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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Ex parte Washington County Students First et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Krista Wilson et al.

v.

Tarim Soner et al.)

(Washington Circuit Court, CV-19-900064)

HANSON, Judge.

Certain named defendants in a civil action brought in the Washington Circuit Court, including Washington County Students

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First ("WCSF"), a nonprofit corporation, and several persons alleged to be directors of WCSF ("the directors"),¹ have petitioned for a writ of mandamus directing that court to vacate its order denying a motion to dismiss that action and to enter an order dismissing the action.² For the reasons stated herein, we grant the petition and issue the writ.

The petition and the exhibits appended thereto reveal the following pertinent facts. WCSF was incorporated in March 2018 for the purpose of seeking regulatory approval of the establishment of a public charter school in Washington County, to be called "Woodland Preparatory School" ("the planned school"). WCSF thereafter submitted an application to the Alabama Public Charter School Commission ("the Commission"), a governmental agency established by the legislature pursuant to Act No. 2015-3, Ala. Acts 2015, known as the "Alabama School Choice and Student Opportunity Act" ("the Act") and codified at Ala. Code 1975, § 16-6F-1 et seq.; according to the Act, the Commission is "an independent state entity"

¹Those persons are Thad Becton, Tiffany Dumas, Paul (Gene) Brown, Leo Leddon, Nancy Alston, Jessica Ross, and Jacob Snow.

²The petition, although originally filed in our supreme court, was transferred to this court for decision.

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having a mission "to authorize high quality public charter schools" (Ala. Code 1975, § 16-6F-6(c)(1) and (c)(2)). The Commission approved the application submitted by WCSF in May 2018, permitting the planned school to open in August 2019; however, in June 2019, the Commission granted a request to delay the opening date of the planned school until August 2020.³ As of the date of this decision, there is considerable doubt that the planned school will open, and the Commission has given notice of its intent to initiate charter-revocation proceedings as to the planned school.

In August 2019, the Washington County Education Association ("WCEA"), along with its president⁴ and two other employees⁵ of that county's board of education (hereinafter referred to collectively as "the plaintiffs"), initiated the action from which this petition arises, naming as defendants

³Although the complaint in the underlying civil action alleges that only five of six participating members of the Commission voted to approve the requested delay, our supreme court has held that a majority of a six-member quorum of the Commission can properly act on behalf of the Commission. See generally LEAD Educ. Found. v. Alabama Educ. Ass'n, 290 So. 3d 778, 788-91 (Ala. 2019).

⁴Krista Wilson is the president of WCEA.

⁵Those employees are Betty Brackin and Summer Beech.

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WCSF, the directors, and two other persons: Soner Tarim, an individual who is alleged to have a financial interest in the planned school, and Unity School Services, LLC, ("the LLC") a Texas-based limited-liability company that is represented by Tarim.⁶ In their complaint, the plaintiffs alleged that the defendants' fraudulent misrepresentations regarding Tarim's current and future roles at, and community support for, the planned school induced the Commission to approve the charter-school application submitted by WCSF; that the planned school is "not authorized in compliance with ... charter-school law"; and that the defendants have violated Ala. Code 1975, § 16-6F-5(a)(1), which states that "[a] public charter school shall be open to any student residing in the state,"⁷ by advertising the planned school in Mississippi media outlets. In response to the complaint, the petitioners filed a motion to dismiss in

⁶Tarim and the LLC have not themselves petitioned for mandamus relief; however, they admit the allegations of the mandamus petition and assert that the writ is due to be granted.

⁷Although consideration of the matter is not necessary to our resolution of the issues presented by the mandamus petition, it should be noted that the statute invoked by the plaintiffs, which declares Alabama charter schools to be open to any resident students, does not directly address the status of nonresident students.

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which they asserted, among other things, that the plaintiffs had not exhausted remedies afforded to them under the Alabama Administrative Procedure Act ("the AAPA"), Ala. Code 1975, § 41-22-1 et seq., and, thus, could not seek judicial review of the Commission's approval decision in a collateral action; that the plaintiffs lacked standing; and that the plaintiffs had failed to join the Commission or the Alabama State Department of Education, whom the petitioners labeled as indispensable parties, as defendants. After a hearing, the circuit court entered an order on February 12, 2020, denying the motion to dismiss. The petitioners sought mandamus review of that order in a timely manner by filing their petition on March 25, 2020; see Rule 21(a)(3), Ala. R. App. P.⁸

Correctly noting that the writ of mandamus will issue to review the denial of a motion to dismiss that raises questions of failure to exhaust administrative remedies, see Ex parte Alabama Department of Mental Health, 207 So. 3d 743, 750 (Ala.

⁸The petitioners have also filed a motion in the circuit court requesting that that court revisit its nonfinal order denying the motion to dismiss; however, that filing had no effect on the timeliness or the ripeness of the instant mandamus petition, which is directed to the February 12, 2020, order. See generally Ex parte Troutman Sanders, LLP, 866 So. 2d 547, 549-50 (Ala. 2003).

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Civ. App. 2016), the petitioners reiterate their contention that the plaintiffs have not exhausted administrative remedies available to them under the AAPA as to the Commission's decision to approve WCSF's application, citing this court's opinion in Ex parte Alabama Public Charter School Commission, 256 So. 3d 98 (Ala. Civ. App. 2018). In that case, this court, in considering the timeliness of a local school board's efforts to secure judicial review of an order of the Commission reversing that school board's denial of a charter-school application, concluded that, although the Act did not expressly provide for judicial review of Commission orders, any gap left by the Act in that regard was filled by the AAPA:

"[T]he [AAPA] sets forth 'a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public,' Ala. Code 1975, § 41-22-2(a). Under the AAPA, administrative proceedings pertinent to 'the grant, denial, revocation, suspension, or renewal of' a 'license' -- which term encompasses 'any agency franchise, permit, certificate, approval, registration, charter, or similar form of permission required by law,' Ala. Code 1975, § 41-22-3(4) -- are governed by the provisions of the AAPA governing 'contested cases.' See Ala. Code 1975, § 41-22-19(a). Persons who are 'aggrieved by a final decision in a contested case' are entitled to judicial review under the auspices of the AAPA. Ala. Code 1975, § 41-22-20(a)."

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Ex parte Alabama Pub. Charter Sch. Comm'n, 256 So. 3d at 100; see also id. at 102 (holding that "[t]he circuit court ... correctly determined that the AAPA applied to" the civil action brought in that court by the local school board challenging the Commission's order).

The plaintiffs, in their response to the mandamus petition, seek to parry the thrust of the petitioners' arguments regarding the applicability of the AAPA to the contentions in the underlying action, claiming that the underlying action does not seek to impugn the correctness of the Commission's decision but, instead, posits that the defendants "committed fraud during the charter application process." The plaintiffs fail to recognize, however, that such a contention amounts to a collateral attack on the Commission's decision to approve the charter-school application submitted by WCSF stemming from allegations of intrinsically fraudulent conduct⁹ on the part of WCSF or other

⁹Intrinsic fraud necessarily includes, for example, perjury of a party to a case or controversy, such as the false statements allegedly made by the defendants to the Commission. See generally Greathouse v. Alfa Fin. Corp., 732 So. 2d 1013, 1016-17 (Ala. Civ. App. 1999) (allegedly false statements contained in affidavit filed in collections action amounted to intrinsic fraud rather than "fraud on the court").

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parties who sought, or stood to benefit from, that approval. This court spoke to the impropriety of such attacks in Bishop State Community College v. Williams, 4 So. 3d 1152 (Ala. Civ. App. 2008):

"The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial acts of public, executive, or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers."

Limbaugh v. Board of Managers, City of Birmingham Ret. & Relief Sys., 628 So. 2d 623, 624 (Ala. Civ. App. 1993) (quoting Mahaffey v. Board of Managers, 515 So. 2d 1261, 1262 (Ala. Civ. App. 1987)). See also Ex parte Buffalo Rock Co., 941 So. 2d 273, 278 (Ala. 2006).

"Judicial records import absolute verity and are not subject to contradiction in collateral proceedings by extraneous evidence.

"The same general rule pertains to a judgment rendered by an administrative tribunal invested with judicial power.'

Alabama Elec. Coop., Inc. v. Alabama Power Co., 251 Ala. 190, 197, 36 So. 2d 523, 529-30 (1948) (citations omitted).

"[W]hen the law has vested a special board, commission or tribunal with authority to hear and determine matters arising in the course of its duties, its decisions on those matters are conclusive, and like the judgments of courts, cannot

be collaterally attacked in another proceeding.' City of Lubbock v. Corbin, 942 S.W.2d 14, 22 (Tex. App. 1996). The decision of an administrative agency acting in a quasi-judicial capacity is not subject to collateral attack if the agency had jurisdiction over the parties and the subject matter. In re Applications T-851 and T-852, 268 Neb. 620, 686 N.W.2d 360 (2004); Bryant v. Arkansas Pub. Serv. Comm'n, 54 Ark. App. 157, 924 S.W.2d 472 (1996)."

4 So. 3d at 1158-59.

As the petitioners correctly note, the AAPA provides for timely intervention by persons in contested cases pending before administrative agencies when a person "has an individual interest in the outcome of the case as distinguished from a public interest and the representation of the interest of the [person] is inadequate." Ala. Code 1975, § 41-22-14. In response to the petitioners' contention that the plaintiffs should have sought intervention before the Commission while it was considering the charter-school application of WCSF in order to present their fraud claims, the plaintiffs assert that the fraudulent conduct that they have alleged in the underlying action was neither known to them nor capable of being known at the time the Commission considered and acted upon the application. However, even assuming the correctness of the plaintiffs' position, the

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plaintiffs nonetheless had, under the Act and the AAPA, an administrative remedy by way of initiating a new contested case before the Commission seeking the revocation of the approval of WCSF's application. See Ala. Code 1975, § 41-22-19(a) (stating that the AAPA's "provisions ... concerning contested cases shall apply to," among other things, "the ... revocation ... of a license"); see also Ala. Code 1975, §§ 16-6F-6(f)(7) and 16-6F-(p)(6) (indicating authorizers' powers to revoke charter contracts). Notably, the Act specifies that the Commission, as a charter-school authorizer, may act to revoke a charter contract "at any time" if the Commission determines, among other things, that a public charter school has "failed to comply with" the Act, has "[c]ommit[ted] a material and substantial violation of any of the terms, conditions, standards, or procedures required under [the Act]," has "[f]ail[ed] to meet or make sufficient progress toward the performance expectations set forth in the charter contract," or has "[s]ubstantially violate[d] any material provision of law from which the public charter school was not exempted." Ala. Code 1975, § 16-6F-8(c)(7). Indeed, as we have noted, the Commission has given notice that it will, in

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the near future, consider revocation of the planned school's charter contract.

The materials before this court, the pertinent portions of which include the complaint, the motion to dismiss, the circuit court's order denying the motion to dismiss, and the Commission's notice regarding the potential revocation of the planned school's charter contract, do not reveal that the Commission's approval of the application submitted by WCSF was void or that the plaintiffs ever undertook any efforts before the Commission, either before or after the Commission's granting of the application presented by WCSF, to bring before the Commission the matters of the fraudulent or otherwise improper conduct in which the defendants have been alleged to have engaged in connection with the planned school. Instead, the plaintiffs have sought to mount a collateral attack on the Commission's determinations with respect to that application by seeking relief in a civil fraud action that, under Alabama law, cannot properly be maintained. In our view, the former United States Claims Court aptly summarized the principle that the exhaustion-of-remedies doctrine here furthers: "Allegations of fraud before a deliberative body should be

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brought before the body which was the victim of the alleged fraud." Wyatt v. United States, 23 Cl. Ct. 314, 319 (1991) (citing Rocovich v. United States, 933 F.2d 991, 995 n.6 (Fed. Cir. 1991)).

Based upon the foregoing facts and authorities, the order of the Washington Circuit Court denying the motion to dismiss filed by the petitioners is due to be vacated on the first ground presented by the petition; we do not reach the question whether that result might also be compelled on the basis of the additional grounds asserted by the petitioners. The circuit court is directed to vacate its order, and to dismiss the plaintiffs' action, forthwith.

PETITION GRANTED; WRIT ISSUED.

Thompson, P.J., and Moore, Donaldson, and Edwards, JJ.,
concur.