STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0881

DR. RALPH SLAUGHTER

VERSUS

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

Judgment Rendered: **MAR 25 2021**

* * * * * * * *

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C612525

The Honorable Donald R. Johnson,
Judge Presiding

* * * * * * * *

Scott D. Wilson
Baton Rouge, Louisiana

Tina Vicari Grant
R. Stephen Stark
Baton Rouge, Louisiana

Counsel for Plaintiff/
Appellant
Dr. Ralph Slaughter

Counsel for Defendant/
Appellee
Louisiana State
Employees'
Retirement System

* * * * * * * *

BEFORE: THERIOT, WOLFE, AND HESTER, JJ.

THERIOT, J.

Dr. Ralph Slaughter appeals the Nineteenth Judicial District Court's June 15, 2020 judgment dismissing with prejudice his claims for a writ of mandamus, mandatory injunctive relief, and declaratory judgment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

This matter has a lengthy procedural history. The following is set forth in the Supreme Court's earlier opinion in *Slaughter v. Louisiana State Employees' Retirement System*, 2015-0324 (La. 10/14/15); 180 So.3d 279, 280-81 (per curiam) and in a subsequent appeal, *Slaughter v. Louisiana State Employees' Retirement System*, 2019-0977 (La. App. 1 Cir. 6/1/20); 305 So.3d 358.

In 2009, Dr. Ralph Slaughter ("plaintiff") retired as president of Southern University System ("Southern") after thirty-five years of service. Upon retirement, the Louisiana State Employees' Retirement System ("LASERS") began paying plaintiff retirement benefits of $24,487 per month.

Plaintiff then filed suit against Southern for past due wages. The trial court ruled that Southern had miscalculated plaintiff's income base by including supplemental pay plaintiff had received from the Southern University Foundation, and determined plaintiff's terminal pay (500 hours of unused leave) and retirement should have been calculated on his $220,000

annual base salary due from Southern. The court of appeal affirmed, noting plaintiff "manipulated the system and used his position for his own benefit." See *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 2010-1049 (La. App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970 ("*Slaughter I*").

Meanwhile, on January 22, 2010, Southern sent a letter to LASERS advising it had committed an error by including supplemental funds in plaintiff's earnings. Because the *Slaughter I* suit was ongoing at the time, LASERS filed a concursus proceeding (hereinafter referred to as "*Slaughter II*") seeking to deposit the disputed amount of plaintiff's benefit in the registry of court pending resolution of the *Slaughter I* litigation. Plaintiff filed an exception of no cause of action. The trial court granted the exception and dismissed *Slaughter II* with prejudice. LASERS did not appeal this judgment.

On April 27, 2012, after *Slaughter I* became final, LASERS sent correspondence to plaintiff advising it intended to retroactively reduce his retirement benefit starting June 1, 2012 "due to an error made by Southern University in the reporting of [his] earnings." Relying on La. R.S. 11:192, LASERS maintained it may adjust benefits and further reduce the corrected benefit to recover overpayment within a reasonable number of months.

Plaintiff filed the instant suit against LASERS, seeking a writ of mandamus, injunctive relief, and a

declaratory judgment confirming LASERS has no authority or ability to reduce his retirement benefits. The petition alleged plaintiff's retirement benefits should be calculated based on the entirety of his earnings over thirty-five years of employment, including salary supplements.

After a bench trial in 2013, the trial court granted plaintiff's petition for declaratory judgment. Without reaching the merits of plaintiff's arguments regarding the calculation of benefits, the court held LASERS was not entitled to reduce plaintiff's retirement benefits because it failed to follow the procedural requirements set forth in La. R.S. 11:407. Specifically, the court found LASERS failed to introduce any evidence indicating it submitted documentation of the administrative error to the LASERS board of trustees as required by La. R.S. 11:407.

LASERS appealed this ruling. Plaintiff answered the appeal, asserting that any attempt by LASERS to reduce his benefits was barred by res judicata and prescription. On appeal, this court rejected plaintiff's res judicata and prescription arguments. However, this court affirmed the trial court's judgment in favor of plaintiff, finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. One judge concurred and another judge dissented. See *Slaughter v. Louisiana State Employees' Retirement System*, 2013-2255 (La. App. 1 Cir. 12/4/14), 2014 WL 6854536 (unpublished) ("*Slaughter III*").

Upon the application of LASERS, the Louisiana Supreme Court granted certiorari. Subsequently, the Supreme Court in *Slaughter v. Louisiana State Employees' Retirement System*, 2015-0324 (La. 10/14/15); 180 So.3d 279 (per curiam) ("*Slaughter IV*") found that this court had properly rejected plaintiff's arguments of res judicata and prescription. The *Slaughter IV* Court then stated that as to the merits of this court's decision in *Slaughter III*, "the narrow question presented for our resolution is whether LASERS failed to follow the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits." *Slaughter IV*, 180 So.3d at 282. The *Slaughter IV* Court concluded that this court and the trial court had erred in finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's benefits, and reversed this court's judgment on that point. The *Slaughter IV* Court affirmed this court's judgment in all other respects and remanded to the trial court for further proceedings consistent with the opinion. *Slaughter IV*, 180 So.3d at 284.

Following the remand in *Slaughter IV*, plaintiff filed a motion for summary judgment on September 20, 2017, seeking restoration of his retirement benefits in the amount of $24,487.95 per month, as originally calculated, and injunctive relief preventing LASERS from interfering with payment of that amount. Plaintiff argued that although LASERS may have followed the proper procedure to initiate action to reduce and recoup benefits, no reduction or recoupment was

appropriate. Plaintiff maintained that there was no genuine issue of material fact precluding judgment in his favor on this point, and requested that the trial court:

> [R]equire LASERS to restore to Dr. Slaughter all retirement benefits to which he is due, with interest, and award him attorney fees, costs, and other legal, general, and equitable relief, including a declaration that Dr. Slaughter is entitled to retirement benefits in the amount of $24,487.95 per month and injunctive relief preventing LASERS from interfering with payment of this amount in retirement benefits to Dr. Slaughter.

In response, LASERS filed an exception raising the objection of res judicata. The trial court heard plaintiff's motion for summary judgment and LASERS' exception together on January 22, 2018, and executed a written judgment denying both on February 14, 2018.

Thereafter, plaintiff filed a pleading entitled "Motion for Declaratory Judgment" on June 28, 2018, seeking "judgment that all earned compensation, including the salary supplement paid to him by the Southern University System, be found to be a part of his average monthly compensation for purposes of retirement benefits. . . ." Plaintiff filed a memorandum in support of his motion for declaratory judgment, in which he repeated the arguments and requests for relief set forth in his September 20, 2017 motion for summary judgment. The record demonstrates that neither the trial

court nor the parties took any action on plaintiff's motion for declaratory judgment.

On September 6, 2018, plaintiff filed a pleading entitled "Plaintiff's Post-Trial Brief on Remand in Support of Motion for Judgment on the Record" ("motion for judgment on the record"). Plaintiff also sought an order from the trial court directing LASERS to show cause "why plaintiff should not be awarded judgment as prayed for in his lawsuit, on remand from the Louisiana Supreme Court, based on the record already generated in this court." The motion for judgment on the record again repeated the arguments and requests for relief made in plaintiff's September 20, 2017 motion for summary judgment. Plaintiff did not submit any new evidence in support of the motion for judgment on the record.

The trial court heard plaintiff's motion for judgment on the record on February 11, 2019. On March 6, 2019, the trial court executed a written judgment[1] denying the motion for judgment on the record, which provided in pertinent part:

> Considering the pleadings, evidence, the memoranda, and the argument of counsel:

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[1] An identical written judgment was executed on March 19, 2019. This court found the March 19, 2019 judgment to be a nullity and without legal effect. See *Slaughter v. Louisiana State Employees Retirement System*, 2019-0977 (La. App. 1 Cir. 6/1/20); 305 So.3d 358, 361-62 n. 1.

> It is ORDERED and ADJUDGED that the plaintiff's Motion for Judgment on the Record be and is hereby DENIED at plaintiff's costs.

Plaintiff appealed the March 6, 2019 judgment. See *Slaughter v. Louisiana State Employees Retirement System*, 2019-0977 (La. App. 1 Cir. 6/1/20); 305 So.3d 358 ("*Slaughter V*"). In *Slaughter V*, this court found that the relief granted or denied by the March 6, 2019 judgment was not evident from the language of the judgment without reference to other documents in the record. This court further found that the March 6, 2019 judgment did not contain appropriate decretal language dismissing any claims or the petition. Accordingly, this court held that the March 6, 2019 judgment was not a valid final judgment and dismissed plaintiff's appeal.[2] *Slaughter V*, 305 So.3d at 363-64.

On June 15, 2020, the trial court rendered judgment denying plaintiff's motions for a writ of mandamus, mandatory injunctive relief, and declaratory judgment, and dismissing with prejudice plaintiff's claims for a writ of mandamus, mandatory injunctive

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[2] On September 13, 2019, while the appeal was pending, the trial court issued a "corrected judgment", which stated in pertinent part:

> Considering the pleadings, evidence, memoranda, and argument of counsel,
>
> IT IS ORDERED, ADJUDGED, AND DECREED that final [j]udgment be and it is hereby granted in favor of defendant, LASERS, and against plaintiff, Dr. Slaughter, denying Dr. Slaughter's Motion for Judgment on the Record at Dr. Slaughter's cost.

relief, and declaratory judgment. Plaintiff timely appealed.[3]

ASSIGNMENTS OF ERROR

Plaintiff assigns the following as error:

(1) Plaintiff did not and could not have manipulated his pay process.

(2) The trial court erred as a matter of law when it failed to rule that "earned compensation" as defined in La. R.S. 11:403(10) included his salary supplements.

(3) The trial court committed reversible error in finding that there was any overpayment to plaintiff of retirement benefits, and in finding that even a false or inaccurate report of overpayment triggered a mandatory obligation for LASERS to reduce plaintiff's

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[3] LASERS argues that the June 15, 2020 judgment is not a final appealable judgment. However, the trial court denied all of plaintiff's claims and the judgment appealed itemized each class of relief. It is well settled that a final judgment must be precise, definite, and certain. A final judgment must also contain decretal language. Generally, it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment. *Conley v. Plantation Management Co., L.L.C.*, 2012-1510 (La. App. 1 Cir. 5/6/13); 117 So.3d 542, 546-47. The June 15, 2020 judgment satisfies those requirements and is thus a final appealable judgment.

retirement benefits and recoup alleged overpayments.

(4) The trial court committed reversible error in finding that any administrative error occurred during a reporting period that was during the periods in which plaintiff received additional pay; there was no evidence of such.

(5) The trial court committed reversible error in failing to find that plaintiff's monthly rate for retirement benefit calculation purposes should be based on $39,000 monthly.

STANDARD OF REVIEW

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882 (La. 1993). Questions of law, including the interpretation of a statute, are subject to *de novo* review. See *Benjamin v. Zeichner*, 2012-1763 (La. 4/5/13); 113 So.3d 197, 201; see also *Tanana v. Tanana*, 2012-1013 (La. App. 1 Cir. 5/31/13); 140 So.3d 738, 742.

DISCUSSION

Assignment of Error #1

In his first assignment of error, plaintiff argues that he did not and could not have manipulated his pay

process. This argument is in response to the Supreme Court's statement in *Slaughter IV* that the trial court had not reached the merits of plaintiff's arguments regarding the calculation of benefits, but had acknowledged the court of appeal's holding in *Slaughter I* that plaintiff was able to manipulate how certain payments were made and show them as salary when they may not have been. See *Slaughter IV*, 180 So.3d at 281 n.1.

Whether plaintiff did or did not manipulate his pay process is not before this court. We will not disturb this court's factual findings in a prior case. This assignment of error lacks merit.

Assignment of Error #2

In his second assignment of error, Plaintiff argues that the trial court erred as a matter of law when it failed to rule that "earned compensation" as defined in La. R.S. 11:403(10) included his salary supplements. LASERS argues that the issue of whether plaintiff's supplemental pay from the Southern University System Foundation should have been included in the calculation of his retirement benefits was the basis of plaintiff's initial suit against LASERS. According to LASERS, judgment has been rendered in its favor several times since the original filing in 2012. Thus, LASERS argues that the matter is barred by res judicata.

LASERS argument is essentially a law-of-the-case argument. The law-of-the-case doctrine embodies the principle that an appellate court generally does not revisit its own rulings of law on a subsequent appeal in

the same case. *State ex rel. Div. of Admin., Office of Risk Management v. National Union Fire Ins. Co. of Louisiana*, 2013-0375 (La. App. 1 Cir. 1/8/14); 146 So.3d 556, 562. Although the issue of whether LASERS followed the applicable procedural requirements was decided by the Supreme Court in *Slaughter IV*, the merits of plaintiff's argument in his lawsuit against LASERS have not been addressed by this court. Accordingly, the law-of-the-case doctrine is not applicable to this issue.[4]

We now turn to plaintiff's argument that the trial court erred as a matter of law when it failed to rule that "earned compensation" as defined in La. R.S. 11:403(10) included his salary supplements. Louisiana Revised Statutes 11:444 governs the computation of retirement benefits and states in pertinent part:

> A.(1)(a)(i) A member who retires effective on or after July 1, 1973, shall receive a maximum retirement allowance equal to two and one-half percent of average compensation, as determined under R.S. 11:231, for every year of

[4] We further note that the *Slaughter I* suit was between plaintiff and the Board of Supervisors of Southern University, not plaintiff and LASERS. Thus, this matter is not barred by res judicata as a result of *Slaughter I. Burguieres v. Pollingue*, 2002-1385 (La. 2/25/03); 843 So.2d 1049, 1053 (res judicata bars a second action when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) *the parties are the same*; (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation).

> creditable service, plus three hundred dollars. (Emphasis added.)

La. R. S. 11:231(B) provides:

> For purposes of retirement benefit computation, average compensation, or its equivalent, shall be based on the thirty-six highest successive months of employment, or on the highest thirty-six successive joined months of employment where interruption of service occurred. The earnings to be considered for the thirteenth through the twenty-fourth month shall not exceed one hundred twenty-five percent of the earnings of the first through the twelfth month. The earnings to be considered for the final twelve months shall not exceed one hundred twenty-five percent of the earnings of the thirteenth through the twenty-fourth month. Nothing in this Subsection, however, shall change the method of determining the amount of earned compensation received.[5] (Emphasis added.)

Further, La. R.S. 11:403(5)(a)(i) states:

> "Average compensation", for a member whose first employment making him eligible for membership in the system began on or before June 30, 2006, and for any person who receives an additional benefit pursuant to R.S. 11:444(A)(2)(b) or (c), 557, 582, or 602 or R.S. 24:36 whose first employment making him

[5] Louisiana Revised Statutes 11:231 was amended effective January 1, 2011, 2010 La. Acts 992, § 1, but the text of La. R.S. 11:231(B) was not substantially changed.

> eligible for membership in one of the state systems occurred on or before December 31, 2010, means the average annual earned compensation of a state employee for the thirty-six highest months of successive employment, or for the highest thirty-six successive joined months of employment where interruption of service occurred; however, average compensation for part-time employees who do not use thirty-six months of full-time employment for average compensation purposes shall be based on the base pay the part-time employee would have received had he been employed on a full-time basis. (Emphasis added.)

Earned compensation is defined by La. R.S. 11:403(10), which states:

> "Earned Compensation" means the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes and includes the full amount earned by an employee, overtime, and per diem earned by an employee of the House of Representatives, the Senate, or an agency of the legislature, and expense allowances and per diem paid to members of the legislature, the clerk, or sergeant at arms of the House of Representatives and president and secretary or sergeant at arms of the Senate. (Emphasis added.)

Louisiana Revised Statutes 11:403(6) defines "base pay," stating:

> "Base pay" means prescribed compensation for a specific position on a full-time basis, but does not include overtime, per diem, differential pay, payment in kind, premium pay, or any other allowance for expense authorized and incurred as an incident to employment, except supplemental pay for certain members as provided by Article X, Section 10(A)(1) of the Louisiana Constitution of 1974.[6] Employees who work biweekly eighty-hour schedules shall have their earned compensation for such regularly scheduled work considered as part of base pay even if some of these hours are defined as overtime for the purpose of the Fair Labor Standards Act. (Emphasis added; footnote added.)

This court addressed these statutes in plaintiff's lawsuit against the Board of Supervisors of Southern University.[7] See *Slaughter I*, 76 So.3d at 453-54. We

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[6] Article X, Section 10(A)(1) of the Louisiana Constitution provides that, in certain circumstances, the legislature may supplement the uniform pay plans for sworn, commissioned law enforcement officers employed by a bona fide police agency of the state or its political subdivisions and for fire protection officers employed by a port authority.

[7] In *Slaughter I*, the question of whether plaintiff's supplemental pay should be included in plaintiff's retirement benefit calculation arose, despite not being directly at issue. This court wrote in *Slaughter I*, 76 So.3d at 453:

> Herein, the issue is not one of the calculation of LASERS benefits or an interpretation of the retirement statutes for purposes of determining those benefits.

agree with this court's findings in that case. Relevantly, this court summarized:

> Retirement provisions in Title 11 of the Revised Statutes, applicable to LASERS and other retirement systems, also provide that retirement benefits are based on "average earned compensation." The "earned compensation" as defined in La. R.S. 11:403(10) means "the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes." . . . As defined in La. R.S. 11:403(6), "base pay" means, "prescribed compensation for a specific position on a full-time basis, but does not include overtime, per diem, differential pay, payment in kind, premium pay, or any other allowance for expense authorized and incurred as an incident to employment." The definition of base pay includes an exception for supplemental pay of sworn, commissioned law enforcement and fire protection officers, from any available funds of the state. *See* La. Const. art. X, § 10(A)(1)(b).

Our analysis on the issue of determining the amount due (and the hourly rate) is limited solely to the facts and the issues in this case and does not address Dr. Slaughter's retirement benefit calculation. Nevertheless, because there is a lack of jurisprudence addressing the method of calculating an amount due under the Wage Payment Law, the parties have presented argument based on the meaning of certain terms, such as compensation, in Louisiana's retirement statutes.

> From our reading of these particular retirement statutes, it is clear that the legislature did not intend for supplemental pay or expense allowances to be included in the calculation of compensation for employees who were not law enforcement officers or firefighters and did not fall within the exception. (Footnote omitted.)

Thus, we find that the trial court correctly concluded that "earned compensation" as defined in La. R.S. 11:403(10) does not include plaintiff's salary supplements. This assignment of error lacks merit.

Assignment of Error #3

In his third assignment of error, plaintiff argues that the trial court committed reversible error in finding that there was any overpayment to plaintiff of retirement benefits, and in finding that even a false or inaccurate report of overpayment triggered a mandatory obligation for LASERS to reduce plaintiff's retirement benefits and recoup alleged overpayments.

On January 22, 2010, Tracie Woods, Executive Counsel of Southern, sent a letter to Cynthia Rougeou, Executive Director of LASERS. The letter stated in relevant part:

> It has come to our attention from court testimony in December, 2009, that Southern University – Baton Rouge miscalculated the retirement income basis for Dr. Ralph Slaughter.

> We accidentally included special/supplemental pay from the SU Foundation which our research indicates; we should not have included in his retirement calculation.
>
> On December 3, 2009, Judge Kelly, 19th Judicial Court, ruled the retirement should have been calculated on the 220k base salary and should not have included any supplemental pay. It appears we provided an inflated salary amount to LASERS. Southern University asks that LASERS recalculates the retirement benefit on the 220k base salary with any additional calculations that may be required.

On April 27, 2012, after *Slaughter I* had concluded,[8] LASERS sent a letter to plaintiff stating the following:

> Your monthly retirement benefit has been recalculated due to an error made by Southern University in the reporting of your earnings. Your adjusted benefit is $17,909.19. As a result of this recalculation, there is an amount due LASERS by you for the overpayment of benefits since your retirement in 2009. The total amount of overpayment is $227,651.07. There is a credit due to you for the amount of contributions you made on the erroneous earnings in the amount of $30,000.01. We have applied the credit to the amount due LASERS and this leaves a balance of

[8] Cynthia Rougeou testified at the 2013 trial that, out of an abundance of caution, LASERS waited over two years after receiving Ms. Woods' letter before reducing plaintiff's benefits in case LASERS was brought into plaintiff's ongoing litigation with Southern.

> $197,651.06 remaining due and owing to LASERS.
>
> By law, specifically La. R.S. 11:192, LASERS may adjust your benefit and may further reduce the corrected benefit to recover the overpayment within a reasonable number of months. We plan to recover the balance over a 60 month period. As a result, your corrected benefit will be reduced in the amount of $3,294.18. Thus, your monthly gross benefit will be $14,615.91 for 60 months. At the expiration of 60 months, your gross monthly benefit will be $17,909.19. The correct/reduced benefit will begin June 1, 2012.

As discussed in our analysis of plaintiff's second assignment of error, the trial court correctly concluded that "earned compensation" as defined in La. R.S. 11:403(10) does not include plaintiff's salary supplements. Thus, Southern's inclusion of plaintiff's salary supplements was an error that caused an overpayment. This assignment of error lacks merit.

Assignment of Error #4

In his fourth assignment of error, plaintiff argues that the trial court committed reversible error in finding that any administrative error occurred during a reporting period that was during the periods in which plaintiff received additional pay; there was no evidence of such. Plaintiff refers to a May 11, 2012 letter sent from Wretha Carpenter, Deputy Fiscal Officer of LASERS, to Rosie Taylor of Southern. The May 11, 2012

letter informs Ms. Taylor that plaintiff's retirement benefit was recently recalculated due to an error in the reporting of his earnings by Southern. According to the letter, the error occurred during the reporting periods of February 2005 through July 2007. Plaintiff argues that he received the supplemental pay at issue from July 1, 2007 until June 30, 2009, not during the reporting periods of February 2005 through July 2007. Thus, he argues that any error that occurred during the reporting periods of February 2005 through July 2007 should not affect his retirement benefits.

Cynthia Rougeou testified at the 2013 trial that she was only aware of one administrative error with respect to plaintiff's benefit calculation. She does not know why the May 11, 2012 letter specifically referenced the reporting periods of February 2005 through July 2007, nor does she know whether Wretha Carpenter's letter provided the correct dates.

Tracie Woods testified that she believed that the overpayment was discovered while Southern was looking at payroll records during the litigation of plaintiff's 2009 wage claim case. She did not recall the particular dates of the administrative error.

Plaintiff's employment contract with Southern commenced on July 1, 2007 and ended June 30, 2009. He received a base salary of $220,000 per annum, a vehicle allowance, a housing allowance unless living on the university's campus, and a salary supplement from Southern University System Foundation funds in the amount of $200,000 per year (such salary supplement

being contingent upon the funds being provided by the foundation.) Thus, it is clear from the record that the salary supplement at issue occurred from July 1, 2007 until June 30, 2009. The administrative error was the inclusion of that salary supplement in the calculation of plaintiff's retirement benefits. Considering plaintiff's employment contract and the testimony at trial, the dates of February 2006 through July 2007 in Wretha Carpenter's letter were likely inaccurate. Regardless, there is no doubt that the salary supplement from July 1, 2007 through June 30, 2009 should not have been included in the calculation of plaintiff's retirement benefits. This assignment of error lacks merit.

Assignment of Error #5

In his fifth assignment of error, plaintiff argues that the trial court committed reversible error in failing to find that plaintiff's monthly rate for retirement benefit calculation purposes should be based on the $39,000 he received monthly. However, the $39,000 includes his supplemental pay which, as explained in our analysis of his second assignment of error, should not have been included in the calculation of his retirement benefits. This assignment of error lacks merit.

DECREE

For the above and foregoing reasons, the Nineteenth Judicial District Court's June 15, 2020 judgment dismissing with prejudice Dr. Ralph Slaughter's

claims for a writ of mandamus, mandatory injunctive relief, and declaratory judgment is affirmed. Costs are assessed to Appellant, Dr. Ralph Slaughter.

AFFIRMED.

RALPH SLAUGHTER	19th JUDICIAL DISTRICT COURT
VERSUS	
LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM	EAST BATON ROUGE PARISH, LA
	NO. 612,525 SEC. 24

JUDGMENT

(Filed Jun. 15, 2020)

Plaintiff, Dr. Ralph Slaughter's, Motion for a writ of mandamus, mandatory injunctive relief, and declaratory judgment came up for hearing on February 11, 2019. Representing the plaintiff, Dr. Slaughter, was Scott D. Wilson. Representing the defendant, Louisiana State Employees Retirement System, were Tina Vicari Grant and R. Stephen Stark.

Considering the pleadings, the evidence, and the arguments of counsel,

IT IS ORDERED, ADJUDGED, AND DECREED that final judgment be and it is hereby rendered against plaintiff, Dr. Slaughter, and in favor of defendant, Louisiana State Employees Retirement System, denying Dr. Slaughter's motions for a writ of mandamus, mandatory injunctive relief, and declaratory judgment, and dismissing with prejudice Dr. Slaughter's claims for a writ of mandamus, mandatory injunctive relief, and declaratory judgment against Louisiana State Employees Retirement System, at Dr. Slaughter's costs.

If it is deemed that this is a partial judgment, then, after an express determination that there is no just reason for delay, in accordance with Louisiana Code of Civil Procedure article 1915(B)(1), this Judgment is hereby designated as a final judgment.

/s/ Donald R. Johnson
DONALD R. JOHNSON, 19TH J.D.C.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0977

DR. RALPH SLAUGHTER

VERSUS

LOUISIANA STATE EMPLOYEES RETIREMENT SYSTEM

Judgment Rendered: JUN 01 2020

* * * * * * * *

On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket No. C612525, Sec. 24

Honorable R. Michael Caldwell, Judge Presiding

* * * * * * * *

Scott D. Wilson John S. McLindon Baton Rouge, Louisiana	Counsel for Plaintiff/Appellant Dr. Ralph Slaughter
Tina Vicari Grant R. Stephen Stark Baton Rouge, Louisiana	Counsel for Defendant/Appellee Louisiana State Employees' Retirement System

* * * * * * * *

BEFORE: McCLENDON, WELCH, AND HOLDRIDGE, JJ.

McCLENDON, J.

This case is before us on appeal by plaintiff, Dr. Ralph Slaughter, from a judgment of the trial court denying plaintiff's "motion for judgment on the record." For the reasons that follow, we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

The background of this case is set forth in the Supreme Court's earlier opinion in **Slaughter v. Louisiana State Employees' Retirement System**, 2015-0324 (La. 10/14/15), 180 So.3d 279, 280-81 (*per curiam*):

> In 2009, plaintiff, Dr. Ralph Slaughter, retired as president of Southern University System ("Southern") after thirty-five years of service. Upon retirement, the Louisiana State Employees' Retirement System ("LASERS") began paying plaintiff retirement benefits of $24,487 per month.
>
> In 2009, plaintiff filed suit against Southern for past due wages. The district court ruled that Southern had miscalculated plaintiff's income base by including supplemental pay plaintiff had received from the Southern University Foundation, and determined plaintiff's terminal pay (500 hours of unused leave) and retirement should have been calculated only on his $220,000 annual base salary due from Southern. The court of appeal affirmed on appeal, noting plaintiff "manipulated the system and used his position for his

own benefit." [**Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.**, 10-1049 (La.App. 1 Cir. 8/2/11), 76 So.3d 438, writ denied, 11-2110 (La. 1/13/12), 77 So.3d 970 ("**Slaughter I**")].

In the meanwhile, on January 22, 2010, Southern sent a letter to LASERS advising it had committed an error in including supplemental funds in plaintiff's earnings. Because the [**Slaughter I**] suit was ongoing at the time, LASERS filed a concursus proceeding (hereinafter referred to as ["**Slaughter II**"]) seeking to deposit the disputed amount of plaintiff's benefit in the registry of court pending resolution of the [**Slaughter I**] litigation. Plaintiff filed an exception of no cause of action. The district court granted the exception and dismissed [**Slaughter II**] with prejudice. LASERS did not appeal this judgment, and it is now final.

On April 27, 2012, after [**Slaughter I**] became final, LASERS sent correspondence to plaintiff advising it intended to retroactively reduce his retirement benefit starting June 1, 2012 "due to an error made by Southern University in the reporting of your earnings." Relying on La. R.S. 11:192, LASERS maintained it may adjust benefits and further reduce the corrected benefit to recover overpayment within a reasonable number of months.

Plaintiff then filed the instant suit against LASERS, seeking a writ of mandamus, injunctive relief, and a declaratory

judgment confirming LASERS has no authority or ability to reduce his retirement benefits. The petition alleged plaintiff's retirement benefits should be calculated based on the entirety of his earnings over thirty-five years of employment, including salary supplements.

After a bench trial, the district court granted plaintiff's petition for declaratory judgment. Without reaching the merits of plaintiff's arguments regarding the calculation of benefits, the court held LASERS was not entitled to reduce plaintiff's retirement benefits because it failed to follow the procedural requirements set forth in La. R.S. 11:407. Specifically, the court found LASERS failed to introduce any evidence indicating it submitted documentation of the administrative error to the LASERS board of trustees as required by La. R.S. 11:407.

LASERS appealed this ruling. Plaintiff answered the appeal, asserting that any attempt by LASERS to reduce his benefits was barred by res judicata and prescription.

On appeal, the court of appeal rejected plaintiff's res judicata and prescription arguments. However, the court affirmed the district court's judgment in favor of plaintiff, finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. [**Slaughter v. Louisiana State Employees' Retirement System**, 13-2255 (La.App. 1 Cir. 12/4/14), 2014

> WL 6854536 (*unpublished*)]. One judge concurred and another judge dissented ["**Slaughter III**"].
>
> Upon the application of LASERS, we granted certiorari to review the correctness of that decision. [**Slaughter v. Louisiana State Employees' Retirement System**, 13-0324 (La. 6/1/15), 171 So.3d 258] ["**Slaughter IV**"].
>
> [Footnotes omitted.]

Upon review of this court's decision in **Slaughter III**, the Supreme Court in **Slaughter IV** found that this court had properly rejected plaintiff's arguments of res judicata and prescription. The **Slaughter IV** Court then stated that as to the merits of this court's decision in **Slaughter III**, "the narrow question presented for our resolution is whether LASERS failed to follow the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits." The **Slaughter IV** Court concluded that this court and the trial court had erred in finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's benefits, and reversed this court's judgment on that point. The **Slaughter IV** Court affirmed this court's judgment in all other respects and remanded to the trial court for further proceedings not inconsistent with the opinion. **Slaughter IV**, 180 So.3d at 281-84.

Following **Slaughter IV**, on September 20, 2017, plaintiff filed a motion for summary judgment seeking

restoration of plaintiff's retirement benefits in the amount of $24,487.95 per month, as originally calculated, and injunctive relief preventing LASERS from interfering with payment of that amount. Plaintiff argued that although LASERS may have followed the proper procedure to initiate action to reduce and recoup benefits, no reduction or recoupment was appropriate. Plaintiff maintained that there was no genuine issue of material fact precluding judgment in his favor on this point, and requested that the trial court:

> [R]equire LASERS to restore to Dr. Slaughter all retirement benefits to which he is due, with interest, and award him attorney fees, costs, and other legal, general, and equitable relief, including a declaration that Dr. Slaughter is entitled to retirement benefits in the amount of $24,487.95 per month and injunctive relief preventing LASERS from interfering with payment of this amount in retirement benefits to Dr. Slaughter.

In response, LASERS filed an exception raising the objection of res judicata. The trial court heard plaintiff's motion for summary judgment and LASERS' exception together on January 22, 2018, and executed a written judgment denying both on February 14, 2018.

Thereafter, plaintiff filed a pleading entitled "Motion for Declaratory Judgment" on June 28, 2018, seeking "judgment that all earned compensation, including the salary supplement paid to him by the Southern University System, be found to be a part of his average

monthly compensation for purposes of retirement benefits. . . ." Plaintiff filed a memorandum in support of his motion for declaratory judgment, in which he repeated the arguments and requests for relief set forth in his September 20, 2017 motion for summary judgment. The record demonstrates that neither the trial court nor the parties took any action on plaintiff's motion for declaratory judgment.

On September 6, 2018, plaintiff filed a pleading entitled "Plaintiff's Post-Trial Brief on Remand in Support of Motion for Judgment on the Record," ("motion for judgment on the record"). Plaintiff specifically sought an order from the trial court directing LASERS to show cause "why plaintiff should not be awarded judgment as prayed for in his lawsuit, on remand from the Louisiana Supreme Court, based on the record already generated in this court." The motion for judgment on the record again repeated the arguments and requests for relief made in plaintiff's September 20, 2017 motion for summary judgment. Plaintiff did not submit any new evidence in support of the motion for judgment on the record.

The trial court heard plaintiff's motion for judgment on the record on February 11, 2019. On March 6, 2019, the trial court executed a written judgment denying the motion for judgment on the record, which provided in pertinent part:

> Considering the pleadings, evidence, the memoranda, and the argument of counsel:

> It is ORDERED and ADJUDGED that the plaintiff's Motion for Judgment on the Record be and is hereby DENIED at plaintiff's costs.

An identical written judgment was executed on March 19, 2019.[1] Plaintiff then filed the instant appeal.

Upon the lodging of the record with this court, we issued an *ex proprio motu* rule ordering the parties to show cause by briefs why the instant appeal should not be dismissed as the March 6, 2019 judgment was not a final, appealable judgment.[2] Plaintiff filed a "Motion to Remand and Supplement the Record with an Amended District Court Judgment," recognizing that the March 6, 2019 judgment was defective and requesting the remand of this matter to the trial court for the purpose of obtaining an amended judgment that would be final and appealable in nature, and to supplement the

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[1] Inexplicably, the trial court signed a judgment on March 19, 2019, that was identical to the March 6, 2019 judgment. Once a trial court has rendered a valid final judgment, it has no authority to render a second final judgment, which is practically identical to the first judgment and adjudicates the same issues. See **Giavotella v. Mitchell**, 2019-0100 (La.App. 1 Cir. 10/24/19), 289 So.3d 1058, 1066 n.3, writ denied, 2019-01855 (La. 1/22/20). Accordingly, the March 19, 2019 judgment is a nullity and without legal effect. See **Judson v. Davis**, 2011-0623 (La.App. 1 Cir. 11/9/11), 81 So.3d 712, 722, writ denied, 2011-2747 (La. 2/17/12), 82 So.3d 288.

[2] LASERS filed a memorandum in response to this court's rule to show cause order, arguing that the March 6, 2019 judgment is not a final, appealable ruling on the basis that it lacks decretal language. LASERS further argued that the March 6, 2019 judgment did not contain a ruling on the merits "because the trial court had already done so."

appellate record with such judgment. On October 28, 2019, this court referred plaintiff's motion to the panel hearing the merits of the appeal.

APPELLATE JURISDICTION

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue, and we are obligated to recognize any lack of jurisdiction if it exists. **Quality Envtl. Processes, Inc. v. Energy Dev. Corp.**, 2016-0171 (La.App. 1 Cir. 4/12/17), 218 So.3d 1045, 1052-53. The appellate jurisdiction of this court extends to final judgments, which determine the merits in whole or in part. See LSA-C.C.P. arts. 1841 and 2083; **Rose v. Twin River Dev., LLC**, 2017-0319 (La.App. 1 Cir. 11/1/17), 233 So.3d 679, 683.

A valid judgment must be precise, definite, and certain. **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045 (La.App. 1 Cir. 12/20/02), 836 So.2d 364, 365. A final appealable judgment must also contain decretal language and must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. **DeVance v. Tucker**, 2018-1440 (La.App. 1 Cir. 5/31/19), 278 So.3d 380, 382. Additionally, a final appealable judgment must contain appropriate decretal language disposing of or dismissing claims in the case. **Quality Envtl. Processes, Inc.**, 218 So.3d at 1053; **State in Interest of J.C.**, 2016-0138 (La.App. 1 Cir. 6/3/16), 196 So.3d 102, 107. These determinations

should be evident from the language of the judgment without reference to other documents in the record. **Advanced Leveling & Concrete Sols. v. Lathan Company, Inc.**, 2017-1250 (La.App. 1st Cir. 12/20/18), 268 So.3d 1044, 1046 (*en banc*). A judgment that does not contain appropriate decretal language cannot be considered as a final judgment for the purpose of an appeal. **Johnson v. Mount Pilgrim Baptist Church**, 2005-0337 (La.App. 1 Cir. 3/24/06), 934 So.2d 66, 67.

The March 6, 2019 judgment from which this appeal arises is titled simply "Judgment," and provides in its entirety:

> The Motion for Judgment on the Record filed by the plaintiff, Dr. Ralph Slaughter, came up for hearing before the Honorable R. Michael Caldwell on February 11, 2019. Representing the plaintiff was Scott D. Wilson. Representing the defendant were Tina Vicar' Grant and R. Stephen Stark.
>
> Considering the pleadings, evidence, the memoranda, and the argument of counsel:
>
> It is ORDERED and ADJUDGED that the plaintiff's Motion for Judgment on the Record be and is hereby DENIED at plaintiff's costs.

While the March 6, 2019 judgment specifically denies plaintiff's motion for judgment on the record, the judgment is defective and not a final judgment for the purpose of an appeal. We acknowledge that the denial

of a request for a writ of mandamus is an appealable judgment. **City of Baton Rouge v. Douglas**, 2016-0655 (La.App. 1 Cir. 4/12/17), 218 So.3d 158, 163. Likewise, a declaratory judgment has the force and effect of a final judgment or decree. See LSA-C.C.P. arts. 1871 and 1878; **Steiner v. Reed**, 2010-1465 (La.App. 1 Cir. 2/11/11), 57 So.3d 1188, 1192. Further, "an appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction. . . ." LSA-C.C.P. art. 3612(B); see **Clipper Estates Master Homeowners' Ass'n, Inc. v. Harkins**, 2013-1833 (La.App. 1 Cir. 9/30/14) 2014 WL 4892546, at *4 (*unpublished*). Although plaintiff's motion for judgment on the record sought a writ of mandamus, mandatory injunctive relief, and declaratory judgment, the March 6, 2019 judgment appealed herein does not reference the relief plaintiff sought in the "motion for judgment on the record." Therefore, the relief that is granted or denied by the judgment is not evident from the language of the judgment without reference to other documents in the record. The judgment does not contain appropriate decretal language dismissing any claims or the petition. See **University Medical Center v. Schnauder**, 2019-0149 (La.App. 1 Cir. 10/23/19), 2019 WL 5485181, at *1 (*unpublished*) (This court dismissed an appeal of a judgment denying, but not dismissing, a petition for a writ of mandamus, holding that the judgment was "defective and not a final judgment for the purpose of an appeal because it [did] not contain appropriate decretal language dismissing any claims or

the petition").[3] Such a judgment is not precise, definite, or certain.

In the absence of a valid final judgment, this court lacks subject matter jurisdiction. **Advanced Leveling & Concrete Sols.**, 268 So.3d at 1046-47. We therefore dismiss plaintiff's the appeal from the March 6, 2019 judgment.[4] In view of this court's holding in **Marrero v. I. Manheim Auctions, Inc.**, 2019-0365 (La.App. 1 Cir. 11/19/19), 291 So. 3d 236, 239, we also deny plaintiff's motion to remand and supplement the record with an amended trial court judgment. (Although the

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[3] Judge McClendon notes her dissent in **University Medical Center,** but finds it to be distinguishable.

[4] We recognize that this court has discretion to convert an appeal of a non-appealable judgment to an application for supervisory writs. See **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. Generally, appellate courts have exercised that discretion when the motion for appeal was filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4-3, and where reversal of the trial court's decision would terminate the litigation, or where clear error in the trial court's judgment, if not corrected, will create a grave injustice. However, when the jurisdictional defect lies in the non-finality of a judgment, an appellate court will generally refrain from the exercise of its supervisory jurisdiction when an adequate remedy exists by appeal, particularly when an adequate remedy by appeal will exist upon the entry of the requisite precise, definite, and certain decretal language necessary for appellate review. Accordingly, we decline to exercise our discretion to convert this appeal of a judgment that is not final for lack of decretal language to an application for supervisory writs. See **Boyd Louisiana Racing, Inc. v. Bridges**, 2015-0393, 2015-0394, 2015-0395 (La.App. 1 Cir. 12/23/15), 2015 WL 9435285, at "3-4 (*unpublished*).

trial court may correct any misstatements, irregularities or informalities, or omission of the trial record on appeal, there is no authority for a trial court to amend a judgment after it is divested of jurisdiction upon the signing of an order of appeal.)

CONCLUSION

For the above and foregoing reasons, plaintiff's motion to remand and supplement the record with an amended trial court judgment is denied. The appeal of the district court's March 6, 2019 judgment is hereby dismissed. Costs of the appeal are assessed against Dr. Ralph Slaughter.

MOTION DENIED; APPEAL DISMISSED.

HOLDRIDGE, J., concurring.

I respectfully concur. I agree that this court does not have appellate jurisdiction and that the appeal should be dismissed, but not for the reasons stated in the opinion. While the opinion finds that the lack of decretal language renders the judgment non-appealable, I conclude that the denial of a motion for judgment on the record is an interlocutory judgment that is not appealable.

Pursuant to La. C.C.P. art. 2083A, this court's appellate jurisdiction extends to "final judgments." A "final judgment" is defined in La. C.C.P. art. 1841 as "[a] judgment that determines the merits in whole or in

part." On the other hand, an "interlocutory judgment" is a judgment that does not determine the merits, but only decides preliminary matters in the course of the action. La. C.C.P. art. 1841. An interlocutory judgment is appealable only when expressly provided by law. La. C.C.P. art. 2083C.

A judgment denying a motion for judgment on the record is not a final judgment in any manner but is an interlocutory judgment. It is similar in nature to a judgment that denies a motion for a new trial and a judgment that denies a motion for judgment notwithstanding the verdict. All three motions request the trial court to render a determination on the merits based upon a previously generated record. It is well settled that judgments which deny a motion for a new trial and those that deny motions for a judgment notwithstanding the verdict are interlocutory rulings. See **Brehm v. Amacker**, 2015-1531 (La. App. 1st Cir. 12/7/17), 236 So.3d 621, 629 (the denial of a motion for new trial is generally considered to be a non-appealable interlocutory judgment); **Brister v. Continental Insurance Company**, 30429 (La App. 2nd Cir. 4/8/98), 712 So.2d 177, 180 (a trial court's judgment denying motions for judgment notwithstanding the verdict and new trial is an interlocutory ruling). The denial of Dr. Slaughter's motion did not determine the merits of his claim and it did not end the matter, as Dr. Slaughter's motion for a declaratory judgment has not yet been decided by the trial court. Because there is no law expressly authorizing the appeal of a judgment denying a motion for a judgment on the

record, the trial court's judgment is a non-appealable judgment under La. C.C.P. art. 2083C. The inclusion of decretal language therein could not transform the non-appealable interlocutory judgment into a final appealable judgment.

10/14/15

SUPREME COURT OF LOUISIANA

NO. 2015-C-0324

DR. RALPH SLAUGHTER

VERSUS

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

PER CURIAM

In this matter, we are called upon to determine whether the lower courts erred in finding the defendant retirement system failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. For the reasons that follow, we find the lower courts did not apply the proper statutory analysis and reached an erroneous result.

FACTS AND PROCEDURAL HISTORY

In 2009, plaintiff, Dr. Ralph Slaughter, retired as president of Southern University System ("Southern") after thirty-five years of service. Upon retirement, the Louisiana State Employees' Retirement System ("LASERS") began paying plaintiff retirement benefits of $24,487 per month.

In 2009, plaintiff filed suit against Southern for past due wages. The district court ruled that Southern had miscalculated plaintiff's income base by including supplemental pay plaintiff had received from the Southern University Foundation, and determined plaintiff's terminal pay (500 hours of unused leave) and retirement should have been calculated only on his $220,000 annual base salary due from Southern. The court of appeal affirmed on appeal, noting plaintiff "manipulated the system and used his position for his own benefit." *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 10-1049 (La. App. 1 Cir. 8/2/11), 76 So. 3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So. 3d 970 ("*Slaughter I*").

In the meanwhile, on January 22, 2010, Southern sent a letter to LASERS advising it had committed an error in including supplemental funds in plaintiff's earnings. Because the *Slaughter I* suit was ongoing at the time, LASERS filed a concursus proceeding (hereinafter referred to as "*Slaughter II*") seeking to deposit the disputed amount of plaintiff's benefit in the registry of court pending resolution of the *Slaughter I* litigation. Plaintiff filed an exception of no cause of action. The district court granted the exception and dismissed *Slaughter II* with prejudice. LASERS did not appeal this judgment, and it is now final.

On April 27, 2012, after *Slaughter I* became final, LASERS sent correspondence to plaintiff advising it intended to retroactively reduce his retirement benefit starting June 1, 2012 "due to an error made by Southern University in the reporting of your earnings."

Relying on La. R.S. 11:192, LASERS maintained it may adjust benefits and further reduce the corrected benefit to recover overpayment within a reasonable number of months.

Plaintiff then filed the instant suit against LASERS, seeking a writ of mandamus, injunctive relief, and a declaratory judgment confirming LASERS has no authority or ability to reduce his retirement benefits. The petition alleged plaintiff's retirement benefits should be calculated based on the entirety of his earnings over thirty-five years of employment, including salary supplements.

After a bench trial, the district court granted plaintiff's petition for declaratory judgment. Without reaching the merits of plaintiff's arguments regarding the calculation of benefits,[1] the court held LASERS was not entitled to reduce plaintiff's retirement benefits because it failed to follow the procedural requirements set forth in La. R.S. 11:407. Specifically, the court found LASERS failed to introduce any evidence indicating it submitted documentation of the administrative error to the LASERS board of trustees as required by La. R.S. 11:407.

LASERS appealed this ruling. Plaintiff answered the appeal, asserting that any attempt by LASERS to

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[1] It is noteworthy that although the district court did not resolve the merits, it acknowledged the holding in *Slaughter I*, explaining the court of appeal found "Dr. Slaughter was able himself to manipulate how those payments were made and to show them as salary and so forth when, in fact, they may not have been."

reduce his benefits was barred by res judicata and prescription.

On appeal, the court of appeal rejected plaintiff's res judicata and prescription arguments.[2] However, the court affirmed the district court's judgment in favor of plaintiff, finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. *Slaughter v. Louisiana State Employees' Retirement System*, 13-2255 (La. App. 1 Cir. 12/4/14) (unpublished). One judge concurred and another judge dissented.

Upon the application of LASERS, we granted certiorari to review the correctness of that decision. *Slaughter v. Louisiana State Employees' Retirement System*, 13-0324 (La. 6/1/15), ___ So. 3d ___.

DISCUSSION

As a threshold matter, we note plaintiff's brief to this court asserts that any attempt by LASERS to reduce or recoup the overpayment of benefits is barred under theories of res judicata and prescription. These arguments were rejected by the court of appeal.

[2] In its opinion, the court of appeal concluded these exceptions had not been specially pleaded in the district court as required by La. Code Civ. P. art. 927. Nonetheless, citing La. Code Civ. P. art. 2163, the court of appeal reasoned it could consider peremptory exceptions raised for the first time in an appellate court. Therefore, pretermitting the question of whether the exceptions were properly raised in the district court, the court of appeal considered the exceptions on the merits.

Although plaintiff did not apply for a writ of certiorari in this court seeking review of this portion of the court of appeal's judgment, La. Code Civ. P. art. 2133(B) provides that a party "may assert, in support of the judgment, any argument supported by the record, although he has not appealed, answered the appeal, or applied for supervisory writs." Thus, to the extent plaintiff is arguing the district court reached the correct result in finding LASERS was not entitled to recoup any overpayment (albeit for different reasons), he is entitled to present these arguments. *See Logan v. Louisiana Dock Co., Inc.*, 541 So. 2d 182 (La. 1989); *Roger v. Estate of Moulton*, 513 So. 2d 1126 (La. 1987) (on rehearing).

We first find the court of appeal properly rejected plaintiff's arguments of res judicata. As the court of appeal explained, the 2010 concursus proceeding in *Slaughter II* did not involve the underlying issue of whether or not there was an overpayment of retirement benefits to plaintiff or whether his supplemental pay should have been considered in the calculation of those benefits. Thus, the judgment in *Slaughter II* does not act as a bar to any attempt by LASERS to reduce and recoup an overpayment of benefits to plaintiff.

Similarly, we do not find prescription precludes LASERS from seeking to reduce and recoup any overpayment of benefits to plaintiff. La. R.S. 11:543 provides the right to "collect any benefit paid to an individual to whom the benefit was not due shall prescribe after a period of three years has elapsed from the date of the payment, except in case of fraud." LASERS began paying retirement benefits to plaintiff

following his retirement on July 1, 2009. By letter dated April 27, 2012, LASERS notified plaintiff his monthly retirement benefit had been recalculated due to Southern's reporting error. In response to this letter, plaintiff filed the instant suit on May 30, 2012. Thus, the dispute over benefits was raised at the latest by May 30, 2012, within three years of the first benefit payment on July 1, 2009.[3]

On the merits, the narrow question presented for our resolution is whether LASERS failed to follow the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. In finding the actions of LASERS were not procedurally proper, the lower courts relied on La. R.S. 11:407, which provides:

> Except as expressly provided otherwise in this Chapter, the director may, upon written documentation that an administrative error has occurred in the administration of this system, which documentation shall be submitted to the board of trustees at the next board meeting, whether such administrative error was committed by this system or otherwise,

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[3] La, R.S. 11:543 has not been interpreted in the jurisprudence since it was enacted in 2006. It is unclear whether this statute imposes a requirement on LASERS to file suit within three years in order to collect an overpayment, or whether the statute simply operates as a limitation on LASERS's right to recover an overpayment after three years from the date LASERS becomes aware of the error. In any event, we are not required to resolve that question under the instant facts, as issue was joined on May 30, 2012 when plaintiff filed the instant action against LASERS.

> correct such administrative error and may make all adjustments relative to such correction.

The courts reasoned that LASERS failed to produce evidence of compliance with this provision, as it did not show its director presented documentation of the administrative error to the LASERS board of trustees at the next board meeting after Southern's January 22, 2010 letter was received. In the absence of evidence of compliance with La. R.S. 11:407, the lower courts reasoned LASERS was not entitled to reduce or recoup any overpayment of benefits to plaintiff.

However, LASERS argues the case is governed by La. R.S. 11:192, which provides:

> Whenever any state, parochial, or municipal retirement system or pension fund pays any sum of money or benefits to a retiree, beneficiary, or survivor which is not due them, the board of trustees shall adjust the amount payable to the correct amount, and the board is hereby authorized to recover any overpayment by reducing the corrected benefit such that the overpayment will be repaid within a reasonable number of months. The board shall notify the beneficiary, or survivor, of the amount of overpayment in benefits and the amount of the adjustment in benefits, thirty days prior to any reduction from the benefit amount without the overpayment. [emphasis added].

LASERS argues this statute imposes a mandatory duty on it to adjust benefits whenever it learns it has paid an amount not due. LASERS submits this statutory requirement is consistent with the constitutional mandate in La. Const. Art. X, § 29(E)[4] to maintain actuarial soundness of state retirement systems.

The interpretation of any statutory provision starts with the language of the statute itself. *Oubre v. Louisiana Citizens Fair Plan*, 11-0097, p. 11 (La. 12/16/11), 79 So.3d 987, 997. When the provision is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect, and its provisions must be construed so as to give effect to the purpose indicated by a fair interpretation of the language used. La. Civ.Code art. 9; La. R.S. 1:4; *Boudreaux v. Louisiana Dept. of Public Safety &Corrections*, 12-0239, p.5 (La. 10/16/12), 101 So. 3d 22, 26. Unequivocal provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning. La. Civ.Code art. 11; La. R.S. 1:3; *Id.*

The rules of statutory construction instruct that the meaning and intent of a law is determined by considering the law in its entirety and all other laws on

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[4] La. Const, Art. X, § 29(E) provides:

(E) Actuarial Soundness. (1) The actuarial soundness of state and statewide retirement systems shall be attained and maintained and the legislature shall establish, by law, for each state or statewide retirement system, the particular method of actuarial valuation to be employed for purposes of this Section,

the same subject matter and by placing a construction on the provision in question that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting it. *Allen v. Allen*, 13-2778 (La. 5/7/14), 145 So.3d 341, *citing In re Succession of Boyter*, 99-0761, p. 9 (La.1/7/00), 756 So2d 1122,1129; *Stogner v. Stogner*, 98-3044, p. 5 (La.7/7199), 739 So.2d 762, 766. A statute must be applied and interpreted in a manner that is consistent with logic and the presumed fair purpose and intention of the legislature in passing it. *Id.* In construing legislation, it is presumed that the intention of the legislative branch is to achieve a consistent body of law. *Id.*

Applying these principles of statutory construction, we find La. R.S. 11:407 and La. R.S. 11:192 must be interpreted together in a manner which promotes logic and consistency. A plain reading of La. R.S. 11:407 indicates the focus of that statute is on the director of LASERS. The statute is written in the permissive, providing the director "may" correct an administrative error after submitting documentation of the error to the LASERS board of trustees. However, nothing in this statute addresses the authority of the board of trustees to adjust benefits nor does it provide that submission of documentation to the board of trustees is a prerequisite to action by the board.

In contrast to La. R.S. 11:407, La. R.S. 11:192 specifically addresses the power of the board of trustees, providing "the board of trustees **shall** adjust the amount payable to the correct amount, and the board is hereby authorized to recover any overpayment by

reducing the corrected benefit such that the overpayment will be repaid within a reasonable number of months." [emphasis added]. The mandatory authority of the board of trustees to adjust benefits under La. R.S. 11:192 is not dependent on notification by the director under the provisions of La. R.S. 11:407.[5] Rather, the only requirement for adjustment of benefits under this statute that the board of trustees notify the beneficiary of the amount of overpayment in benefits and the amount of the adjustment in benefits, thirty days prior to any reduction.

In the instant case, the LASERS board of trustees, acting through its executive director, initiated the adjustment in benefits. It is undisputed that plaintiff was notified of this adjustment by letter dated thirty days prior to the reduction. Accordingly, all the procedural requirements of La. R.S. 11:192 have been satisfied.

In summary, we find the lower courts erred in finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. We therefore reverse this portion of the court of appeal's judgment,[6] and we

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[5] The interpretation of La. R.S. 11:407 advanced by plaintiff would create an absurd situation whereby the board of trustees might be forever foreclosed from adjusting a patently erroneous benefit simply because the director fails to submit written documentation of the error to the board at its next meeting. Such an interpretation would force LASERS to pay a benefit not due and would be contrary to the policy of actuarial soundness enshrined in La. Const. Art. X, § 29(E).

[6] As discussed earlier, we find no error in the portion of the court of appeal's judgment denying plaintiff's exceptions of res

remand the case to the district court to consider the remaining issues presented in plaintiff's suit.

DECREE

For the reasons assigned, the judgment of the court of appeal is reversed insofar as it finds the Louisiana State Employees' Retirement System failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's retirement benefits. In all other respects, the judgment of the court of appeal is affirmed. The case is remanded to the district court for further proceedings not inconsistent with this opinion. All costs in this court are assessed against plaintiff.

JOHNSON, C.J. CONCURS AND ASSIGNS REASONS

I concur in the result reached by the majority. I write separately to clearly outline the events leading up to the reduction of Dr. Slaughter's benefits and recoupment of overpayments, as well as the steps taken by LASERS in adjusting those payments, and to emphasize there is no longer a dispute over whether LASERS overpaid benefits to Dr. Slaughter due to an error made by Southern University in calculating his income base, as that issue is now res judicata.

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judicata and prescription. We therefore affirm this portion of the court of appeal's judgment.

In 2009, a district court ruled that Southern University miscalculated Dr. Slaughter's income base by including supplemental pay he received from the Southern University Foundation. Based on this ruling, Southern University counsel sent a letter, dated January 22, 2010, to notify LASERS that the University incorrectly reported the earnings upon which Dr. Slaughter's benefit payments were calculated. On April 20, 2010, LASERS filed a concursus proceeding in the district court seeking to deposit the disputed funds into the registry of the court until the matter was resolved. The district court dismissed the concursus proceeding on June 17, 2010. LASERS did not appeal this ruling, which then became final.

On August 2, 2011, the First Circuit affirmed the wage claim dispute. This court denied writ on January 13, 2012. *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. and Mech. Coll.*, 2010-1049 (La. App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970. As of January 13, 2012, there was no longer any pending litigation in this matter. The courts determined that Dr. Slaughter's income base was miscalculated, therefore rendering LASERS' benefit payments inaccurate.

On April 27, 2012, LASERS sent a letter to Dr. Slaughter notifying him that it would begin reducing his benefits and would further reduce his payments to recoup all monies that were paid to him, in error, since his retirement in 2009, to be effective June 1, 2012. Dr. Slaughter filed the instant suit on June 30, 2012. Therefore, LASERS reduced Dr. Slaughter's benefits

only once all wage disputes were resolved. It is clear that LASERS did not reduce Dr. Slaughter's benefits upon receipt of a letter from the Southern University System claiming an error in calculation, but properly reduced Dr. Slaughter's benefits once the courts definitively ruled that his wages were improperly calculated. Thus, pursuant to La. R.S. 11:192, LASERS was authorized to adjust Dr. Slaughter's benefits and recoup all overpaid funds.

The Supreme Court of the State of Louisiana

DR. RALPH SLAUGHTER

VS.

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

NO. 2015-C-0324

IN RE: Louisiana State Employees Retirement System; – Defendant; Applying For Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. I, No. 612,525; to the Court of Appeal, First Circuit, No. 2013 CA 2255;

June 1, 2015

Granted. See Order Attached.

MRC

GTE

JLW

GGG

JDE

SJC

Supreme Court of Louisiana
June 1, 2015

/s/ Carmen B. Young
Deputy Clerk of Court
For the Court

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 2255

DR. RALPH SLAUGHTER

VERSUS

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

Judgment Rendered: DEC 04 2014

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE STATE OF LOUISIANA DOCKET NUMBER C612525, SECTION 24

HONORABLE R. MICHAEL CALDWELL, JUDGE

* * * * * * * *

Jill L. Craft John S. McLindon Baton Rouge, Louisiana	Attorneys for Plaintiff/Appellee Dr. Ralph Slaughter
Tina Vicari Grant R. Stephen Stark Baton Rouge, Louisiana	Attorneys for Defendant/Appellant Louisiana State Employees' Retirement System

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

In this appeal, a state retirement system challenges a judgment declaring it was not entitled to reduce a retired employee's retirement benefits nor to seek recoupment for alleged overpayments. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, after thirty-five years of service, Dr. Ralph Slaughter retired from state employment. The last state position he held was President of the Southern University System (SUS) in Baton Rouge, Louisiana. Following Dr. Slaughter's retirement, based on information provided to it by SUS, the Louisiana State Employees Retirement System (LASERS) paid Dr. Slaughter retirement benefits of $24,487.95 per month.

In September 2009, Dr. Slaughter filed suit against the Southern University Board of Supervisors (SU Board), for past due wages (wage suit).[1] Following an oral ruling by the trial court in the wage suit, Ms. Trade Woods, SUS's executive counsel, informed Ms. Cindy Rougeou, LASERS' executive director, by letter

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[1] The details of the wage suit are set forth In **Slaughter v. Board of Supervisors of Southern University and Agricultural and Mechanical College**, 10-1049 (La. App. 1 Cir. 8/2/11), 76 So.3d 438, 455, writ denied, 11-2110 (La. 1/13/12), 77 So.3d 970, wherein this court affirmed the trial court's judgment, finding "no error in the trial court's determination that [a] salary supplement [from the Southern University Foundation] should not be used in the leave pay calculation."

dated January 22, 2010, that SUS had miscalculated Dr. Slaughter's retirement income base by including supplemental pay Dr. Slaughter had received from the Southern University Foundation. Ms. Woods requested that LASERS recalculate Dr. Slaughter's retirement benefit. In April 2010, referencing Dr. Slaughter's wage suit, LASERS filed a concursus proceeding, claiming that Dr. Slaughter and the SU Board had "conflicting and/or competing claims" regarding the amount of Dr. Slaughter's retirement benefit, and seeking to deposit the disputed amount of his benefit into the registry of the court. In July 2010, the trial court signed a judgment dismissing the concursus proceeding with prejudice based on an exception of no cause of action filed by Dr. Slaughter.

By letter dated April 27, 2012, LASERS notified Dr. Slaughter that his monthly retirement benefit had been recalculated due to Southern University's reporting error and indicated his adjusted monthly benefit was $17,909.19 per month. Citing LSA-R.S. 11:192 as its authority, LASERS informed Dr. Slaughter that, effective June 1, 2012, it would adjust his retirement benefit and would further reduce the corrected benefit for sixty months to recoup overpayments made to him since 2009. Dr. Slaughter responded by filing the instant suit against LASERS, seeking a declaratory judgment that LASERS was riot entitled to reduce his retirement benefits nor to recoup past benefits paid, and further seeking a writ of mandamus and injunctive relief against LASERS. In his petition, he argued that LASERS' right to reduce/recoup was barred by the

res judicata effect of the judgment dismissing its concursus proceeding; he also mentioned that any action based on that right was prescribed. LASERS answered the suit. After a hearing, the trial court signed a judgment on July 24, 2012, denying permanent injunctive relief and mandamus and deferring the merits of the declaratory judgment action to a trial.[2]

The matter ultimately proceeded to a bench trial in September 2013. On October 3, 2013, the trial court signed a judgment: (1) declaring LASERS was not entitled to reduce Dr. Slaughter's retirement benefits nor seek recoupment of any alleged overpayments of retirement benefits to him; and (2) ordering LASERS to immediately return all sums withheld from Dr. Slaughter's retirement benefits to him. LASERS appealed from this adverse judgment, and Dr. Slaughter answered the appeal.

RES JUDICATA AND PRESCRIPTION

In his answer to the appeal, Dr. Slaughter contends the trial court erred in failing to find that LASERS' right to reduce/recoup was barred by res

[2] The trial court's July 24, 2012 judgment does not address res judicata or prescription. In its oral reasons for judgment, however, the trial court stated that the judgment in the concursus proceeding did not have a res judicata effect on LASERS' ability to reduce/recoup Dr. Slaughter's benefits. And, in its oral reasons for denying reconsideration of the judgment, the trial court stated that the question of prescription was not before it, because an exception pleading the objection of prescription had not been raised, and "unless and until LASERS field] suit to recover money," it did not see that prescription "comes into play."

judicata and/or prescription.[3] These contentions are without merit.

Regarding res judicata, the burden of proving the facts essential to sustaining a res judicata objection is on the party pleading the objection, in this case, Dr. Slaughter. **Landry v. Town of Livingston Police Department**, 10-0673 (La. App. 1 Cir. 12/22/10), 54 So.3d 772, 776. If there is any doubt as to its application, the exception of res judicata must be overruled. **Pierrotti v. Johnson**, 11-1317 (La. App. 1 Cir. 3/19/12), 91 So.3d 1056, 1063. The trial court determined the judgment of dismissal in LASERS' concursus proceeding did not have a res judicata effect on LASERS' right to seek reduction/recoupment of retirement benefits from Dr. Slaughter. As explained by the trial court, the concursus proceeding involved LASERS' desire to deposit disputed retirement funds into

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[3] Under LSA-C.C.P. art. 927, the objection of prescriptions and res judicata are raised via a peremptory exception, and the objection of prescription shall be "specially pleaded." In this case, as presented to the trial court, Dr. Slaughter did not file formal written pleadings specifically captioned as exceptions, to raise his peremptory exceptions pleading the objections of prescription and res judicata. Rather, he incorporated arguments pertaining to these objections into his petition for declaratory judgment and into his memorandum in support of his request for a temporary restraining order and injunctive relief. However, an appellate court may consider a peremptory exception filed for the first time in that court, if pleaded prior to submission of the case for a decision, and if proof of the ground of the exception appears of record. LSA-C.C.P. art, 2163. Thus, pretermitting the issue of whether he properly asserted the exceptions below, we accept Dr. Slaughter's answer to the appeal as sufficient to assert the exceptions on appeal.

the registry of the court until the dispute between SUS and Dr. Slaughter was resolved. The concursus proceeding did not seek resolution of the underlying issue of whether or not there was an overpayment of retirement benefits to Dr. Slaughter, or whether his supplemental pay should have been considered in the calculation of those benefits. We agree with the trial court and find that Dr. Slaughter has failed to carry his burden of proving that res judicata is applicable here.

Regarding prescription, unless it is evident from the face of the pleadings, the party raising the objection of prescription, again Dr. Slaughter, bears the burden of proof. See **Milbert v. Answering Bureau, Inc.**, 13-0022 (La. 6/28/13), 120 So.3d 678, 684. Here, the applicable provision is LSA-R.S. 11:543, which provides that the right of the USERS board of trustees to "collect any benefit paid to an individual to whom the benefit was not due shall prescribe after a period of three years has elapsed from the date of the payment, except in case of fraud." LASERS began paying retirement benefits to Dr. Slaughter following his retirement in 2009. By letter dated April 27, 2012, LASERS notified Dr. Slaughter his monthly retirement benefit had been recalculated due to Southern University's reporting error and that, effective June 1, 2012, it would adjust his retirement benefit and reduce the corrected benefit for sixty months to recoup overpayments made to him since 2009. Shortly thereafter, LASERS began making the adjusted payments to Dr. Slaughter. After reviewing the pertinent dates, we conclude Dr. Slaughter has

failed to prove that LASERS' right to collect any overpayment is prescribed.

DECLARATORY JUDGMENT

The trial court's basis for rendering the declaratory judgment in Dr. Slaughter's favor was LASERS' failure to prove its adherence to LSA-R.S. 11:192 and 11:407 before it sought to reduce/recoup Dr. Slaughter's benefits. These statutes provide as follows:

> **§ 192. Overpayment of benefits; corrections; repayment**
>
> Whenever any state . . . retirement system pays any sum of money or benefits to a retiree . . . which is not due them, the board of trustees shall adjust the amount payable to the correct amount, and the board is hereby authorized to recover any overpayment by reducing the corrected benefit such that the overpayment will be repaid within a reasonable number of months. The board shall notify the [retiree] . . . of the amount of overpayment in benefits and the amount of the adjustment in benefits, thirty days prior to any reduction from the benefit amount without the overpayment.
>
> **§ 407. Correction of administrative error**
>
> Except as expressly provided otherwise in this Chapter [dealing specifically with LASERS], the director may, upon written documentation that an administrative error has occurred in the administration of this system, which

> documentation shall be submitted to the board of trustees at the next board meeting, whether such administrative error was committed by this system or otherwise, correct such administrative error and may make all adjustments relative to such correction.

Under these statutes, LASERS has the authority to reduce and recoup overpayment of retirement benefits: (1) upon written documentation that such an administrative error has occurred (whether such administrative error was committed by LASERS or otherwise); (2) when such documentation has been submitted to the LASERS board of trustees at its next board meeting; (3) when LASERS has notified the affected party, thirty days prior to any reduction, of the amount of the overpayment and the amount of the adjustment, and (4) when the reduction/recoupment is done within a reasonable number of months.

The trial court found that LASERS failed to comply with the second requirement above, that is, it did not establish that documentation of SUS's administrative error (i.e., Ms. Woods' January 22, 2010 letter) was submitted to the LASERS board of trustees. In oral reasons for judgment, the trial court explained:

> [Louisiana Revised Statute 11:407] does not say what written documentation must entail, and I think the notice from Ms. Woods would probably have been sufficient. But in reading . . . [LSA-R.S.] 11:407 it says the director may, upon written documentation that an administrative error has occurred in the

> administration of this system, which documentation shall be submitted to the board of trustees at the next board meeting. It goes on to say she may make all adjustments relative to such correction. LASERS offered no evidence in this trial. Ms. Rougeau, the executive director, was called by the plaintiff and testified . . . about various committee meetings, the minutes of various committee meetings, and one set of minutes from one board [meeting] were admitted into evidence. Those don't address – and particularly the board meeting minutes – do not address whether or not this written documentation was presented to the board. Ms. Rougeau . . . was not asked whether this information was ever presented to the board, and there was no evidence that it was presented to the board as required by [LSA-R.S.] 11:407. So . . . I think LASERS may have been in a position to properly reduce [Dr. Slaughter's] benefits and seek recoupment. But inasmuch as they have not proven adherence to either [LSA-R.S.] 11:192 or 11:407, I must grant at this time the declaratory relief sought and declare that at this point in time LASERS is not entitled to reduce Dr. Slaughter's benefits or seek recoupment.

After a thorough review of the record, we conclude the trial court's reasoning is correct. The minutes from several LASERS Management Committee meetings were introduced at the trial. However, LASERS did not establish that its "management committee" has the authority to accept submissions that LSA-R.S. 11:407

mandates go to its "board of trustees"; thus the management committee meeting minutes are not proof that Ms. Woods' letter was submitted to the board of trustees. Even if LASERS management committee was a proper representative of the board of trustees, LSA-R.S. 11:407 requires that the documentation of administrative error be submitted to the LASERS board of trustees "at its next meeting." Ms. Woods' letter was dated January 22, 2010. LASERS has not established when the "next meeting" after receipt of the letter occurred. The March 26, 2010 management committee meeting minutes indicate there was a meeting on February 26, 2010, but there is no evidence establishing that Ms. Woods' letter was submitted at that time.

LASERS argues that "the administrative error was made known to the LASERS Board of Trustees, specifically through the Petition for Concursus filed by the Board of Trustees, the basis of which was the administrative error claimed by Southern University." However, we are unable to conclude that the filing of a petition for concursus, to which Ms. Woods' letter was attached, fulfills LSA-R.S. 11:407's requirement that written documentation of an administrative error be "submitted to the LASERS board of trustees at the next board meeting[.]" Thus, because LASERS failed to prove that it followed the proper procedure before initiating action to reduce/recoup Dr. Slaughter's retirement benefits, we conclude the trial court correctly granted declaratory judgment in Dr. Slaughter's favor.

ATTORNEY FEES

In his answer to the appeal, Dr. Slaughter seeks an award of additional attorney fees in connection with this appeal. As a general rule, attorney fees are recoverable only when authorized by statute or expressly provided for by contract. **Steptore v. Masco Construction Company, Inc.**, 93-2064 (La. 9/18/94), 643 So.2d 1213, 1218; **Matherne v. Barnum**, 11-0827 (La. App. 1 Cir. 3/19/12), 94 So.3d 782, 792, writ denied, 12-0865 (La. 6/1/12), 90 So.3d 442. Dr. Slaughter has cited no statutory or contractual provision entitling him to additional attorney fees, and we have found no such authority. Thus, an additional award of attorney fees is not warranted.

CONCLUSION

For the above reasons, Dr. Slaughter's exceptions pleading the objections of res judicata and prescription, as well as his claim for additional attorney fees, are denied. Further, the October 3, 2013 judgment: (1) declaring LASERS was not entitled to reduce Dr. Slaughter's retirement benefits nor seek recoupment of any alleged overpayments of retirement benefits to him; and (2) ordering LASERS to immediately return all sums withheld from Dr. Slaughter's retirement benefits to him, is affirmed.

Costs of the appeal in the amount of $2,106.00 are assessed to Louisiana State Employees Retirement System.

EXCEPTIONS DENIED; ATTORNEY FEES DENIED; JUDGMENT AFFIRMED.

The Supreme Court of the State of Louisiana

DR. RALPH SLAUGHTER

VS.

LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM

NO. 2021-C-00567

IN RE: Ralph Slaughter – Applicant Plaintiff; Applying For Writ Of Certiorari, Parish of East Baton Rouge, 19th Judicial District Court Number(s) 612,525, Court of Appeal, First Circuit, Number(s) 2020 CA 0881;

June 22, 2021

Writ application denied.

JLW

JDH

SJC

JTG

WJC

JBM

Griffin, J., would grant.

Supreme Court of Louisiana
June 22, 2021

/s/ Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

Judges Supplemental Compensation Fund
Records Request
2006-2012

	Collections	Payroll	Retirement	Medicare/ Fica Expense	Jefferson Judges Expense	Total Payroll Expense
January 2006	312,964.83	269,798.50	47,670.05	2,941.10	1,283.66	321,693.31
February	285,364.41	269,798.50	48,275.81	2,943.09	1,283.66	322,301.06
March	373,829.14	269,798.50	48,270.57	2,941.36	1,283.66	322,294.09
April	303,745.80	269,798.50	48,270.57	2,941.39	1,283.66	322,294.12
May	344,050.45	271,186.77	48,519.61	2,961.44	1,283.66	323,951.48
June	342,926.98	270,648.50	97,466.74	2,944.55	1,283.66	372,343.45
July	346,266.80	270,114.15	48,827.49	2,945.03	1,283.66	323,170.33
August	489,845.57	269,529.05	48,336.86	2,942.60	1,283.66	322,092.17
September	358,093.70	268,707.38	48,342.27	2,930.66	1,283.66	321,263.97
October	353,980.47	316,770.46	56,996.77	3,459.36	1,510.19	378,736.78
November	326,156.99	315,663.71	56,631.80	3,436.02	1,510.19	377,141.72
December	308,585.33	316,250.28	56,700.37	3,393.74	1,510.19	377,854.58
Total for 2006	4,145,790.47	3,377,964.30	654,308,91	36,780,34	16,083.51	4,085,137.06
January 2007	339,099.01	315,543.00	56,811.62	3,456.74	1,510.19	377,321.55
February	295,434.31	314,761.65	56,422.09	3,445.31	1,510.19	376,139.24
March	366,217.72	315,393.26	56,733.73	3,455.22	1,510.19	377,092.40
April	332,241.04	314,776.00	56,615.83	3,446.00	1,510.19	376,348.02
May	376,029.76	315,917.71	56,833.89	3,462,81	1,510.19	377,724.60
June	358,805.51	316,776.00	56,997.83	3,469.24	1,510.19	378,753.26
July	361,099.48	315,459.00		3,457.05	1,526.67	320,442.72
August	511,431.02	314,459.00	60,404.51	3,442.65	1,526.67	379,832.83
September	354,867.42	314,629.74	60,404.22	3,445,17	1,526.67	380,005.80
October	389,845.75	315,786.57	60,439.34	3,462.24	1,526.67	381,214.82
November	334,866.48	315,128.82	60,879.33	3,462.78	1,526.67	380,997.60
December	311,862.95	318,614.72	60,745.15	3,457.42	1,526.67	384,343.96
Total for 2007	$4,331,820.43	$3,787,245.47	$643,287.54	$41,462.63	$18,221.16	$4,490,216.80
January 2008	387,165.49	317,415.60	61,660.28	3,496.77	1,526.67	384,099.32
February	357,345.28	317,093.00	51,211.66		1,526.67	379,831.33
March	362,570.70	313,072.12	61,145.85		1,526.67	375,744.64
April	389,439.22	311,518.25	60,496.69		1,526.67	373,541.61
May	357,868.49	310,685.00	60,008.60		1,526.67	372,220.27
June	374,510,35	309,884.98	119,902.74		1,526.69	431,314.41
July	394,724.50	306,814.04			1,502.58	308,316.62
August	394,793.72	308,037.61	53,733.92		12502.58	363,274.11
September	354,742.63	309,593.82	53,960.28		1,502.58	365,056.68
October	406,149.00	309,368.00	54,102.21		1,502.58	364,972.79
November	310,710.87	308,930.60	54,096.88		1,502.58	364,530.06
December	277,933.98	308,652.80	54,200.96		1,502.58	364,356.34
Total for 2008	$4,367,954.23	$3,731,065.82	$694,520.07	$3,496.77	818,175.52	$4,447,258.18

Judges Supplemental Compensation Fund
Records Request
2006-2012

	Collections	Payroll	Retirement	Medicare/ Fica Expense	Jefferson Judges Expense	Total Payroll Expense
'January 2009	$390,085.05	$321,421.20	$53,970.53		$1,502.58	$376,894.31
February	$357,189.38	$320,797.14	$56,581.33		$1,502.58	$378,881.05
March	$413,601.79	$320,776.00	$56,333.35		$1,502.58	$378,611.93
April	$382,002.10	$320,871.13	$56,460.08		$1,502.58	$378,833.79
May	$377,324.70	$324,020.82	$56,536.32		$1,502.58	$382,059.72
June	$419,942.15	$323,410.00	$57,119.00		$1,502.58	$382,031.58
July	$432,752.23	$322,893.90	$57,043.00		$1,502.58	$381,439.48
August	$427,138.66	$322,958.42	$57,404.31		$1,503.85	$381,866.58
September	$411,836.58	$322,776.63	$57,248.31		$1,503.85	$381,528.79
October	$416,898.12	$322,410.00	$57,239.89		$1,503.85	$381,153.74
November	$378,105.89	$321,176.59	$57,084.90		$1,503.85	$379,765.34
December	$376,834.22	$320,345.54	$57,126.17		$1,503.85	$378,975.56
Total for 2009	$4,783,710.87	$3,863,857.37	$680,147.19	$0.00	$18,037.31	$4,562,041.87
January 2010	$392,485.75	$319,430.50	$57,013.27		$1,503.85	$377,947.62
February	$388,894.16	$318,517.13	$57,049.26		$1,503.85	$377,070.24
March	$499,780.05	$321,492.26	$57,207.19		$1,503.85	$380,203.30
April	$437,399.61	$322,093.00	$57,756.57		$1,503.85	$381,353.42
May	$429,154.12	$322,093.00	$57,872.30		$1,503.85	$381,469.15
June	$444,683.41	$322,681.11	$57,692.30		$1,503.84	$381,877.25
July	$393,966.93	$322,093.00	$57,791.69		$1,546.96	$381,431.65
August	$442,548.10	$320,246.46	$68,231.24		$1,546.96	$390,024.66
September	$422,349.50	$320,226.00	$67,690.16		$1,546.96	$389,463.12
October	$386,654.37	$320,474.24	$67,600.50		$1,546.96	$389,621.70
November	$355,939.84	$321,776.00	$67,463.51		$1,546.96	$390,736.47
December	$329,434.42	$321,392.81	$67,721.50		$1,546.96	$390,661.27
Total for 2010	$4,923,290.26	$3,852,515.51	$741,089.49	$0.00	$18,304.85	$4,611,909.85
January 2011	$389,017.63	$321,307.83	$67,658.49		$1,546.96	$390,513.28
February	$368,244.94	$321,093.00	$67,618.50		$1,546.96	$390,258.46
March	$389,686.06	$321,093.00	$67,571.24		$1,546.96	$390,211.20
April	$345,957.44	$321,093.00	$67,571.24		$1,546.96	$390,211.20
May	$395,527.64	$322,093.00	$67,571.24		$1,546.96	$391,211.20
June	$404,831.24	$322,093.00	$67,748.66		$1,546.96	$391,388.62
July	$382,034.28	$321,987.68	$97,519.71		$1,671.24	$421,178.53
August	$420,866.62	$321,685.00	$95,848.47		$1,671.24	$419,204.71
September	$391,084.27	$321,685.00	$97,474.75		$1,671.24	$420,830.99
October	$364,265.90	$321,072.12	$97,741.46		$1,671.24	$420,484.82
November	$366,984.82	$320,662.14	$97,526.04		$1,671.24	$419,859.42
December	$335,021.93	$321,267.82	$97,098.19		$1,671.24	$420,037.25
Total for 2011	$4,553,522.77	$3,857,132.59	$988,947.99	$0.00	$19,309.20	$4,865,389.78

Judges Supplemental Compensation Fund
Records Request
2006-2012

	Collections	Payroll	Retirement	Medicare/ Fica Expense	Jefferson Judges Expense	Total Payroll Expense
January 2012	$378,437.45		$98,816.22		$1,838.36	$98,654.58
February	$379,407.04				$1,838.36	$1,838.36
March	$411,230.08	$703,252.68			$1,838.36	$705,091.04
April	$377,172.39	$353,001.00			$1,838.36	$354,839.36
May	$400,425.38	$354,247.00			$1,838.36	$356,085.36
June	$373,696.06	$703,765.56			$1,842.76	$705,608.32
July	$384,341.76	$356,351.00			$1,838.36	$358,189.38
August	$341,661.25	$355,751.00			$1,838.36	$357,589.36
September		$355,384.33			$1,838.36	$357,222.69
October						$0.00
November						$0.00
December						$0.00
Total for 2012	$3,046,371.41	$3,181,752.57	$96,816.22	$0.00	$16,549.64	$3,295,118.43

Portions of Dr. Slaughter's writ application to the Louisiana Supreme Court

* * *

III. STATEMENT OF APPLICABLE WRIT GRANT CONSIDERATIONS

Writ Grant Consideration Four: the appellate court has erroneously interpreted or applied the constitution or a law of this state, and the decision will cause material injustice or significantly affect the public interest. Specifically, if the lower courts' interpretation of LASERS' statutory scheme is correct, then the statutory scheme violates the Equal Protection Clause as it results in discrimination in favor of judges, teachers, and firefighters and against other state employees who are members of LASERS; the lower courts erred in ruling that "earned compensation" as defined in La. R.S. 11:403(10) does not include Dr. Slaughter's supplemental pay.

Dr. Slaughter introduced a schedule from the Louisiana Supreme Court to show the millions of dollars in salary supplements that are being reported to LASERS as earned compensation for ALL state judges including Supreme Court Justices, Appeals Court Judges and District Court Judges. The district court took judicial notice of LA. R. S. 13:10.3 Judges Supplemental Compensation Fund which reads in part:

> A. The Judges Supplemental Compensation Fund, hereafter referred to as "the fund" is hereby created. The proceeds from the fund

> shall be used solely and exclusively for "salary supplements" to judges and commissioners, for related costs of the state and municipal retirement funds. . . .
>
> D. After making provisions for necessary and associated administrative expenses, the board shall authorize the judicial administrator to set aside and transmit monthly an amount to provide the additional employer's retirement contribution due by the state on the supplemental compensation to the State Employees' Retirement System on behalf of the judges who are members of the system. The board, through the judicial administrator, shall then distribute the proceeds from the fund monthly, as follows:
>
> (1) Justices of the supreme court, appellate court judges and district, family and juvenile court judges, including the magistrate of the criminal district court of Orleans Parish, shall receive equal supplemental compensation.

Since all of the state judges who are members of LASERS receive and have been receiving for years an equal monthly salary supplement that is paid and reported to LASERS as earned compensation, the ruling by the Appeals Court has arbitrarily, capriciously, and unreasonably discriminated against Dr. Slaughter because he does not have an affiliation with the judiciary. In *Fishbein v. State ex rel. LSU*, 898 So.2d 1260 (La. 2005), this Court ruled that Dr. Fishbein's supplemental pay was included within the definition of earnable compensation for purposes of computing her

retirement benefits. In *Dunn v. City of Kenner*, 187 So.3d 404 (La. 1/27/16), this Court held that educational incentive pay, seniority incentive pay, holiday pay, and acting pay constitute "earnable compensation" for purposes of calculating the firefighters' pension contributions.

La. Const. Art. 10, sec. 29(E)(5) provides in relevant part: "The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired." Dr. Slaughter had a vested and accrued contractual right, and retired members have a vested and accrued contractual right and constitutional property interest in their pension benefits as agreed upon and guaranteed by the Board. La. R.S. 11:403(33) specifically defines a "vested right" in the context of LASERS as "when a member obtains retirement eligibility as to age and service in accordance the provisions of this Chapter." "Retirement" is defined to mean "termination of active service, with a retirement allowance punted under the provisions of this Chapter." La. R.S. 11:403(24). "Termination" is defined to mean "complete cessation of employment with the state." La. RS. 11:403(32).

Louisiana courts have consistently held that pension statutes must be liberally construed in favor of the intended beneficiaries. *Harrison v. Trustees of Louisiana State Employees' Retirement System*, 95-0048 at 7(La.App. 1 Cir. 1995), 671 So.2d 385, 390. Denial of retirement benefits is not favored whenever there exists an otherwise reasonable construction. *Id.*; also *West Monroe Police Pension and Relief Fund v. Lofton*,

356 So.2d 126 (La. App. 2d Cir.1978). Accordingly, any ambiguity in such a statute must be resolved in favor or the retiree. *Harrison, supra; Swift v. St. of La.*, 342 So.2d 191 (La.1977); *Groves v. Bd. Of Trustees of the Teachers' Retirement System*, 324 So.2d 587 (La. App. 1st Cir.1975), *writs den.*, 326 So.2d 378, 380 (La. 1976).

This Court has recognized that retirement contributions represent "an increasingly important part of an employee's compensation for his services", the Court concluded that an employer's contribution into a retirement-type plan "is not a purely gratuitous act, but it is in the nature of additional remuneration to the employee who meets the conditions of the plan. The employer expects and receives something in return for his contribution, while the employee, in complying earns the reward. The credits to the these plans, when made, are in the nature of compensation (although deferred until contractually payable)." Relying on this portion of *T.L. James*, the *Andrepont* court concluded there is ample support for determining that contributions to retirement plans are among the emoluments of employment and can be considered deferred compensation. *Andrepont v. Lake Charles Harbor & Terminal Dist.*, 602So.2d 704,708 (La. 1992). See also *Fishbein, infra.*

If the lower courts' interpretation of La. R. S. 11:403(10) is correct, then LASERS' statutory scheme violates the Equal Protection Clause. The equal protection clause of the Fourteenth Amendment to the United States Constitution, section 1, states in relevant part: "**No state shall** make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor **deny to any person within its jurisdiction the equal protection of the laws**." Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional. Dr. Slaughter's right to his retirement benefits is a ***fundamental right***, triggering a ***strict scrutiny*** analysis under the equal protection clause. To pass strict scrutiny, the legislature must have passed the law to further a "compelling governmental interest," and must have narrowly tailored the law to achieve that interest.[1]

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[1] Louisiana has its own equal protection clause. La.Const. art. I, § 3, provides:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. *No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations.* Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime. (Emphasis supplied).

In *Manuel v. State*, 677 So. 2d 116, 119-20 (La. 1996), this Court observed:

> "In *Sibley v. Board of Supervisors of Louisiana State Univ. and Agric. and Mechanical College*, 477 So.2d 1094 (La. 1985), we construed this third sentence of Section 3 to mean that *when a statute classifies persons on a basis therein enumerated [which include "political*

There is no compelling governmental interest, or even any conceivable policy rationale, that justifies allowing supplemental pay to be included in earned compensation for judges, teachers, and firefighters, but not for other state employees such as Dr. Slaughter who are members of LASERS.

As the appellate court ruling conflicts with the La. Supreme Court's *Dunn* and *Fishbein* decisions in excluding supplemental pay from earnable compensation, the appellate court erroneously interpreted the statutes regarding earnable compensation and supplemental pay which are analogous in this case to the statute defining those terms in *Fishbein* (La. R.S. 11:701(10)) and *Dunn* (La. R.S. 11:233(B)(1) and R. S. 11:2252).

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state employees.

Writ Grant Consideration Five is when a "court of appeal has so far departed from proper judicial proceedings or so abused its powers, . . . as to call

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ideas or affiliations"], the statute is unconstitutional unless the proponents of the statute prove this legislative classification "substantially furthers an appropriate state purpose." Id. at 1108. . . . *When the court reviews such a law, the burden is on the proponent of the classification and the standard of review is heightened, requiring the proponent to establish that the classification is not arbitrary, capricious or unreasonable because it substantially furthers an appropriate governmental objective. Moore v. RLCC Technologies, Inc.*, 95-2621, pp. 9-10 (La. 2/28/96); 668 So.2d 1135, 1140-41."(emphasis supplied).

for an exercise of this court's supervisory authority." This consideration comes into play in connection with three issues in the First Circuit's ruling: (1) its reliance on *Slaughter I*, which was a suit for unpaid wages against Dr. Slaughter's employer and not against LASERS for retirement benefits; (2) the First Circuit's conclusion that any alleged overpayment resulted from an administrative error that occurred during a time frame in which Dr. Slaughter was receiving supplemental pay; the lower courts erred in finding that there was any overpayment to Dr. Slaughter of retirement benefits, and in finding that even an inaccurate report of overpayment triggered a mandatory obligation for LASERS to reduce Dr. Slaughter's retirement benefits and recoup alleged overpayments; and (3) the lower courts' error in finding Dr. Slaughter could have manipulated his pay process.

D. ARGUMENT

1. The appellate court has erroneously interpreted or applied the constitution or a law of this state, and the decision will cause material injustice or significantly affect the public interest. Specifically, if the lower courts' interpretation of LASERS' statutory scheme is correct, then the statutory scheme violates the Equal Protection Clause as it results in discrimination in favor of judges, teachers, and firefighters and against other state employees who are members of LASERS; the lower courts erred in ruling that "earned compensation" as defined in La. R.S.

11:403(10) does not include Dr. Slaughter's supplemental pay.

Dr. Slaughter introduced a schedule from the Louisiana Supreme Court to show the salary supplements that are being reported to LASERS as earned compensation for ALL state judges including Supreme Court Justices, Appeals Court Judges and District Court Judges. The district court took judicial notice of La. R.S. 13:10.3 Judges Supplemental Compensation Fund which reads in part:

> A. The Judges Supplemental Compensation Fund, hereafter referred to as "the fund" is hereby created. The proceeds from the fund shall be used solely and exclusively for salary supplements to judges and commissioners, for related costs of the state and municipal retirement fluids. . . .
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> D. After making provisions for necessary and associated administrative expenses, the board shall authorize the judicial administrator to set aside and transmit monthly an amount to provide the additional employer's retirement contribution due by the state on the supplemental compensation to the State Employees' Retirement System on behalf of the judges who are members of the system. The board, through the judicial administrator, shall then distribute the proceeds from the fund monthly, as follows:
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