Rel: March 29, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0259

Nicholas Douglas

v.

Gregory S. Griggers

Appeal from Sumter Circuit Court
(CV-21-900013)

BRYAN, Justice.

Nicholas Douglas appeals from a judgment of the Sumter Circuit Court ("the trial court") removing Douglas from the office of constable in Sumter County. For the reasons explained below, we conclude that the

trial court lacked subject-matter jurisdiction over the action, and, consequently, we reverse and remand.

Background

Douglas was elected to the office of constable of Sumter County in November 2020. In February 2021, Gregory S. Griggers, the district attorney for the 17th Judicial Circuit, filed a petition for the writ of quo warranto,[1] purportedly on behalf of the State of Alabama, alleging that Douglas was not eligible to hold the office of constable because he was not a resident of Sumter County. The petition also alleged that Douglas had "a long history of engaging in conduct that is detrimental to the public good." The petition sought Douglas's ouster from office.

Douglas moved to dismiss the petition, arguing that he was, in fact, a resident of Sumter County. Douglas also argued that Griggers had not complied with the requirements to bring a petition for the writ of quo warranto set forth in § 6-6-591, Ala. Code 1975. Griggers filed a response

[1]"Quo warranto" is defined as: "1. A common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed. … 2. An action by which the state seeks to revoke a corporation's charter." Black's Law Dictionary 1508 (11th ed. 2019). Alabama's quo warranto statutory scheme is currently located in Title 6, Chapter 6, Article 13, of the Alabama Code of 1975, and was first codified as part of the Alabama Code of 1852.

to the motion to dismiss, in which he asserted that Douglas had a "lengthy criminal history" and was a convicted felon. Griggers then filed an amended petition, in which he alleged that Douglas had been convicted of multiple felonies in multiple other states and was, therefore, disqualified from holding public office in Alabama under § 36-2-1, Ala. Code 1975.

The trial court denied Douglas's motion to dismiss, and Douglas thereafter filed an answer to the petition. The trial court conducted a two-day bench trial in September and October 2022. On November 1, 2022, the trial court entered a judgment removing Douglas from the office of constable in Sumter County. Douglas thereafter filed a postjudgment motion, which was denied by operation of law. See Rule 59.1, Ala. R. Civ. P. Douglas appealed.

Analysis

On appeal, Douglas first argues that the trial court lacked subject-matter jurisdiction over this quo warranto action because the procedure set forth in § 6-6-591 was not followed in this case. We find this issue dispositive; therefore, we do not address Douglas's remaining arguments and express no opinion regarding the issues they raise.

Section 6-6-591 provides:

> "(a) An action may be commenced in the name of the state against the party offending in the following cases:
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> > "(1) When any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military, any franchise, any profession requiring a license, certificate, or other legal authorization within this state or any office in a corporation created by the authority of this state;
> >
> > "(2) When any public officer, civil or military, has done or suffered any act by which, under the law, he forfeits his office; or
> >
> > "(3) When any association, or number of persons, acts within this state as a corporation without being duly incorporated.
>
> "(b) The judge of the circuit court may direct the action to be commenced when he believes that any of the acts specified in subsection (a) of this section can be proved and it is necessary for the public good, or it may be commenced without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought.
>
> "(c) An action under this section must be commenced in the circuit court of the county in which the acts are done or suffered or, if to try the right to a corporate office, in the circuit court of the county in which the corporation has its principal office or, if it has no principal office, in any county in which it does business."

(Emphasis added.)

"'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.'" Blue Cross & Blue Shield of Alabama, Inc. 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)).

Under the plain meaning of § 6-6-591, there are only two alternative methods for commencing a quo warranto action: (1) at the direction of a circuit-court judge or (2) without the direction of a circuit-court judge on the information of any person giving security for the costs of the action. No other permissible methods for commencing a quo warranto action are provided by the statute.

> "The maxim 'expressio unius est exclusio alterius,' though not a rule of law, is an aid to construction. It has application when, in the natural association of ideas, that which is expressed is so set over by way of contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment. … [U]nder it an act which, although neither expressly forbidden nor authorized, is contrary to the plain implication of a statute, is unlawful."

Weill v. State ex rel. Gaillard, 250 Ala. 328, 334, 34 So. 2d 132, 137 (1948).

In this case, it is undisputed that a circuit-court judge did not direct Griggers to commence this action. It is also undisputed that Griggers did not give security for the costs of the action. Thus, neither of the two permissible alternative methods set forth in § 6-6-591 for commencing a quo warranto action were satisfied in this case.

This Court has recently reiterated that, in an action brought by a private party, the absence of the security required by § 6-6-591 "deprives the circuit court of subject-matter jurisdiction over a quo warranto action." Burkes v. Franklin, 370 So. 3d 235, 241 (Ala. 2022). Thus, the question presented is whether Griggers, as the district attorney for the 17th Judicial Circuit, was authorized to unilaterally commence this quo warranto action on the State's behalf in the absence of such a directive from a circuit-court judge or without giving security for the costs of the action.

Griggers has not filed a brief on appeal. However, the attorney general has submitted an appellate brief arguing that Griggers possessed such authority under § 6-5-1, Ala. Code 1975, which provides, in relevant part:

> "(a) The state may commence an action in its own name and is entitled to all remedies provided for the enforcement of

> rights between individuals without giving bond or security or causing an affidavit to be made, though the same may be required as if the action were between private citizens.
>
> "(b) The district attorney of the circuit in which an action by the state is pending must attend to the same on the part of the state, and the Governor of the state may employ assistant counsel if he deems it necessary. The written direction of the Governor to the attorney of record is sufficient authority for commencing such an action, and the trial judge may determine the amount of compensation. If unsuccessful, the state is liable for costs as individual parties are."

(Emphasis added.)

Section 6-5-1 is a statute governing the procedure for civil actions commenced by the State generally. By contrast, § 6-6-591 governs the procedure for quo warranto actions specifically. To the extent that any conflict exists between the two statutes, § 6-6-591 governs in this case.

> "Statutes should be construed together so as to harmonize the provisions as far as practical. Siegelman v. Folmar, 432 So. 2d 1246 (Ala. 1983). In the event of a conflict between two statutes, a specific statute relating to a specific subject is regarded as an exception to, and will prevail over, a general statute relating to a broad subject. Murphy v. City of Mobile, 504 So. 2d 243 (Ala. 1987); Bouldin v. City of Homewood, 277 Ala. 665, 174 So. 2d 306 (1965)."

Ex parte Jones Mfg. Co., 589 So. 2d 208, 211 (Ala. 1991).

However, we also note that the attorney general has cited no case in which § 6-5-1 has been interpreted as investing district attorneys with

the authority to unilaterally commence quo warranto actions on the State's behalf without the direction of a circuit-court judge or without providing security for the costs of the action; our research has likewise revealed none. Moreover, even assuming -- without deciding -- that § 6-5-1 may have some applicability to quo warranto actions generally, there has been no assertion by Griggers or the attorney general that the governor directed Griggers to commence this action in accordance with the procedure contemplated by § 6-5-1. Therefore, we do not interpret the provisions of § 6-5-1 as authorizing Griggers's petition in this case.

The attorney general also cites § 12-17-184, Ala. Code 1975, which provides, in relevant part:

> "It is the duty of every district attorney and assistant district attorney, within the circuit, county, or other territory for which he or she is elected or appointed:
>
> "….
>
> "(3) To prosecute and defend any civil action in the circuit court in the prosecution or defense of which the state is interested."

(Emphasis added.)

We conclude that the attorney general's argument based on the language of § 12-17-184 begs the question. In particular, this argument

presupposes that Griggers, as the district attorney for the 17th Judicial Circuit, possessed the authority to unilaterally decide that the State is interested in prosecuting this quo warranto action in the absence of security for the costs of the action. In so doing, the attorney general has disregarded the role of the circuit-court judge in these proceedings. Under the plain meaning of § 6-6-591(b), the authority to determine whether the State is interested in prosecuting a quo warranto action in the absence of security for the costs of the action is vested in the circuit-court judge.

In Birmingham Bar Ass'n v. Phillips & Marsh Inc., 239 Ala. 650, 657-58, 196 So. 725, 731-32 (1940), this Court explained:

> "Quo warranto was a very ancient prerogative writ directed against him who usurped an office or franchise to inquire by what authority he exercised such franchise, etc. 51 C.J. 309, § 2.
>
> "This writ was early succeeded by an information in the nature of quo warranto, likewise prerogative, in character, and having the same objectives. 51 C.J. 310, § 3.
>
> "Our statute, of long standing, is modeled upon this common law proceeding ….
>
> "This remedy 'looks to the sovereign power of the state with respect to the use or abuse of franchises -- which are special privileges -- created by its authority, and which must, as a principle of fundamental public policy, remain subject to

> its sovereign action in so far as the interests of the public, or any part of the public, are affected by their usurpation or abuse. State v. Des Moines City Ry. Co., 135 Iowa 694, 109 N.W. 867, 872 [(1906)]; State v. Street Ry. Co., 140 Mo. 539, 41 S.W. 955, 38 L.R.A. 218, 62 Am. St. Rep. 742, 748 [(1897)]; State v. Birmingham W. W. Co., 164 Ala. 586, 51 So. 354, 27 L.R.A. (N.S.) 674, 137 Am. St. Rep. 69, 20 Ann. Cas. 951 [(1910)].' State ex rel. Weatherly et al. v. Birmingham Water Works Co., 185 Ala. 388, 64 So. 23, 27, Ann. Cas. 1916B, 166 [(1913)].
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> "Our statute has extended the right to institute such proceeding to a person giving security for costs of the action. But, in such case, the action is still prerogative in character, brought in the name of the State, on the relation of such person, who becomes a joint party with the State. The giving of security for the costs of the action is the condition upon which the relator is permitted to sue in the name of the State. Without such security, he usurps the authority of the State. Ex parte Talley, 238 Ala. 527, 192 So. 271 [(1939)].
>
> "But this is not the only method of invoking the authority of the State in the protection of franchises it has granted in the interest of the public.
>
> " 'The judge of the circuit court may direct such action to be brought when he believes that any of the acts specified in the preceding section can be proved, and it is necessary for the public good.' [Ala.] Code [1923], § 9933[, now codified at § 6-6-591(b)].
>
> "Thus is committed to the judicial department the institution of such proceedings …. Circuit Judges, in the exercise of their discretion under this section, should have in mind this duty. … The direction to bring such action is to the Solicitor as in [Ala. Code 1923,] § 9930."

(Emphasis added.)

Section 9930 of the Alabama Code of 1923, cited at the end of the foregoing excerpt from Birmingham Bar Association, is now codified at § 6-6-590(b), Ala. Code 1975, and addresses quo warranto actions seeking to vacate a corporation's charter or to annul its existence. That statute provides:

> "(b) The judge of the circuit court, whenever he believes that any of the acts or omissions specified in subsection (a) of this section can be proved and it is necessary for the public good, must direct the district attorney to commence an action, or an action may be commenced without the direction of the judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is commenced."

(Emphasis added.)[2] Thus, this Court's decision in Birmingham Bar Association demonstrates the historical understanding that, under Alabama's quo warranto statutory scheme as a whole, if a circuit-court

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[2]Section 9930 of the Alabama Code of 1923 provided:

> "Judge of circuit court may direct solicitor to commence action; any person may sue on securing costs. -- The judge of the circuit court whenever he believes that any of these acts or omissions can be proved, and it is necessary for the pubic good, must direct the solicitor of the circuit or county to bring such action; or such action may be brought without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought."

judge determined that a quo warranto action should be commenced on the State's behalf without providing security for the costs of the action, the proper procedure was for the circuit-court judge to direct the circuit or county solicitor -- now called the district attorney -- to commence such an action.[3]

This Court's precedent makes clear that this has long been considered the proper procedure under Alabama law. Substantively, the provisions of § 6-6-591(b) are the same as those of § 9933 of the Alabama Code of 1923. Almost a century ago, this Court explained the following regarding § 9933:

> "Such action, brought by direction of the judge of the circuit court, proceeds in the name of the state upon the relation of the solicitor in his official capacity. It is not required that the solicitor be made a party personally nor that

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[3]In League of Women Voters v. Renfro, 292 Ala. 128, 131, 290 So. 2d 167, 169 (1974), this Court explained:

> "Statutes are in pari materia where they deal with the same subject. Kelly v. State, 273 Ala. 240, 139 So. 2d 326 [(1962)]. Where statutes are in pari materia they should be construed together to ascertain the meaning and intent of each. City of Birmingham v. Southern Express Co., [164 Ala. 529, 51 So. 159 (1909)]. Where possible, statutes should be resolved in favor of each other to form one harmonious plan and give uniformity to the law. Waters v. City of Birmingham, 282 Ala. 104, 209 So. 2d 388 [(1968)]; Walker County v. White, 248 Ala. 53, 26 So. 2d 253 [(1946)]."

> security for costs be given as in cases of information filed by a private person. Code, §§ 9933, 9938.
>
> "It is contemplated that the judge shall have advance information leading him to believe the charge can be proven and the proceeding is for the public good."

Donovan v. State ex rel. Biggs, 215 Ala. 55, 55, 109 So. 290, 290 (1926).

Moreover, that same year, this Court released a decision reflecting the precise historical understanding of the statutory quo warranto procedure that, we conclude, also resolves the essential question presented by the case before us now. In Evans v. State ex rel. Sanford, 215 Ala. 61, 109 So. 357 (1926), a circuit solicitor purported to bring a quo warranto action in the name of the State after receiving a private letter from a judge directing him to do so. In holding that the circuit-court judge's direction to commence such an action must be a part of the court record, as opposed to only a private letter, this Court explained:

> "In the instant case the proceedings were instituted in the name of the state, without joinder of any person, and without any security for costs. In section 9933, supra, such course of procedure is authorized when the judge of the circuit court, believing that any of the acts in the preceding section can be proved, and that it is necessary for the public good, directs such action to be brought. The order of the judge of the circuit court in such cases takes the place of the joinder of an individual relator and security for costs. Manifestly such an order is a condition precedent to such a proceeding in the name of the state alone."

Evans, 215 Ala. at 62, 109 So. at 357 (emphasis added). The Court held: "Such an order was a condition precedent in this case. No such order was on file, or formed a part of the record of this cause, and it must logically follow, from a consideration of the foregoing authorities, that respondent's motion to quash [the proceeding] should have been sustained." 215 Ala. at 62, 109 So. at 358.

In Wenzel v. State ex rel. Powell, 241 Ala. 406, 407, 3 So. 2d 26, 26 (1941), the Court recited the principle again. The Court stated:

> "This is a proceeding by quo warranto … and was instituted by the County Solicitor of Morgan County by information filed by him, in the name of the State, without security for costs.
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> "It has been consistently ruled here that failure to give security for costs in such proceedings, in the absence of an order of the Judge of the Circuit Court, authorized by § 9933 of the Code of 1923, Code 1940, Tit. 7, § 1137, is jurisdictional and fatal to the proceedings."

Id.

We acknowledge that, by granting Griggers's petition in this case, the trial court determined that Douglas should be removed from the office of constable based on the evidence that Griggers presented at trial. In other words, the trial court determined that Griggers's petition for the writ of quo warranto had merit after the proceeding had concluded.

However, as the foregoing decisions make clear, a circuit-court judge's direction to commence a quo warranto action is a condition precedent to commencing such a proceeding in the absence of security for the costs of the action. Evans, 215 Ala. at 62, 109 So. at 357. Section 6-6-591(b) "contemplate[s] that the judge shall have advance information leading him to believe the charge can be proven and the proceeding is for the public good." Donovan, 215 Ala. at 55, 109 So. at 290 (emphasis added). "Thus is committed to the judicial department the institution of such proceedings …." Birmingham Bar Association, 239 Ala. at 657, 196 So. at 732 (emphasis added).

A much more recent case also illustrates the modern understanding of the statutory procedure, which is in harmony with the historical understanding outlined above. In Reed v. State ex rel. Davis, 961 So. 2d 89, 91-92 (Ala. 2006), "the district attorney for Russell County presented documents to the presiding circuit judge of the Russell Circuit Court … indicating that" Ronnie Reed, who had been elected as a county commissioner, "had been convicted of a felony in 1975 and that he had not been pardoned for that conviction."

The presiding circuit-court judge "issued an order, in accord with Code of Alabama 1975, § 6-6-591 et seq., directing the district attorney for Russell County … to file a quo warranto action against Reed," which action was given a designated case number in the circuit court. Reed, 961 So. 2d at 92. "[B]efore the district attorney had complied with [the] order, a private citizen … filed a quo warranto action against Reed." Id. The private citizen's action was also assigned a case number, and, upon his "dismissal as a party, the district attorney, proceeding for the State, was substituted as the plaintiff, the case files [for the two actions] were merged, and [the private citizen's action] was dismissed." Id. All the Russell County circuit-court judges later recused themselves from the case, and Brady E. Mendheim, then a district judge in Houston County, was assigned to hear the case. Judge Mendheim, relying on the presiding circuit-court judge's order, ordered the district attorney to proceed with a quo warranto action against Reed and ultimately entered an order removing Reed from office.

In considering whether the quo warranto action had been properly prosecuted, this Court stated:

> "Section 6-6-591(b) provides that the circuit judge 'may direct the action to be commenced when he believes that any of the

> acts specified in subsection (a) of this section can be proved and it is necessary for the public good.' This directive is to be given to the district attorney before the action is commenced and may be entered by any circuit judge with jurisdiction."

Reed, 961 So. 2d at 95 (emphasis added).

Later in its decision, the Court explained: "The determination required of the judge before commencement of a quo warranto action represents a preliminary determination of a factual basis of public necessity for commencing the quo warranto action." Id. at 96 (emphasis added). The Court then approvingly quoted from Judge Mendheim's removal order, which stated, in relevant part: "'The clear language of § 6-6-591(b) states that the determination of the "public good" rests with the judge at the initiation of a quo warranto proceeding. It is a preliminary determination by the judge that the case is not a wholly private concern .... '" Id. (emphasis added). Ultimately, this Court affirmed the circuit court's judgment in Reed.

In light of the foregoing, we conclude that Griggers was not statutorily authorized to unilaterally commence this quo warranto action on the State's behalf without the direction of a circuit-court judge or without providing security for the costs of the action. Therefore, we have adjusted the style of this appeal to reflect that the proper appellee in this

case is Griggers personally and not the State of Alabama. In reaching this conclusion, we note that adopting the position asserted by Griggers and the attorney general in this case would infer an appointment of greater prosecutorial power to district attorneys than is conveyed by the plain meaning of the legislature's chosen words. This Court is without the ability to grant that authority. If district attorneys should possess such power, it is the province of the legislature to provide it.

On that point, this Court's reasoning from an 1898 decision affirming the dismissal of a petition by reference to the quo warranto statutory scheme as it existed then is of equal relevance today:

> "We have no doubt that Chap. 14, Tit. 2, Part 3 of the Code of 1886, constitutes the only system of laws now obtaining in this State touching the remedy of quo warranto, or information in the nature of quo warranto. That system was manifestly intended to be, and is, a complete one, covering the whole subject, taking the place of the common law remedy. We perceive nothing in our constitution limiting the power of the law-making department of the government to make this substitution of systems. Indeed, the statutory system preserves, substantially, the principles of the common law remedy, only regulating, as was within perfect legislative competency, by whom, in whose names and behalf, and by what procedure public and private rights, which the common law information was adequate to redress, should be set on foot and adjudicated. The statutory system gives ample protection to the public, and to private claimants of public offices, and its requirements must be observed when the redress which quo warranto gives is desired to be invoked.

> "… [This proceeding] does not meet the statute requirements as to parties and procedure."

State ex rel. Fitts v. Elliott, 117 Ala. 172, 173, 23 So. 43, 43 (1898).[4]

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[4]Elliott involved a "quo warranto proceeding at the suit of the State, on the relation of Attorney-General [William C. Fitts] against the appellee, James M. Elliott, Jr., having for its purpose the ousting of said Elliott from the office of Mayor of the city of Gadsden." 117 Ala. at 172, 23 So. at 43 (synopsis).

We note that authority exists for the proposition that the attorney general may commence a quo warranto action. See, e.g., Young v. State ex rel. Russell, 256 Ala. 84, 88, 53 So. 2d 350, 353 (1951)("Where the action is not at the direction of the circuit judge or where the Attorney General is not a party some relator must be joined with the state as a party plaintiff."). The reason for that view can perhaps be traced to the common law; "[b]y the common law the matter of instituting proceedings of this nature was a prerogative of the Attorney General who could exercise an arbitrary discretion in this regard not subject to be controlled or reviewed." Baxter v. State ex rel. Metcalf, 243 Ala. 120, 122, 9 So. 2d 119, 120 (1942).

However, this Court has shown caution in not conflating district attorneys, formerly called circuit solicitors, with the attorney general when evaluating statutory powers of this nature. In State v. Moore, 19 Ala. 514, 518 (1851), the Court considered a legislative act that provided:

> "'It shall be the duty of the several solicitors in this State, in whose circuit any turnpike road may be located, to issue a scire facias, at the instance of and in behalf of the State, against any owner of said road, whenever the provisions of any law creating such franchise shall have been so violated as to forfeit the same, by misuser or nonuser, or when the said owner shall have done or omitted any act or acts which amount to a surrender of the rights, privileges or franchises conferred by the act authorizing the same.'"

Conclusion

The absence of a circuit-court judge's direction to Griggers to commence this quo warranto action or the absence security for the costs

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In interpreting the act, the Moore Court reasoned as follows:

> "The language of the act plainly shows that the Legislature did not intend to confide this discretion to the solicitors; but, on the contrary, it was the manifest intention to withhold it from them. They were to act 'at the instance of the State,' which excludes the idea of their acting upon their own will or discretion. … This language, which refers the discretion to no particular department or officer, was, however, used with direct reference to the common law, where, in the case of informations in the nature of a quo warranto, the attorney general held the discretion. …
>
> "We do not decide that our Attorney General, as an officer of State, can derive his powers from the common law, but we decide, by construction of the act in reference to the common law, which the Legislature evidently had in view, that the Legislature intended to confer this high discretion upon him, to be exercised in its behalf justly and impartially."

19 Ala. at 521.

Like the legislative act at issue in Moore, and as explained above, the plain meaning of § 6-6-591(b) does not invest district attorneys with authority to unilaterally commence quo warranto actions. Whether the attorney general has authority to unilaterally prosecute a quo warranto action under § 6-6-591 on the state's behalf without the direction of a circuit-court judge or without providing security for the costs of the action is an issue that is not presented by this appeal. Therefore, we express no opinion regarding that issue in deciding the case before us now.

of this action deprived the trial court of subject-matter jurisdiction over the action. See Wenzel, 241 Ala. at 407, 3 So. 2d at 26. Because the trial court lacked subject-matter jurisdiction over this action, its judgment is void. See Burkes, 370 So. 3d at 241. Therefore, the trial court's judgment is reversed, and this cause is remanded with instructions for the trial court to enter an order vacating its judgment.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Wise, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Shaw and Sellers, JJ., concur in the result.