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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2009-2010

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Ex parte Joseph E. Pierson

PETITION FOR WRIT OF CERTIORARI

(In re: Joseph E. Pierson

v.

Jefferson County Personnel Board and Jefferson County Roads
and Transportation Department)

(Jefferson Circuit Court: CV-08-1662)

THOMAS, Judge.

Joseph E. Pierson, who was employed by the Jefferson County Roads and Transportation Department ("the Department")

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as a traffic-striping machine operator, was terminated from his employment with the Department on September 19, 2007. Pierson appealed the termination to the Jefferson County Personnel Board ("the Board"). After a two-day hearing, the hearing officer determined in his report and recommendation that Pierson should be reinstated and that Pierson should be offered anger-management training as a result of the behavior that led to the termination of his employment. The Board received the hearing officer's report and recommendation on April 14, 2007. The Department filed a detailed objection to the hearing officer's report and recommendation with the Board. The Board considered the Department's objection and reviewed the record developed before the hearing officer; the Board ultimately rejected the hearing officer's report and recommendation and affirmed the Department's termination of Pierson's employment. The Board's order was signed by the Board members on May 13, 2007; however, the order was not stamped as received by the Board, and the certificate of service of the order was not completed, until May 15, 2007.

Pierson appealed the Board's order to a three-judge panel of the Jefferson Circuit Court. See Act No. 248, § 22, Ala.

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Acts 1945, as amended by Act No. 684, Ala. Acts 1977 ("the enabling act") (stating that an appeal from the Board's order lies in the circuit court and that the presiding judge of the circuit court shall assign the case to a panel of three judges for review). On January 21, 2009, the circuit court reversed the Board's decision and remanded the cause to the Board for it to make required findings of fact so that the circuit court could properly review the Board's order. After the Board complied, the circuit court affirmed the Board's decision to uphold the termination of Pierson's employment on September 8, 2009. Pierson seeks certiorari review of the judgment of the circuit court.

""[T]he proper method of reviewing circuit court decisions involving appeals from the Jefferson County Personnel Board is by common-law petition for writ of certiorari." Ex parte Personnel Bd. of Jefferson County, 513 So. 2d 1029, 1031 (Ala. Civ. App. 1987). "Review of the writ of certiorari in this court is limited to a consideration of the proper application of the law by the circuit court and whether that court's decision is supported by the legal evidence." Copeland v. Personnel Bd. of Jefferson County, 498 So. 2d 854, 855 (Ala. Civ. App. 1986).'"

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Ex parte Jefferson County Sheriff's Dep't, 13 So. 3d 993, 995 (Ala. Civ. App. 2009) (quoting Ex parte City of Birmingham, 992 So. 2d 30, 32 (Ala. Civ. App. 2008)).

As he did before the circuit court, Pierson argues before this court that the Board's decision was not timely rendered under its own Rule 12.6, thus causing the hearing officer's report and recommendation to become the order of the Board. Rule 12.6 reads, in part, as follows:

"The Board, at the first regular or special meeting following the hearing, shall consider the Hearing Officer's Report and Recommendation, and modify, alter, set aside or affirm said report and certify its findings to the Appointing Authority who shall forthwith put the same into effect. If the Board fails to act within 30 days after the receipt of the Hearing Officer's Report and Recommendation, the Report and Recommendation shall become the order of the Board."

(Emphasis added.)

The rule requires that the Board "act" on the hearing officer's report and recommendation within 30 days of the Board's receipt of the hearing officer's report and recommendation. If the Board fails to act within that 30-day period, the hearing officer's report and recommendation becomes the order of the Board. Thus, Rule 12.6 operates much like Rule 59.1, Ala. R. Civ. P., which automatically denies a

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pending postjudgment motion at the end of a 90-day period, see, e.g. Ex parte PinnOak Res., LLC, 26 So. 3d 1190, 1199 (Ala. 2009), except that Rule 12.6 causes the adoption of the hearing officer's report and recommendation as the order of the Board at the expiration of the 30-day period. See Ex parte City of Birmingham, 992 So. 2d 30, 33 (Ala. Civ. App. 2008) (stating that the Board's order would be "announced," as required by the enabling act, as if the Board had issued the hearing officer's report and recommendation upon the expiration of the 30-day period).

Pierson contends that May 15, 2007, the date that the Board's order was stamped filed by the Board and the date that appears on the certificate of service of the Board's order, is the pertinent date upon which to base a determination of the timeliness of the Board's order. The Department argues, however, that the Board is only required "to act" within the 30-day period and that the action required to be taken by the Board is merely the "rendering of a decision" to "modify, alter, set aside, or affirm" the hearing officer's report and recommendation. See Ex parte Jefferson County Sheriff's Dep't, 13 So. 3d at 996 ("The 'act' that is contemplated by

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Rule 12.6 is necessarily, therefore, the rendering of a decision."). Thus, the Department contends that May 13, 2007, the date that the order was signed by the members of the Board, is the date that the order was rendered and that that date is the appropriate date upon which to base the timeliness determination.

Pierson argues that a decision to use the date that the Board members signed the order as the date upon which to base a timeliness determination for purposes of Rule 12.6 would also result in that date being the "announcement" of the order for purposes of triggering the running of the time for appeal from the Board's order under the enabling act. See Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977 (stating that an appeal from the Board's order to the circuit court "shall be filed within ten days from the announcement of the [Board's] ... order"); Ex parte City of Birmingham, 992 So. 2d 30, 33 (Ala. Civ. App. 2008) (equating the automatic adoption of the hearing officer's report and recommendation upon the expiration of the 30-day period in Rule 12.6 with the "announcement" of the Board's order). Pierson contends that such a conclusion could

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possibly leave an employee in the position of having little or no time to perfect an appeal from an order of the Board. We agree that the date of "announcement," which triggers the time for appeal, and the effective date of the Board's order for purposes of Rule 12.6 should be the same date. Thus, in order to determine whether the date the Board's order was signed or the date the Board's order was stamped filed and the certificate of service was executed is the appropriate date for determining whether the Board's order was timely entered in the present case, we will turn to the language used in the enabling act and to principles of statutory construction.

"In interpreting the provisions of an Act ..., a court is required to ascertain the intent of the legislature as expressed and to effectuate that intent. Lewis v. Hitt, 370 So. 2d 1369 (Ala. 1979). The legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained by its passage. Ex parte Holladay, 466 So. 2d 956 (Ala. 1985). Words used in the statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. Coastal States Gas Transmission Co. v. Alabama Public Service Commission, 524 So. 2d 357 (Ala. 1988); Alabama Farm Bureau Mutual Casualty Insurance Co. v. City of Hartselle, 460 So. 2d 1219 (Ala. 1984). If the language of the statute is clear and unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect. Dumas Brothers

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Manufacturing Co. v. Southern Guaranty Insurance Co., 431 So. 2d 534 (Ala. 1983); Town of Loxley v. Rosinton Water, Sewer, & Fire Protection Authority, Inc., 376 So. 2d 705 (Ala. 1979)."

Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687, 689 (Ala. 1991).

Under the enabling act, an appeal from the order of the Board must be filed within 10 days of the "announcement" of the order. Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977; see also Ex parte City of Birmingham, 992 So. 2d at 33. "Announcement" is defined as "a public notification or declaration." Merriam-Webster's Collegiate Dictionary 50 (11th ed. 2003). The enabling act also requires that "[t]he [B]oard's [order] ... be certified to the appointing authority who shall forthwith put the same into effect." Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977. "Certify" is defined as "to present in formal communication." Merriam-Webster's Collegiate Dictionary 203 (11th ed. 2003). "Effect" is defined as "the quality or state of being operative." Merriam-Webster's Collegiate Dictionary 397 (11th ed. 2003). Thus, based on the language of the enabling act, the Board's order must be formally communicated to the appointing

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authority so that the order may become operative, and the time for appeal begins to run once the parties have been notified of the order.

The date the Board certifies its order to the appointing authority, as required by the enabling act, can fairly be considered the date of announcement of the Board's order for the purpose of determining when the time for appeal should begin to run. The certificate of service indicates that the Board notified the parties of the Board's order on the date on the certificate. Using the date on which the Board's order was filed with the Board and on which the certificate of service to the parties was executed is fair to all parties concerned and provides a clear date upon which to base the calculation of the time for an appeal and, in this case, the timeliness of the Board's action on the hearing officer's report and recommendation. Thus, we conclude that the date on which the Board's order was announced and, therefore, the date on which the order became effective such that the Board evinced an intent to act to fulfill its duty under Rule 12.6 was May 15, 2007, the date on which the order was stamped filed by the Board and on which the certificate of service

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evidencing service on both the appointing authority and Pierson was executed.

We have already implicitly determined that an order of the Board "rendered" after the expiration of the 30-day period is a nullity because the Board's failure to timely act had already resulted in the adoption of the hearing officer's report and recommendation as the order of the Board. Ex parte Jefferson County Sheriff's Dep't, 13 So. 3d at 996. The Board's order in the present case was announced on May 15, 2007, 31 days after the Board received the hearing officer's report and recommendation. The Board's untimely order is a nullity, the hearing officer's report and recommendation having become the order of the Board by operation of Rule 12.6 on May 14, 2007. Because the Board's May 15, 2007, order is not a valid order and because the only valid order of the Board was favorable to Pierson, the circuit court should have dismissed his appeal. Ex parte Jefferson County Sheriff's Dep't, 13 So. 3d at 996. As in Ex parte Jefferson County Sheriff's Department, the circuit court is instructed to vacate its judgment addressing the merits of Pierson's appeal

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regarding the termination of his employment and to dismiss Pierson's appeal. Id. at 996-97.

In light of our conclusion that the Board failed to act on the hearing officer's report and recommendation within the 30-day period provided in Rule 12.6, thus resulting in the adoption of the hearing officer's report and recommendation by the Board, we pretermitt discussion of Pierson's other arguments regarding the Board's invalid order of May 15, 2007. See Favorite Market Store d/b/a F.M. Serv. Corp. v. Waldrop, 924 So. 2d 719, 723 (Ala. Civ. App. 2005) (pretermittting discussion of additional issues when the decided issue was dispositive of the case).

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman, J., concur.

Moore, J., dissents, with writing, which Bryan, J., joins.

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MOORE, Judge, dissenting.

I respectfully dissent from the main opinion because I do not agree that the order of the Jefferson County Personnel Board ("the Board") was untimely under Rule 12.6 of the Rules and Regulations of the Board. Specifically, I disagree with Pierson's assertion, and the main opinion's conclusion, that the date of the "act" contemplated by the 30-day time limitation in Rule 12.6 should be the same date as the date of "announcement" of the Board's order for purposes of triggering the running of the time for appeal from the Board's order under the enabling act. See Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977 (stating that an appeal from the Board's order to the circuit court "shall be filed within ten days from the announcement of the [Board's] ... order").

As recited in the main opinion, Rule 12.6 provides, in pertinent part:

"The Board, at the first regular or special meeting following the hearing, shall consider the Hearing Officer's Report and Recommendation, and modify, alter, set aside or affirm said report and certify its findings to the Appointing Authority who shall forthwith put the same into effect. If the Board fails to act within 30 days after the receipt of the Hearing Officer's Report and Recommendation, the

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Report and Recommendation shall become the order of the Board."

In Ex parte Jefferson County Sheriff's Department, 13 So. 3d 993, 996 (Ala. Civ. App. 2009), this court stated that "the word 'act' in Rule 12.6 refers to the requirement that the Board 'modify, alter, set aside, or affirm' the hearing officer's report and recommendation" and further concluded that "[t]he 'act' that is contemplated by Rule 12.6 is necessarily, therefore, the rendering of a decision."

On May 13, 2007, the Board "set aside" the hearing officer's report and recommendation, an "act" that is explicitly enumerated in Rule 12.6. By rejecting the hearing officer's report and recommendation and affirming the decision of the Jefferson County Roads and Transportation Department ("the Department") to terminate Pierson's employment on May 13, 2007, I believe the Board complied with the mandate in Rule 12.6 and rendered a decision in the case. I agree with the main opinion, however, that the date of the "announcement" of the Board's order, and thus the date that triggered the running of the period for Pierson to appeal the Board's decision, occurred on May 15, 2007, when the order was stamped

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as received by the Board and the certificate of service of the order was completed.

I conclude also that allowing the date of the Board's "act" to deviate from the date of the "announcement" of the Board's decision does not, as Pierson argues, conflict with the holding in Ex parte City of Birmingham, 992 So. 2d 30 (Ala. Civ. App. 2008). In that case, this court determined that, if the Board fails to act within the 30-day period prescribed by Rule 12.6, the hearing officer's report would become the decision of the Board and that, "when Rule 12.6 operates to make the hearing officer's report the Board's order, the Board's order is essentially 'announced' at the expiration of the 30-day period" for purposes of Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977. 992 So. 2d at 33. In other words, when the Board fails to act, there is no order to certify and, thus, the decision is automatically rendered and announced at the end of the 30-day period prescribed by Rule 12.6. In the present case, the Board rendered a decision. Thus, Rule 12.6 was never triggered and the Board's decision was neither automatically rendered nor announced. Rather, the Board complied with Rule

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12.6, and, thus, its decision-making power was not usurped by that rule. The Board maintained its authorization to formally communicate its order via certification in order to trigger Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977, and begin the 10-day appeal period.

Because I conclude that the date of the "act" contemplated by Rule 12.6 and the date of the "announcement" of the order contemplated by Act No. 248, § 22, Ala. Acts 1945, as amended by Act No. 684, Ala. Acts 1977, refer to different actions by the Board and, thus, do not necessarily occur on the same date in all situations, and because I conclude that the Board acted within the 30-day period and, thus, that its decision was not untimely, I would affirm the decision of the Jefferson Circuit Court.¹ Because a majority of this court disagrees, I respectfully dissent.

Bryan, J., concurs.

¹Pierson also argues on appeal that the trial court erred by remanding the case to the Board so that it could "cure" its failure to submit a statement of facts with the decision to reject the hearing officer's recommendation. Pierson fails to cite to any authority in support of this argument. Because Pierson has failed to comply with Rule 28(a)(10), Ala. R. App. P., I see no reason to address that argument on appeal.