177 So.3d 454
Supreme Court of Alabama.

Keith McDANIEL
v.
William T. EZELL
City of Florence, Alabama, a municipal corporation, and the Civil Service Board of the City of Florence
v.
William T. Ezell.

1130372 and 1130373.
|
Jan. 30, 2015.
|
Applications for Rehearing Denied March 20, 2015.

Synopsis

Background: Candidate for position of battalion chief with city fire and rescue department brought action against city and city's civil-service board seeking review of decision of board to promote other candidates to position. The Circuit Court, Lauderdale County, No. CV–11–900214, Michael T. Jones, J., entered judgment on jury verdict in favor of candidate. City, board, and promoted candidate appealed.

[Holding:] The Supreme Court, Wise, J., held that candidate failed to establish that he was aggrieved party of decision of board.

1130312–Appeals dismissed with instructions.

1130373–Appeal dismissed with instructions.

Murdock, J., filed opinion concurring specially.

Moore, C.J., filed opinion concurring in the result.

Main, J., concurred in the result.

Shaw, J., filed dissenting opinion.

Bryan, J., filed dissenting opinion.

West Headnotes (4)

[1] Municipal Corporations
Appointment and promotion of firemen

Candidate failed to establish that he was an aggrieved party within meaning of statute governing appeals from decisions of civil-service boards, and therefore candidate lacked statutory right to appeal decision of city's civil-service board promoting other candidates to position of battalion chief within city fire and rescue department; candidate did not present any argument or evidence to establish that his legal rights had been adversely affected by the board's promotion decision, but, rather, his argument and evidence simply focused on his personal dissatisfaction with the way in which the board exercised its discretion pursuant to its internal rules and regulations. Acts 1971, No. 1619, § 2.

Cases that cite this headnote

[2] Courts
Acts and proceedings without jurisdiction

Where the trial court has no subject-matter jurisdiction, it has no alternative but to dismiss the action.

Cases that cite this headnote

[3] Appeal and Error
Void judgment or order

Judgment
Jurisdiction of the person and subject-matter

A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal.

Cases that cite this headnote

[4] Appeal and Error
Want of jurisdiction

An appellate court must dismiss an attempted appeal from a void judgment.

Cases that cite this headnote

Attorneys and Law Firms

***454** Preston S. Trousdale, Jr., of Trousdale Ryan, P.C., Florence, for appellant Keith McDaniel.

Larry B. Moore and Ian Michael Berry of Moore, Berry & Linville, Florence, for ***455** appellants City of Florence and the Civil Service Board of the City of Florence.

Robert L. Gonce of Gonce & Messer, Florence, for appellee William T. Ezell.

Opinion

WISE, Justice.

The City of Florence, Alabama, a municipal corporation ("the City"), and the Civil Service Board of the City of Florence ("the CSB") and Keith McDaniel appeal separately from a judgment entered by the Lauderdale Circuit Court following a jury verdict in favor of William T. Ezell. We dismiss the appeals with instructions.

Facts and Procedural History

In mid 2011, two positions for promotion to the job of battalion chief became available within the Florence Fire and Rescue Department. Benjamin Cochran, Melvin Brown, Tim Clanton, John T. Muse, McDaniel, and Ezell applied for the positions. The CSB conducted interviews with the candidates on September 1, 2011. Afterward, it promoted Cochran and McDaniel to the two battalion-chief positions.

On September 12, 2011, Ezell filed a two-count complaint against the City and the CSB in the Lauderdale Circuit Court. The first count was an appeal from the decision of the CSB pursuant to Act No. 1619, Ala. Acts 1971 ("the Act"). The second count sought a judgment declaring that the CSB had acted arbitrarily and capriciously with respect to the promotion decision and overturning the CSB's decision to deny Ezell's application for promotion to battalion chief. [1] The complaint included a demand for a jury trial.

1 It appears that Ezell abandoned count 2 at trial.

On October 18, 2011, the City and the CSB filed an answer in which they denied Ezell's allegations. They also asserted that Ezell had failed to join certain indispensable parties. The City and CSB simultaneously filed a motion to dismiss count 1 of the complaint pursuant to Rule 12(b)(7), Ala. R. Civ. P., arguing that all six applicants were indispensable parties. They then asked that count 1 of the complaint be dismissed or that Ezell be required to add Cochran, Brown, Clanton, Muse, and McDaniel as defendants.

On April 16, 2012, the trial court ordered Ezell to amend his complaint to make Cochran, Brown, Clanton, Muse, and McDaniel parties to the suit. On April 17, 2012, Ezell amended count 1 of his complaint and also added Cochran, Brown, Clanton, Muse, and McDaniel as defendants. The City and the CSB filed an answer to the amended complaint in which they denied Ezell's allegations and argued that the complaint failed to state a claim upon which relief could be granted.

The trial court conducted a jury trial following the procedure outlined in *Smith v. Civil Service Board of Florence*, 52 Ala.App. 44, 289 So.2d 614 (Ala.Civ.App.1974). After the jury heard the evidence, the trial court instructed the jury, in part,

> "to decide this case and who should be promoted to the two vacant positions of Battalion Chief based on the evidence presented to you during the trial."

The jury returned the following verdict:

> "We are *not* reasonably satisfied that the decision of the [CSB] was correct and we find that the following 2 individuals

> should be promoted to Battalion Chief (pick two) ... Benjamin Cochran ... William Ezell."

The trial court entered a judgment on the verdict and ordered that the status quo be maintained during the pendency of any appellate proceedings.

The City, the CSB, and McDaniel filed posttrial motions, which the trial court denied. McDaniel filed an appeal to this ***456** Court; that appeal was docketed as case no. 1130372. The City and the CSB also filed an appeal to this Court; that appeal was docketed as case no. 1130373.

Discussion

[1] In their briefs to this Court, the appellants raise several challenges to the procedure the trial court followed during the trial. However, before we can examine those challenges, we must first determine whether Ezell had a right to appeal the CSB's decision pursuant to the Act. The Act provides:

> "An appeal may be taken from any decision of the [CSB] in the following manner: Within ten (10) days after any final decision of such [CSB], any party, including the governing body of the city, feeling aggrieved at the decision of the [CSB], may appeal from any such decision to the Circuit Court of the County. Upon the filing of such appeal, notice thereof shall be served upon any member of the [CSB] and a copy of said notice shall be served upon the appellee or his attorney by the appellant. Such appeal shall be heard at the earliest possible date by the court sitting without a jury, unless a jury is demanded by the appellant at the time of filing his notice of appeal or by the appellee within ten (10) days after notice of appeal has been served upon him. In the event either party demands a jury as provided above, the appeal shall be heard at the next regular jury term of court and shall have priority over all other cases. No bond shall be required for such an appeal and such an appeal shall be effected by filing a notice and request therefor by the appellant upon any member of the [CSB] and upon the appellee as herein provided for above and also by filing a notice and request for an appeal with the Clerk of the Circuit Court. It shall not be necessary to enter exceptions to the rulings of the [CSB], and the appeal shall be a trial de novo; provided, however, that upon hearing such appeal the introduction of the decision of the [CSB] shall be prima facie evidence of the correctness of such decision. An appeal may be taken from any judgment of the Circuit Court to the Court of Appeals or the Supreme Court as now provided by law."

Act No. 1619, Ala. Acts 1971, § 2.

The Act provides that any party "feeling aggrieved at the decision" may appeal; however, it does not define the term "aggrieved." The term "aggrieved" is defined in *Black's Law Dictionary* 80 (10th ed.2014) as "having legal rights that are adversely affected; having been harmed by an infringement of legal rights." Therefore, only a party whose legal rights have been adversely affected by a decision of the CSB may appeal pursuant to the Act.

Pursuant to Act No. 437, Ala. Acts 1947, the CSB promulgated rules and regulations setting forth the procedure to be followed when promoting employees of the Florence police and fire departments. If the CSB fails to follow its own procedural and substantive rules with regard to employment decisions for those departments, a party's legal rights may be adversely

affected, and the party may be aggrieved, for purposes of the Act.

In his original complaint, Ezell included the generic allegation that the CSB "denied his promotion and in his place promoted Lieutenant Keith McDaniel in disregard of the rules of the CSB and the employment rules of the Florence Fire and Rescue Department." During his opening statement, counsel for Ezell argued that Ezell and Cochran performed better than the other candidates in the promotional reviews by the chief and the supervisors at the fire department. He also argued that ***457** Ezell had the experience and the training and the best record of the candidates for the promotion.

During the trial, the City and the CSB presented evidence indicating that, in September 2011, the fire chief notified the CSB that there were two open battalion-chief positions. Both lieutenants, who were one rank below battalion chief, and captains, who were two ranks below battalion chief, were eligible to apply for the positions. The job openings were posted, and applications were filled out and submitted. Afterward, human-resources personnel identified those applicants who were qualified to be promoted to the battalion-chief positions; compiled all the information about each qualified applicant, including evaluations performed by command-staff members at the department; submitted a notebook with all the information for each CSB member to review; and scheduled interviews.

The CSB members who testified indicated that they reviewed and considered the information about each candidate included in the notebooks prepared by the human-resources personnel. However, they indicated that they did not base their decision solely on the information provided by the human-resources personnel. Instead, the CSB members who testified indicated that they attempted to choose people who would best represent the fire department and added that the decision was influenced by such subjective factors as the appearance, attitude, and responses of the candidates during their interviews.

Lindsey Mussleman Davis, one of the CSB members, testified that the CSB could not make the decision based solely on the candidates' experience and training. She also testified that the information that had been provided by the human-resources personnel was a tool the CSB members used in making an employment decision but that it was not the final test. Finally, she stated that the decision to promote McDaniel instead of Ezell was not unanimous, but she added that there was no requirement that the decision be unanimous.

During the trial, Ezell did not present any evidence to support his allegation that the CSB had "denied his promotion and in his place promoted Lieutenant Keith McDaniel in disregard of the rules of the CSB and the employment rules of the Florence Fire and Rescue Department." In fact, he did not present any evidence regarding the rules of the CSB or the department. Instead, Ezell focused on his training and experience and the fact that he had outscored McDaniel on several of the evaluations that had been performed by the department's command staff to argue that he was more qualified than was McDaniel for the position of battalion chief.

During his closing argument, counsel for Ezell emphasized the evaluations by the department's command-staff members in which Ezell had outscored McDaniel and noted that the CSB members knew nothing about firefighting. He also took issue with the fact that the CSB members took into account the fact that the battalion chiefs would be the "face" of the City and considered the impression the battalion chiefs would make with the media. Counsel further argued that Ezell deserved the promotion based on his experience and qualifications.

Finally, in his brief in opposition to a stay of the judgment, counsel for Ezell argued that the CSB's decision to promote McDaniel instead of Ezell was "a wrong decision" and "was not supported by any extraordinary circumstances which would warrant such a promotion." However, even then, counsel did not present any argument or evidence to establish that extraordinary ***458** circumstances were required before the CSB could make such a promotion.

Thus, Ezell did not present any arguments or evidence to establish that his *legal rights* had been adversely affected by the CSB's promotion decision. At most, his arguments and evidence simply focused on his *personal dissatisfaction* with the way in which the CSB exercised its discretion pursuant to its internal

rules and regulations in making the decision to promote McDaniel over him. He did not present any evidence that would establish that the CSB members were not allowed to consider factors other than those evidenced by the notebooks provided by the human-resources personnel in making their decision. Therefore, Ezell failed to establish that he was an aggrieved party for purposes of the Act and, accordingly, failed to demonstrate that he had a right to appeal the CSB's decision.

[2] Because Ezell failed to demonstrate that he had a right to appeal the CSB's decision, the trial court lacked subject-matter jurisdiction to entertain his appeal. " 'Where "the trial court ha[s] no subject-matter jurisdiction, [it has] no alternative but to dismiss the action." ' *Gulf Beach Hotel, Inc. v. State ex rel. Whetstone*, 935 So.2d 1177, 1182 (Ala.2006) (quoting *State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1029 (Ala.1999))." *Ex parte Stewart*, 985 So.2d 404, 409 (Ala.2007). Therefore, the trial court should have dismissed Ezell's appeal.

Conclusion

[3] **[4]** " 'A judgment entered by a court lacking subject-matter jurisdiction is absolutely void and will not support an appeal; an appellate court must dismiss an attempted appeal from such a void judgment.' *Vann v. Cook*, 989 So.2d 556, 559 (Ala.Civ.App.2008)." *MPQ, Inc. v. Birmingham Realty Co.*, 78 So.3d 391, 394 (Ala.2011). Accordingly, we dismiss these appeals with instructions to the trial court to vacate its judgment. [2]

2 Because of our disposition of these appeals, we pretermit discussion of the issues the parties raise in their briefs to this Court.

1130372—APPEAL DISMISSED WITH INSTRUCTIONS.

1130373—APPEAL DISMISSED WITH INSTRUCTIONS.

STUART, BOLIN, and PARKER, JJ., concur.

MURDOCK, J., concurs specially.

MOORE, C.J., and MAIN, J., concur in the result.

SHAW and BRYAN, JJ., dissent.

MURDOCK, Justice (concurring specially).
I concur in the dismissal of the appeals on subject-matter-jurisdiction grounds because the decision by the judicial branch in this particular case, if allowed to stand, would represent not a vindication of some substantive or procedural legal right held by those who were not promoted, but a usurpation by the judicial branch of the discretionary executive authority delegated to the Civil Service Board of the City of Florence.

MOORE, Chief Justice (concurring in the result).
I concur in the result because I believe the defect in William T. Ezell's appeal to the circuit court was not that the court lacked subject-matter jurisdiction to entertain Ezell's appeal on the basis that he did not have a right to appeal but that Ezell ***459** failed to state a claim upon which relief could be granted.

SHAW, Justice (dissenting).
I respectfully dissent. I disagree with the holding of the main opinion that William T. Ezell did not have what must be standing under Act No. 1619, Ala. Acts 1971 ("the Act"), to pursue the appeal in the circuit court. In my dissenting opinion in *Ex parte Alabama Educational Television Commission*, 151 So.3d 283, 293–94 (Ala.2003), I explained my view that "standing" under Alabama law exists where the legislature has specifically provided a person with a cause of action (or here, an appeal) and where the interests of the parties are sufficiently "adverse":

> " '[S]tanding[ ] goes to whether a party has a sufficient "personal stake" in the outcome and whether there is sufficient "adverseness" that we can say there is a "case or controversy."
>
> > " ' "Standing goes to the existence of sufficient adversariness to satisfy both Article III case-or-controversy requirements and prudential concerns. In determining standing, the nature

of the injury asserted is relevant to determine the existence of the required personal stake and concrete adverseness."

" '13A *Federal Practice & Procedure* § 3531.6.

" 'Although the Alabama Constitution does not have the same Article III language as is found in the Federal Constitution, this Court has held that Section 139(a) of the Alabama Constitution limits the judicial power of our courts to "cases and controversies" and to "concrete controversies between adverse parties." As Justice Lyons has stated:

" ' "Standing is properly limited to circumstances stemming from lack of justiciability. A plaintiff must be so situated that he or she will bring the requisite adverseness to the proceeding. A plaintiff must also have a direct stake in the outcome so as to prevent litigation, initiated by an interested bystander with an agenda, having an adverse impact on those whose rights are directly implicated. See *Diamond v. Charles*, 476 U.S. 54, 61–62, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986).

" ' "Much of the precedent in the area of standing comes from federal courts subject to the case-or-controversy requirement of Article III of the United States Constitution. Of course, we do not have a case-or-controversy requirement in the Alabama Constitution of 1901, but our concepts of justiciability are not substantially dissimilar. See *Pharmacia Corp. v. Suggs*, 932 So.2d 95 (Ala.2005), where this Court, after noting the absence of a case-or-controversy requirement in our Constitution, observed:

" ' " 'We have construed Art. VI, § 139, Ala. Const. of 1901 (as amended by amend. no. 328, § 6.01, vesting the judicial power in the Unified Judicial System), to vest this Court "with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts." *Alabama Power Co. v. Citizens of Alabama*, 740 So.2d 371, 381 (Ala.1999). See also *Copeland v. Jefferson County*, 284 Ala. 558, 226 So.2d 385 (1969) (courts decide only concrete controversies between adverse parties).' "

" '*Hamm[v. Norfolk So. Ry.*], 52 So.3d [484] at 500 [(Ala.2010)] (Lyons, J., concurring specially).'

***460** "*Ex parte McKinney*, 87 So.3d 502, 513 (Ala.2011) (Murdock, J., dissenting). The focus of Alabama law regarding standing, generally, is on whether the parties have a 'sufficient personal stake in the outcome' in the case, whether their interests are sufficiently 'adverse,' and whether the plaintiff is 'so situated' that he or she will bring 'the requisite adverseness' to the proceeding.

"It is well settled that the legislature may provide for a cause of action and may supply subject-matter jurisdiction to the courts of this State. *Ex parte Seymour*, 946 So.2d 536, 538 (Ala.2006) ('The jurisdiction of Alabama courts is derived from the Alabama Constitution and the Alabama Code.')."

(Footnote omitted.)

The Act provides that, from "any final decision of [the Civil Service Board of the City of Florence ('the CSB')], any party, including the governing body of the city, feeling aggrieved at the decision of the [CSB], may appeal from any such decision to the Circuit Court of the County." Certainly Ezell was "feeling aggrieved" by the CSB's decision: the CSB declined to award him the promotion and, according to his complaint, the CSB failed to follow its own rules and the rules of the City of Florence Fire and Rescue Department in making its promotion decision. The legislature has provided Ezell the means to appeal this decision; I believe that he and the CSB have sufficient stakes in the outcome and have the requisite adverseness to provide Ezell "standing" in this case. To the extent that the main opinion holds that Ezell had no standing because he was unable to *prove* that the CSB failed to follow its rules or that his legal rights were otherwise impacted by the CSB's decision to promote someone other than him to the position of battalion chief, the main opinion appears to signal a retreat from this Court's recent caselaw distinguishing a lack of standing from the inability to prove the merits of one's case. See *Poiroux v. Rich*, 150 So.3d 1027

(Ala.2014); *Ex parte MERSCORP, Inc.*, 141 So.3d 984 (Ala.2013); and *Ex parte BAC Home Loans Servicing, LP*, 159 So.3d 31 (Ala.2013). I do not believe that the circuit court's judgment is void on the ground that Ezell lacked standing; therefore, I dissent.

BRYAN, Justice (dissenting).

I respectfully dissent. Act No. 1619, Ala. Acts 1971 ("the Act"), provides that any party "feeling aggrieved" by a decision of the Civil Service Board of the City of Florence ("the CSB") may appeal the decision to the circuit court. Citing the most recent edition of *Black's Law Dictionary*, the main opinion concludes that only a party whose legal rights have been adversely affected by such a decision may appeal under the Act; that is, the main opinion uses a "legal-right" test to determine whether William T. Ezell is "aggrieved" by the CSB's decision and, thus, whether he has standing to appeal. "Under this approach ... standing to challenge official action requires injury to a 'legal right' of the plaintiff." 13A Charles Alan Wright et al., *Federal Practice and Procedure* § 3531.1 (3d ed.2008). The legal-right test was prevalent in federal courts in the 1930s, but was eventually replaced by other tests. *See* 3 Richard J. Pierce, Jr., *Administrative Law Treatise* § 16.1–.3 (5th ed.2010). Under the newer prevailing standards, Ezell clearly would have the right to appeal the CSB's decision.

Professor Pierce explains why the legal-right test fell out of favor:

> "The legal right test was criticized on many grounds. See, e.g., ***461** Davis, The Liberalized Law of Standing, 37 U. Chi. L.Rev. 450 (1970). Perhaps the most telling criticism was based on its confusion of the issue of access to the courts with the issue of whether a party should prevail on the merits of a dispute. Under the legal right test, a court was required to determine whether the petitioner's claim had merit in order to decide whether the petitioner was entitled to have the merits of its case considered by the court. This circular reasoning process is unnecessary to the determination of the threshold question of access to judicial review, and it can force a court to determine the merits of a claim at such an early stage that the court does not focus enough attention on the merits. Thus, considering the merits of a party's claim as part of the process of determining whether the party has standing to assert that claim invites poorly reasoned summary judicial disposition of the merits of the claim."

Pierce, *supra*, § 16.2, at 1410. *See also* Wright, *supra*, § 3531.1 ("There were thus two ways in which the legal-right formula could be found defective. One was its capacity to limit standing; the other was its capacity to confuse substantive and remedial issues with standing."). By conflating the merits of Ezell's appeal with the standing to appeal, the main opinion illustrates one of the shortcomings of the legal-right test.

In 1940, the United States Supreme Court signaled a shift away from the legal-right test with *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869 (1940), a decision that views the term "aggrieved" much more broadly than does the main opinion here. Sanders Brothers owned a radio station, and its competitor applied to the FCC for a license to operate a radio station nearby. The FCC granted the license despite the contention of Sanders Brothers that a new station would harm Sanders Brothers economically. The relevant statute granted the right to judicial review of the FCC's licensing decision to any person "aggrieved or whose interests were adversely affected" by the decision. 309 U.S. at 476–77. The Supreme Court concluded that Sanders Brothers did not have a "right" to be free from economic harm caused by competition. However, despite the fact that the FCC's decision had not violated a legal right of Sanders Brothers, the Supreme Court held that Sanders Brothers had standing to challenge the decision under the express terms of the statute. In

sum, "while Sanders Brothers could not argue on the merits that grant of the license impermissibly caused it economic harm, it could use that economic harm as the basis for standing." Pierce, *supra*, § 16.2, at 1411. For the next 30 years, the Supreme Court applied this permissive-standing test when the relevant statute granted judicial review for anyone "adversely affected or aggrieved" (while applying the narrow legal-right test in the absence of such statutory language). *Id.* § 16.2, at 1412. Here, the Act grants the right to judicial review to any party "aggrieved" by the decision of the CSB. When the Act was passed in 1971, the word "aggrieved," at least in this context, had an established meaning broader than the meaning given to it by the main opinion.

In 1970, one year before the Act was passed, the United States Supreme Court continued the trend toward inclusiveness in standing with *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). That case concerned the scope of judicial review under the federal Administrative Procedure Act, which grants judicial review to "[a] person suffering legal wrong because of an agency action, or adversely affected or aggrieved by agency action within the meaning of a ***462** relevant statute." 5 U.S.C. § 702. In *Data Processing*, the Court stated a two-part test that built on the inclusive approach in *Sanders Brothers*. A plaintiff challenging an administrative decision must establish (1) an "injury in fact, economic or otherwise," caused by the decision and (2) that the interest sought to be protected is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." 397 U.S. at 152–53. The Court specifically rejected the legal-right, or "legal-interest" test, stating that that test goes to the merits, not to standing. *Id.* at 153. The Court concluded that the two-part test was satisfied in that case, noting that the first part was satisfied because the administrative decision would likely cause economic loss to the plaintiff's member firms. In short, the Court in *Data Processing* "unequivocally abandoned the legal right test," Pierce, *supra*, § 16.3, at 1412, but the test continues to find occasional use in some jurisdictions, Wright, *supra*, § 3531.1. *See also* 3 Charles H. Koch, Jr., *Administrative Law and Practice* § 14.16 (2d ed.1997) (stating that "[e]ven the most conservative view of standing in the federal system does not advocate the readoption of the 'legal interest' test" but noting that "some version" of the test may exist in some states).

Although we are not bound by the above cases, I find them persuasive in construing a statutory provision that allows, without further explanation, judicial review to one "aggrieved" by a decision of the CSB.[3] The legal-right test used by the main opinion merges concepts of standing with the merits and, for the most part, is a legal relic. Under the test stated in *Data Processing*, Ezell, as an "aggrieved" party, easily would have standing to challenge the CSB's decision. By not receiving the promotion, Ezell suffered an economic injury, which is an injury in fact. Certainly the interest sought to be protected by Ezell, which relates directly to a personnel decision made by the CSB, is arguably within the zone of interests to be protected or regulated by the Act.

3 I note that "[m]uch of the precedent in the area of standing comes from federal courts subject to the case-or-controversy requirement of Article III of the United States Constitution." *Hamm v. Norfolk S. Ry.*, 52 So.3d 484, 500 (Ala.2010) (Lyons, J., concurring specially). Insofar as the analysis in the federal cases cited above is grounded in the case-or-controversy requirement, I note that, although Alabama's Constitution does not have a case-or-controversy requirement, "our concepts of justiciability are not substantially dissimilar." *Id.*

Further, I note that we could have easily found that Ezell was "aggrieved" by simply referencing an earlier edition of *Black's Law Dictionary* instead of the most recent edition. When the Act was passed in 1971, the then current edition of *Black's* defined an "aggrieved party" in part as "[o]ne whose legal right is invaded by an act complained of, *or whose pecuniary interest is directly affected* by a decree or judgment." *Black's Law Dictionary* 87 (4th ed.1968) (emphasis added). Reference to a "pecuniary" interest (which was a factor in both *Sanders Brothers* and *Data Processing*) continued to be part of the definition of "aggrieved party" through the 9th edition of *Black's* published in 2009. In *Birmingham Racing Commission v. Alabama Thoroughbred Ass'n*, 775 So.2d 207 (Ala.Civ.App.1999), the Court of Civil used an earlier version of the definition in a situation similar to the present one. That court construed the undefined term

"person aggrieved" in a statute providing for judicial review of decisions by a racing commission. That court quoted the 6th edition of *Black's*, published in 1990, which ***463** provided, in part, that an aggrieved party is one "whose pecuniary interest is directly and adversely affected."

I conclude that Ezell has standing to challenge the CSB's decision. Thus, I would not dismiss the appeal; instead, I would address the merits.

All Citations

177 So.3d 454, 39 IER Cases 1271