rel: November 19, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200570

David G. Bronner, as secretary-treasurer of the Public Education Employees' Health Insurance Plan, et al.

v.

Chris Barlow et al.

Appeal from Montgomery Circuit Court
(CV-14-900964)

SELLERS, Justice.

David G. Bronner, as secretary-treasurer of the Public Education Employees' Health Insurance Plan ("PEEHIP"), and individual members

of the Board of Control of PEEHIP ("the PEEHIP Board"), the remaining defendants in this action ("the defendants"), appeal from a summary judgment entered in favor of the plaintiffs and members of a purported class, who are all active public-education employees and PEEHIP participants married to other active public-education employees and PEEHIP participants and who have dependent children.[1] We reverse and remand.

I. Facts and Procedural History

This is the third time this dispute involving benefits under PEEHIP has been before this Court.[2] In Ex parte Retirement Systems of Alabama,

[1]In May 2014, James B. Burks II, Eugenia Burks, Martin A. Hester, Jacqueline Hester, Thomas Highfield, Carol Ann Highfield, Jake Jackson, and Melinda Jackson, individually and on behalf of a class of similarly situated individuals, commenced a purported class action against, among others, the defendants pursuant to 42 U.S.C. § 1983. As of February 1, 2021, all the original named plaintiffs either had retired or had a spouse who had retired. As discussed in more detail herein, the trial court, in its summary judgment, granted the original named plaintiffs' motion to "add" or, in the alternative, to "substitute" as plaintiffs Chris Barlow, Jessica Barlow, Bryan Gustafson, and Holly Gustafson, all of whom fell within the purported class and had justiciable claims against the defendants.

[2]See Ex parte Retirement Systems of Alabama, 182 So. 3d 527 (Ala. 2015) (dismissing all claims except for the plaintiffs' claims for injunctive relief, pursuant to 42 U.S.C. §1983, against the defendants); and Bronner

182 So. 3d 527, 530 (Ala. 2015), this Court set forth the relevant facts regarding PEEHIP:

> "PEEHIP, which is managed by the PEEHIP Board, provides group health-insurance benefits to public-education employees in Alabama. Each year, the PEEHIP Board submits 'to the Governor and to the Legislature the amount or amounts necessary to fund coverage for benefits authorized by this article [i.e., Ala. Code 1975, Title 16, Chapter 25A, Article 1] for the following fiscal year for employees and for retired employees as a monthly premium per active member per month.' § 16-25A-8(b), Ala. Code 1975. That monthly premium is paid by employers for each of their active members ('the employer contribution'). See § 16-25A-8(a), Ala. Code 1975.
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> "In addition, '[e]ach employee and retired employee [is] entitled to have his or her spouse and dependent children, as defined by the rules and regulations of the [PEEHIP] board, included in the coverage provided upon agreeing to pay the employee's contribution of the health insurance premium for such dependents.' § 16-25A-8(e), Ala. Code 1975. Section 16-25A-1(8), Ala. Code 1975, provides, in pertinent part, that '[i]ndividual premiums may include adjustments and surcharges for ... family size including, but not limited to, a husband and wife both being covered by a health insurance plan as defined herein.' The employer contribution, as well as 'all premiums paid by employees and retired employees under the provisions of this section and any other premiums paid under the provisions of this article,' are deposited into [the

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v. Burks, 270 So. 3d 262 (Ala. 2017) (dismissing the defendants' Rule 5, Ala. R. App. P., permissive appeal on the basis that permission to appeal had been improvidently granted).

> Public Education Employees' Health Insurance Fund]. § 16-25A-8(f), Ala. Code 1975."

Before October 1, 2010, all public-education employees participating in PEEHIP earned a monthly "allocation" or benefit, which could be used to obtain certain coverage alternatives under PEEHIP. The plaintiffs describe that benefit as the difference between the "State's cost of insurance" and the premiums public-education employees are charged for the insurance. Under a program referred to as "the combining allocation program," a public-education employee married to another public-education employee could "combine" their monthly benefits and receive "family coverage," which would also cover their dependent children, without paying any additional monthly premium.

On May 6, 2010, the PEEHIP Board voted to eliminate "the combining allocation program" and to phase in a new premium rate structure ("the 2010 policy"), which requires a public-education employee married to another public-education employee to gradually begin paying the same monthly premiums for family hospital-medical coverage that other PEEHIP participants were required to pay. When the 2010 policy

was implemented, all public-education employees participating in PEEHIP were required to pay a $15 premium for individual coverage and a $117 premium for family coverage.

In May 2014, the original named plaintiffs, individually and on behalf of a class of similarly situated individuals, see note 1, supra, commenced in the Montgomery Circuit Court a purported class action against the defendants, among others, pursuant to 42 U.S.C. § 1983.[3] In their complaint, the original named plaintiffs sought a judgment declaring that the 2010 policy was unconstitutional under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because, they claimed, the 2010 policy denied them and the members of the purported class a benefit for the payment of insurance accorded every other PEEHIP participant. The original named plaintiffs sought an order enjoining the defendants from denying them and the members of the purported class the use of that benefit,

[3]42 U.S.C. § 1983 creates a cause of action against any person who, acting under color of state law, deprives someone else of "rights, privileges, or immunities secured by the Constitution and laws."

which, they claimed, would permit them and the members of the purported class to obtain family coverage at no cost. The defendants thereafter moved for a summary judgment, which the trial court denied.

In Bronner v. Burks, 270 So. 3d 262 (Ala. 2017), this Court granted the defendants' Rule 5, Ala. R. App. P., petition to appeal the trial court's denial of their motion for a summary judgment. Although this Court ultimately dismissed the appeal on the basis that permission to appeal had been improvidently granted, we nonetheless described the disparity alleged by the original named plaintiffs regarding the denial of a benefit:

> "It appears from the materials before us that public-education employees 'earned' or were 'eligible' for monthly coverage and could use that benefit, at their option, to select certain coverage alternatives. Whether described as allotments, allocations, or units of monthly eligibility, each public-education employee accrues a monthly insurance benefit. Each public-education employee may use this benefit to purchase family coverage. But, as the plaintiffs allege and the materials before the Court confirm, when two PEEHIP participants are married to each other, they may not use one of their accrued benefits to purchase family coverage -- they must use both. When compared to individual PEEHIP participants -- where only one accrued monthly benefit can be used to purchase family coverage -- one spouse is effectively denied the monthly insurance benefit that accrued. In such a case, it does not matter that the money represented by the employer contribution is paid to [the Public Education Employees'

> Health Insurance Fund] -- one spouse is denied the benefit of the coverage he or she earned. It is true that, ultimately, the premium paid for the family coverage is the same. Nevertheless, the benefits provided are different -- the couple is treated as though they receive only one monthly eligibility benefit instead of two."

270 So. 3d at 269.[4]

Following the issuance of our opinion in Bronner, the plaintiffs filed a motion for a summary judgment; the defendants filed a renewed motion for a summary judgment. Following a hearing, the trial court entered a summary judgment in favor of the plaintiffs and the purported class members on their § 1983 claims. The trial court specifically declared that the 2010 policy discriminated against active public-education employees married to another active public-education employee, thus denying them equal protection under the law. The trial court thus ordered the defendants to "cease and desist their discriminatory conduct" to the extent that such conduct denies the plaintiffs and the purported class members

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[4]This Court agreed with the defendants that the allocations did not represent a sum of money PEEHIP participants were entitled to receive to purchase insurance. Rather, this Court noted, "the 'allocations' simply represented a public-education employee's monthly eligibility for insurance coverage." Bronner, 270 So. 2d at 269.

a benefit made available to other active public-education employees participating in PEEHIP. This appeal followed.

II. Standard of Review

This Court reviews a summary judgment de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Rule 56(c), Ala. R. Civ. P.; Nettles v. Pettway, 306 So. 3d 873 (Ala. 2020). The movant for a summary judgment has the initial burden of producing evidence indicating that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. Once the movant produces evidence establishing a right to a summary judgment, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. We consider all the evidence in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. Id.

III. Subject-Matter Jurisdiction

Before considering the merits of this appeal, we address the defendants' argument that this purported class action became moot as of

February 1, 2021, when the last of the original named plaintiffs either had retired or had a spouse who had retired. See note 1, supra. As indicated, the original named plaintiffs, individually and on behalf a class of similarly situated individuals, filed a class-action complaint against the defendants, among others. In conjunction with that complaint, the original named plaintiffs filed a motion for class certification pursuant to Rule 23, Ala. R. Civ. P. The defendants did not oppose that motion, nor did they allege that class certification would be improper. Rather, according to the trial court's summary judgment, the defendants orally represented that, if the original named plaintiffs prevailed on the merits, the defendants would provide the relief sought to those plaintiffs, as well as all similarly situated individuals. Based on that representation, the trial court deemed the motion for class certification to be moot.

As of February 1, 2021, before the entry of the summary judgment, the last of the original named plaintiffs either had retired or had a spouse who had retired. The defendants, thus, filed a motion to dismiss the entire action as moot, arguing that the original named plaintiffs no longer had a "live" claim. In response, the original named plaintiffs moved to

"add" or, in the alternative, to "substitute" new plaintiffs, all of whom fell within the purported class and had justiciable claims against the defendants. In the summary judgment, the trial court granted that motion, explaining that, because the defendants had committed to providing class-wide relief if the original named plaintiffs prevailed on the merits, it retained jurisdiction to allow the "addition and/or substitution" of plaintiffs to ensure that class-wide relief remained available even though the original named plaintiffs may not benefit from that relief.

The defendants argue that the lack of class certification of the action and the change in status of the original named plaintiffs since the commencement of the action have rendered the action moot. Under the circumstances presented, we conclude that this action is in the nature of a class action despite the lack of a formal certification order. This case was commenced as a class action and has proceeded accordingly for at least seven years. The class-action complaint provides, among other things, a description of the class affected by the alleged discrimination and the scope of the relief requested, clearly indicating that the action was intended to benefit a class of similarly situated public-education

employees. The defendants raised no objection to the propriety of this case proceeding as a class action; rather, as indicated, they expressly acquiesced to providing class-wide relief if the original named plaintiffs prevailed on the merits. Finally, the issues in this case have been fully briefed, the trial court has ordered class-wide injunctive relief, and the case is now before this Court for appellate review.[5] See, e.g., Wyatt ex rel. Rawlins v. Poundstone, 169 F.R.D. 155, 159 (M.D. Ala. 1995) ("Where a lawsuit has proceeded to trial as a class action, the class has been clearly defined and redefined over the years, injunctive relief has been ordered as to the class, all parties and the court have treated the lawsuit as a class action, and for over 20 years no party has suggested that certification was an issue, as is all true in this lawsuit, the case is for all intents and

[5]We note that the United States Court of Appeals for the Second Circuit has held that it is unnecessary to certify a class when doing so would be a mere formality, e.g., when plaintiffs seek only declaratory and injunctive relief and state defendants explicitly indicate a willingness to comply with a trial court's order regarding that relief. See Davis v. Smith, 607 F.2d 535, 540 (2d Cir.1978) ("Where retroactive monetary relief is not at issue and the prospective benefits of declaratory and injunctive relief will benefit all members of a proposed class to such an extent that the certification of a class would not further the implementation of the judgment, a district court may decline certification.").

purposes a class action even though no formal certification order has been entered ...."). Because this action is in the nature of a class action, we conclude that the trial court properly granted the original named plaintiffs' motion to "add" or "substitute" new plaintiffs to represent the class. See Graves v. Walton Cnty. Bd. of Educ., 686 F.2d 1135, 1138 (5th Cir. Unit B 1982) ("It is firmly established that where a class action exists, members of the class may intervene or be substituted as named plaintiffs in order to keep the action alive after the claims of the original named plaintiffs are rendered moot.").[6] Accordingly, this Court will address the propriety of the trial court's summary judgment providing the plaintiffs and the class members (collectively referred to as "the public-education plaintiffs") injunctive relief pursuant to § 1983.

IV. Discussion

[6]Cf. Jones v. Southern United Life Ins. Co., 392 So. 2d 822, 823 (Ala. 1981) ("Notwithstanding the mootness of the suit as to Mary Jones [by accepting an offer of settlement], it is not moot as to other members of the class, and she can continue to litigate the issues as a representative of the class.").

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of laws." U.S. Const., Amend. XIV, § 1. The import of that clause is that a state must treat similarly situated individuals in a similar manner. Plyler v. Doe, 457 U.S. 202, 216 (1982). The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving "any person of life, liberty, or property, without due process of law ...." U.S. Const., Amend. XIV, § 1.

The public-education plaintiffs claim that the 2010 policy, eliminating the combing allocation program, violates principles of equal protection and due process and that the 2010 policy cannot withstand judicial scrutiny. Because the 2010 policy neither implicates a constitutionally protected fundamental right nor targets a suspect class, the rational-basis test governs our analysis.[7] In Northington v. Alabama

[7]The public-education plaintiffs assert that the 2010 policy must be analyzed under the more stringent strict-scrutiny test because, they say, the 2010 policy discriminates against them solely on the basis of who they married and on the fact that they have children. Although the rights to marry and to have children are protected fundamental rights, the 2010 policy in no way impinges on the public-education plaintiffs' rights to

Department of Conservation & Natural Resources, 33 So. 3d 560, 564 (Ala. 2009), this Court stated the following regarding the rational-basis test:

> "[T]he rational-basis test is the proper test to apply to either a substantive-due-process challenge or an equal-protection challenge when neither a suspect class nor a fundamental right is involved. Gideon v. Alabama State Ethics Comm'n, 379 So. 2d 570 (Ala. 1980). 'Under the rational basis test the Court asks: (a) Whether the classification furthers a proper governmental purpose, and (b) whether the classification is rationally related to that purpose.' 379 So. 2d at 574.
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> "The law is clear that a party attacking the constitutionality of a statute has the burden of negating every conceivable or reasonable basis that might support the constitutionality of the statute. Thorn v. Jefferson County, 375 So. 2d 780 (Ala.1979). Moreover, this Court will uphold a statute as long as the statute implements any rational purpose. State v. Colonial Pipeline Co., 471 So. 2d 408 (Ala. Civ. App. 1984). '[A] statutory discrimination will not be set aside if any set of facts reasonably may be conceived to justify it.' 471 So. 2d at 412. 'Unless clearly and patently arbitrary, oppressive and capricious on its face, such classification is not subject to judicial review. Mere inequality under such

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marry or to have children. See Parks v. City of Warner Robins, 43 F.3d 609, 614-15 (11th Cir. 1996) ("While the [anti-nepotism] policy may place increased economic burdens on certain city employees who wish to marry one another, the policy does not forbid them from marrying.").

> classification is not sufficient to invalidate a statute.' State v. Spann, 270 Ala. 396, 400, 118 So. 2d 740, 743 (1959)."[8]

Finally, in addressing the equal-protection and due-process challenges under a rational-basis analysis, this Court must presume that the 2010 policy is valid and construe it in favor of its constitutionality. Id. Based on the record before us, we, unlike the trial court, conclude that the 2010 policy easily passes the rational-basis test and is not unconstitutional.

In support of their motion for a summary judgment, the defendants submitted the affidavit of Diane Scott, the chief financial officer of PEEHIP and of the Retirement Systems of Alabama ("the RSA"). Scott explained that the defendants have the statutory authority and discretion to change the terms of PEEHIP benefits, including premium rates, from year to year. Scott stated that, because of rising health-care costs and a $255 million funding shortfall in 2010, the defendants made the decision

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[8]The parties do not dispute that the same principles of law regarding our review of statutes under the rational-basis test would apply to our review of policies implemented by an administrative agency such as the PEEHIP Board.

to eliminate the combining allocation program and to phase in a new premium rate structure that required active public-education employees married to another active public-education employee to gradually begin paying the same premiums for family coverage that other PEEHIP participants were required to pay. Scott stated that the defendants always recognized that the combined allocation program would have to end at some point as the result of PEEHIP's having become a group health-insurance plan rather than remaining as the pre-1983 state program that had given a specific dollar amount to each individual public-education employee to purchase insurance. Scott explained that the "benefit" accorded to each public-education employee under PEEHIP is the right to obtain coverage upon payment of the premiums set by the PEEHIP Board. See, e.g., § 16-25A-8(e), Ala. Code 1975 ("Each employee ... shall be entitled to have his or her spouse and dependent children, as defined by the rules and regulations of the [PEEHIP] board, included in the coverage provided upon agreeing to pay the employee's contribution of the health insurance premium for such dependents." (emphasis added)). Scott also stated that, in conjunction with approving the 2010 policy, the

defendants also approved other cost-saving measures that affected all PEEHIP participants, including increased premiums, co-payments, and deductibles. Scott stated that the premium rates currently in effect are among the lowest in the nation for the "robust" health coverage that PEEHIP provides its participants. Scott finally stated that, when the defendants considered and approved the 2010 policy, they were unaware of any other health-insurance plan in the industry that provided premium-free family coverage. The defendants further supported their rationale by pointing out that the June 2010 edition (Vol. VI -- No. 3) of The Advisor, a newsletter published by the RSA, informed PEEHIP participants that the decision to eliminate the combining allocation program was made "to address a real funding crisis and to ensure the sustainability of the plan in the fairest way possible considering the overall group of 290,000 covered lives."

The public-education plaintiffs offered no evidence to rebut the defendants' reasons for implementing the 2010 policy. The public-education plaintiffs do not contest the defendants' statutory right to regulate PEEHIP, nor do they dispute that the defendants have the

discretion to change PEEHIP's terms and benefits from year to year. More importantly, the public-education plaintiffs do not dispute that the defendants must provide for the financial stability of PEEHIP. In essence, the public-education plaintiffs have maintained throughout this litigation that they seek "only that portion of the allocation or differential that would permit [them] to receive family coverage at no cost." Public-education plaintiffs' brief at 40. In reality, the public-education plaintiffs seek reinstatement of the combining allocation program, despite the fact that the defendants exercised their discretion to eliminate that program. Based on the evidence before us, we agree that, as a result of PEEHIP's having become a group health-insurance plan and the need to ensure the sustainability of PEEHIP, the defendants had to begin a process to eliminate the combining allocation program. Although the elimination of the combining allocation program may have financially impacted the public-education plaintiffs more than it impacted other PEEHIP participants, it is well settled that mere inequality resulting from such a change is insufficient to invalidate the 2010 policy. Northington. Furthermore, PEEHIP provides an annual plan covering certain health-

care costs incurred by participants during that year. That annual plan, unlike some other employee benefits, is not a vested right that accrues immediately upon employment, the terms of which can never be changed for the duration of employment. To the contrary, the nature of health-insurance coverage changes each year based on any number of factors that the PEEHIP Board in its discretion must consider to maintain the viability of the plan. Changing the plan, the coverage, and the nature of the costs and benefits are annual considerations appropriately addressed and implemented by the PEEHIP Board based on prevailing actuarial costs as predicted for the coming year. In short, the PEEHIP Board is constrained by financial factors existing in the market for health-care coverage without reference to the amount of an employees' previous premium or other options. Any board charged with obtaining health-care coverage for such a large group must be given the discretion to annually consider all pertinent factors and determine the terms of the plan that will provide the greatest benefit at the lowest cost to all participants because maximizing health-care coverage, not maximizing the benefits or minimizing the costs to a specific group of individuals, is such a board's

annual goal. In this case, the evidence presented by the defendants supports the conclusion that the 2010 policy furthers one or more legitimate purposes and that the classifications in the 2010 policy are rationally related to those purposes. There is nothing before us to indicate that the defendants intended to single out the public-education plaintiffs for disparate treatment under the 2010 policy. Accordingly, we conclude that the 2010 policy is neither arbitrary nor discriminatory and that it does not violate either the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

V. Conclusion

The summary judgment entered in favor of the public-education plaintiffs on their 1983 claims and ordering injunctive relief is reversed, and the cause is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bolin and Wise, JJ., concur.

Parker, C.J., and Stewart, J., concur in the result.