Rel: March 8, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170706

LEAD Education Foundation et al.

v.

Alabama Education Association et al.

1170724

Mac Buttram et al.

v.

Alabama Education Association et al.

1170737

Ed Richardson, Interim State Superintendent of Education

v.

Alabama Education Association et al.

Appeals from Montgomery Circuit Court
(CV-18-107)

BOLIN, Justice.

Alabama Public Charter School Commission members Mac Buttram, Charles Jackson, Lisa Williams, Melinda McLendon, Terri Tomlinson, Tommy Ledbetter, Melissa Kay McInnis, Chad Fincher, Henry Nelson, and Ibrahim Lee (hereinafter referred to collectively as "the Commission members"); LEAD Education Foundation ("LEAD"); and Ed Richardson, former interim State Superintendent of Education[1] (hereinafter referred to collectively as "the defendants"), separately appeal from a summary judgment entered in favor of the Alabama Education Association ("the AEA"), Vicky Holloway, and Felicia Fleming (hereinafter referred to collectively as "the plaintiffs").

[1]Shortly after these appeals were filed, Eric Mackey became the State Superintendent of Education. Mackey has been automatically substituted as an appellant. See Rule 43(b), Ala. R. App. P.

The defendants also challenge on appeal the circuit court's denial of their motions to dismiss and/or for a summary judgment.

I. Facts

In December 2017, LEAD submitted an application to the Alabama Public Charter School Commission ("the Commission"), established pursuant to the Alabama School Choice and Student Opportunity Act, § 16-6F-1 et seq., Ala. Code 1975 ("the ASCSOA"), seeking to open a public charter school beginning in the 2018-2019 school year.[2] During a two-month evaluation period, the Commission investigated LEAD's capability to open and to operate as a public charter school. The Commission contracted with the National Association of Charter School Authorizers ("NACSA"), which provided a three-member panel to evaluate and to make recommendations on LEAD's application. In a report issued on January 19, 2018, NACSA's panel noted some areas that needed improvement and requested additional information. The NACSA report, however, also provided that

[2]Because the Montgomery County Public School System did not become an "authorizer" pursuant to the ASCSOA until January 16, 2018, LEAD's application was filed directly with the Commission under and in accordance with § 16-6F-6, Ala. Code 1975.

"[t]he authority and responsibility to decide whether to approve or deny each application rests with the members of the Commission." In the weeks following the panel's report, LEAD provided the requested information and made other improvements as suggested by NACSA.

On February 12, 2018, the Commission conducted an open meeting, with seven out of nine members present.[3] At the meeting, LEAD presented testimony and documentary evidence and answered the Commission's questions regarding matters related to the NACSA report and other concerns. Neither Holloway, Fleming, nor an AEA representative was present at the meeting, and no private citizens voiced any opposition to LEAD's application. At the conclusion of the meeting, the Commission

[3]At some point before LEAD'S application was filed, the Commission consisted of 10 members. However, the 10th member resigned, leaving a position vacant. Because the lieutenant governor recommends a replacement in the event of a vacancy on the Commission and the office of lieutenant governor was vacant at the time, the position has remained vacant. Thus, the Commission consisted of nine members at the time of the February 12 meeting. The plaintiffs argue that the Commission should have also included an 11th member appointed by the school board, but no such member was present at the meeting. That argument is addressed infra.

voted 5-1 to approve LEAD's application.[4] On March 15, 2018, the Commission adopted a resolution approving LEAD's application.

II. Procedural History

On March 5, 2018, the plaintiffs filed a complaint seeking declaratory and injunctive relief against the Commission members; (2) Ed Richardson, then the interim State Superintendent of Education; and (3) LEAD, a nonprofit organization formed to establish a public charter school in Montgomery County. The AEA consists of school teachers, principals, administrative personnel, and other employees. Holloway and Fleming are citizens and taxpayers of both Montgomery County and the State of Alabama and are employees of the Montgomery County Board of Education.

The five-count complaint sought, among other things, to invalidate the Commission's 5-1 decision at its February 12, 2018, meeting to approve LEAD's application to open a public charter school for the 2018-2019 school year. The plaintiffs set forth the following claims:

[4]Citing a conflict, the seventh member declined to vote at the meeting.

> Count I: The Commission violated the majority-vote requirement of the ASCSOA. Specifically, the plaintiffs asserted that a majority vote of the body of the Commission comprised of a total of 11 members was necessary for the passage of an action authorizing the charter school as required by § 16-6F-6(c)(3) and (9), Ala. Code 1975.
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> Count II: The Commission violated the Open Meetings Act, § 36-25A-1 et seq., Ala. Code 1975, by failing to adhere to the Commission's adopted parliamentary procedures, which the plaintiffs alleged required a vote by a "majority of the entire commission" pursuant to §§ 36-25A-5(a) and -9, Ala. Code 1975.
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> Count III: The Commission violated the ASCSOA by failing to seat a local school-board member on the Commission as required by § 16-6F-6(c)(4), Ala. Code 1975.
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> Count IV: The Commission violated the ASCSOA by failing to fulfill its ministerial duty to reject the application by "declining to approve weak or inadequate charter applications" as set forth in § 16-6F-6(p)(3), Ala. Code 1975. Specifically, the plaintiffs argued that, if the Commission's 5-1 vote was found to have legal effect, it was nonetheless "arbitrary and capricious" for the Commission to approve LEAD's application, which was contrary to the recommendation of NACSA.
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> Count V: The plaintiffs argued that Richardson and anyone in his employ or acting in concert with him should be prevented from disbursing any funds or property to LEAD Academy because, they said, it is not a lawfully authorized charter school.

In their complaint, the plaintiffs also sought the following relief:

"(a) ... a declaratory judgment and injunction declaring that the application of the LEAD Education Foundation was not approved by the purported 5-1 vote at the February [12], 2018, meeting of the Commission;

"(b) ... a declaratory judgment and injunction forbidding the Commission, and all those acting in conjunction with [it], from approving future applications with less than six affirmative votes, a majority of the entire [C]ommission;

"(c) ... a judgment declaring that approval of the LEAD Education Foundation application was a per se violation of the ASCSOA due to its being weak and inadequate both as found by the Commission's own reviewer, a national expert, and as a matter of law and prohibiting the Commission from attempting to adopt the same application without substantial modifications in the future;

"(d) ... a judgment declaring that the Commission was not duly constituted when evaluating the LEAD Education Foundation application, making all actions on the application after its receipt void ab initio;

"(e) ... writs of mandamus and prohibition, as well as an injunction to Defendant Richardson from disbursing any public funds or transferring any public property to LEAD Academy;

"(f) ... injunctions, as well as writs of mandamus and prohibition, to prevent LEAD Education Foundation and all other defendants from taking any further action as though LEAD Academy were a duly-authorized charter school, including, but not limited to, advertising as an authorized charter school, enrolling students, or seeking to enforce any right to preferred purchase of real property held by a public school system; and

> "(g) ... provide such other relief as the [circuit court] deems appropriate."

The plaintiffs attached evidentiary materials, including online articles from a local newspaper and television station and NACSA's "Charter School Application Recommendation Report 2018."

Following a March 7, 2018, hearing on a motion for a temporary restraining order, Judge J.R. Gaines entered an order setting motion deadlines and a hearing for April 30. The order also limited LEAD from participating in certain activities related to formation of LEAD Academy pending the court's ruling following the April 30 hearing. Specifically, the circuit court ordered:

> "LEAD Education Foundation may advertise, recruit and solicit applications for filling any and all staff positions for LEAD Academy; provided, however, that no contracts of employment for LEAD Academy may be entered into, and no public funds obligated or expended for these activities ....
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> "... LEAD Education Foundation may advertise, solicit applications, and register students for LEAD Academy; provided, however, that no students may be enrolled in LEAD Academy, and no public funds obligated or expended for these activities ....
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> "... LEAD Education Foundation is in no way prohibited from purchasing, negotiating, or otherwise contracting with any private party or private entity for LEAD Academy's facilities;

> provided, however, that no public building may be purchased, or public funds obligated or expended for these activities ...."

LEAD filed a motion to dismiss or, in the alternative, for a summary judgment, arguing that the plaintiffs' ASCSOA and Open Meetings Act claims did not rest on a legal basis, that the plaintiffs had failed to demonstrate the necessary elements for the declaratory and injunctive relief they sought, and that their pleadings and evidentiary materials were insufficient to support their claims. Richardson filed a motion to dismiss, primarily addressing issues of immunity and standing. The Commission members filed a motion to dismiss or, in the alternative, for a summary judgment, contending that each of the plaintiffs' claims failed as a matter of law and that there was no genuine issue of material fact. In addition, the Commission members filed a separate motion to dismiss on the basis of immunity. The plaintiffs filed responses, in which they addressed immunity and the merits of the defendants' argument that the ASCSOA requires no more than a majority of a quorum for voting purposes.

The plaintiffs also filed a motion for a summary judgment, contending that there was no genuine issue of

material fact as to counts I, II, III, and V.[5] The defendants filed responses to the plaintiffs' motion for a summary judgment, as well as evidentiary materials.[6]

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[5]In their brief in support of their motion for a summary judgment, the plaintiffs did not specifically address the merits of count IV. The plaintiffs did, however, assert that,

> "[b]ecause there was no legally-valid vote to approve the application of LEAD Academy, discussion of the remaining claims in Plaintiffs' Complaint is pretermitted as moot. However, Plaintiff is prepared to engage in the required discovery to present those claims on the merits, should the Court decline to award summary judgment."

In their conclusion, the plaintiffs also stated:

> "Plaintiffs fully stand behind their claims in Count IV of their Complaint that, even if LEAD Academy had been approved in a procedurally correct manner, its application was woefully deficient, meaning the Commission had a ministerial duty to deny it. However, given the admissions of the Defendants as to the remaining counts, exploration of that topic is unnecessary."

[6]The evidentiary materials provided by the defendants included the affidavit of Charlotte Meadows, LEAD's founder and president; the bylaws of the Commission; responses to interrogatories from Sherry Tucker, president of the AEA board of directors, Holloway, and Fleming; the affidavit of Logan Searcy, an education administrator for the Alabama Department of Education; the minutes of the February 12, 2018, meeting of the Commission; NACSA's Charter School Application Recommendation Report issued on January 19, 2018; the March 15, 2018, resolution of the Commission; and the affidavit of Mac Buttram.

On April 12, 2018, the plaintiffs filed a motion to stay discovery, requesting that the court stay depositions until it ruled on the motions for a summary judgment, which the defendants opposed. On April 24, 2018, the circuit court conducted a hearing on the motion to stay. On April 30, 2018, the court conducted oral argument on all other pending motions. On May 1, 2018, the circuit court granted the plaintiffs' motion for a summary judgment as to count I of the complaint. Specifically, the circuit court specifically found that the individual plaintiffs had taxpayer standing to challenge the proposed expenditure because, "if Plaintiffs are right on the merits of the Commission's action regarding LEAD's application, then it would be unlawful for LEAD to receive public funds." In addition, the court found that the number of votes was insufficient to approve the application, specifically interpreting § 16-6F-6(c)(3), Ala. Code 1975, as requiring a majority vote of the entire Commission. The circuit court concluded that, because it was entering a summary judgment in favor of the plaintiffs with respect to count I, the remaining counts were dismissed as moot. The

circuit court also denied all the defendants' dispositive motions.

On May 2, 2018, the defendants filed their separate notices of appeal. This Court consolidated the appeals for the purpose of writing one opinion.[7]

III. Discussion

A. Mootness Issue

The plaintiffs assert that the issues before this Court have become moot because LEAD did not execute the charter contract for the 2018-2019 school year within 60 days after

[7]Section 12-3-10, Ala. Code 1975, confers exclusive jurisdiction of all appeals from administrative agencies other than the Alabama Public Service Commission to the Alabama Court of Civil Appeals. An appeal of a circuit court's review of an administrative decision is considered to be an appeal of that decision for purposes of § 12-3-10. See Kimberly-Clark Corp. v. Eagerton, 433 So. 2d 452, 454 (Ala. 1983) (holding that "§ 12-3-10 in referring to 'appeals from administrative agencies,' was intended to grant to the Court of Civil Appeals exclusive jurisdiction of all appeals involving the enforcement of, or challenging, the rules, regulations, orders, actions, or decisions of administrative agencies"). Consequently, on January 29, 2019, this Court transferred the consolidated appeals to the Court of Civil Appeals pursuant to § 12-1-4, Ala. Code 1975. Because of the need for an expeditious resolution of the substantive issues by this Court, the consolidated appeals were properly transferred to this Court pursuant to § 12-3-15, Ala. Code 1975.

the Commission entered its decision.[8] The defendants' explanation for the delay, however, is the plaintiffs' filing of this action against LEAD. The defendants acknowledge that the original contract-execution deadline, which they calculate as May 14, 2018, has passed; they argue, however, that an order entered by the circuit court on May 8, 2018, tolled the contract-execution deadline pending the outcome of the appeals

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[8]LEAD also argues the plaintiffs failed to invoke this Court's appellate jurisdiction by exhausting their administrative remedies in compliance with the Alabama Administrative Procedure Act, § 41-22-1 et seq., Ala. Code 1975. Because the primary question raised by the plaintiffs is one of "interpretation of a statute," we conclude that the statutory-interpretation claims meet a recognized exception to the doctrine of the exhaustion of administrative remedies. In City of Graysville v. Glenn, 46 So. 3d 925, 929 (Ala. 2010), we identified the following exceptions to the exhaustion-of-remedies doctrine:

> "'[W]hen (1) the question raised is one of interpretation of a statute, (2) the action raises only questions of law and not matters requiring administrative discretion or an administrative finding of fact, (3) the exhaustion of administrative remedies would be futile and/or the available remedy is inadequate, or (4) where there is the threat of irreparable injury.'
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> "Ex parte Lake Forest Prop. Owners' Ass'n, 603 So. 2d 1045, 1046-47 (Ala. 1992). ..."

(Emphasis added.)

and that therefore, the issues before the Court are ripe for review.

> "'This Court has often said that, as a general rule, it will not decide questions after a decision has become useless or moot.' Arrington v. State ex rel. Parsons, 422 So. 2d 759, 760 (Ala. 1982).
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> > "'"'A moot case or question is a case or question in or on which there is no real controversy; a case which seeks to determine an abstract question which does not rest on existing facts or rights, or involve conflicting rights so far as plaintiff is concerned.'" Case v. Alabama State Bar, 939 So. 2d 881, 884 (Ala. 2006) (quoting American Fed'n of State, County & Mun. Employees v. Dawkins, 268 Ala. 13, 18, 104 So. 2d 827, 830-31 (1958)). "The test for mootness is commonly stated as whether the court's action on the merits would affect the rights of the parties." Crawford v. State, 153 S.W.3d 497, 501 (Tex. App. 2004) (citing VE Corp. v. Ernst & Young, 860 S.W.2d 83, 84 (Tex. 1993)). "A case becomes moot if at any stage there ceases to be an actual controversy between the parties." Id. (emphasis added) (citing National Collegiate Athletic Ass'n v. Jones, 1 S.W.3d 83, 86 (Tex. 1999)).
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> > "'..."A moot case lacks justiciability." Crawford, 153 S.W.3d at 501. Thus, "[a]n action that originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised in it have become moot by subsequent acts or events." Case, 939 So. 2d at 884 (citing Employees of Montgomery County Sheriff's Dep't v. Marshall, 893 So. 2d 326, 330 (Ala. 2004)).'

> "Chapman v. Gooden, 974 So. 2d 972, 983-84 (Ala. 2007)."

Ex parte Merrill, [Ms. 1170216, May 18, 2018] ___ So. 3d ___, ___ (Ala. 2018).

The record indicates that, during oral argument on the motion for a temporary restraining order on March 7, 2018, the court entered an oral order enjoining LEAD from hiring employees, enrolling students, or obligating state funds. On March 26, 2018, the court issued a written order enjoining the defendants from the same activities. Thus, at that time, the circuit court's order effectively prevented LEAD from taking steps to execute the charter contract within 60 days of approval as is required by § 16-6F-7(e)(1), Ala. Code 1975.[9] The injunction remained in place until the circuit court entered its May 1, 2018, order holding that the Commission's decision to approve LEAD's application was invalid. Thereafter, on May 8, 2018, LEAD filed a motion to stay, specifically requesting that the circuit court suspend or toll

[9]Section 16-6F-7(e)(1) provides:

> "Within 60 days of approval of a charter application, the authorizer and the governing board of the public charter school shall execute a charter contract ...."

the 60-day deadline to execute the charter contract pending the outcome of its appeal before the Alabama Supreme Court. The circuit court granted the motion.[10]

Section § 16-6F-7(e)(1) does not include a specific provision allowing for an extension of the 60-day deadline. Citing Ex parte VEL, LLC, 225 So. 3d 591 (Ala. 2016), the plaintiffs argue that LEAD had no equitable basis on which to toll the statutory deadline because, they say, there are no extraordinary circumstances that prevented LEAD from executing the contract within the 60-day period. In VEL, this Court discussed the concept of equitable tolling as applied to the statutory period for filing an amendment to a complaint. Although LEAD's circumstances involve the tolling of a statutory deadline set forth in the ASCSOA and VEL concerns

[10]The general rule is that, with respect to matters related to an administrative decision, a circuit court may grant a stay by issuing an order that specifies the conditions upon which the stay is granted. See § 41-22-20(c), Ala. Code 1975. In addition, Rule 62(c), Ala. R. Civ. P., and Rule 8, Ala. R. App. P., permit the court to stay the effects of an injunction while a case is pending on appeal. Consequently, the circuit court entered an order staying the effects of its May 1, 2018, order, which enjoined LEAD from performing actions in preparation for executing a contract and preparing for the school year.

the statutory period for filing a pleading in court, the reasoning is analogous:

> "In Weaver v. Firestone, 155 So. 3d 952, 957-58 (Ala. 2013), this Court discussed the equitable-tolling doctrine:
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> > "'"[A] litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way" as to the filing of his action. Pace v. DiGuglielmo, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005). In Ex parte Ward, 46 So. 3d 888 (Ala. 2007), this Court "[held] that equitable tolling is available in extraordinary circumstances that are beyond the petitioner's control and that are unavoidable even with the exercise of diligence." 46 So. 3d at 897. The Court noted that in determining whether equitable tolling is applicable, consideration must be given as "'to whether principles of "equity would make the rigid application of a limitation period unfair" and whether the petitioner has "exercised reasonable diligence in investigating and bringing [the] claims."'" Id. (quoting Fahy v. Horn, 240 F.3d 239, 245 (3d Cir. 2001), quoting in turn Miller v. New Jersey Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998)); see also Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990) ("We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into

allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." (footnotes omitted)). This Court acknowledged in Ward that "'the threshold necessary to trigger equitable tolling is very high, lest the exceptions swallow the rule.' United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000)." 46 So. 3d at 897. The plaintiff

> "'"bears the burden of demonstrating ... that there are ... extraordinary circumstances justifying the application of the doctrine of equitable tolling. See Spitsyn v. Moore, 345 F.3d [796,] 799 [(9th Cir. 2003)] (holding that the burden is on the petitioner for the writ of habeas corpus to show that the exclusion applies and that the 'extraordinary circumstances' alleged, rather than a lack of diligence on his part, were the proximate cause of the untimeliness); Drew v. Department of Corr., 297 F.3d 1278, 1286 (11th Cir. 2002) ('The burden of establishing entitlement to this extraordinary remedy plainly rests with the petitioner.')."

"'Ward, 46 So. 3d at 897. It is well settled that whether equitable tolling is applicable in a case generally involves a "'fact-specific inquiry.'" See, e.g., Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003); Put[man] v. Galaxy 1 Marketing, Inc., 276 F.R.D. 264, 275 (S.D. Iowa 2011) ("[R]esolution of the issue is

> fact-specific."); see also Transport Ins. Co. v. TIG Ins. Co., 202 Cal. App. 4th 984, 1012, 136 Cal. Rptr. 3d 315, 337 (2012) ("[W]e are hard pressed to think of more fact-specific issues than 'accrual' and [equitable] 'tolling.'").'"

225 So. 3d at 604.

Citing Weaver v. Firestone, 155 So. 3d 952 (Ala. 2013), LEAD argues that the statutory deadline for executing the charter contract should be "equitably tolled" because, it says, it has exercised due diligence and the delay has been caused by extraordinary circumstances that are beyond its control. We agree. First, it is clear that LEAD has acted diligently in its attempts to execute the charter contract. For example, LEAD offered to enter into a contingency agreement with the Commission; the Commission, however, declined to do so. LEAD also timely moved for, and obtained, a stay from the circuit court.

In addition, LEAD demonstrated extraordinary circumstances beyond its control. The plaintiffs' filing of this action challenging the Commission's actions and requesting declaratory and injunctive relief in the circuit court and the court's granting of their request has delayed LEAD's efforts to execute the charter contract within the 60-

day period. The plaintiffs' own legal maneuvering in this case, therefore, is the very reason for any delay by LEAD in executing the contract. Thus, "'[o]ur interest in preventing litigants from attempting to manipulate the Court's jurisdiction to insulate a favorable decision from review further counsels against a finding of mootness here.'" Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 73 (Ala. 2009) (declaratory-judgment action) (quoting City of Erie v. Pap's A.M., 529 U.S. 277, 288 (2000)).

In order to determine whether the tolling of the 60-day period resolves the mootness issue, we must determine when the 60-day period began to run. Section 16-6F-7(e)(1) provides, in pertinent part:

> "Within 60 days of approval of a charter application, the authorizer and the governing board of the public charter school shall execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the public charter school will be judged and the administrative relationship between the authorizer and the public charter school, including each party's rights and duties. ..."

The plaintiffs argue that the 60-day period began running on February 12, 2018 -- the date the Commission voted to approve the application. LEAD, however, argues that the 60-day

period began running on March 15, 2018 -- the date the Commission's decision was approved by resolution.

The ASCSOA distinguishes between when an authorizer must "decide" whether to approve or deny an application and when an actual "approval" of an application occurs. Section 16-6F-7(b)(4), Ala. Code 1975, provides, in pertinent part:

> "No later than 60 days after the filing of the charter application, the authorizer shall decide to approve or deny the charter application .... The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting. If no action is taken on the application within 60 days, the application shall be considered denied and the applicant may appeal the decision to the commission."

In this case, § 16-6F-7(b)(4) required the Commission "to approve or deny" the application no later than 60 days from the date the application was submitted. The application was submitted on December 18, 2017, and the initial vote to approve was taken on February 12, 2018. Next, during the March 15, 2018, open meeting, the Commission complied with the statute by formalizing by adoption of a "resolution" its decision to approve the application. Thus, the final resolution adopting its initial approval -- and not the Commission's initial decision by vote to approve -- is

considered the Commission's "approval" for purposes of the triggering date for the ASCSOA's requirement that the Commission and the charter-school applicant execute a charter contract within 60 days. Cf. Ex parte Alabama Pub. Charter Sch. Comm'n, 256 So. 3d 98 (Ala. Civ. App. 2018) (determining that the 30-day period for filing a notice of appeal in conformity with the Alabama Administrative Procedure Act began running from the date of the Commission's final resolution that confirmed its previous oral announcement). Thus, LEAD had 60 days from the adoption of the Commission's final resolution on March 15, 2018, to execute the charter contract. The running of that 60-day period was tolled, however, by the circuit court's May 8, 2018, order, which granted LEAD's request for a stay and for the tolling of the statutory period. Consequently, to the extent the defendants challenge the circuit court's order granting the plaintiffs' motion for a summary judgment with respect to count I and denying the defendants' dispositive motions related to the charter-school application, the claims related to the plaintiffs' requests for injunctive and declaratory relief regarding the 2018-2019 school year remain ripe for review.

B. The Majority Voting Issue

The issue for this Court to decide is whether the vote of a majority of the quorum present as opposed to a majority of the entire Commission is sufficient to approve a public-charter-school application. The decision is a matter of statutory construction. In State Farm Mutual Automobile Insurance Co. v. Motley, 909 So. 2d 806 (Ala. 2005), this Court stated:

> "'"Words used in a 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. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the Legislature must be given effect."'
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> "Blue Cross & Blue Shield v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998)(quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).
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> "'Of course, the rule is well recognized that in the construction of a statute, the legislative intent is to be determined from a consideration of the whole act with reference to the subject matter to which it applies and the particular topic under which the language in question is found. The intent so deduced from the whole will prevail over

> that of a particular part considered separately.'
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> "Blair v. Greene, 246 Ala. 28, 30, 18 So. 2d 688, 689 (1944).
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> > "'It is well settled that when it is interpreting a statute this Court seeks to give effect to the intent of the Legislature, as determined primarily from the language of the statute itself. Beavers v. County of Walker, 645 So. 2d 1365, 1376 (Ala. 1994) (citing [McCall v.] McCall, 596 So. 2d 2 (Ala. Civ. App. 199[1])); Volkswagen of America, Inc. v. Dillard, 579 So. 2d 1301 (Ala. 1991). Also, our rules of statutory construction direct us to look at the statute as a whole to determine the meaning of certain language that is, when viewed in isolation, susceptible to multiple reasonable interpretations. McRae v. Security Pac. Hous. Servs., Inc., 628 So. 2d 429 (Ala. 1993).'
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> "Ex parte Alfa Fin. Corp., 762 So. 2d 850, 853 (Ala. 1999).
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> > "'"When interpreting a statute, [a court] must read the statute as a whole because statutory language depends on context; [a court] will presume that the Legislature knew the meaning of words it used when it enacted the statute."'
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> "Ex parte USX Corp., 881 So. 2d 437, 442 (Ala. 2003)(quoting Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003))."

909 So. 2d at 813-14.

If we interpret the statute as requiring that the affirmative vote of a majority of the quorum present is necessary to grant an application for a public charter school, then this Court must conclude that the circuit court erred in denying the defendants' motions for a summary judgment on the basis that a majority of the entire body of the Commission is necessary to approve an application.

Section 16-6F-6(c)(9), Ala. Code 1975, provides:

> "Six members of the commission constitute a quorum, and a quorum shall be necessary to transact business. Actions of the commission shall be by a majority vote of the commission. The commission, in all respects, shall comply with the Alabama Open Meetings Act and state record laws. Notwithstanding the preceding sentence, members of the commission may participate in a meeting of the commission by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes, including the establishment of a quorum. Telephone or video conference or similar communications equipment shall also allow members of the public the opportunity to simultaneously listen or observe meetings of the commission."

(Emphasis added.)

The plaintiffs assert that the second sentence of the quoted paragraph establishes that an application for a charter

school must be approved by a majority of the entire Commission. When the first and second sentences are read together and in the context of the entire statute, it is clear that a majority vote of a quorum of the Commission is sufficient. The "majority vote of the commission" clause, which follows immediately the clause allowing the Commission to act by a quorum of six, is obviously meant to be a majority vote of the Commission transacting business as a quorum. In other words, the sentences read together establish that the Commission "transacts" business through its "actions" as a quorum. Thus, when a quorum of six members of the Commission conducts business, such as approving an application for a public charter school, the concurrence of a majority of that quorum suffices to bind the Commission.

Our interpretation is furthered by the defendants' citation to State ex rel. Woodward v. Skeggs, 154 Ala. 249, 46 So. 268 (Ala. 1908), in which we considered similar wording related to the interrelation of quorum and majority clauses. In Skeggs, the Court interpreted § 76 and § 52 of the Alabama Constitution of 1901 together. Section 76 provides that when the Legislature convened in special session, legislation

should be by a "vote of two-thirds of each House." Section 52 provides that the majority of each House constitutes a quorum to do business. The Court noted that other sections of the Constitution also provided that an affirmative vote by a named proportion of the entire elected membership of each House was essential to enact proposed legislation. It concluded that the word "House," as used in § 52, meant the entire membership of each body and that a majority of each body shall constitute the House for the transaction of business, and, in view of the absence of a provision requiring the named proportion of the entire elected membership, two-thirds of a quorum of each House was sufficient to enact legislation at a special session. Skeggs, 154 Ala. at 254, 46 So. 2d at 270-71.

The ASCSOA contains no clear language modifying the common-law rule that a vote of a majority of a quorum is sufficient. "[I]n the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority is empowered to act for the body. Where the enabling statute is silent on the question, the body is justified in adhering to the common-law rule." F.T.C. v. Flotill Prods., Inc., 389 U.S. 179, 183-84 (1967)(footnote omitted).

We have decided similar cases in which we adhered to the common-law rule that a majority of a quorum is empowered to act for the body, absent a specific statutory provision requiring otherwise. For example, in Ex parte Shelby Medical Center, 564 So. 2d 63 (Ala. 1990), we discussed whether the Alabama Administrative Procedure Act, § 41-42-1 et seq., Ala. Code 1975, required that a decision of the CON Review Board must consist of a majority of the entire nine members of the board or whether an approval by a majority of a quorum was sufficient. Section 41-22-15, Ala. Code 1975, provided that, "'in a contested case, a majority of the officials of the agency who are to render the final order must be in accord for the decision of the agency to be a final decision.'" 564 So. 2d at 66. Section 41-22-3(8), Ala. Code 1975, defined "quorum" as "a majority of the members of an agency ... authorized to act in the name of the agency." 564 So. 2d at 66. Construing those two sections together, we concluded that a majority of only a quorum was required to approve the agency decision. 564 So. 2d at 66-67. See also Roach v. Bynum, 403 So. 2d 187, 192 (Ala. 1981)("At common law, the presence of a simple majority of shareholders entitled to vote on a matter

constitute a quorum, and a majority vote of that quorum was all that was necessary to validly transact shareholder business. Benintendi v. Kenton Hotel, 294 N.Y. 112, 119, 60 N.E.2d 829, 831 (1945).").

The defendants cite Mann v. Key, 345 So. 2d 293 (Ala. 1997), as an example of specific statutory language requiring a "majority of the total membership of the governing body," usurping the common-law rule. In Mann, an election statute required a vote by a majority "'of the total membership of the governing body'" to break a tie. 345 So. 2d at 295. The Court recognized the common-law rule allowing a majority of a quorum to act for the body, but held that the statutory language "mandat[ed] a majority vote of the total membership, i.e., four out of six." 345 So. 2d at 296.

The ASCSOA does not include language requiring a majority vote of the entire Commission. The ASCSOA simply refers to a majority vote "of the commission" immediately afer the clause empowering a majority of a quorum to transact business. Further, the circuit court's determination that the votes must consist of a majority of all the Commission effectively reads the quorum clause out of the ASCSOA. If 6 members must always

agree in order for the Commission to act because 6 is a majority of either 10 or 11, there is no reason to separately provide that a quorum consisting of 6 members is "necessary to transact business." The first sentence would be surplusage.

Based on the foregoing, we conclude that the Commission did not violate the ASCSOA by approving the application by a majority vote of a quorum of the Commission.

C. The 11th-Member Issue

The plaintiffs also argue that the Commission violated the ASCSOA by failing to include the 11th member appointed by the Montgomery County School Board. Section 16-6F-6(c)(3) provides, in pertinent part, that "[t]he commission shall be composed of a total of 11 members" and that "[t]he State Board of Education shall appoint 10 members." Further direction is set forth in § 16-6F-6(c)(4), which provides, in pertinent part:

> "The eleventh member of the commission shall be a rotating position based on the local school system where the application was denied. This member appointed to the rotating position shall be appointed by the local school system where the applicant is seeking to open a public charter school. The local school system shall appoint a member to the rotating position through board action specifically to consider that application."

The plaintiffs argue that an 11th member is necessary to create a properly composed Commission as required by § 16-6F-6(3) and (4). The Commission's impression, however, is that the 11th member is necessary only when a public school board has registered as an "authorizer" pursuant to § 16-6F-6(d), Ala. Code 1975.

The primary disagreement between the parties is over the last sentence in § 16-6F-6(c)(4), requiring that "[t]he local school system shall appoint a member to the rotating position through board action specifically to consider that application." The plaintiffs argue that this sentence means that the 11th member should sit on the Commission any time the Commission considers an application for a charter school. They argue that this additional member is required, regardless of whether the school board itself is or is not a qualified authorizer.

The Commission interprets the ASCSOA to mean that an 11th member is appointed by the local school board only when there is an appeal following an actual denial by its own board. They argue that a local board that is not an authorizer cannot review the application and that, therefore, no 11th member is

appointed and the applicant works directly with the Commission. In other words, if a local school board does not register under § 16-6F-6(a)(1) to become an authorizer, it cannot consider applications deemed denied under § 16-6F-6(e).

In Ex parte Chesnut, 208 So. 3d 624, 640 (Ala. 2016), this Court held:

> "[A] reviewing court will accord an interpretation placed on a statute or an ordinance by an administrative agency charged with its enforcement great weight and deference. Notwithstanding this rule of construction, however, where the language of the statute or ordinance is plain, this Court will not blindly follow an administrative agency's interpretation but will interpret the statute to mean exactly what it says."

Extending "great weight and deference" to the interpretation of the ASCSOA by the Commission as the implementing agency, we conclude that the Commission's interpretation of the ASCSOA as requiring an 11th member only when the local school board is an authorizer to be reasonable. The local school board was not an authorizer at the time the Commission considered the charter-school application. Thus,

the Commission did not violate the ASCSOA by failing to include an 11th member.[11]

Based on the foregoing, we conclude that, to the extent the circuit court denied the defendants' motions for a summary judgment with respect to the plaintiffs' claim that the Commission violated the ASCSOA by voting as a majority of a quorum, the circuit court's decision was incorrect as a matter of law.

Accordingly, it is ordered that the judgment is reversed and a judgment rendered in favor of the defendants.

1170706 -- REVERSED AND JUDGMENT RENDERED.

1170724 -- REVERSED AND JUDGMENT RENDERED.

1170737 -- REVERSED AND JUDGMENT RENDERED.

Parker, C.J., and Wise, Sellers, and Mendheim, JJ., concur.

Bryan, J., concurs in the result.

Shaw and Stewart,* JJ., dissent.

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[11]We also note that, at the time the Commission considered the charter-school application, the Montgomery County Public School System was not an authorizer. The pleadings indicate that the Montgomery County Public School System is now an authorizer; thus, the circumstances in this case have changed.

*Although Justice Stewart was not present at oral argument in this case, she has listened to the audiotape of the oral argument.

SHAW, Justice (dissenting).

I respectfully dissent. I believe that a vote of the majority of the members of the Alabama Public Charter School Commission ("the Commission") is required to approve an application for a charter school. As the trial court held, a majority of the members of the Commission did not vote to approve the charter-school application at issue in this case; therefore, in my opinion, the trial court's judgment is due to be affirmed.

The Code section at issue in this case, Ala. Code 1975, § 16-6F-6(c)(9), provides, in pertinent part: "Six members of the commission constitute a quorum, and a quorum shall be necessary to transact business. Actions of the commission shall be by a majority vote of the commission." To me, the Code section references two different groups performing two different tasks. The Commission is required ("shall") to perform all "actions" by a vote of its majority. A quorum of the Commission, which is made up of at least six members of the Commission, is required ("shall") for it to "transact business." We must presume that these are not necessarily the same thing; otherwise, the legislature would not have used two different terms. Trott v. Brinks, Inc., 972 So. 2d 81, 85 (Ala. 2007) ("We presume that the use of two different words

indicates that the legislature intended the two words be treated differently.").[12] In other words, by using two different terms to describe the tasks of two different groups, the language indicates that these two groups are not both performing the same tasks.

The main opinion holds that a majority of a quorum can equate to, or act as, the majority of the entire body when the language of the Code section does not require otherwise. The cases relied on in the main opinion are distinguishable in that here, unlike in those cases, the Code section specifically distinguishes between what a quorum can do, "transact business," and what can be done only by a majority of the Commission: take "actions." If a majority of a quorum could take "actions" on behalf of the Commission in addition to transacting business, then the Code section would not have

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[12]"'[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.... The use of different terms within related statutes generally implies that different meanings were intended.'" Trott, 972 So. 2d at 85 (quoting 2A Norman Singer, Sutherland on Statutes and Statutory Construction § 46:06, at 194 (6th ed. 2000) (footnotes omitted)). See also House v. Cullman Cty., 593 So. 2d 69, 75 (Ala. 1992) (stating that the Court was not permitted "to disregard ... marked differences in terminology"), and State v. Adams, 91 So. 3d 724, 736 (Ala. Crim. App. 2010) ("[W]e must presume that in using these various terms, the legislature intended for each to have its own meaning.").

separately said that "actions ... shall be by a majority vote of the commission."

The approval or denial of a charter-school application is defined as an "action" of the Commission. See Ala. Code 1975, §§ 16-6F-7(b)(4) and (7) (describing the approval or denial of a charter application as an "action" of an "authorizer"), and Ala. Code 1975, § 16-6F-6(a)(1)b. (defining the Commission as an "authorizer"). An action of the Commission "shall"--must--"be by a majority vote of the commission" and not a majority of a quorum. Thus, it is necessary for the majority of the Commission to vote to take the action of approving an application. A majority of the Commission (whether the total membership is 10 or 11) is 6 members. In this case, only five members of the Commission voted to approve the application.

Stewart, J., concurs.