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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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State ex rel. Shirley Williams-Scott

v.

Eddie Penny

Appeal from Jefferson Circuit Court, Bessemer Division
(CV-19-900226)

SELLERS, Justice.

The State of Alabama, on the relation of Shirley Williams-Scott, appeals from an order entered by the Jefferson Circuit Court denying Williams-Scott's petition for a writ of

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quo warranto seeking to declare that Eddie Penny does not hold office as the mayor of the City of Fairfield. We affirm.

Pursuant to Act No. 1991-699 ("the local act"), Fairfield, which before the 2010 federal census had a population of over 12,000, has operated under a mayor-council form of government; the mayor and council president are elected at large, and 6 council members are elected from single-member districts. It appears undisputed that, before the most recent federal census in 2010, the population of Fairfield was more than 12,000. Section 11-43-2(a), Ala. Code 1975, provides:

"[I]n all cities and towns at the general election to be held on the fourth Tuesday in August, 1984, and quadrennially thereafter, there shall be elected a mayor, who, in cities having a population of 12,000 or more according to the last or any subsequent federal census, shall not sit with the council nor have a vote in its proceedings, and he or she shall have the power and duties conferred in this chapter."

(Emphasis added.)

The 2010 federal census indicated that the population of Fairfield had dropped below 12,000. Section 11-43-2(b), Ala. Code 1975, provides:

"In all cities and towns having a population of less than 12,000 inhabitants according to the last or any

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subsequent federal census, the legislative functions shall be exercised by the mayor and five aldermen. The mayor shall preside over all deliberations of the council. At his or her discretion he or she may vote as a member of the council on any question coming to a vote, except in case of a tie, in which event he or she must vote."

(Emphasis added.) Another statutory provision states that, "[i]n all towns or cities, a majority of the whole number of members to which such corporation is entitled, including the mayor in towns and cities of less than 12,000 population, shall be necessary to constitute a quorum." § 11-43-48, Ala. Code 1975.

In the 2016 election cycle, Ed May II was elected to the position of mayor of Fairfield, and Penny was elected to the position of council president. It is undisputed that May did not attend any council meetings for 90 consecutive days, beginning October 1, 2018.¹ Section § 11-40-25(b), Ala. Code 1975, provides that "[a]ny elected municipal official who misses all regular and special called council or commission

¹The trial court noted that both May and the council had received notice of the applicability of § 11-43-2(a) and (b) via an order in a previous case, dated September 24, 2018, in which the Jefferson Circuit Court ruled that the council's ordinance changing the structure of the governing body of Fairfield to a manager-council form of government was invalid because then mayor May had not been given an opportunity to vote on the ordinance as mandated by § 11-43-2(b).

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meetings for 90 consecutive days, beginning on the date of any absence, shall be removed from office by operation of law."

An "elected municipal official" includes "any mayor ... elected or appointed to municipal office whose presence at council or commission meetings is counted towards establishing a quorum." § 11-40-25(a), Ala. Code 1975.

During its January 22, 2019, meeting, the council relied on the above-referenced statutes to justify approving a resolution providing that May was removed from the office of mayor as a matter of law. Penny was subsequently proclaimed mayor by a vote of the council.

Williams-Scott filed a quo warranto action pursuant to § 6-6-591(a)(1), Ala. Code 1975, seeking a declaration that Penny did not hold the office of mayor.² Following a hearing, the trial court entered an order holding that May had been removed from the office of mayor by operation of law pursuant

²Section 6-6-591(a)(1), Ala. Code 1975, states:

"(a) An action may be commenced in the name of the state against the party offending in the following cases:

"(1) When any person usurps, intrudes into or unlawfully holds or exercises any public office ... within this state or any office in a corporation created by the authority of this state"

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to § 11-40-25, that Penny lawfully held the office of mayor, and that a vacancy existed in the office of council president. This appeal followed.

The facts of this case are undisputed. Therefore, this Court, applying a de novo standard of review, must determine whether the trial court misapplied the law to those undisputed facts. Kendrick v. Advertiser Co., 213 So. 3d 573 (Ala. 2016). According to Williams-Scott, the local act provides for the composition and election process for the governing body of Fairfield. Williams-Scott appears to argue that the local act requires that the office of mayor be totally independent of the council and that, therefore, the mayor is prohibited from voting at or presiding over council meetings.³ To that extent, Williams-Scott argues that the local act conflicts with § 11-43-2 and § 11-43-48. Assuming Williams-Scott is correct that, in the event of a conflict, the local act would control over

³Williams-Scott also asserts that Fairfield is a Class 6 municipality operating with a mayor-council form of government and that the provisions of § 11-44D-4, Ala. Code 1975, are applicable in this case. The trial court, however, stated in its order that § 11-44D-4 was inapplicable to its analysis because Chapter 44D concerns abandonment of a commission form of government in Class 6 municipalities. Williams-Scott does not sufficiently address that conclusion, so we must accept the trial court's analysis.

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the more general statutes, she simply has not demonstrated that anything in the local act forbids the mayor from participating in the council's legislative functions. Williams-Scott cites only one section of the local act establishing that the mayor-council form of government consists of "six single-member districts with one at-large member, to be designated as president of the city council, which shall be in addition to the office of the mayor." Accordingly, Williams-Scott has not demonstrated that the trial court erred in concluding that the local act did not preclude the mayor from participating with the council in its legislative functions pursuant to another applicable law such as § 11-43-2(b).⁴

Williams-Scott argues alternatively that, to the extent that § 11-43-2 did change the legislative function of the mayor and the council by requiring the mayor to vote at and preside over council meetings, the mayor and the council did not comply with § 11-43-2(c), which, she says, required the

⁴The trial court specifically concluded that § 11-43-2 did not purport to change the mayor-council form of government; rather, the trial court concluded, it mandated certain procedures when Fairfield's population fell below 12,000.

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mayor and the council together to adopt an ordinance, within 30 days of the 2010 federal census, electing to operate pursuant to § 11-43-2(b). Even assuming, without deciding, that Williams-Scott's interpretation of § 11-43-2(c) is correct, when the 2010 federal census was released, subsection (c) and its subparts were nonexistent; subsection (c) was added effective June 1, 2018. In short, Williams-Scott's argument fails because the revisions made in 2018 could not apply retroactively but are prospective--governing the form of government based on the results from the 2020 federal census and beyond.⁵

As alternative relief, Williams-Scott asserts in a single paragraph, without any supporting authority or citations to the record, that any change in the legislative functions of

⁵Moreover, it appears from the record that counsel for Williams-Scott conceded at the hearing that subsection (c) was inapplicable:

"[The court]: See, you're under (c).

"[Counsel for Williams-Scott]: Yes, subsection (c).

"[The court]: I think we can all agree that (c) doesn't apply.

"[Counsel for Williams-Scott]: Does not apply."

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the mayor and the council predicated on § 11-43-2(b) would be barred based on the doctrine of equitable estoppel. We decline to consider this argument. See Rule 28(a)(10), Ala. R. App. P.; see also State Farm Mut. Auto. Ins. Co. v. Motley, 909 So. 2d 806 (Ala. 2005).

Based on the foregoing, we conclude that the trial court did not err in denying Williams-Scott's petition for a writ of quo warranto seeking to declare that Penny does not hold office as mayor of Fairfield.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.