Rel: September 3, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200230

Ex parte Jefferson County Board of Education

PETITION FOR WRIT OF MANDAMUS

(In re: Alabama Lockers, LLC

v.

Jefferson County Board of Education)

(Jefferson Circuit Court, CV-20-902676)

BRYAN, Justice.

The Jefferson County Board of Education ("the Board") petitions this Court for a writ of mandamus directing the Jefferson Circuit Court to dismiss the action brought against the Board by Alabama Lockers, LLC. Because the Board is entitled to State immunity, we grant the petition and issue the writ.

Alabama Lockers provides services regarding school lockers. In July 2020, Alabama Lockers sued the Board, alleging breach of contract. Alabama Lockers also alleged that the Board had failed to follow both "state bid laws" and its own policies and procedures regarding bidding on locker-services contracts. In September 2020, the Board filed a motion to dismiss, asserting, in relevant part, that Alabama Lockers' action is barred by State immunity. The circuit court denied the Board's motion to dismiss, and the Board then filed a petition for the writ of mandamus with this Court.

" 'A petition for a writ of mandamus is the proper vehicle by which to seek review of the denial of a motion to dismiss based on the ground of State immunity.' " Ex parte Jefferson Cnty. Dep't of Hum. Res., 63 So. 3d 621, 625 (Ala. 2010) (quoting Drummond Co. v. Alabama Dep't of Transp.,

937 So. 2d 56, 57 (Ala. 2006)). Typically, the denial of a motion to dismiss or a summary-judgment motion is not reviewable by a mandamus petition; however, the denial of such a motion grounded on a claim of immunity is one exception to that general standard. Ex parte Haralson, 853 So. 2d 928, 931 n.2 (Ala. 2003).

> "The writ of mandamus is an extraordinary legal remedy. Ex parte Mobile Fixture & Equip. Co., 630 So. 2d 358, 360 (Ala. 1993). Therefore, this Court will not grant mandamus relief unless the petitioner shows: (1) a clear legal right to the order sought; (2) an imperative duty upon the trial court to perform, accompanied by its refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the Court. See Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002)."

Ex parte Davis, 930 So. 2d 497, 499 (Ala. 2005).

The Board argues that Alabama Lockers' action against the Board is barred by State immunity, which is sometimes referred to as sovereign immunity in our caselaw. The Board is clearly correct.

> " 'Section 14, Ala. Const. 1901, provides: "[T]he State of Alabama shall never be made a defendant in any court of law or equity." (Emphasis added.) "The wall of immunity erected by § 14 is nearly impregnable." Patterson v. Gladwin Corp., 835 So. 2d 137, 142 (Ala. 2002). Indeed, as regards the State of Alabama and its agencies, the wall is absolutely impregnable. Ex parte Alabama Dep't of Human Res., 999 So.

> 2d 891, 895 (Ala. 2008) ("Section 14 affords absolute immunity to both the State and State agencies."); Ex parte Jackson County Bd. of Educ., 4 So. 3d 1099, 1102 (Ala. 2008) (same); Atkinson v. State, 986 So. 2d 408, 410-11 (Ala. 2007) (same); [Ex parte Alabama Dep't of Transp.], 978 So. 2d 17 (Ala. 2007)] (same); Ex parte Alabama Dep't of Transp., 764 So. 2d 1263, 1268 (Ala. 2000) (same); Mitchell v. Davis, 598 So. 2d 801, 806 (Ala. 1992) (same). "Absolute immunity" means just that -- the State and its agencies are not subject to suit under any theory.
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> " ' "This immunity may not be waived." Patterson, 835 So. 2d at 142. Sovereign immunity is, therefore, not an affirmative defense, but a "jurisdictional bar." Ex parte Alabama Dep't of Transp., 985 So. 2d 892, 894 (Ala. 2007). The jurisdictional bar of § 14 simply "preclud[es] a court from exercising subject-matter jurisdiction" over the State or a State agency. Lyons v. River Road Constr., Inc., 858 So. 2d 257, 261 (Ala. 2003). Thus, a complaint filed solely against the State or one of its agencies is a nullity and is void ab initio. Ex parte Alabama Dep't of Transp. (In re Russell Petroleum, Inc. v. Alabama Dep't of Transp.), 6 So. 3d 1126 (Ala. 2008). ... Any action taken by a court without subject-matter jurisdiction -- other than dismissing the action -- is void. State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1029 (Ala. 1999).' "

Ex parte Board of Trs. of Univ. of Alabama, 264 So. 3d 850, 853 (Ala. 2018) (quoting Alabama Dep't of Corr. v. Montgomery Cnty. Comm'n, 11 So. 3d 189, 191-92 (Ala. 2008)).

In Ex parte Hale County Board of Education, 14 So. 3d 844 (Ala. 2009), this Court explained that county boards of education are entitled

to State immunity under Article I, § 14, of the Alabama Constitution of 1901 (Off. Recomp.). This Court stated: " 'For purposes of § 14 immunity, county boards of education are considered agencies of the State. Louviere v. Mobile County Bd. of Educ., 670 So. 2d 873, 877 (Ala. 1995) ("County boards of education, as local agencies of the State, enjoy [§ 14] immunity.").' " Ex parte Hale Cnty. Bd. of Educ., 14 So. 3d at 848 (quoting Ex parte Jackson Cnty. Bd. of Educ., 4 So. 3d 1099, 1102 (Ala. 2008)). "Because county boards of education are local agencies of the State, they are clothed in constitutional immunity from suit." 14 So. 3d at 848. Thus, the Board, as a county board of education, is entitled to State immunity in this case. Accordingly, the Board has established a clear legal right to have the action against it dismissed.

Alabama Lockers does not argue that it has a viable action under the controlling precedent cited above. Rather, Alabama Lockers "disagrees ... with the current precedent" and "strongly urges [this Court] to reassess that precedent." Alabama Lockers' answer at 20. Specifically, Alabama Lockers asks this Court to overrule Ex parte Hale County Board of Education, supra, which, as noted above, held that county boards of

education are agencies of the State and, thus, are immune from suit under § 14. Hale, which this Court decided in 2009, explicitly overruled Kimmons v. Jefferson County Board of Education, 204 Ala. 384, 85 So. 774 (1920), and Sims v. Etowah County Board of Education, 337 So. 2d 1310 (Ala. 1976), "to the extent that they and their progeny impose an implied 'right to be sued' on county boards of education." 14 So. 3d at 848-49.

Before addressing the challenge to Hale, we will review the history of State immunity as it relates to county boards of education.

> " 'During the early years of our history as a State our rule of state governmental responsibility was directly opposite from what it is today. Our first Constitution provided:
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> > " ' "The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the State."
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> " 'Ala. Const. Art. 6, § 9 (1819).
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> " 'The constitutional mandate of 1819 remained unchanged until the Constitution of 1865 was adopted when the provision granting a right to sue the state was changed to read:
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> > " ' "That suits may be brought against the State, in such manner, and in such courts, as may be by law provided."

> " 'In 1875, the Legislature repealed all acts granting the right to sue the State, and the Constitution of 1875 contained a provision, that "The State of Alabama shall never be made defendant in any court of law or equity." Section 15, Const. of Alabama, 1875. Section 14 of the 1901 Constitution is the same as Section 15 of the 1875 Constitution. The adoption of the 1875 Constitution closed the door to litigants who had claims against the State, and the door has remained closed continuously by subsequent constitutional provisions and court decisions interpreting those provisions.
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> " 'Section 14 of the Alabama Constitution of 1901 specifically prohibits the State from being made a party defendant in any suit at law or in equity. This Court, construing Section 14, has held almost every conceivable type of suit to be within the constitutional prohibition.' "

Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1205-06 (Ala. 2006) (quoting Hutchinson v. Board of Trs. of Univ. of Alabama, 288 Ala. 20, 23, 256 So. 2d 281, 282-83 (1971)).

Although constitutional provisions have clearly provided immunity for the State since 1875, the issue whether county boards of education enjoy such immunity has not always been as clear. In Kimmons, supra, a 1920 decision, a plaintiff sued a county board of education, challenging the board's authority to issue warrants for the construction of a school building. This Court briefly touched on issues concerning possible

immunity for the board. The Court stated that the board was an independent agency of the State for purposes of the act under which the board had issued the warrants. However, the Court also noted that, under that act, the board was "given the right to sue" and, thus, that the board was subject to "an implied right to be sued." 204 Ala. at 387, 85 So. at 777. Accordingly, the Court in Kimmons addressed the merits of the plaintiff's claims against the board. However, the Court did not address the immunity provided by § 14 or attempt to reconcile that provision with its observation that the board was an agency of the State.

In Sims, supra, a plurality decision released by this Court in 1976, plaintiffs alleged claims of negligence and breach of contract against a county board of education. This Court again noted that a county board of education is considered an agency of the State. However, the Court, citing Kimmons, also stated that a board's statutory right to sue "carries with it the implied right to be sued." 337 So. 2d at 1313. The Court in Sims further noted that a board "can be sued 'within the scope of its corporate power,' ... but our cases appear to have held that tort liability is not one of those matters within the scope of its corporate power." 337 So. 2d at

1316 (quoting Morgan v. Cherokee Cnty. Bd. of Educ., 257 Ala. 201, 203, 58 So. 2d 134, 136 (1952)). Thus, the Court concluded that the board had immunity regarding the negligence claims but did not have immunity regarding the contract claims. Like the Court in Kimmons, the Court in Sims did not address § 14.

In 2009, this Court in Hale overruled Kimmons and Sims "to the extent that they and their progeny impose an implied 'right to be sued' on county boards of education." 14 So. 3d at 848-49. The Court stated that the Kimmons decision, on which the Court in Sims had relied, had "resulted in significant confusion." 14 So. 3d at 848. In overruling Kimmons and Sims, the Court in Hale "reassert[ed] the absolute constitutional immunity of county boards of education." Id. The essential reasoning supporting a finding of State immunity in Hale was straightforward: § 14 provides absolute immunity to the State, § 14 immunity extends to agencies of the State, county boards of education are agencies of the State, and, thus, county boards of education have absolute immunity under § 14. Id.

Alabama Lockers argues that the Court in Hale was "misguided" in its reading of Kimmons and, thus, that we should now overrule Hale (Alabama Lockers does not address Sims). Alabama Lockers emphasizes that the Court in Hale stated that "the Court [in Kimmons] failed to consider that county boards of education are 'local agencies of the state' and thus immune from suit under the constitutional bar of § 14." 14 So. 3d at 848. Alabama Lockers then asserts that the Court in Hale, in overruling Kimmons, incorrectly stated that the Court in Kimmons had "failed to consider" that county boards of education are agencies of the State. Alabama Lockers notes that the Court in Kimmons did in fact observe that the county board education in that case was an "independent agency of the state." Kimmons, 204 Ala. at 388, 85 So. 2d at 777. However, we believe Alabama Lockers reads too much into the first part of the clause in Hale that it scrutinizes. The second part of that clause provides important context, and we emphasize it here: "[T]he Court [in Kimmons] failed to consider that county boards of education are 'local agencies of the state' and thus immune from suit under the constitutional bar of § 14." Hale, 14 So. 3d at 848 (emphasis added). The upshot of the

analysis in Hale was that the Court in Kimmons had failed to consider the crucial application of § 14 to the fact that county boards of education are agencies of the State. As noted, the Court in Kimmons did not address § 14 at all. When the fact that county boards of education are agencies of the State is considered in the context of § 14, as it was in Hale, it becomes evident that such boards are entitled to State immunity.

Alabama Lockers also broadly contends that State immunity under § 14 should not immunize the State from claims based on contract. In support of that argument, Alabama Lockers cites the following portion of Article IV, § 95, of the Alabama Constitution of 1901 (Off. Recomp.):

> "There can be no law of this state impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this state."

Section 95 does not limit the application of the State immunity provided by § 14 in any way. Section 95 is found in Article IV of the Alabama Constitution, which specifically concerns the legislative department. Section 14 is found in Article I, which is titled "Declaration of Rights." Section 95 limits the legislature's authority to pass legislation concerning

contracts. However, § 14 clearly provides the State absolute immunity against all claims, including contract claims. Section 14 -- a broad, overarching constitutional provision -- is simply not limited by the restriction on legislative action found in § 95.

We reaffirm our holding in Hale stating that county boards of education are entitled to State immunity. Additionally, we note that the law reflected in Hale is well established, having been applied in several of our decisions since that decision was released. See, e.g., Ex parte Wilcox Cnty. Bd. of Educ., 285 So. 3d 765, 774-75 (Ala. 2019); Ex parte Wilcox Cnty. Bd. of Educ., 279 So. 3d 1135, 1140-41 (Ala. 2018); Ex parte Montgomery Cnty. Bd. of Educ., 270 So. 3d 1171, 1173 (Ala. 2018); Ex parte Wilcox Cnty. Bd. of Educ., 218 So. 3d 774, 778 (Ala. 2016); Ex parte Jackson Cnty. Bd. of Educ., 164 So. 3d 532, 534-35 (Ala. 2014) (succinctly rejecting a challenge to the reasoning in Hale and stating that the basis for the decision in Hale is "sound"); Board of Sch. Comm'rs of Mobile Cnty. v. Weaver, 99 So. 3d 1210, 1216-17 (Ala. 2012); Ex parte Montgomery Cnty. Bd. of Educ., 88 So. 3d 837, 841-42 (Ala. 2012); Colbert Cnty. Bd. of

Educ. v. James, 83 So.3d 473, 478-79 (Ala. 2011); and Ex parte Monroe Cnty. Bd. of Educ., 48 So. 3d 621, 624-25 (Ala. 2010).

The Board is entitled to State immunity under § 14, and, thus, Alabama Lockers' action against the Board must be dismissed. Accordingly, we grant the petition and issue a writ of mandamus directing the circuit court to dismiss the action.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.