Rel: March 24, 2023

Notice:

This case concerns the reallocation of a circuit-court judgeship from the 10th Judicial Circuit located in Jefferson County to the 23d Judicial Circuit located in Madison County. Tiara Young Hudson, an attorney residing in Jefferson County, had been a candidate for appointment and election to the Jefferson County judgeship before its reallocation to Madison County. In response to the reallocation of that judgeship, Hudson initiated an action in the Montgomery Circuit Court ("the trial court") seeking a judgment declaring that the act providing for the reallocation of judgeships, § 12-9A-1 et seq. ("the Act"), Ala. Code 1975, violated certain provisions of the Alabama Constitution of 1901. Hudson

in the criminal division of Alabama's 10th Judicial Circuit for a term beginning in January 2023. On June 1, 2022, then Place 14 circuit judge Clyde Jones retired, leaving a vacancy in the Place 14 judgeship. In response to that vacancy, on June 9, 2022, the Alabama Judicial Resources Allocation Commission ("the Commission") convened and, pursuant to powers granted it by the Act,[1] voted to reallocate the Place 14 judgeship from 10th Judicial Circuit, the circuit least in need of an additional circuit-court judgeship according to a formal judicial-caseload study, to the 23d Judicial Circuit, the circuit most in need of an additional judgeship according to the same study. On July 18, 2022, Governor Kay Ivey appointed Judge Patrick Tuten, then a district judge in Madison

[1]Section 12-9A-2(a), Ala. Code 1975, provides, in part:

> "Only in the event of a vacancy due to death, retirement, resignation, or removal from office of a district or circuit judge, the Judicial Resources Alloc13.5(l38)131pes'.01 Tc0.01 38.3(o)5[om]/

County, to fill the newly reallocated circuit-court judgeship, a position he assumed the next day.

On July 19, 2022, several hours after Tuten had taken the oath of office, Hudson filed a complaint in the trial court seeking declaratory and injunctive relief. The only three defendants named in the action were Governor Ivey, who has the authority to make appoir3.6(P( )]/e)2912/5(p)5.3(p

R. Civ. P., and because it failed to state a claim upon which relief could be granted pursuant to Rule 12(b)(6), Ala. R. Civ. P. On appeal, no presumption of correctness is given to a dismissal. "'We review de novo whether the trial court had subject-matter jurisdiction.'" Taylor v. Paradise Missionary Baptist Church, 242 So. 3d 979, 986 (Ala. 2017) (quoting Solomon v. Liberty Nat'l Life Ins. Co., 953 So. 2d 1211, 1218 (Ala. 2006)). "The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle her to relief." Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). Furthermore, this Court reviews questions of law de novo. See Ex parte Liberty Nat'l Life Ins. Co., 209 So. 3d 486, 489 (Ala. 2016).

Analysis

We first address whether the trial court correctly concluded that Hudson's exclusive remedy in this case was to petition for a writ of quo warranto. As this Court has explained,

> "[t]he writ of quo warranto is a common law writ used to determine whether one is properly qualified and eligible to hold a public office. The writ is utilized to test whether a person may lawfully hold office, unlike impeachment, which

> is the removal of an officeholder for inappropriate acts while lawfully holding office. See Sullivan v. State ex rel. Attorney General of Alabama, 472 So. 2d 970 (Ala. 1985); State ex rel. Chambers v. Bates, 233 Ala. 251, 171 So. 370 (1936). Sta(l)-. 33.52 1[illegible]

> "In Alabama, actions for the writ of quo warranto may be brought by private citizens pursuant to Ala. Code 1975, § 6-6-591. Rouse v. Wiley, 440 So. 2d 1023 (Ala. 1983). Section.61 T[illegible]

> "'(a) An action may be commenced in the name of the state against the party offending in.61 Tc-0.007 Tc0.011

> "Te issuance of a writ of quo warranto must serve the public good, although it may also incidentally benefit the person or persons that institute the action. Floyd v. State ex rel. [illegible].61 Tc-0.004 Tc-0.009 Tw7.9

> Hargrove, 277 Ala. 688, 174 So. 2d 328 (1965)."

Ex par3. Sierra Club, 674 So. 2d 54, 56-57 (Ala. 1995).

A declaratory judgment, on the other hand, serves the broader function of enabling par3ies to obtain a judicial determination of their legal rights related to an actual controversy between them in advance of an invasion of such rights and whether or not further relief is or could be

claimed. See, e.g., Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 224 (Ala. 2003) (stating that a purpose of Alabama's Declaratory Judgment Act, § 6-6-220 et seq., Ala. Code 1975, is "to enable parties between whom an actual controversy exists or those between whom litigation is inevitable to have the issues speedily determined when a speedy determination would prevent unnecessary injury caused by the delay of ordinary judicial proceedings").

> "'The Declaratory Judgment Act, §§ 6-6-220 through -232, Ala. Code 1975, "does not '"empower courts to ... give advisory opinions, however convenient it might be to have these questions decided for the government of future cases."'" Bruner v. Geneva County

Etowah Baptist Ass'n v. Entrekin, 45 So. 3d 1266, 1274-75 (Ala. 2010) (quoting Bedsole v. Goodloe, 912 So. 2d 508, 518 (Ala. 2005)).

Furthermore, this Court has recognized that a declaratory-judgment action cannot serve as a substitute for a quo warranto action. "[T]he exclusive remedy to determine whether a party is usurping a public office is a quo warranto action pursuant to § 6-6-591, Ala. Code

> person, who becomes a joint party with the State. The giving of security for the costs of the action is the condition upon which the relator is permitted to sue in the name of the State. Without such security, he usurps the authority of the State.
>
> "'....
>
> "'As indicated, it is the policy of the law of Alabama that [quo warranto] proceedings should be had in the name of the State, and instituted in the manner designated by statute.
>
> "'To sanction a private action inter partes with the same objective would operate a virtual repeal of the quo warranto statute.
>
> "'....
>
> "'The Declaratory Judgment Law was never intended to strike down the public policy involved.'

"Birmingham Bar Ass'n v. Phillips & Marsh, 239 Ala. 650, 657-58, 196 So. 725, 732 (1940) (citations omitted).

"Where a controversy presented in a declaratory-icto ac(g)2.5(e h)

Environmental Management ("ADEM"), challenging the qualifications,

> practice in such matters is not provided by statute'; it then notes that quo warranto proceedings 'or actions in the nature thereof' fall under this rule. Rule 81(a)(23). ... [T]he Alabama legislature provided for the use of the writ of quo warranto in § 6-6-591[, Ala. Code 1975]. In contrast to the writ of quo warranto, the declaratory judgment procedure is designed to settle a justiciable controversy where each side has standing to engage the power of the courts for a determination of that controversy. In this case, however, the only question at issue at this time is the legality of the appointments of [the three members]. The consequence of an action to test whether they are entitled to hold these offices requires that the petitioner have standing. [The environmental organization] would have standing to petition the trial court for a writ of quo warranto, on behalf of the State, to determine the legality of these appointments. It does not have standing to file a declaratory judgment action under these circumstances. Even under our Rules of Civil Procedure, a declaratory judgment action is not convertible to a quo warranto action."

674 So. 2d at 58.

In this case, Hudson argues that her action was not initiated with the direct purpose of removing Tuten from office but, rather, to challenge the constitutionality of the Act under which a judgeship was removed from the 10th Judicial Circuit. She contends that her action only "collaterally implicates Judge Tuten's authority to occupy an unlawfully created [judicial] seat." Hudson's brief at 17. We cannot overlook, however, the fact that Hudson's action named Tuten as a defendant and sought a judgment declaring that Tuten's appointment was "invalid and

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Shaw, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Mitchell, J., concurs specially, with opinion.

Parker, C.J., and Cook, J., recuse themselves.

MITCHELL, Justice (concurring specially).

and insinuate that the reallocation decision was motivated by racism reveals, at a minimum, questionable professional judgment.

Hudson's implicit accusations of racism are particularly puzzling given that her own filings use overtly biased language when referring to different racial groups. Those filings capitalize "Black" every time it appears but do not capitalize "white" anytime it appears, even when the two words appear side-by-side in the same sentence. See, e.g., Hudson's brief at 6, 8; C. 6, 9, 11, 12, 19, 21. The persistence of this pattern suggests that it is not an accident but instead a deliberate choice, the effect of which is to signal that certain races deserve heightened respect while others do not.

That signaling may be fashionable in certain circles,[4] but it has no place in our legal system. Our system of justice "is color-blind, and

[4]See, e.g., Explaining AP Style on Black and white, Associated Press (July 20, 2020), currently available at: www.apnews.com/article/9105661462 (explaining that "AP's style is now to capitalize Black in a racial, ethnic or cultural sense" but stating that "AP style will continue to lowercase the term white in racial, ethnic and cultural senses" because white people lack shared "history and culture"

favor or disfavor does nothing to advance our nation's shared commitment to "equality before the law." Id. at 562.

II.

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Yet repeated references to these latter characteristics are made throughout Hudson's filings in this case, for no apparent reason other than to make an ideological point. I caution attorneys practicing in our courts not to repeat these tactics in future cases.