

District Court of Appeal of Florida, Third District.
METROPOLITAN DADE COUNTY, Appellant,

v.

Sandra MILTON, Appellee.

No. 98-23.

March 11, 1998.

Demoted county employee brought action under Whistle-blower's Act against county, county manager, and director. The Circuit Court, Dade County, Robert P. Kaye, J., granted employee's motion for temporary reinstatement to former position. County appealed. The District Court of Appeal, Shevin, J., held that employee who was demoted rather than discharged was not entitled to reinstatement to former position.

Reversed and remanded.

West Headnotes

[1] Counties 104 67

104 Counties

104III Officers and Agents

104k67 k. Removal. Most Cited Cases

County employee who was demoted rather than discharged was not entitled to temporary reinstatement to former position under Whistle-blower's Act, as Act provided for reinstatement only for "discharged" employees, and that term did not include demotion in light of plain and ordinary meaning of term and context in which it was used. West's F.S.A. § 112.3187(9)(f).

[2] Statutes 361 188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited Cases

Statutes 361 190

361 Statutes


361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k190 k. Existence of Ambiguity. Most Cited Cases

Ambiguity is prerequisite to judicial construction, and in absence of ambiguity the plain meaning of statute prevails.

[3] Statutes 361 188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited Cases

When language of statute is clear and unambiguous, statute must be given its plain and ordinary meaning.

[4] Statutes 361 188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited Cases

Words of common usage, when employed in statute, should be construed in their plain and ordinary sense.

[5] Statutes 361 212.1

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k212 Presumptions to Aid Construction

361k212.1 k. Knowledge of Legislature. Most Cited Cases

In choosing statutory term, court assumes that legislature knew its plain and ordinary meaning.

[6] Statutes 361 188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited Cases

Reference to dictionary is permissible, if necessary, to determine plain and ordinary meaning of statutory term.

[7] Statutes 361 ↪ 208

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k208 k. Context and Related Clauses. Most Cited Cases
It is permissible to consider contextual use of statutory term in ascertaining its meaning.**[8] Statutes 361 ↪ 195**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k195 k. Express Mention and Implied Exclusion. Most Cited Cases

When legislature has used a term in one section of statute but omits it in another section of same statute, court will not imply it where it has been excluded.

***914** Robert A. Ginsburg, County Attorney, Miami, and Thomas A. Tucker Ronzetti, Assistant County Attorney, Coral Gables, for appellant.

De La O, Marko & Wang and David E. Marko and Adrian C. Delancy, Miami, for appellee.

Before SCHWARTZ, C.J., and GREEN and SHEVIN, JJ.

SHEVIN, Judge.

Metropolitan Dade County [County] appeals an order granting employee Sandra Milton's motion for temporary reinstatement in her action filed under the Whistle-blower's Act [Act]. § 112.3187, Fla. Stat. (1997). We reverse.

[1] Milton, a division director of special operations at the Department of Corrections and Rehabilitation of Metropolitan Dade County, filed the action under the Act against the County, County Manager Armando Vidal, and Corrections Director Donald Manning. Milton sought relief for her demotion to lieutenant allegedly in retaliation for her disclosures concerning defendants. Subsequently, Milton filed a motion pursuant to section 112.3187(9)(f) seeking temporary reinstatement to her former position as division

director pending the final outcome on the complaint. The trial court granted her motion. The County seeks reversal of the order, contending that Milton was not entitled to temporary reinstatement because she was demoted rather than discharged as stated in the statute. We agree with the County's position.

The trial court reinstated Milton pursuant to section 112.3187(9)(f), which states:

In any action brought under this section, the relief must include the following: ... Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being *discharged* in retaliation for a protected disclosure and if a court of competent jurisdiction ... determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency.

(emphasis added).

[2] Milton's entitlement to temporary reinstatement relief depends on whether the undefined term "discharged," as employed in subsection (9)(f), includes the demotion of an employee in retaliation for a protected disclosure. "Florida law is well settled that ambiguity is a prerequisite to judicial construction, and in the absence of ambiguity the plain meaning of the statute prevails." *Martin County v. Edenfield*, 609 So.2d 27, 29 (Fla.1992); *accord Nicoll v. Baker*, 668 So.2d 989 (Fla.1996); *Blum v. Tamarac Fairways Ass'n, Inc.*, 684 So.2d 826 (Fla. 4th DCA 1996); *Kelder v. ACT Corp.*, 650 So.2d 647, 649 (Fla. 5th DCA), *review denied*, 660 So.2d 713 (Fla.1995). In this case, the statutory language is unambiguous, and the plain meaning of the statute must prevail. The plain language of subsection (9)(f) applies only to a discharge from employment. Because we hold that the language of subsection ***915** (9)(f) is not ambiguous, we are precluded from engaging in judicial construction, as suggested by Milton, in order to extend the definition of "discharged" to encompass a demotion within the purview of subsection (9)(f). *See Edenfield*, 609 So.2d at 29. Such interpretation would amount to "an abrogation of legislative power." *Holly v.*

Auld, 450 So.2d 217, 219 (Fla.1984).

[3] [4] [5] [6] “When the language of a statute is clear and unambiguous, the statute must be given its plain and ordinary meaning.” *Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P.*, 673 So.2d 163, 167 (Fla. 4th DCA 1996). See *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So.2d 898 (Fla.1996). “Words of common usage, when employed in a statute, should be construed in their plain and ordinary sense.” *Zuckerman v. Alter*, 615 So.2d 661, 663 (Fla.1993); *M.C. v. State*, 695 So.2d 477, 483 (Fla. 3d DCA), review denied, 700 So.2d 686 (Fla.1997). In choosing the statutory term “discharged”, we assume that the legislature knew its plain and ordinary meaning. See *Sheffield v. Davis*, 562 So.2d 384 (Fla. 2d DCA 1990). Reference to a dictionary is permissible, if necessary, to determine such meaning. See *L.B. v. State*, 700 So.2d 370, 372 (Fla.1997); *Green v. State*, 604 So.2d 471, 473 (Fla.1992). The dictionary defines the term “discharge” as “to dismiss from employment: to terminate the employment of.” *Webster's Third New Int'l Dictionary* 644 (1986); *Black's Law Dictionary* 463 (6th ed. 1990)(“To dismiss from employment; to terminate employment of a person.”). Applying the plain and ordinary meaning of the term “discharged,” we conclude that the term does *not* include demotion. Accordingly, the order may not stand as Milton was demoted rather than discharged, and demotion is outside the purview of subsection (9)(f).^{FN1}

FN1. Although Milton has cited case law which gives discharge a broader meaning, we do not follow those cases as they address different statutory schemes. See *Crusen v. United Air Lines, Inc.*, 141 F.Supp. 347, 351 (D.Colo.)(where cases involve different statutes, broader meaning given to term “discharge” has no bearing on instant case), *aff'd*, 239 F.2d 863 (10th Cir.1956).

[7] [8] This result is supported by reference to other subsections of section 112.3187.^{FN2} The legislature defined “adverse personnel action” as “the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee ... by an agency” § 112.3187(3)(c), Fla. Stat. (1997)(emphasis

added). In so doing, the legislature evidenced its recognition that the term “discharge” denotes an action which differs from a demotion and does *not* include the term “demotion.” Furthermore, in delineating the prohibited employer actions, § 112.3187(4)(a), the possible remedies, § 112.3187(8)(a), and the relief available to the employee, § 112.3187(9)(a), (f), the legislature chose to differentiate between the various adverse personnel actions. The legislature apparently recognized the distinction between these various actions and opted *not* to include the broad term “adverse personnel action” or the term “demotion” in subsection (9)(f). Clearly, it is within the legislature's province to limit the extraordinary temporary relief provided to the extreme action of discharge. “When the legislature has used a term, as it has here, in one section of the statute but omits it in another section of the same statute, we will not imply it where it has been excluded.” *Leisure Resorts, Inc. v. Frank J. Rooney, Inc.*, 654 So.2d 911, 914 (Fla.1995); *Beach v. Great Western Bank*, 692 So.2d 146, 152(Fla), cert. granted on other grounds, 522 U.S. 912, 118 S.Ct. 294, 139 L.Ed.2d 226 (1997); see also *Moonlit Waters Apartments, Inc.*, 666 So.2d at 900; *Montes de Oca v. Orkin Exterminating Co.*, 692 So.2d 257 (Fla. 3d DCA), review denied, 699 So.2d 1374 (Fla.1997); *National Airlines, Inc. v. Division of Employment Sec. of Fla. Dept. of Commerce*, 379 So.2d 1033 (Fla. 3d DCA 1980). Thus, we must decline to “imply” the term “demotion” into subsection (9)(f). See *Holly*, 450 So.2d at 219. Accordingly, we reverse the order.

FN2. It is permissible to consider the contextual use of the term in ascertaining its meaning. See *Miele v. Prudential-Bache Sec., Inc.*, 656 So.2d 470 (Fla.1995).

***916** In enacting the Whistle-blower's Act, the legislature has commendably created a cause of action against state agencies for an employee who is subject to certain adverse personnel action in retaliation for disclosures under the Act. Furthermore, the legislature has provided additional aid to such employee by granting preliminary relief in the form of temporary reinstatement when that employee is discharged in retaliation for a protected disclosure pursuant to subsection (9)(f).

The legislature should consider extending this protection in

707 So.2d 913

707 So.2d 913, 23 Fla. L. Weekly D674, 13 IER Cases 1477

(Cite as: **707 So.2d 913**)

order to render the Act truly effective by safeguarding an employee who has been demoted to such a grievous extent as under the circumstances of this case. Milton has suffered a major demotion in position and a concomitant reduction in salary and benefits: her yearly salary has been reduced by approximately \$40,000, and she has been demoted several levels below the position of a division director to a lieutenant. As presently written, the limitation of the temporary reinstatement subsection does *not* fairly serve the whistle-blower. We invite the legislature, in its wisdom, to address this deficiency.

Reversed and remanded.

Fla.App. 3 Dist.,1998.

Metropolitan Dade County v. Milton

707 So.2d 913, 23 Fla. L. Weekly D674, 13 IER Cases 1477

END OF DOCUMENT