SC-2022-0836

In the Supreme Court of Alabama

Tiara Young Hudson,
Appellant,

v.

Kay Ivey, in her official capacity as Governor of Alabama; Patrick Tuten in his official capacity as appointee to Madison County, Alabama's Twenty-Third Judicial Circuit; and Tom Parker in his official capacity as C

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SUMMARY OF THE ARGUMENT

Appellees' arguments against reversal fail for three reasons. *First*, Ms. Hudson does not challenge the circuit court's dismissal of Judge Tuten as a defendant in this matter. Rather, her remaining cause of action is a declaratory judgment action against Chief Justice Parker in his official capacity as the chair of the Judicial Resource Allocation

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Jefferson County judgeship and create a judgeship in Madison County. *C*_12. The Governor compounded this injury to Ms. Hudson when the Governor accepted and considered JRAC's nominations for the circuit court judgeship in the newly created seat in Madison County. *C*_7. The circuit court can redress Ms. Hudson's injury by issuing a judgment declaring that Ala. Code § 12-9A-2 unconstitutionally delegates legislative authority to JRAC.

Third, Ms. Hudson stated a plausible claim because JRAC "supersede[d]" an act of the Legislature, Ala. Code § 12-17-20, when it altered the number of judges in the circuit courts. *See Freeman v. City of Mobile*, 761 So. 2d 235, 236–37 (Ala. 1999). The power to "supersede" an act of the Legislature cannot be delegated.

ARGUMENT

I. Ms. Hudson's sole claim is for declaratory judgment that

Club, 674 So. 2d at 58.[2] Rather, this cause of action posits that the very law used to appoint Tuten is void for want of constitutional authority or support. Therefore, the circuit court had jurisdiction under Ala. Code § 6-6-222 to hear Ms. Hudson's claim and this Court should reverse the circuit court's conclusion to the contrary.

II. Ms. Hudson pled sufficient facts to establish her standing.

Ms. Hudson is not

actions constitute an injury that may be redressed by a declaration from the circuit court. *See* Ala. Code § 6-6-222.

A. Ms. Hudson's injury is traceable to the Appellees and can be redressed by a declaration.

A claim is traceable to a party if there is a "causal connection between the injury and the conduct complained of." *Ala. Alcoholic Beverage Control Bd. v. Henri-Duval Winery, L.L.C.*, 890 So. 2d 70, 74 (Ala. 2003) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Here, JRAC caused Ms. Hudson's injury when it eliminated the Jefferson County judgeship and created the Madison County judgeship pursuant to Ala. Code § 12-9A-2. *C*_7–12. Ms. Hudson applied to JCJC to fill the vacant Jefferson County judgeship through the process guaranteed by the Alabama Constitution. *C*_5; *see* Ala. Const. Jefferson Cnty. §§ 8–9. However, JCJC halted its obligation because of JRAC's actions. *C*_12.

The Governor compounded this unconstitutional injury by accepting and considering the nominations for the Madison County judgeship. *Id.* Thus, there is a sufficient causal connection between Appellees' conduct and Ms. Hudson's injury.

Appellees' argument that Ms. Hudson's injury is not redressable because JRAC and the Governor cannot "undo" their actions also fails. *See* R. Br. 23. A claim is redressable if there is "a likelihood that the injury will be 'redressed by a favorable decision.'" *Ala. Alcoholic Beverage Control Bd.*, 890 So. 2d at 74 (quoting *Lujan*, 504 U.S. at 560–61).

Here, Ms. Hudson requested a declaration that Ala. Code § 12-9A-2 is unconstitutional. *C*_14. This declaration would redress her injury by resolving the issue of whether JRAC's elimination of the Jefferson County judgeship pursuant to Ala. Code § 12-9A-2 violated Ala. Const. art. IV § 44. Prior acts are annulled if they are declared unconstitutional

permitting circuit judges from beginning court with prayer and putting up religious depictions of the Ten Commandments on the walls of the court. 711 So. 2d at 962.

This Court held that Chief Justice Hooper, as the "administrator" of the judicial system, did not have the power to stop these acts. *Id*. at 963. The Court dismissed the claim because the relief the plaintiffs sought could not be provided for. *Id*. at 964.

Here, by contrast, Ms. Hudson does not request that JRAC be required to do anything. Instead, she requests a declaration that Ala. Code § 12-9A-2, which authorized JRAC to eliminate the Jefferson County judgeship and create the Madison County judgeship, is unconstitutional. *See C*_14. Thus, the relief she seeks could be provided.

Appellees also rely on *Stamps v. Jefferson Cnty. Bd. of Educ.*, 642 So. 2d 941 (Ala. 1994); *see* R. Br. 22–24, but Ms. Hudson distinguished this case in her opening brief, *see* Br. 25. In *Stamps*, the plaintiffs sought a declaration that a county provision would subject them to prosecution under the Nursing Practices Act. 642 So. 2d at 941. This Court held that plaintiffs erred by not naming "the only entity expressly charged with enforcing" the Nursing Practices Act, *id.* at 944, because absent naming

that prosecuting entity as a defendant, a ruling would not "*terminate the uncertainty or controversy* giving rise to the proceeding," *Id*. at 944 (quoting Ala. Code § 6-6-229).

Here, Chief Justice Parker is a proper party because, as the chair of JRAC, he acted in an official capacity pursuant to Ala. Code § 12-9A-2 to eliminate the Jefferson County judgeship and create the Madison County judgeship. A declaration invalidating Ala. Code § 12-9A-2 would therefore "terminate the uncertainty" generating this proceeding. *See Stamps*, 642 So. 2d at 944.

B. JRAC does not need to be a named defendant for this Court to declare Ala. Code § 12-9A-2 unconstitutional.

Appellees argue that Ms. Hudson needed to name JRAC and not the Chief Justice as the chair of the commission because the chair has only one vote and thereby has no power to affect Ms. Hudson's rights. *See* R. Br. 22. This argument fails for two reasons. First, the Chief Justice's individual vote is irrelevant. It is his action as chair of JRAC to carry out the decision of the agency that curtailed Ms. Hudson's rights.

Second, the requested relief was to declare Ala. Code § 12-9A-2 unconstitutional. *C*_14. All that is required for a court to afford this relief

is a "justiciable controversy." *Ex parte State ex rel. James*, 711 So. 2d at 959. A controversy is "justiciable" when party A seeks to obtain judgment from a court against party B because of an act done to party A by party B, and both parties dispute the legality of the act. *See Reid v. City of Birmingham*, 150 So. 2d 735, 744 (1963).

As the chair of JRAC, the Chief Justice is an appropriate official representative of the agency and, therefore, an appropriate defendant against whom to issue a declaratory judgment. Ms. Hudson was impacted when JRAC eliminated the Jefferson County judgeship. *C*_7–12. Ms. Hudson and the Appellees both dispute whether Ala. Code § 12-9A-2 is unconstitutional. Thus, there is a "justiciable controversy" between the parties to this action. *Reid*, 150 So. 2d at 744.

C. Ms. Hudson had the right to amend her complaint to add JRAC.

Nevertheless, if this Court decides that Ms. Hudson needed to name the other members or JRAC itself as defendants, the circuit court still erred because it should have allowed Ms. Hudson to amend her complaint to add them. Under Rule 15, "a party may amend a pleading without leave of court, but subject to disallowance on the court's own motion or a

motion to strike of an adverse party, at any time more than forty-two (42) days before the first setting of the case for trial." Ala. R. Civ. P. 15.

In this instance, there has not been a "first setting of thh seC ETrcfor t rial" *Se* Ala. R. Civ. P. 15. Moreover, t his is th e first time th aAppellees

(Ala. 1993). All that the pleader must prove is that they may "possibly prevail." *Id*. Moreover, "a motion to dismiss is rarely appropriate in a declaratory-judgment action." *Harper v. Brown, Stagner, Richardson, Inc.*, 873 So. 2d 220, 223 (Ala. 2003).

Ms. Hudson alleged that Ala. Code § 12-9A-2 violates the Alabama Constitution because it delegates to JRAC the "power to repeal, amend, or otherwise supplant an act of the Legislature." *See Freeman*, 761 So. 2d at 236–37. Ms. Hudson and the Appellees agree that any delegation of this lawmaking power is impermissible under the Constitution. *See* R. Br. 32. Moreover, both parties agree that the question of whether there are "reasonably clear standards," *Folsom v. Wynn*, 631 So. 2d 890, 894 (Ala. 1993), does not apply when reviewing delegation of lawmaking power, *see* R. Br. 32.

"It is settled law that the Legislature may not constitutionally delegate its powers, whether the general powes. ln hetss. in e r

Ed. 1990)). Thus, delegation of lawmaking power is *per se* unconstitutional. *Folsom*, 631 So. 2d at 894.

Because the "reasonably clear standards" question does not apply here, and the court must review the complaint "most strongly in the

words, acting pursuant to Ala. Code § 12-9A-2, JRAC "supplant[ed] an act of the Legislature." *See Freeman,* 761 So. 2d at 236–37.

Appellees argue that *Freeman* is distinguishable because the challenged provision in *Freeman* "stands in stark contrast" to Ala. CodeFreeman

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the number of circuit or district judges . . . unless authorized by an act." Ala. Const. art. VI § 151(b). This requires an actual "act" to be passed by the Legislature.

Even if the Court were to agree with Appellees' argument that the total number of judges did not change, the circuit court still erred because Ala. Const. art. VI § 142(a) and Ala. Code § 12-17-20 must be read *in pari materia* with Ala. Const. art. VI § 151(b). The Legislature enacted Ala. Code § 12-17-20 to specify exactly how to allocate judgeships across judicial circuits. I001 Tw m 157o14

standard was "reasonably clear." Additionally, at this stage all Ms. Hudson is required to prove is that it is "possible" that this standard is not "reasonabl[e]." Ms. Hudson met this low standard.

Contrary to Appellees' reasoning, the delegation standards discussed in *Monroe* are distinguishable. *See* R. Br. 30–31. In *Monroe*, the standards set a ceiling on how much power the party could use and how the party could use it. 762 So. 2d at 833. JRAC, however, has no limit on what it can consider when eliminating or creating judgeships.

In *Monroe,* retailers challenged a Department of

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*Motion for admission
pro hac vice to be filed.

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing Brief with the Clerk of Court using AlaFile, which will send notification of such filing to all counsel of record.

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Dated: November 1, 2022

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