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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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ANNETTE BORGWAT,

Plaintiff and Respondent,

v.

SHASTA UNION ELEMENTARY SCHOOL  
DISTRICT,

Defendant and Appellant.

C078692

(Super. Ct. No. 178750)

Plaintiff Annette Borgwat retired from defendant Shasta Union Elementary School District. Under the collective bargaining agreement, she was entitled to a contribution from the District of \$200 monthly toward her medical insurance coverage. She declined medical insurance from the District but maintained her dental and vision coverage. For two years, the District paid \$200 monthly toward her dental and vision coverage. But after paying it for two years, the District realized that Borgwat was not entitled to it and discontinued the contribution.

Borgwat sued, and the trial court determined that she was entitled to the \$200 contribution toward her dental and vision coverage because “medical insurance” is ambiguous in the collective bargaining agreement and may include dental and vision coverage.

We reverse. Medical, dental, and vision coverage are separate under the collective bargaining agreement. Therefore, Borgwat is not entitled to the \$200 contribution toward her dental and vision coverage because they are not part of her medical insurance coverage.

## BACKGROUND

Borgwat was an employee of the District until she retired in 2009. The parties agree that her retirement benefits are subject to the collective bargaining agreement in effect at the time.

Section 5.2 of the collective bargaining agreement provides for employee (not retiree) insurance benefits. We quote it because of the language it uses in describing those benefits:

“[H]ealth and welfare benefits for employees covered by this Agreement who are normally assigned to work more than thirty (30) hours per week are eligible to receive District-paid health benefits as follows: a) The District will contribute up to \$10,404 annually for each eligible bargaining unit member toward the cost of medical (Blue Cross Health Plan C), dental and vision benefit coverage. . . .”

Later, in the same section concerning employee benefits, the collective bargaining agreement provides:

“The above stated District insurance premium contribution represents the maximum amount of District payment towards employee insurance . . . .”

Section 5.7 of the collective bargaining agreement deals directly with retiree insurance benefits. It provides:

“Unit members who . . . elect to continue their District group medical insurance coverage shall receive a monthly District contribution toward such premium not to exceed \$200.00 . . . .”

Upon retiring in 2009, Borgwat discontinued her Blue Cross medical insurance provided through the District’s group plan because she was covered under her husband’s policy, but she kept her District dental and vision insurance. From 2009 to 2012, the District contributed toward Borgwat’s dental and vision insurance. As a result of the District’s contribution, Borgwat paid nothing for the dental and vision insurance.

In May 2012, the District sent Borgwat a letter explaining that it had not been applying her benefits correctly under the terms of the collective bargaining agreement and that she was not entitled to a District contribution toward her dental and vision insurance. After sending the letter, the District no longer made the contribution toward her dental and vision insurance.

Borgwat sued the District, seeking declaratory relief. (A cause of action for breach of contract was dismissed because Borgwat did not comply with the Government Claims Act.) After a court trial based on statements of disputed and undisputed facts and the testimony of three witnesses for the District, the court entered judgment in favor of Borgwat. The court found that the collective bargaining agreement provided for the District to, in the court’s words, “pay a maximum amount of \$200 per month for group medical insurance coverage which includes dental and vision insurance coverage.”

The trial court’s reasoning for its decision is found in its tentative decision. The court determined that the term “group medical insurance coverage” in section 5.7 of the collective bargaining agreement is ambiguous because it “reasonably can be understood by some to include dental and vision.” The court noted that, as to employee benefits in section 5.2, the collective bargaining agreement listed medical, dental, and vision benefits separately but lumped them together for a total District contribution (\$10,404) for those benefits. The court also considered the District’s actions after the contract was created,

noting that it contributed toward Borgwat’s dental and vision insurance after her retirement. The court therefore interpreted the term “group medical insurance coverage” in section 5.7 to include dental and vision insurance.

## DISCUSSION

We conclude that the language of the collective bargaining agreement does not support the trial court’s conclusion that the term “group medical insurance coverage” in section 5.7 was ambiguous or that it could include dental and vision insurance. We also reject Borgwat’s contentions that (1) the District caused the asserted ambiguity in the collective bargaining agreement and (2) the District waived its right to rely on the collective bargaining agreement.

In this court trial, the court based its conclusions on undisputed evidence, including the interpretation of contract language. Therefore, we review the judgment de novo as a question of law. (*Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1127.)

The trial court found that the term “group medical insurance coverage” in section 5.7 of the collective bargaining agreement is ambiguous because it could reasonably be understood as meaning medical, dental, and vision coverage. That finding is not supported by consideration of the collective bargaining agreement as a whole.

“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.” (Civ. Code, § 1641.) If the contract, as a whole, is not ambiguous, then we determine the meaning based on the plain language of the contract, not on extrinsic evidence. (*Rosenfeld v. Abraham Joshua Heschel Day School, Inc.* (2014) 226 Cal.App.4th 886, 897.)

Section 5.7 of the collective bargaining agreement offers a \$200 contribution to retirees’ “group medical insurance coverage.” And section 5.2 provides that there are three types of “health and welfare benefits” – “medical (Blue Cross Health Plan C), dental and vision benefit coverage.” Interpreting “group medical insurance coverage” in

section 5.7 to include dental and vision coverage is inconsistent with the specific use of those terms in section 5.2. “Group medical insurance coverage” is not a broad term applying to all health benefits. Instead, “health and welfare benefits” is the broad term used in the collective bargaining agreement. “Group medical insurance coverage” refers only to the medical insurance provided through Blue Cross. Therefore, the \$200 contribution in section 5.7 applies only to medical insurance, not to dental and vision insurance.

The trial court relied, in part, on the fact that section 5.2 lumped together medical, dental, and vision insurance in the total amount the District would pay for employee health benefits. We see no significance in this circumstance. The District committed to paying \$10,404 each year for employees’ “medical (Blue Cross Health Plan C), dental and vision benefit coverage. . . .” The collective bargaining agreement did not treat those three categories as one, and it separated out medical insurance for contribution for retirees.

The trial court erred by finding the language ambiguous. Having so found, it determined that extrinsic evidence, including the District’s payment of the contribution after Borgwat retired supported the interpretation posited by Borgwat. That evidence, however, was not relevant because the language is not ambiguous. The District made a mistake that benefited Borgwat for three years. That mistake did not change the collective bargaining agreement.

Borgwat argues that any ambiguity in the collective bargaining agreement must be attributed to the District. We need not consider this argument because the collective bargaining agreement is not ambiguous. In any event, a negotiated contract is not susceptible to the rule that one party or the other caused an ambiguity. (*Dunne & Gaston v. Keltner* (1975) 50 Cal.App.3d 560, 563, fn. 3.)

Borgwat also claims the District waived its right to withhold the contribution to her dental and vision coverage. But principles of waiver do not apply here. The District

did not knowingly and intentionally relinquish a known right. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 31.)

DISPOSITION

The judgment is reversed and remanded with directions to enter judgment in favor of the District. The parties will bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

NICHOLSON, Acting P. J.

We concur:

HULL, J.

BUTZ, J.