

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SEVENTH DIVISION

LT. GLENN SLIGH, CAPT. MYRON HALL,
CORP. RICKY BRIGGS, CAPT. LOYD FRANKLIN,
SGT. MACK THOMPSON, MAJOR CLEVE BARFIELD
AND OTHERS SIMILARLY SITUATED

PLAINTIFFS

VS.

CASE NO. 60CV-12-344

ARKANSAS STATE POLICE
RETIREMENT SYSTEM, KIRK BRADSHAW,
JOHN W. ALLISON, BRANT TOSH, BLAKE WILSON,
DONNIE UNDERWOOD, JOE MILES, DR. JOHN SHELNUTT,
IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE
BOARD OF TRUSTEES OF THE ARKANSAS
STATE POLICE RETIREMENT SYSTEM

DEFENDANTS

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Defendants, Arkansas State Police Retirement System (ASPRS, the System, or retirement system), John W. Allison, Brant Tosh, Blake Wilson, Donnie Underwood, Joe Miles and Dr. John Shelnett (Trustees), move the Court to grant them summary judgment pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, and to deny Plaintiffs' motion for summary judgment, on the following grounds:

1. There remain no genuine issues of material fact at issue in this case.
2. Plaintiffs' constitutional claims pursuant to 42 U.S.C. § 1983 against the System and the Trustees fail to state a claim because the System and the Trustees, in their official capacity, are not "persons" amenable to suit under § 1983.
3. In addition, Plaintiffs' claims against the System and the Trustees in their "official" capacity are barred by sovereign immunity.

4. As a matter of law, Plaintiffs cannot establish that the constitutional provisions prohibiting impairment of an obligation of a contract (Article II, Section 17 of the Arkansas Constitution and Article I, Section 10 of the United States Constitution) apply to Defendants.

5. To the extent Plaintiffs' complaint can be construed to allege an impairment of contract claim *due to a change in state law*, it is barred by the statute of limitations.

6. As a matter of law, Plaintiffs cannot establish a constitutionally protected contract right to a certain amount of interest on DROP funds, because the Arkansas Supreme Court has unequivocally held that retirement plans that are non-contributory create no contractual obligation.

7. As a matter of law, Plaintiffs cannot establish a constitutionally protected property interest in the right to earn a certain rate of interest on DROP funds.

8. As a matter of law, Plaintiffs cannot establish that Defendants' vote to reduce the interest rate on DROP funds, which was pursuant to the express statutory authority of Act 404 of 2007, was due to mistake or error under Ark. Code Ann. § 24-6-205.

9. As a matter of law, Plaintiffs cannot establish that the Trustees violated any fiduciary duty by taking action that was expressly authorized by statute.

10. Plaintiffs' claims for attorney's fees and costs are barred by sovereign immunity.

11. In addition, Plaintiffs are not entitled to attorney's fees and costs pursuant to 42 U.S.C. § 1988 because they cannot state a claim under 42 U.S.C. § 1983.

12. As a matter of law, Plaintiffs cannot establish the essential elements of their claims and reasonable jurors could not differ in their determination that Defendants are entitled to judgment on Plaintiff's claims as a matter of law. Therefore, there remain no issues for trial, and Defendants are entitled to summary judgment pursuant to Rule 56(c) of the Arkansas Rules

of Civil Procedure. For these same reasons, Plaintiffs' motion for summary judgment should be denied.

13. The following Exhibits (attached hereto) are offered in support of Defendants' motion and in support of Defendants' response in opposition to Plaintiffs' motion:

- Exhibit A – Affidavit of Richard Weiss;
- Exhibit B – Affidavit of Gail Stone;
- Exhibit C – Excerpts from Deposition of Richard Weiss;
- Exhibit D – Excerpts from Deposition of Gail Stone; and
- Exhibit E – Affidavit of Blake Wilson

14. This motion is supported by a brief in support, which more fully sets forth the grounds for the motion.

WHEREFORE, Defendants respectfully request that they be granted summary judgment; that Plaintiffs' motion for summary judgment be denied; and for such further relief to which they may be entitled.

Respectfully Submitted,

DUSTIN McDANIEL
Attorney General

By: /s/ Patricia VanAusdall Bell
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CERTIFICATE OF SERVICE

I, Patricia VanAusdall Bell, hereby certify that on this 6th day of October, 2014, I electronically filed the foregoing with the Pulaski County Clerk of Court, which shall send notification of such filing to the following:

C. Burt Newell
burt@hotspringslaw.net

/s/ Patricia Van Ausdall Bell
Patricia Van Ausdall Bell