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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2012-2013

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**Ex parte RCHP-Florence, LLC, d/b/a/ Eliza Coffee Memorial
Hospital and Shoals Hospital**

PETITION FOR WRIT OF MANDAMUS

**(In re: RCHP-Florence, LLC, d/b/a Eliza Coffee Memorial
Hospital and Shoals Hospital**

v.

**Colbert County Northwest Alabama Health Care Authority,
d/b/a Helen Keller Hospital, et al.)**

(Montgomery Circuit Court, CV-11-272)

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PITTMAN, Judge.

RCHP-Florence, LLC, an entity doing business as Eliza Coffee Memorial Hospital and Shoals Hospital ("RCHP-Florence"), petitions this court for a writ of mandamus directing the Montgomery Circuit Court ("the circuit court") to set aside a discovery order. For the reasons discussed below, we deny RCHP-Florence's petition.

On November 3, 2010, RCHP-Florence filed a petition pursuant to § 41-22-11(a), Ala. Code 1975,¹ with the State Health Planning and Development Agency ("SHPDA"). RCHP-Florence's petition asked SHPDA's Certificate of Need Review Board ("the CONRB") to issue a declaratory ruling that Colbert County Northwest Alabama Health Care Authority, an entity doing business as Helen Keller Hospital ("Helen Keller"), was required to cease performing surgical procedures at an outpatient-surgery center located on its campus ("the outpatient-surgery center") until it obtained a certificate of need ("CON") from the CONRB. On November 12, 2010, Helen

¹In pertinent part, § 41-22-11(a), Ala. Code 1975, provides that, "[o]n the petition of any person substantially affected by a rule, an agency may issue a declaratory ruling ... with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it."

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Keller intervened in order to oppose RCHP-Florence's petition. The CONRB held a hearing regarding RCHP-Florence's petition on November 17, 2010. At that hearing, RCHP-Florence began presenting evidence in support of its petition; however, before the parties' presentation of evidence was completed, the CONRB and the parties, at the request of the CONRB, entered into an agreement on the record to extend the 45-day period for the CONRB to issue an express ruling in response to RCHP-Florence's petition until the next regularly scheduled meeting of the CONRB on January 19, 2011.² However, on January 18, 2011, the governor placed a moratorium on meetings of the CONRB, and, consequently, the January 19, 2011, meeting of the CONRB was canceled.

On February 4, 2011, RCHP-Florence filed a notice of appeal with SHPDA, and, on March 4, 2011, RCHP-Florence filed a complaint with the circuit court stating three claims.³ The

²With respect to petitions filed pursuant to § 41-22-11(a), § 41-22-11(b), Ala. Code 1975, provides, in pertinent part, that "[f]ailure of the agency to issue a declaratory ruling on the merits within 45 days of the request for such ruling shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review."

³Section 41-22-20(b), Ala. Code 1975, provides that a proceeding for review of a final decision of an administrative

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first claim sought judicial review of the denial by operation of law of the petition RCHP-Florence had filed with SHPDA pursuant to § 41-22-11(a). The second claim sought a declaratory ruling by the circuit court, pursuant to § 41-22-10, Ala. Code 1975, and the Declaratory Judgment Act, § 6-6-220 et seq., Ala. Code 1975, that Helen Keller was required to cease performing surgical procedures at the outpatient-surgery center until it obtained a CON from the CONRB. The third claim sought an injunction from the circuit court, pursuant to § 22-21-276(a), Ala. Code 1975, enjoining Helen Keller from performing surgical procedures at the outpatient-surgery center until it obtained a CON from the CONRB. Thereafter, Helen Keller propounded certain discovery requests that RCHP-Florence considered objectionable, and RCHP-Florence filed a motion for a protective order. The circuit court orally denied that motion. Subsequently, RCHP-Florence timely filed a petition asking this court to issue a writ of mandamus directing the circuit court to set aside its order denying the

agency in a contested case may be instituted by filing a notice of appeal with the pertinent administrative agency and by filing a petition seeking judicial review of the administrative agency's decision in the appropriate circuit court.

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motion for a protective order. Because the circuit court had not rendered and entered a written order ruling on the motion for a protective order as required by Rule 58, Ala. R. Civ. P., this court instructed the circuit court to enter such an order, and the circuit court did so.

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995).

In reviewing the papers filed with RCHP-Florence's mandamus petition and the answer to that petition filed by Helen Keller, we noted an issue regarding the jurisdiction of the circuit court that the parties had not addressed. Accordingly, we called for the parties to submit letter briefs addressing that issue, and the parties have done so.

Because RCHP-Florence's first claim sought judicial review of a decision of an administrative agency and because the timely filing of a notice of appeal is necessary to invoke the jurisdiction of the circuit court to review a decision of an administrative agency pursuant to § 41-22-20, Ala. Code

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1975, see Krawczyk v. State Dep't of Pub. Safety, 7 So. 3d 1035, 1037 (Ala. Civ. App. 2008) ("[A] timely filing [of a notice of appeal] under § 41-22-20(d) [, Ala. Code 1975,] is jurisdictional."), we must determine whether RCHP-Florence timely filed its notice of appeal in order to determine whether RCHP-Florence's first claim invoked the jurisdiction of the circuit court.

Section 41-22-20(d), Ala. Code 1975, provides that a notice of appeal from a final decision of an administrative agency such as the CONRB of SHPDA must be filed with the pertinent administrative agency within 30 days of the date the petitioner receives notice of, or other service of, the decision rendered by that administrative agency. When the decision of the administrative agency is the denial of a petition or application by operation of law due to the administrative agency's failure to rule on that petition or application within a specified period, a notice of appeal from such a denial must be filed within 30 days after the petition or application was denied by operation of law. See Noland Health Servs., Inc. v. State Health Planning & Dev. Agency, 44 So. 3d 1074, 1081-82 (Ala. 2010) (holding that the period for

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seeking judicial review of denial of CON application not expressly ruled upon by the CONRB begins to run at the time that application has been denied by operation of law). Section 41-22-11(b), Ala. Code 1975, provides that, when a petition for a declaratory ruling is filed with an administrative agency pursuant to § 41-22-11(a), "[f]ailure of the agency to issue a declaratory ruling on the merits within 45 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review." In the present case, the 45th day after the filing of RCHP-Florence's petition with SHPDA was December 18, 2010. However, § 1-1-4, Ala. Code 1975, provides that, if the last day of a period within which an act must be done falls on a Sunday, a legal holiday as defined in § 1-3-8, Ala. Code 1975, "or a day on which the office in which the act must be done shall close as permitted by any law of this state, the last day also must be excluded, and the next succeeding secular or working day shall be counted as the last day within which the act may be done." Consequently, because SHPDA, like many agencies of this State, is closed for

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business on Saturday,⁴ the last day allowed by § 41-22-11(b) for the CONRB to issue an express ruling in response to RCHP-Florence's petition was Monday, December 20, 2010.

However, RCHP-Florence argues that the 45-day period for the CONRB to issue an express ruling did not expire until January 19, 2011, because, RCHP-Florence says, the CONRB and the parties agreed to extend the 45-day period for the CONRB to issue an express ruling until January 19, 2011. Thus, according to RCHP-Florence, it had 30 days from January 19, 2011, to file a notice of appeal, and it timely filed that notice of appeal on February 4, 2011. We disagree. Section 41-22-11 contains no language authorizing either an administrative agency such as the CONRB or the parties to a proceeding initiated by the filing of a petition pursuant to § 41-22-11(a) to extend by agreement the 45-day period within which the administrative agency must issue an express ruling. Had the legislature intended to authorize such extensions by agreement, it could easily have included language in § 41-22-11 expressly authorizing such extensions. Cf., e.g., § 22-21-

⁴Cf. Ala. Admin. Code (SHPDA), r. 410-1-3-.05 (excluding final Saturdays from calculations of time periods established by SHPDA rules).

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275(3), Ala. Code 1975 (expressly authorizing SHPDA to extend the 90-day period for the CONRB to rule on a CON application for a period not to exceed 30 days with or without the consent of the applicant and to extend that 90-day period without limitation with the consent of the applicant).

"The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. 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. Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687 (Ala. 1991)."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). Applying the principles set forth in IMED Corp. v. Systems Engineering Associates Corp., we must conclude that the absence from § 41-22-11 of language authorizing extensions by agreement of the 45-day period specified by § 41-22-11(b) clearly and unambiguously evidences a legislative intent not to authorize such extensions. Therefore, in the present case, we conclude that the agreement of the CONRB and the parties to extend the 45-day period for the CONRB to issue an express

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ruling in response to RCHP-Florence's petition did not extend that period and, therefore, that that period expired on December 20, 2010.⁵

Because the CONRB did not issue an express ruling in response to RCHP-Florence's petition on or before December 20, 2010, RCHP-Florence's petition was denied by operation of law on December 20, 2010, see § 41-22-11(b), and the 30-day period for RCHP-Florence to file a notice of appeal with SHPDA began to run on December 21, 2010. See Noland Health Servs., Inc. v. State Health Planning & Dev. Agency, supra. That 30-day period expired on January 19, 2011, and RCHP-Florence did not file its notice of appeal with SHPDA until February 4, 2011. Consequently, RCHP-Florence's notice of appeal was untimely filed, and, thus, RCHP-Florence's first claim did not invoke

⁵RCHP-Florence argues that, despite the absence from § 41-22-11 of language authorizing extensions by agreement of the 45-day period specified by § 41-22-11(b), we nonetheless should give effect to the agreement of the CONRB and the parties to extend that 45-day period in this case because, RCHP-Florence says, that agreement is analogous to an agreement of the parties to extend the period for a trial court to rule on a postjudgment motion pursuant to Rule 59.1, Ala. R. Civ. P.; however, we do not find that argument persuasive because Rule 59.1 contains language expressly authorizing the parties to extend by agreement the period for a trial court to rule on a postjudgment motion, whereas § 41-22-11 contains no language authorizing an extension by agreement of the 45-day period specified by § 41-22-11(b).

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the jurisdiction of the circuit court.⁶ See Krawczyk v. State Dep't of Pub. Safety, supra.

RCHP-Florence also argues that, even if its first claim failed to invoke the circuit court's jurisdiction, its second claim, which stated a claim for a declaratory ruling by the circuit court pursuant to § 41-22-10 and the Declaratory Judgment Act, and its third claim, which stated a claim for an injunction to be issued by the circuit court pursuant to § 22-

⁶The parties had not completed their presentation of evidence to the CONRB at the November 17, 2010, hearing; however, if RCHP-Florence had timely filed its notice of appeal with SHPDA, either party or both parties could have sought an order from the circuit court remanding the matter to the CONRB for the presentation of additional evidence pursuant to § 41-22-20(i), Ala. Code 1975. In pertinent part, that statute provides:

"If, before the date set for hearing a petition for judicial review of agency action in a contested case, it is shown to the satisfaction of the court that additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may remand to the agency and order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modification, new findings, or decision with the reviewing court and mail copies of the new findings, or decision to all parties."

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21-276(a), invoked the jurisdiction of the circuit court.

However, § 41-22-11(b) provides, in pertinent part:

"A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by a court in a proper proceeding. Such rulings are subject to review in the Circuit Court of Montgomery County ... in the manner provided in Section 41-22-20 for the review of decisions in contested cases."

(Emphasis added.) In pertinent part, § 41-22-20(j), Ala. Code 1975, provides that "[t]he review shall be conducted by the court without a jury and, except as herein provided, shall in the review of contested cases be confined to the record and the additions thereto as may be made under subsection (i) of this section." Moreover, § 41-22-20(k), Ala. Code 1975, provides:

"[T]he agency order shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, except where otherwise authorized by statute. The court may affirm the agency action or remand the case to the agency for taking additional testimony and evidence or for further proceedings. The court may reverse or modify the decision or grant other appropriate relief from the agency action, equitable or legal, including declaratory relief, if the court finds that the agency action is due to be set aside or modified under standards set forth in appeal or review statutes applicable to that agency or if substantial rights of the petitioner have been

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prejudiced because the agency action is any one or more of the following:

"(1) In violation of constitutional or statutory provisions;

"(2) In excess of the statutory authority of the agency;

"(3) In violation of any pertinent agency rule;

"(4) Made upon unlawful procedure;

"(5) Affected by other error of law;

"(6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

"(7) Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion."

RCHP-Florence's arguing that its second and third claims independently invoked the circuit court's jurisdiction is tantamount to arguing that RCHP-Florence is entitled to seek a new adjudication by the circuit court of the same issue that was decided by the CONRB instead of seeking judicial review of the CONRB's decision in accordance with § 41-22-11(b) and § 41-22-20. The language in § 41-22-11(b) indicating that a decision of an administrative agency in response to a petition for a declaratory ruling pursuant to § 41-22-11(a) is binding

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on the administrative agency and the applicant unless it is altered by the circuit court in a proceeding seeking judicial review in accordance with § 41-22-20 indicates that, once RCHP-Florence sought a declaratory ruling from the CONRB pursuant to § 41-22-11(a) and its petition was denied, RCHP-Florence's only recourse was to seek judicial review of the CONRB's decision in accordance with § 41-22-20. Caselaw also supports that conclusion. In Alabama Cellular Service, Inc. v. Sizemore, 565 So. 2d 199, 204-05 (Ala. 1990), the supreme court held that petitioning an administrative agency for a declaratory ruling regarding the validity or applicability of a rule of that administrative agency pursuant to § 41-22-11(a) is not a prerequisite to seeking a declaratory ruling regarding the validity or application of that administrative rule by the circuit court pursuant to either the Declaratory Judgment Act or § 41-22-10. The supreme court also indicated that, when a party has a right to seek a declaratory ruling regarding the validity or applicability of a rule of an administrative agency, the party may elect either to seek a declaratory ruling from the administrative agency pursuant to § 41-22-11(a) or to seek such a declaratory ruling from the

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circuit court pursuant to § 41-22-10 and the Declaratory Judgment Act. The supreme court stated:

"It is clear that the Legislature, in adopting the [Administrative Procedure Act ('APA')], did not intend to limit declaratory judgment actions in any way. By the inclusion of § 41-22-10 in the APA, the drafters of this legislation ensured that the validity and applicability of a state agency rule or regulation could be the basis of a 'justiciable controversy' as that term is used in our Uniform Declaratory Judgments Act. Section 41-22-11 was intended to force the state agency to make a decision, not to be a prerequisite to a declaratory judgment action. ...

"We agree with the analysis espoused by the Honorable Alvin Prestwood, who chaired the committee responsible in large part for the passage of the Alabama Administrative Procedure Act, and who filed an amicus brief with this court in Stuart[v. Historic Warehouse, Inc., 505 So. 2d 298 (Ala. 1986)].⁸ Section 41-22-10 provides that the validity o[r] applicability of a rule of a state agency may be determined in an action for a declaratory judgment in the Circuit Court of Montgomery County. Section 41-22-11 allows a person who is substantially affected by a rule of a state agency to petition the agency for declaratory relief, and the circuit court may review the agency action under this section. The failure of the agency to act within 45 days of the request constitutes a denial of the merits of a request and is subject to judicial review. Each section has a field of operation. It is unnecessary as a precondition for bringing such a declaratory judgment action to first petition the state agency under § 41-22-11.

⁸The application of the exhaustion principles to [§ 41-22-10] certainly would not enhance the

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orderly progress of proceedings and judicial decisions under the APA. Section [41-22-11] should be left to its own sphere of operation, and [§ 41-22-10] should be allowed to serve its purposes unfettered. It is respectfully submitted that persons who want relief available only through [§ 41-22-11] should be required to adopt that route, and those seeking relief available only under [§ 41-22-10] should be left to that remedy. In those cases where an affected person had standing and sought relief available under either section, he should be allowed to elect which of the remedies he would explore. It seems that any other approach would create a monster which would, as a practical matter, haunt the courts for some time to come.' 505 So. 2d 298, at 302 (Maddox, J. dissenting)."

565 So. 2d at 204-05 (emphasis added).

In State Personnel Board v. Wallace, 659 So. 2d 683, 686 (Ala. Civ. App. 1995), this court held that, initially, a party desiring a declaratory ruling regarding the validity or applicability of a rule of an administrative agency has the option to seek such a ruling from the pertinent administrative agency pursuant to § 41-22-11(a) or to seek such a ruling directly from the circuit court pursuant to § 41-22-10; however, if that party elects to seek such a ruling from the pertinent administrative agency pursuant to § 41-22-11(a) instead of seeking it directly from the circuit court pursuant to § 41-22-10, that party is bound by that decision and that party's only recourse in the event of an adverse decision by

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the administrative agency is to seek judicial review of the administrative agency's decision. This court stated:

"As noted previously, Wallace filed with [the State Personnel Board ('Personnel')] a petition for a hearing and a request for a declaratory ruling, pursuant to Ala. Code 1975, § 41-22-11. Personnel issued a declaratory ruling, which was adverse to Wallace. Section 41-22-11(b) provides, in pertinent part: 'A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by a court in a proper proceeding.'

"Wallace's only recourse, after requesting that Personnel issue a declaratory ruling pursuant to § 41-22-11, was an appeal to the Circuit Court of Montgomery County for a judicial review of the declaratory ruling issued by Personnel. See Ala. Code 1975, § 41-22-11(b). The standard of review which the circuit court must follow in reviewing the declaratory ruling issued by Personnel is set forth in Ala. Code 1975, § 41-22-20. Alabama State Personnel Board v. Brashears, 575 So. 2d 1149 (Ala. Civ. App. 1991).

"We would note that, initially, Wallace had the option of filing an action for declaratory judgment as to the validity or applicability of [Ala. Admin. Code (Pers. Bd.),] Rule 670-X-10-.01[,] directly with the circuit court of Montgomery County, pursuant to Ala. Code 1975, § 41-22-10. Alabama Cellular Service, Inc. v. Sizemore, 565 So. 2d 199 (Ala. 1990). However, Wallace elected not to pursue that avenue and is now bound by that decision. Consequently, the circuit court of Montgomery County is now required to review Personnel's declaratory ruling pursuant to the [Administrative Procedure] Act."

659 So. 2d at 686 (emphasis added).

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In Auburn Medical Center, Inc. v. State Health Planning & Development Agency, 814 So. 2d 263, 265 (Ala. Civ. App. 2001), Auburn Medical Center had elected to seek a declaratory ruling from the CONRB pursuant to § 41-22-11(a) instead of seeking such a ruling directly from the circuit court pursuant to § 41-22-10. This court held that "Auburn Medical Center [was] not entitled to seek relief pursuant § 41-22-10 once it decided to proceed under § 41-22-11."

Accordingly, we conclude that, once RCHP-Florence elected to seek a declaratory ruling from the CONRB pursuant to § 41-22-11(a), its only recourse after its petition was denied was to seek judicial review of the CONRB's decision in accordance with § 41-22-20. Consequently, RCHP-Florence's second and third claims did not invoke the jurisdiction of the circuit court. Because none of RCHP-Florence's claims invoked the circuit court's jurisdiction, RCHP-Florence does not have a clear legal right to the writ of mandamus it seeks. Therefore, we deny the petition.

PETITION DENIED.

Thompson, P.J., and Thomas, Moore, and Donaldson, JJ.,
concur.