioner's request pursuant to G.S. 150B-4 and 150B-45 for a Declaratory Ruling, and provide Petitioner with the following relief:

1. Declare that G.S. 128-38.4A as relied on by Respondents does not apply to Petitioner and that the Respondents cannot deprive Petitioner of accrued creditable service toward retirement from December 1, 2012 through March 31, 2017;
2. Declare that Respondents have no statutory or regulatory authority to deprive Petitioner of accrued creditable service earned under TSERS and transferred pursuant to statutory authority to LGERS;

3. Declare that Respondents have no statutory or regulatory authority to deprive Petitioner of accrued creditable service earned through the accrual of unused sick leave;
4. Declare that Respondents have no statutory or regulatory authority to conclude that Petitioner was ineligible to retire with sufficient accrued creditable service on March 31, 2017;
5. Declare that Respondents have no statutory or regulatory authority to conclude that Petitioner was ineligible to draw retirement benefits from RODSPF;
6. Declare that Respondents claim for \$126,290.28 is void in that Petitioner was legally retired as of April 1, 2017 and entitled to benefits paid to her;
7. Issue a Preliminary and Permanent Injunction requiring the Respondents to reinstate Petitioner's retirement benefits as legally calculated and for interest on the amounts improperly withheld upon payment of those benefits improperly withheld;
8. That the costs of this action be taxed against the Respondents;
9. That Petitioner be awarded her attorneys fees, as may be allowable by law; and
10. For such other and further relief as the Court may deem just and proper.

This the 20 day of November, 2018.

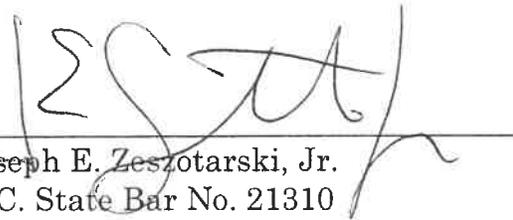
**ROBERT F. ORR  
ATTORNEY AT LAW**



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Counsel for Petitioner

CERTIFICATE OF SERVICE

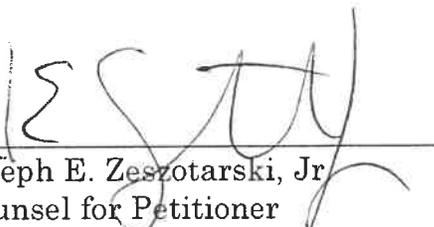
I hereby certify that I have this day served a copy of the foregoing PETITION FOR JUDICIAL REVIEW as follows:

Joseph Newsome  
Special Deputy Attorney General  
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Raleigh, NC 27602-0629

Christina Morrow Strickland  
General Counsel for Retirement Systems Division  
3200 Atlantic Avenue  
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Sam Hayes  
NC Department of State Treasurer  
3200 Atlantic Avenue  
Raleigh, NC 27604

This the 20<sup>th</sup> day of November, 2018.

  
\_\_\_\_\_  
Joseph E. Zeszotarski, Jr.  
Counsel for Petitioner