

**Reversed and Rendered and Opinion filed March 16, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-01164-CV**

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**CITY OF GALENA PARK, Appellant**

**V.**

**BARBARA NUGENT, Appellee**

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**On Appeal from the 269<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 97-57958**

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**OPINION**

This is an appeal from the trial court's order granting summary judgment in favor of Barbara Nugent, and denying summary judgment against the City of Galena Park ('City'). Nugent alleges that the City denied her recovery of accumulated sick leave upon her termination. The trial court agreed with Nugent and found that Article 8.500 of the Code of Ordinance of the City of Galena Park provided for the recovery of all of her accumulated sick leave time. The City appeals, contending that the trial court misconstrued the city ordinance. We agree and reverse and render summary judgment for Galena Park.

## **Background Facts**

Barbara Nugent was employed by the City of Galena Park for over twenty years, serving as the city secretary, treasurer and the tax assessor/collector. In May 1996, Nugent was terminated from her position. She was given three months pay upon termination. At the time of her termination, Nugent had accumulated 271 days of sick leave. In October 1996, Nugent requested to be paid for fifteen days of her accumulated sick leave pursuant to sections 1.49 and 1.53 of the City of Galena Parks Personnel Manual. The City agreed, and paid her for those days she requested; however, the City did not compensate Nugent for her remaining 256 days of accumulated sick leave. Nugent claims that she is entitled to this additional compensation pursuant to Article 8.500 of the Code of Ordinance of the City of Galena Park. The City disagrees and contends that the ordinance limits accumulated sick leave/severance pay to three months pay. Both sides moved for summary judgment. The trial court denied the City's motion and granted Nugent's motion, awarding her \$43,233.28 in damages.

## **Standard of Review for Summary Judgments**

When both sides move for summary judgment and the trial court grants one motion and denies the other, the reviewing court should review both sides' summary judgment evidence and determine all questions presented. *Bradley v. State ex rel. White*, 990 S.W.2d 245 (Tex.1999). When faced with error in that circumstance, the reviewing court should render the judgment the trial court should have rendered. *Id.*

The standard for summary judgment review is well settled. A trial court should grant a motion for summary judgment if the moving party establishes that: (1) no genuine issue of material fact exists and (2) the moving party is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex.1991). As a question of law, statutory construction is an appropriate topic for summary judgment. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 655-56 (Tex. 1989).

## **Statutory Construction**

The sole issue before us is whether the ordinance limits accumulated sick leave to three months pay, or whether accumulated sick leave pay should be paid in addition to the three months severance pay. When we are confronted with a question of statutory construction, we must first determine whether the statute is ambiguous. *Cail v. Service Motors, Inc.*, 660 S.W.2d 814, 815 (Tex.1983). If the meaning of the statute is clear and unambiguous, extrinsic aids and rules of construction are inappropriate, and the statute should be given its common, everyday meaning. *Id.* We are to examine the statute as a whole, rather than by isolated portions taken out of context. *See Hammond v. City of Dallas*, 712 S.W.2d 496, 498 (Tex. 1986). Every provision of a statute should be construed with every other portion to produce a harmonious whole; thus, one provision should not be given a meaning inconsistent with the other provisions, even though it may be susceptible of an inconsistent construction if it was standing alone. *See Walden v. Royal Globe Ins. Co.*, 577 S.W.2d 296, 300 (Tex. App. – Beaumont 1978, ref. n.r.e.).

We are guided by the same principles in interpreting a city ordinance that are generally followed in construing statutes. *Mills v. Brown*, 159 Tex. 110, 316 S.W.2d 720, 723 (1958). Article 8.500 of the Code of Ordinance of the City of Galena Park is entitled Sick Leave for Employees Other Than Civil Service. The ordinance establishes the City’s sick leave policy. Subsection(e) of the ordinance is directed to employees who have served for at least ten years:

If an employee for any reason leaves the city’s employ after having served faithfully for as many as ten (10) years, he shall receive in a lump sum payment, the full amount of his accumulated sick leave plus his severance pay, ***based on the following schedule***:

10 years – minimum – 2 months pay

15 years – maximum – 3 months pay

The number of years in between these periods shall be prorated or graduated thus: eleven (11) years service, 2 and 1/5 months pay; twelve (12) years service, 2 and 2/5 months pay; thirteen (13) years service, 2 and 3/5 months pay; fourteen (14) years service, 2 and 4/5 months pay. If at the end of ten (10) or more years of service, the employee has only a limited number of accumulated sick days leave, and leaves the city’s employ, ***he will receive the sum total of his accumulated sick leave and severance pay up to the maximum as outlined in the schedule above***. (emphasis added)

Although Nugent correctly argues that an employee who has served at least ten years is entitled to “the full amount of accumulated sick leave, plus severance pay,” she disregards the subsequent provisions. These provisions limit accumulated sick leave and severance pay to a maximum of three months

pay. Accordingly, we hold that the ordinance is unambiguous and clearly limits accumulated sick leave and severance pay to three months pay.

Moreover, even if we were to find that statute was ambiguous, we would reach the same result. The administrative interpretation of the ordinance shows that the City established a three month limit on accumulated sick leave and severance pay. Nugent testified in a deposition that she was aware of this policy. The legislative history of the ordinance, as shown in the minutes, provides for one lump sum payment for the total of “accumulated sick leave and/or severance pay” to a three month maximum. This history offers further support to show that the city limited accumulated sick leave and severance pay to three months pay.

Thus, we sustain the City’s sole point of error. We reverse the trial court’s order granting summary judgment in favor of Nugent, and render summary judgment in favor of the City of Galena Park.

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D. Camille Hutson-Dunn  
Justice

Judgment rendered and Opinion filed March 16, 2000.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.\*

Do Not Publish — TEX. R. APP. P. 47.3(b).

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\* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.