STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 13, 2016)

GEORGE T. MCLAUGHLIN	:	
	:	
v.	:	**C.A. No. PC 2015-2176**
	:	
CENTRAL FALLS BOARD OF TRUSTEES AND THE RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING	:	

DECISION

PROCACCINI, J. Before this Court is the appeal of George T. McLaughlin (McLaughlin) from a final decision of the State of Rhode Island Department of Labor and Training (RIDLT), denying his complaint against the Central Falls Board of Trustees (Board of Trustees) for unpaid wages for work performed on November 9, 1995. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

McLaughlin filed a complaint against the Board of Trustees on October 29, 2014 for unpaid wages for work performed on November 9, 1995 under G.L. 1956 §§ 28-14-1 et seq. Administrative R., Ex. 1. McLaughlin contends that he started his job on Thursday, November 9, 1995. Id. The Central Falls School District (School District) argues that McLaughlin started his employment with the School District on Monday, November 13, 1995.[1] Id.

[1] The difference between November 9 and November 13 as start dates is only one school day, as Friday, November 10, 1995 was the official observance of Veterans Day. Calendar-12.com,

The administrative record reflects that McLaughlin taught secondary English as a Second Language (ESL) for the School District starting in 1995. Administrative R., Ex. 2, Letter from Maureen Chevrette, Ed.D., Superintendent of Central Falls School District Schools, to Whom It May Concern (Feb. 14, 1997). In August 2014, McLaughlin was working with the Employees' Retirement System of Rhode Island (ERSRI) to retire from his teaching position. Administrative R., Ex. 2, Email from Diane Bourne, Assistant Executive Dir., ERSRI, to George McLaughlin (Aug. 20, 2014, 12:36 EDT).

On August 20, 2014, Diane Bourne (Bourne), the Assistant Executive Director of the ERSRI, wrote to McLaughlin that:

> "It appears that the intent of Central Falls [School District] was to have you work and contribute for 135 days for the 1995-1996 school year and earn 1 full year of service credit. However, by ERSRI calculations, the wages paid to you for that year do not equal 135 days, but rather 134 days." Id.

Bourne told McLaughlin that "[i]f that is, in fact the error, Central Falls will have to notify ERSRI of their miscalculation and arrange for payment of the cost of the additional wages (and contributions)." Id.

McLaughlin responded two days later to Bourne. In that response email, he wrote:

> "I discovered in July that the 'Service Credit Earned' for 1996 on my ERSRI online account had been changed . . . from one year (as it had posted for 18+ [sic] years) to 3/4 of a year, while we were still trying to reach clarification regarding the length of service discrepancy." Administrative R., Ex. 2, Email from George McLaughlin to Diane Bourne, Assistant Executive Dir., ERSRI (Aug. 22, 2014, 12:44 EDT).

McLaughlin went further in his email, saying that he believed that Central Falls was being "lethargic" or "seemingly intransigent" to his inquiries. Id. McLaughlin continued, saying that

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Veterans Day (observed) 1995, https://www.calendar-12.com/holidays/veterans_day/1995 (last visited Oct. 25, 2016).

he was forced to push back his intended retirement date of June 30, 2014 because of the disagreement on start date. Id. He further added that as he was unable to retire on that date, he lost retirement compensation that he would have received during that summer. Id.

Several more emails were exchanged between Bourne and McLaughlin. See Administrative R., Ex. 2. It was determined at the conclusion of the emails contained in the record that McLaughlin and the School District would need to determine the actual start date and whether there was an error. Administrative R., Ex. 2, Email from Diane Bourne, Assistant Executive Dir., ERSRI, to George McLaughlin (Aug. 26, 2014, 07:58 EDT).

The School District took the position that McLaughlin had worked only 134 days of the school year. See Administrative R., Ex. 4. McLaughlin took action and filed a complaint via a "Non—Payment of Wages Complaint Form" and an accompanying letter from his attorney on October 19, 2014 with RIDLT. Administrative R., Ex. 1.

The Board of Trustees was served with notice of McLaughlin's contention by RIDLT Chief Labor Standards Examiner, Helen G. Gage (Gage). Administrative R., Ex. 3. It appears that McLaughlin's complaint was initially dismissed by Gage in a letter from December 12, 2014. See Administrative R., Ex. 2; Administrative R., Ex. 5. McLaughlin's attorney sent a letter arguing that the RIDLT was required to reopen the case and consider equitable tolling principles. Administrative R., Ex. 2. Specifically, he argued:

> "Mr. McLaughlin's reasonable belief that he had received wages for November 9, 1995 was reinforced by the District's misrepresentations and misleading silence. Prior to August 20, 2014, Mr. McLaughlin had no awareness or knowledge of any no-payment of wages, and therefore the 'discovery rule' works to delay the accrual of the statute of limitations on his claim." Id. (emphasis in original).

Counsel for the Board of Trustees argued against the application of equitable tolling principles. Administrative R., Ex. 4. On April 23, 2015, RIDLT Assistant Director of Workforce Regulation and Safety, Joseph R. Degnan (Degnan), issued a decision stating that McLaughlin had failed to file his complaint with the RIDLT within the three-year statute of limitations. Administrative R., Ex. 6. Degnan cited § 28-14-19 as his basis for denying any claim. Id.

McLaughlin filed an appeal on May 22, 2015. Pet. to Review Decision of the Rhode Island Dep't of Labor and Training at 3. Both the Board of Trustees and the RIDLT were served notice on June 17, 2015. Rhode Island Superior Court Summons to Central Falls Board of Trustees; Pet. Summons to RIDLT. This appeal was assigned to this Court on September 20, 2016. Order Sept. 20, 2016.

II

Standard of Review

This Court's review of the decision of an administrative agency is governed by the Administrative Procedures Act (APA), §§ 42-35-1, et seq.; Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1048 (R.I. 2008) (citing Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006)). Section 42-35-15(g) of the APA states:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

When reviewing an agency decision, this Court is limited to an examination of the record in deciding whether the agency's decision is supported by substantial evidence. Ctr. for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998) (citations omitted). Substantial evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance." Caswell v. George Sherman Sand & Gravel Co., 424 A.2d 646, 647 (R.I. 1981) (citing Apostolou v. Genovesi, 120 R.I. 501, 508, 388 A.2d 821, 824-25 (1978)). "[D]eference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency." Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456 (R.I. 1993). "Deference is accorded even when the agency's interpretation is not the only permissible interpretation that could be applied." Id. at 456–57 (citing Young v. Cmty. Nutrition Inst., 476 U.S. 974, 981 (1986)). This Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Interstate Navigation Co. v. Div. of Pub. Utils., 824 A.2d 1282, 1286 (R.I. 2003). "[I]f 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

III

Analysis

McLaughlin's appeal of RIDLT's decision rests on several arguments that all involve the omnipresent legal hurdle known as the statute of limitations. McLaughlin filed his original administrative complaint under § 28-14-20(a), which provides that employees with "claims for

wages may [] file[] [a complaint] with the director within three (3) years from the time of services rendered by an employee to his or her employer." Sec. 28-14-20(a) (emphasis added).

The United States Supreme Court has stated that "[s]tatutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Order of R.R. Telegraphers v. Ry. Express Agency, 321 U.S. 342, 348-49 (1944). The Rhode Island Supreme Court has similarly addressed statutes of limitation as "the product of a balancing of the individual person's right to seek redress for past grievances against the need of society and the judicial system for finality—for a closing of the books." Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 181 (R.I. 2008).

McLaughlin asks this Court to find that an administrative agency, in this case the RIDLT, may toll a statute of limitations in circumstances such as his own. He argues that the discovery rule or doctrine of equitable tolling should apply to his case, as he was unaware of the discrepancy between the School District's interpretation of his start date and his own.

A

The "Discovery Rule"

The "discovery rule" states that if an injury remains undiscovered until a certain instance, then only upon discovery will the statute of limitations begin to accrue. Black's Law Dictionary 565 (Bryan A. Gardner, ed., Thomson Reuters 2014). The "discovery rule" is a specific feature of the doctrine of equitable tolling. Hyde v. Roman Catholic Bishop of Providence, 139 A.3d 452, 461 (R.I. 2016). "[T]he heart of the discovery rule is that the statute of limitations does not begin to run until the plaintiff 'discovers, or with reasonable diligence should have discovered,

the wrongful conduct of the [defendant].'" Mills v. Toselli, 819 A.2d 202, 205 (R.I. 2003) (quoting Supreme Bakery, Inc. v. Bagley, 742 A.2d 1202, 1204 (R.I. 2000) (internal citations omitted)). The discovery rule is meant "'to protect individuals suffering from latent or undiscoverable injuries who then seek legal redress after the statute of limitations has expired for a particular claim.'" Hyde, 139 A.3d at 461 (quoting Sharkey v. Prescott, 19 A.3d 62, 66 (R.I. 2011)). The Rhode Island Supreme Court has defined several "factual situations" in which the discovery rule applies. These "factual situations" that toll the statute of limitations until discovery of the injury include pharmaceutical industry product liability, improvements to real property, and medical malpractice. Anthony v. Abbott Labs., 490 A.2d 43, 45 (R.I. 1985); Lee v. Morin, 469 A.2d 358 (R.I. 1983); Wilkinson v. Harrington, 104 R.I. 224, 238, 243 A.2d 745, 753 (1968).

The School District and RIDLT argue that the statute of limitations in this case is clear and that there is no statutory authority for the RIDLT to apply the discovery rule. They explain that "[a]dministrative agencies such as the [RIDLT] are statutory creations possessing no inherent common-law powers. An agency cannot modify the statutory provisions under which it acquired power, unless such an intent is clearly expressed in the statute." Little v. Conflict of Interest Comm'n, 121 R.I. 232, 236, 397 A.2d 884, 886 (1979). RIDLT and the Board of Trustees principally rely on Iselin, wherein our Supreme Court concluded: "[o]ur examination of this unambiguous statute does not reveal even a remote suggestion that equitable tolling is available to save untimely claims, and we decline to hold otherwise." 943 A.2d at 1050. Moreover, the Iselin Court noted the legislature has specifically created a discovery rule for other actions and did not do the same with the statute in question in that case. Id. Iselin instructed that without statutory authority, the Court could not independently expand the discovery rule. Id.

RIDLT and the Board of Trustees agree that the Court has "consistently held that in situations in which a reasonable person would not have discovered [a cause of] action prior to the time of injury, the statute begins to run at the time the injury manifests itself." Lee, 469 A.2d at 360. However, the Board of Trustees and RIDLT argue that a plaintiff has to possess "'some awareness, or imputed awareness, that her injuries were the result of some wrongdoing on the part of defendants.'" Anthony, 490 A.2d at 48 (quoting Dawson v. Eli Lilly and Co., 543 F. Supp. 1330, 1339 (Fed. Cir. 1982)). RIDLT and the Board of Trustees argue that because McLaughlin did not know he was unpaid for November 9, 1995 until August 2014, this injury was undiscovered and thus should not toll the statute of limitations. Administrative R., Ex. 2.

To determine if the discovery rule is applicable in this case, the Court must determine whether there is language in the statute that allows for equitable tolling or, more specifically, the application of the discovery rule. See Iselin, 943 A.2d at 1051. The chapter authorizing this type of action makes no mention of equitable tolling or the discovery rule. Sec. 28-14-1 et seq. The Rhode Island APA makes no mention of equitable tolling or the discovery rule. See §§ 42-35-1 et seq. As such, there is no explicit statutory authorization for the RIDLT to apply the discovery rule.

McLaughlin relies on cases that turned on actions in the judiciary as opposed to an administrative agency action. McLaughlin cites Lee, involving home owners who sued several entities for damage caused by flooding in their basement after the construction of an aqueduct. 469 A.2d at 359. In that case, the Superior Court trial justice granted a directed verdict and did not apply the "discovery rule" to the statute of limitations. Id. The Supreme Court held that it was unfair to the plaintiff to apply a statute of limitation when they were unaware of the damages until a date past that limitation. Id. at 360.

McLaughlin further depends on Anthony to support his contention that the discovery rule should apply. 490 A.2d 43. Anthony was a certified question to the Rhode Island Supreme Court from the United States District Court for the District of Rhode Island regarding the statute of limitations for a drug product-liability case. Id. at 44. In that case, our Supreme Court held that the statute of limitations for a drug product-liability case did not begin accrual "until the plaintiff knows, or should reasonably know, of the alleged wrongful conduct of the manufacturer." Id. at 48.

Both Lee and Anthony are distinguishable from the case at hand. The present case is an appeal of an administrative agency's actions, not an appeal from the actions of the Superior Court. Rhode Island law grants only the Superior Court "exclusive original jurisdiction" over equitable proceedings. G.L. 1956 § 8-2-13. No statute concerning the RIDLT has authorized it to act in an equitable manner with regard to statutes of limitations. Sec. 28-14-1 et seq.; §§ 42-35-1 et seq. Lee was a Superior Court case wherein the trial court had enumerated equitable powers. See § 8-2-13. In Anthony, the federal district court acted with equitable powers as well. See Guar. Trust Co. of N.Y. v. York, 326 U.S. 99, 105 (1945). In both cases, the first trial was heard before a court with the power to exercise equitable relief. Here, however, the RIDLT does not have equitable powers and its decision to limit its exercise of power to those powers the General Assembly has granted to it is not in violation of its statutory authority.

The entire administrative record reflects that McLaughlin's complaint regards work completed on November 9, 1995. Administrative R., Ex. 1. McLaughlin filed his complaint on October 29, 2014, days short of nineteen years later. Id. In the letter rejecting the wage complaint by McLaughlin, Degnan wrote on behalf of the RIDLT that the department's investigation had determined that the three-year statute of limitations began to run from the date

that McLaughlin rendered services, in this case November 9, 1995. Administrative R., Ex. 6. The letter went further saying that "[t]here are no statutory exceptions to this requirement and the Department is not a court of equity." Id. This letter shows clear and sufficient justification for the RIDLT's refusal to apply the discovery rule, as there is no authority for the RIDLT to do so.

McLaughlin asks this Court to do the impossible—reverse a decision based on a department's failure to exercise powers outside its purview. McLaughlin argues that the record contains evidence that shows he only confirmed the discrepancy on August 20, 2014. Administrative R., Ex. 2, Email from Diane Bourne, Assistant Executive Dir., ERSRI, to George McLaughlin (Aug. 20, 2014, 12:36 EDT). As such, McLaughlin believes that the RIDLT should have applied the discovery rule. However, the RIDLT's use of any equitable powers would have been in excess of its statutory authority. See §§ 28-14-1 et seq.; see also §§ 42-35-1 et seq. (the APA makes no mention of equitable powers granted to an administrative department or agency). If McLaughlin wished for the doctrine of equitable tolling to apply, he would necessarily have had to make a complaint in state court. Sec. 28-14-20(c).[2]

[2] Section 28-14-20 reads as follows:

> "(a) All claims for wages may be filed with the director within three (3) years from the time of services rendered by an employee to his or her employer.
> "(b) An aggrieved person who alleges a violation of any provision of this chapter may bring a civil action for appropriate injunctive relief or actual damages or both within three (3) years after the occurrence of the alleged violation of this chapter.
> "(c) An action commenced pursuant to subsection (b) may be brought in the court for the county where the alleged violation occurred; the county where the complainant resides; or the county where the person against whom the civil complaint is filed resides or has his, her or its principal place of business.
> "(d) As used in subsection (b), damages include two (2) times the wages owed to the employee for the first offense.

The record before this Court does not establish a violation of § 42-35-15. Moreover, this Court agrees with the RIDLT's assertion that it does not have the authority to fashion an equitable remedy.

B

Equitable Tolling

Generally, equitable tolling is defined as "[t]he doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired, in which case the statute is suspended or tolled until the plaintiff discovers the injury." Black's Law Dictionary 656 (Bryan A. Gardner, ed., Thomson Reuters 2014). "[E]quitable tolling is an exception to the general statute of limitations based upon principles of equity and fairness . . . ." Johnson v. Newport Cnty. Chapter for Retarded Citizens, Inc., 799 A.2d 289, 292 (R.I. 2002). "It is a 'sparingly invoked doctrine' that is 'used to excuse a party's failure to take an action in a timely manner, where such failure was caused by circumstances that are out of his hands.'" Ortega Candelaria v. Orthobiologics LLC, 661 F.3d 675, 679 (1st Cir. 2011) (quoting Dawoud v. Holder, 561 F.3d 31, 36 (1st Cir. 2009). Usually, a court will not apply the equitable tolling doctrine unless there are "circumstances beyond a litigant's control [that] have prevented him from filing on time." Delaney v. Matesanz, 264 F.3d 7, 15 (1st Cir. 2001). The United States Supreme Court held in Pace v. DiGuglielmo that in order for a court to apply the equitable tolling doctrine, the plaintiff has the burden to prove "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." 544 U.S. 408, 418 (2005) (citing Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)).

"(e) Attorney's fees, including litigation expenses, may be granted to a prevailing plaintiff." Sec. 28-14-20.

McLaughlin's argument regarding the discovery rule, which is by definition a more focused part of equitable tolling, has failed. McLaughlin's further argument in support of the broader doctrine of equitable tolling relies on one recent case from the Rhode Island Supreme Court. In that case, Rivera v. Emps.' Ret. Sys. of R.I., an appeal to the Rhode Island Superior Court under the APA, was filed after the passing of the prescribed thirty-day deadline. 70 A.3d 905, 908-09 (R.I. 2013). In Rivera, our Supreme Court held that the doctrine of equitable tolling could apply to filing an administrative appeal under § 42-35-15(b). Id. at 914.

McLaughlin asks this Court to take the Rivera ruling a step further and to overturn the ruling of RIDLT because the agency did not apply equitable tolling. However, in Rivera, the Court did not grant administrative agencies the power to apply equitable doctrines to the cases that they oversee. See id. at 913-14. Instead, Rivera establishes the Superior Court's power to equitably toll the statutory deadline for filing an appeal. Id. at 914. To expand the holding of Rivera would be to grant equitable powers to the RIDLT—powers not extended by the statute.

McLaughlin points to Little v. Conflict of Interest Comm'n., which simply states that an administrative agency is limited by the powers granted to it statutorily. 121 R.I. 232, 237, 397 A.2d 884, 887 (1979). There are no statutes that grant the RIDLT powers of equity. Sec. 28-14-1 et seq. In fact, in Iselin, the Rhode Island Supreme Court wrote "[t]he retirement system is a complex administrative agency that oversees, inter alia, a large number of claims; a statute of limitation governing those claims is likely to be absolute and devoid of exceptions." 943 A.2d at 1051. Similarly, the RIDLT is a complex agency and sees many complaints about the failure to pay wages. See id. Like the Rhode Island retirement system, the RIDLT appears to be an administrative agency for which "a statute of limitation governing those claims is likely to be absolute and devoid of exceptions." Id.

In its letter, RIDLT denied McLaughlin's complaint based on two separate factors. Administrative R., Ex. 6. RIDLT wrote in its denial of McLaughlin's complaint that their authorizing statutes do not create a statutory exception to the three-year statute of limitations, which started running from the date the services were rendered. Id. RIDLT also denied McLaughlin's complaint because "the Department is not a court of equity." Id.

This Court follows the example of Iselin and, accordingly, upholds RIDLT's decision refusing to apply the principles of equitable tolling.

IV

Conclusion

After review of the entire record, this Court affirms the RIDLT's decision to deny McLaughlin's petition for failure to comply with the statute of limitations. The RIDLT did not violate constitutional or statutory provisions, did not act in excess of its statutory authority, and did not abuse its discretion. RIDLT's decision was not affected by other error of law, clearly erroneous based on the evidence presented, or arbitrary or capricious. Sec. 42-35-15(g). Simply put, the remedy sought by McLaughlin is equitable in nature and, pursuant to Rhode Island law, is unavailable to RIDLT. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**George T. McLaughlin v. Central Falls Board of Trustees and the Rhode Island Department of Labor and Training**
CASE NO:	**PC 2015-2176**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 13, 2016**
JUSTICE/MAGISTRATE:	**Procaccini, J.**
ATTORNEYS:	
For Plaintiff:	**Jeffrey D. Sowa, Esq.**
For Defendant:	**Vicki J. Bejma, Esq.** **Bernard P. Healy, Esq.**