REL: January 31, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180106

Shannon Robbins

v.

Cleburne County Commission

Appeal from Cleburne Circuit Court
(CV-18-900001)

MITCHELL, Justice.

Alabama counties may only enter into contracts that are authorized by the legislature. Shannon Robbins, the former county engineer of Cleburne County, sued the Cleburne County Commission ("the Commission") alleging breach of contract

after the Commission denied the validity of a renewal option in his employment agreement. To decide his appeal, we must determine whether the Commission was authorized by the legislature to enter into that employment agreement. Because Robbins cannot prevail regardless of which potentially applicable statute gives the Commission authority to contract for the employment of a county engineer, we affirm the trial court's dismissal of his case.

Facts and Procedural History

On February 18, 2010, Robbins signed an agreement with the Commission to continue his employment as the Cleburne County Engineer ("the agreement"). The agreement provided:

> "TERMS OF EMPLOYMENT: The employer hereby extends employment of the employee, and the employee hereby accepts an extension of employment with the employer for a period of 60 months, beginning on the 1st day of February, 2011, to the 31st day of January, 2016; however, this Agreement may be terminated by the employee or employer at an earlier date, as hereinafter provided. At least 60 days prior to the end of the term of employment pursuant to this agreement, the employee agrees he will notify the employer in writing that he is selecting one of the following options.
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> "(a) To extend this agreement for an additional twelve (12) month period;
>
> "or
>
> "(b) That he will undertake the negotiation of a new employment contract.

> "....
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> "TERMINATION BY EMPLOYER: This agreement may be terminated by the employer with immediate notice for valid cause in accordance with the Cleburne County Personnel Policies and Procedures Manual, October 2009 Edition."

On October 13, 2015, Robbins attempted to exercise the option to extend the agreement for a sixth year. The Commission refused to recognize the validity of the option and terminated his employment at the end of the original five-year term on January 31, 2016.

Robbins sued the Commission in the Cleburne Circuit Court on January 31, 2018, alleging breach of contract. The Commission filed a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P., arguing that the general law authorizing counties to employ county engineers, see § 11-6-1, Ala. Code 1975 ("the general law"), limited contracts to five years and that the agreement was thus void ab initio. Robbins responded by arguing that the general law did not apply and that a local law requiring Cleburne County to hire a county engineer who "shall serve at the pleasure of the county commission," § 45-15-130.01, Ala. Code 1975 (Local Laws) ("the local law"), authorized the agreement. The trial court agreed that the

local law was the relevant source of the Commission's contracting authority but concluded that the agreement violated the local law and granted the Commission's motion to dismiss. This appeal followed.

Standard of Review

> "The appropriate standard of review under Rule 12(b)(6) 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. In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether she may possibly prevail. We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief."

Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993) (citations omitted).

Analysis

If the Commission was not authorized to enter into the agreement, Robbins cannot prove any set of circumstances that would entitle him to relief. The Alabama Constitution does not extend home rule to the State's counties. As a result, it has long been recognized in Alabama that county governments "are creatures of the Legislature," Arledge v. Chilton Cty.,

237 Ala. 96, 99, 185 So. 419, 421 (1938), and that "as a political subdivision of the state, a county can exercise only that authority conferred on it by law." Jefferson Cty. v. Johnson, 333 So. 2d 143, 145 (Ala. 1976) (citing Alexander v. State, 274 Ala. 441, 443, 150 So. 2d 204, 206 (1962); Trailways Oil Co. v. City of Mobile, 271 Ala. 218, 222, 122 So. 2d 757, 760 (1960)). The Commission's contracting authority thus extends only so far as is authorized by the legislature -- which means that the Commission is "liable for those claims only which the law empowers [it] to contract for." Cooper v. Houston Cty., 40 Ala. App. 192, 195, 112 So. 2d 496, 498 (1959) (citing Board of Revenue & Road Comm'rs of Mobile Cty. v. State ex rel. Drago, 172 Ala. 155, 54 So. 995 (1911)).

In this case, two separate statutes address the Commission's authority to contract for the employment of a county engineer. First, the general law authorizes all counties to hire a county engineer, but it limits that grant of authority by providing that "[t]he county may enter into a contract of employment of appointment to office of said engineer for a period of time not to exceed five years."

Second, the local law, which applies only to Cleburne County, requires the Commission to hire a county engineer and provides that "[t]he county engineer shall serve at the pleasure of the county commission." Robbins is entitled to relief only if the Commission was authorized to bind itself to the agreement by one of those two statutes.

Because those statutes are inconsistent, only one can be the operative grant of authority to the Commission. The general law gives Cleburne County the discretion to do without a county engineer and, should the Commission decide to exercise its hiring authority, limits those contracts to five years, while the local law requires the Commission to hire a county engineer and provides that the engineer shall serve at the Commission's pleasure. We do not need to determine which statute governs here because the Commission exceeded its authority under either law.[1]

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[1]Our hesitancy to choose between the two statutes is driven in part by the doctrine of constitutional avoidance. "'"A court has a duty to avoid constitutional questions unless essential to the proper disposition of the case."'" Chism v. Jefferson Cty., 954 So. 2d 1058, 1063 (Ala. 2006) (quoting Lowe v. Fulford, 442 So. 2d 29, 33 (Ala. 1983), quoting in turn trial court's order). Choosing between the general law and the local law is not essential to resolving this case, and making that choice could require us to confront difficult constitutional questions. Section 105 of the Alabama

We begin our analysis with the Commission's contracting authority under the general law before considering the authority granted it by the local law.

1. The Agreement is Not Authorized by the General Law

The general law authorizing counties to employ a county engineer limits the maximum duration of employment contracts: "The county may enter into a contract of employment of appointment to office of said engineer for a period of time not to exceed five years." § 11-6-1. The decision to award Robbins a five-year contract with a unilateral option for a sixth year exceeded the Commission's authority, because the general law only authorizes a contract for five years or fewer.

No decision of this Court discusses the application of § 11-6-1, and no opinion of an Alabama court directly considers the use of renewal options to circumvent a statutory

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Constitution of 1901 provides that "[n]o special, private, or local law ... shall be enacted in any case which is provided for by a general law." Although no party made an argument based on § 105, the relationship between the general law and the local law in this case may be in tension with this Court's current understanding of § 105 as a bar to any local law that "'create[s] a variance from the provisions of [a] general law.'" City of Homewood v. Bharat, LLC, 931 So. 2d 697, 701 (Ala. 2005) (quoting Opinion of the Justices No. 342, 630 So. 2d 444, 446 (Ala. 1994) (emphasis added in City of Homewood)).

limitation on the length of a contract. But we find the reasoning of Attorney General Opinion No. 91-00187 persuasive. See T-Mobile S., LLC v. Bonet, 85 So. 3d 963, 978 (Ala. 2011) ("An attorney general's opinion is not binding upon this Court, although it can be persuasive authority." (citing Anderson v. Fayette Cty. Bd. of Educ., 738 So. 2d 854, 858 (Ala. 1999))). In that opinion, the Attorney General concluded that the City of Decatur could not enter into a three-year contract with an option to renew for an additional two years when the applicable statute provided that "contracts ... shall be let for periods of not greater than three years." Ala. Op. Att'y Gen. No. 91-00187 (Mar. 20, 1991) (quoting § 41-16-57(e), Ala. Code 1975). The agreement between the Commission and Robbins similarly attempts to evade the five-year limitation set by the general law through the use of an option to renew beyond the statutory limit, and the agreement is equally invalid. The agreement exceeds the authority granted to the Commission under the general law, and Robbins is thus unable to prove any set of circumstances that would entitle him to relief if the agreement is governed by the general law.

2. The Agreement is Not Authorized by the Local Law

The local law requires the Commission to employ a county engineer and provides that "[t]he county engineer shall serve at the pleasure of the county commission." § 45-15-130.01. Robbins's primary argument is that the Commission may, "at [its] pleasure," choose to employ a county engineer under a fixed-term contract rather than at will. Based on the understanding reflected in our caselaw that the phrase "at the pleasure of" refers to at-will employment, and in light of the Court of Appeals' decision in Cooper v. Houston County, 40 Ala. App. 192, 112 So. 2d 496 (1959), and the great weight of persuasive authority from other states, we conclude that, in awarding the five-year contract to Robbins, the Commission exceeded its authority under the local law.

The phrase "at the pleasure of" is commonly understood to refer to at-will employment. See, e.g., Mountain v. Collins, 430 So. 2d 430, 432-33 (Ala. 1983) ("Under [§ 11-44-28, Ala. Code 1975,] municipal employees who do not come under civil service regulations are 'at will' employees. The board of commissioners is responsible for their hiring, and they are 'removable at the pleasure of the board of commissioners.'"

(quoting § 11-44-28, Ala. Code 1975)); DeWitt v. Gainous, 601 So. 2d 103, 104 (Ala. Civ. App. 1992) ("Under Article 5, § 16-60-111.4(3), [Ala.] Code 1975, the State Board of Education is empowered to 'appoint the president of each junior college and trade school, each president to serve at the pleasure of the board.' As this section makes clear, the presidents of Alabama's junior colleges are at-will employees of the state."). In the absence of language specifying that an officer may be removed only for cause, see Townsend v. Hoover City Bd. of Educ., 610 So. 2d 393, 397-99 (Ala. Civ. App. 1992), a statute providing that an officer serves "at the pleasure of" another calls for at-will employment. The local law therefore authorizes the Commission to hire a county engineer only on at an at-will basis.

A government body authorized to fill a position on an at-will basis may not contract away its power of removal. In Cooper v. Houston County, Cooper signed a fixed-term contract to serve as the county engineer for Houston County. 40 Ala. App. at 194, 112 So. 2d at 497-98. But a local law applicable only to Houston County provided that "[t]he term of said office of said ... County Engineer shall continue after

election or appointment thereof at the will of the Board of Revenue." 40 Ala. App. at 194-95, 112 So. 2d at 498 (emphasis omitted). The Court of Appeals noted in its decision that "[c]ounties are governmental agencies of the State, and are liable for those claims only which the law empowers them to contract for," before concluding "that the attempted contract ... seeking to appoint the appellant as County Engineer for a definite period of time, rather than at the will of the Board of Revenue as specifically provided, was beyond the authority of the Board of Revenue, and the attempted contract was a nullity." 40 Ala. App. at 195, 112 So. 2d at 498. Houston County is indistinguishable from this case, and we adopt its reasoning here. On that basis, the Commission exceeded the authority given to it under the local law when it offered Robbins a contract for a five-year term rather than an at-will contract as authorized by the local law.

Several of our sister states have spoken clearly on this issue, and their reasoning bolsters our decision to adopt the Court of Appeals' reasoning in Houston County. Considering a statute providing that an officer "serve at the pleasure of

the attorney general," the Supreme Court of Appeals of West Virginia said:

> "'Where a statute conferring the power to appoint fixes no definite term of office, but provides that the tenure shall be at the pleasure of the appointing body, the implied power to remove such appointee may be exercised at its discretion, and cannot be contracted away so as to bind the appointing body to retain him in such position for a definite, fixed period.'"

Williams v. Brown, 190 W.Va. 202, 205, 437 S.E.2d 775, 778 (1993) (quoting Barbor v. County Court, 85 W.Va. 359, 363, 101 S.E. 721, 722-23 (1920)). The Supreme Court of Minnesota, considering the validity of a fixed-term contract under a statute providing that the school superintendent serve "at the pleasure of" the school board, said:

> "This right which the board has to release the superintendent at its pleasure is a public right, and exists for a public purpose. The school board cannot by contract deprive itself of such right. ... It cannot renounce or agree not to exercise its power of removal at pleasure. ...
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> "To hold that the contract in question is binding for the fixed term would be to allow the school board to deprive itself and its successors of governmental powers which have been granted to it by the Legislature for a public purpose."

Jensen v. Independent Consol. Sch. Dist. No. 85, 160 Minn. 233, 236-37, 199 N.W. 911, 913 (1924). And the Supreme Court

of Georgia, in a case concerning the removal of a public employee hired on a term contract for an at-will position, said that "'the appointee holds at the pleasure of the appointing power, although it was attempted by the appointing power to fix a definite term.'" Wright v. Gamble, 136 Ga. 376, 381, 71 S.E. 795, 797 (1911) (quoting Parsons v. Breed, 126 Ky. 759, 768, 104 S.W. 766, 768 (1907)). See also Clough v. Mayor & Council of Hurlock, 445 Md. 364, 373-77, 127 A.3d 554, 559-62 (2015) (city lacked power to offer term contract to employee who "serve[d] at the pleasure of the Mayor").

The Commission is authorized by the local law to hire a county engineer only on an at-will basis, and the Commission exceeded that authority when it attempted to contract away the power to terminate Robbins's employment at its pleasure. Robbins is thus unable to prove any set of circumstances that would entitle him to relief if the agreement is governed by the local law.

Conclusion

Regardless of which statute involved in this case applies -- the general law or the local law -- Robbins is unable to prove any set of circumstances that would entitle him to

relief. The Commission structured the agreement in such a way that exceeded its authority. For this reason, we affirm the trial court's judgment dismissing Robbins's case under Rule 12(b)(6), Ala. R. Civ. P.

AFFIRMED.

Parker, C.J., and Bolin, Bryan, Mendheim, and Stewart, JJ., concur.

Shaw, J., concurs in the result.

Sellers, J., dissents.