Rel: February 18, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200755

James P. Naftel II, individually and in his official capacity as Probate Judge for Jefferson County, and Governor Kay Ivey

v.

State of Alabama ex rel. Charles R. Driggars

1200787

Ex parte James P. Naftel II, individually and in his official capacity as Probate Judge for Jefferson County, and Governor Kay Ivey

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama ex rel. Charles R. Driggars

v.

James P. Naftel II, individually and in his official capacity as Probate Judge for Jefferson County, and Governor Kay Ivey)

Appellate Proceedings from Jefferson Circuit Court (CV-20-902403)

SELLERS, Justice.[1]

These consolidated appellate proceedings arise from a quo warranto action filed by the State of Alabama, on the relation of Charles R. Driggars, challenging Governor Kay Ivey's appointment of James P. Naftel II to the office of Judge of Probate of Jefferson County, place no. 1. In case no. 1200755, Judge Naftel, individually and in his official capacity, and Governor Ivey appeal from an order of the Jefferson Circuit Court denying their motion for a summary judgment. We reverse that

[1]These appellate proceedings were originally assigned to another Justice on this Court; they were reassigned to Justice Sellers on December 9, 2021.

order of the circuit court and remand the case for that court to enter a summary judgment in their favor. In case no. 1200787, those same parties seek a writ of mandamus directing the circuit court to vacate its discovery orders in the quo warranto action. We dismiss the petition for a writ of mandamus as moot.

I. Facts

On May 31, 2020, Judge Alan King retired, creating a vacancy in the office of Judge of Probate of Jefferson County, place no. 1. On June 30, 2020, Governor Ivey appointed Naftel to fill that vacancy. The next day, the State of Alabama, on the relation of Charles R. Driggars ("the relator"), commenced a quo warranto action pursuant to § 6-6-591(a)(1), Ala. Code 1975, alleging that Judge Naftel was holding that office unlawfully.[2] During the proceedings below, the parties disputed whether,

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[2]A quo warranto action is the exclusive means for determining whether a person unlawfully holds an office. Section 6-6-591(a), Ala. Code 1975, provides, in relevant part:

> "(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

under § 153 Ala. Const. 1901 (Off. Recomp.) (derived from § 6.14 of Amendment No. 328 to the Alabama Constitution of 1901), Governor Ivey had the sole authority to fill, by appointment, a vacancy existing in the office of Judge of Probate of Jefferson County without considering nominees selected by the Jefferson County Judicial Commission ("the judicial commission"). Both sides filed cross-motions for a summary judgment, conceding that the action involves only a legal question regarding the interpretation of § 153 and its interplay with Local Amendments, Jefferson County, § 8 and § 9, Ala. Const. 1901 (Off. Recomp.) (derived from, respectively, Amendment No. 83 and Amendment No. 110 to the Alabama Constitution of 1901). The circuit court denied both summary-judgment motions and scheduled the action for a jury trial. Judge Naftel and Governor Ivey appealed from the denial of their motion for a summary judgment, pursuant to Rule 4(a)(1)(C), Ala. R. App. P.

II. Discussion

> unlawfully holds or exercises any public office ... within this state or any office in a corporation created by the authority of this state ...."

A. Interlocutory Appeal - Rule 4(a)(1)(C), Ala. R. App. P.

As a threshold issue, we address whether the circuit court's order denying the motion for a summary judgment filed by Judge Naftel and Governor Ivey falls with the purview of Rule 4(a)(1)(C), Ala. R. App. P., which authorizes appeals from "any interlocutory order determining the right to public office." In his motion to dismiss the appeal, the relator argues that, because Rule 4(a)(1)(C) refers to orders "determining the right to public office" (emphasis added), it applies only to orders declaring that a person does or does not have the right to hold and occupy a public office. He contends in his motion to dismiss that, because the circuit court denied the parties' cross-motions for a summary judgment and set the matter for a jury trial, "there has been no determination by the circuit court regarding whether Judge Naftel was or was not lawfully or properly appointed by the Governor." Thus, the relator asserts that the appeal filed pursuant to Rule 4(a)(1)(C) is due to be dismissed.[3] In response to

[3]In his motion to dismiss the appeal, the relator also points out that 28 U.S.C. § 1292(a)(3) allows appeals from interlocutory orders "determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed." (Emphasis added.) He

the motion to dismiss the appeal, Judge Naftel and Governor Ivey contend that the relator's reading of Rule 4(a)(1)(C) deprives the rule of significant meaning. They assert in their response that

> "[t]he interlocutory 'determination' in Rule 4(a)(1)(C) must therefore be one that is not conclusive, yet determines the right to public office in some way. The denial of a motion to dismiss or motion for summary judgment -- i.e., the denial of a motion seeking a conclusive determination -- fits the bill. In this case, for instance, the circuit court determined that Judge Naftel was not entitled to judgment as a matter of law and that more facts are needed to conclusively determine whether he is the rightful office holder. That is an interlocutory -- though not conclusive -- determination of Judge Naftel's 'right to public office.' "

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cites precedent interpreting that language as requiring that an interlocutory order decide the substantive merits of a claim to suggest that the same requirement should apply for interlocutory orders under Rule 4(a)(1)(C) to be appealable. As Judge Naftel and Governor Ivey point out in their response to the motion to dismiss, however, § 1292(a)(3)

> " 'was designed to apply in circumstances distinctive to admiralty where it is not uncommon for a court to enter an order finally determining the issues of liability between the parties and then to refer the case to a master for a determination of damages.' "

(Quoting Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 564 (5th Cir. 1981).) The same circumstances do not apply to quo warranto actions.

As Judge Naftel and Governor Ivey describe it in their response to the motion to dismiss the appeal, the order at issue was one "denying a substantive, dispositive motion made on purely legal grounds that asks for a conclusive determination of the right to public office." We agree. "By and large, the construction of rules of court are for the court which promulgated them." Alabama Pub. Serv. Comm'n v. Redwing Carriers, Inc., 281 Ala. 111, 115, 199 So. 2d 653, 656 (1967). "In construing rules of court, this Court has applied the rules of construction applicable to statutes." Ex parte State ex rel. Daw, 786 So. 2d 1134, 1137 (Ala. 2000). " 'A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.' " Ex parte Welch, 519 So. 2d 517, 519 (Ala. 1987) (quoting Sutherland Statutory Construction. § 46.06 (4th ed.)).

In this case, the circuit court entered an order denying the parties' cross-motions for a summary judgment. In those motions, each side asserted that there was no genuine issue of a material fact and conceded that the action was based on a pure question of law regarding the

interpretation of constitutional provisions. That order, denying both summary-judgment motions, was a determination of a right to public office; by not deciding what the parties agree is a purely legal issue, the circuit court made a determination, and an appeal from that lack of a decision is precisely what Rule 4(a)(1)(C) is intended to provide. Our conclusion is buttressed by the nature of quo warranto actions, which are expedited proceedings because of the public's interest in quickly resolving questions surrounding who holds public office in Alabama. Rule 4(a)(1)(C) itself recognizes the importance of prompt resolution of such questions by providing that appeals provided by that rule are to be filed within 14 days. In this case, Governor Ivey appointed Judge Naftel on June 30, 2020, and the relator challenged that appointment the very next day. The case has been pending now for more than 19 months, and both sides have conceded that the circuit court was in a position to decide the dispositive legal issue by summary judgment based solely on the plain wording of the constitution. The circuit court, however, entered an order denying the cross-motions for a summary judgment and scheduled the action for a jury trial. That order, if allowed to stand, will cause further delay, which

would be manifestly against the best interests of the public as well as Judge Naftel. The lack of a prompt decision places a cloud over the Jefferson Probate Court by permitting only tentative decisions because of the possibility that Judge Naftel has been improperly appointed. Based on the foregoing, we conclude that the circuit court's order in this case falls within the purview of Rule 4(a)(1)(C).

B. Standard of Review

This case, involving competing motions for a summary judgment, involves a pure question of law upon which the circuit court declined to decide, thus depriving the parties of a final judgment on the merits. Accordingly, based on the expeditious nature of quo warranto proceedings, this Court will make an independent, de novo, determination of the legal question presented. See King v. Campbell, 988 So. 2d 969 (Ala. 2007) (noting that questions of law are reviewed de novo); see also State ex rel. Williams-Scott v. Penny, 319 So. 3d 514 (Ala. 2019) (applying de novo standard of review in appeal involving quo warranto action).

C. Merits

As all the parties agree, this case concerns the interpretation of § 153 and its interplay with Local Amendments, Jefferson County, § 8 and § 9, which pertain exclusively to Jefferson County. The question presented is whether, under § 153, the Governor of Alabama has the sole authority to fill, by appointment, a vacancy existing in the office of Judge of Probate of Jefferson County without considering the nominees selected by the judicial commission of that county.

Section 153, which addresses the filling of vacancies in judicial offices, provides:

> "The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office shall be filled by appointment of the governor; however, vacancies occurring in any judicial office in Jefferson county shall be filled as now provided by amendments 83 and 110 to the Constitution of Alabama 1901 [Jefferson County §§ 8 and 9] and vacancies occurring in Shelby, Madison, Wilcox, Monroe, Conecuh, Clarke, Washington, Henry, Etowah, Walker, Tallapoosa, Pickens, Greene, Tuscaloosa, [or] St. Clair county shall be filled as provided in the Constitution of 1901 with amendments now or hereafter adopted, or as may be otherwise established by a properly advertised and enacted local law. A judge, other than a probate judge, appointed to fill a vacancy, shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such

> election such judicial office shall be filled for a full term of office beginning at the end of the appointed term."

(Emphasis added.)

Generally, under § 153 vacancies in the "any judicial office" in Alabama are required to be filled by appointment of the governor. Construing the plain language of § 153, any judicial office would include the office of a judge of probate. That same general provision contains an exception: "however, vacancies occurring in any judicial office in Jefferson county shall be filled as now provided by amendments 83 and 110 to the Constitution of Alabama 1901 [Jefferson County §§ 8 and 9]." (Emphasis added.)

Local Amendments, Jefferson County, § 8, provides, in relevant part:

> "All vacancies in the office of judge of the circuit court holding at Birmingham which shall occur subsequent to January 15, 1951 shall be filled in the manner and for the time as herein provided.
>
> "The Jefferson county judicial commission is hereby created for the purpose of nominating to the governor persons for appointment to such a vacancy. The members of such commission shall be (a) two persons who are members of the Alabama state bar, and (b) two persons who are not members

> of the Alabama state bar, and (c) one judge of the circuit court holding at Birmingham.
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> "All members of such commission must reside in the territorial jurisdiction of the circuit court holding at Birmingham.
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> "....
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> "If, subsequent to January 15, 1951, a vacancy occurs in the office of judge of the circuit court holding at Birmingham, such commission shall nominate to the governor three persons having the qualifications for such office. ..."

(Emphasis added.)

Local Amendments, Jefferson County, § 9, provides:

> "Any vacancy occurring in the office of judge of the tenth judicial circuit comprised of Jefferson county only, which is required to be filled by appointment on nominations made by a judicial commission, shall be made within ninety days from the date of the submission of such nominations. In the event the governor fails to fill the vacancy from such nominations within such period, appointment shall be made by the chief justice of the supreme court of Alabama."

Local Amendments, Jefferson County, § 8 and § 9, provide an alternative process for filling judicial vacancies in the Birmingham Division of the Jefferson Circuit Court. See Allen v. Bennett, 823 So. 2d 679, 683 n.4 (Ala. 2001). That alternative process, as described in Local

Amendments, Jefferson County, § 8, provides that vacancies in the Birmingham Division of the Jefferson Circuit Court are required to be filled, by appointment, from nominations made to the governor by the judicial commission; in other words, the judicial commission shall nominate three qualified persons, one of whom the governor shall then appoint to fill a vacancy occurring in the "office of judge of the circuit court holding at Birmingham." Local Amendments, Jefferson County, § 9, provides, additionally, that the governor is required to appoint one of the nominees within 90 days of when the list of nominees is submitted by the judicial commission. It is a well-settled and fundamental rule that, in construing provisions of the constitution, this Court must adhere to the plain meaning of the words used, and we cannot broaden or restrict the meaning of those words. City of Bessemer v. McClain, 957 So. 2d 1061, 1092 (Ala. 2006). Both Local Amendments, Jefferson County, § 8 and § 9, reference only vacancies occurring in the circuit court, specifically the Birmingham Division of the Jefferson Circuit Court, and there is nothing in the language of those local amendments that can be construed as including within their scope the Probate Court of Jefferson County.

Because the local amendments apply only to the Birmingham Division of the Jefferson Circuit Court, the judicial commission plays no role in filling vacancies in the office of Judge of Probate of Jefferson County. Stated differently, Local Amendments, Jefferson County § 8 and § 9, are not implicated in this case; thus, the governor retains the sole authority pursuant to § 153 to fill, by appointment, any vacancy in the office of Judge of Probate of Jefferson County.[4]

III. Conclusion

Based on the foregoing, the order of the circuit court denying Judge Naftel and Governor Ivey's motion for a summary judgment is reversed,

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[4]Since the passage of Amendment No. 328 in 1973, a number of local amendments have created judicial nominating commissions for various counties. See Allen v. Bennett, 823 So. 2d 679, 683-84 (Ala. 2001) (noting that "[b]y also providing that judicial vacancies may be filled as provided in constitutional amendments hereafter 'adopted' or 'as may be otherwise established by a properly advertised and enacted local law,' § 6.14 [now § 153] contemplates procedures ... that could change the process for filling judicial vacancies in one or more of the listed counties"). As Judge Naftel and Governor Ivey point out, presently, Shelby County is the only county where it is required that vacancies in the office of the judge of probate be filled from nominations to the governor by the Shelby County Judicial Commission. See Local Amendments, Shelby County, § 4.05, Ala. Const. 1901 (Off. Recomp.).

and the cause is remanded for that court to enter a summary judgment in their favor. Our resolution of the appeal in favor of Judge Naftel and Governor Ivey make the relief sought in their petition for a writ of mandamus moot; the petition is therefore dismissed.

1200755 -- REVERSED AND REMANDED.

Wise, Mendheim, and Stewart, JJ., concur.

Parker, C.J., and Shaw and Bryan, JJ., dissent.

Bolin and Mitchell, JJ., recuse themselves.

1200787 -- PETITION DISMISSED.

Wise, Mendheim, and Stewart, JJ., concur.

Parker, C.J., and Shaw and Bryan, JJ., concur in the result.

Bolin and Mitchell, JJ., recuse themselves.

SHAW, Justice (concurring in the result in case number 1200787 and dissenting in case number 1200755).

In case no. 1200755, I respectfully dissent. In case no. 1200787, I concur in the result.

An order denying a motion for a summary judgment is interlocutory[5] and not a final judgment; such decisions generally cannot be appealed. Aurora Healthcare, Inc. v. Ramsey, 267 So. 3d 839, 849 (Ala. 2018). However, there is an exception, among others, for interlocutory orders "determining the right to public office." Rule 4(a)(1)(C), Ala. R. App. P. An appeal of an interlocutory order in a quo warranto action alleging that a person unlawfully holds a public office,[6] such as this case, must comply with Rule 4(a)(1)(C). Ala. Code 1975, § 6-6-603 (providing that an appeal in a quo warranto action must be "in accordance with the Alabama Rules of Appellate Procedure").

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[5]"Interlocutory" simply means "interim or temporary; not constituting a final resolution of the whole controversy." Black's Law Dictionary 972 (11th ed. 2019).

[6]See Ala. Code 1975, § 6-6-591.

The plaintiff below, Charles R. Driggars, filed a motion for a summary judgment arguing that Judge James P. Naftel II did not have the right to the office of Judge of Probate of Jefferson County, place no. 1. Judge Naftel and Governor Ivey filed a motion for a summary judgment arguing that Judge Naftel did have the right to that public office.

If the trial court had granted either motion, then it would have made a decision "determining the right to public office," that is, it would have decided if Judge Naftel did or did not have the right to that office. But the trial court denied both motions. It made no determination that Judge Naftel did or did not have "the right to public office"; there is no decision, much less a "determination," either way on this issue. Judge Naftel and Governor Ivey cannot logically say that, in denying their motion, the trial court essentially ruled that Judge Naftel had no right to the office because the trial court also denied Driggars's motion seeking that ruling.

Trial courts may enter a summary judgment only when there is "no genuine issue as to any material fact." Rule 56(c)(3), Ala. R. Civ. P. The trial court apparently believed that it could not at that time issue a ruling "determining the right to public office" because a jury had to first give its

own verdict on factual issues material to the trial court's subsequent decision on the legal issue whether Judge Naftel had "the right to public office." Whether the trial court was correct on that entirely separate issue -- the existence of a question of fact requiring the denial of the summary-judgment motions -- is precisely the type of nonfinal, interlocutory summary-judgment ruling that this Court has no jurisdiction to review on appeal.[7] It is true that the trial court, in denying the summary-judgment motions, made a "determination," but that determination was to not make the legal ruling that Rule 4(a)(1)(C) allows a party to appeal. A determination that there was an issue of fact for trial does not equate to a determination of the legal merits in a case. To the extent that this Court must ensure that quo warranto actions are decided expeditiously, we have done so by allowing review of certain interlocutory orders under Rule 4(a)(1)(C), which simply does not yet have application to the circumstances of the appeal.

[7]I see no analysis as to how the trial court erred in holding that there was a genuine issue of material fact in this case.

Because an appeal of an interlocutory order is not available in case no. 1200755, the appeal is from a nonfinal judgment and is thus due to be dismissed. Further, I believe that the mandamus petition in case no. 1200787 is premature; therefore, I concur in the result in its dismissal.

PARKER, Chief Justice (dissenting in case number 1200755).

This Court lacks jurisdiction over this appeal under the language of our own rules. Generally, an order denying a summary-judgment motion is not appealable because it is not a final judgment. Aurora Healthcare, Inc. v. Ramsey, 267 So. 3d 839, 849 (Ala. 2018). Rule 4(a)(1), Ala. R. App. P., lists interlocutory orders from which an appeal is permitted. See City of Gadsden v. Boman, 143 So. 3d 695, 702 (Ala. 2013). These include "any interlocutory order determining the right to public office." Rule 4(a)(1)(C). In this case, the circuit court denied both sides' motions for a summary judgment, refusing to rule on the validity of the judicial appointment and setting the case for trial. The question is whether that denial "determin[ed a] right to public office."

The key word in Rule 4(a)(1)(C) is "determining." In 1975 when Rule 4(a)(1)(C) was adopted,[8] Black's Law Dictionary defined "determine" as "[t]o bring to a conclusion, to settle by authoritative sentence, to decide."

[8]Rule 4(a)(1)(C) was part of the Alabama Rules of Appellate Procedure when this Court adopted them in 1975. See Alabama Reports, 294 Ala. XXI-CXXI, XXVII-XXVIII (1975).

Black's Law Dictionary 536 (rev. 4th ed. 1968). Similarly, "determination," was defined as "[t]he decision of a court of justice. It implies an ending or finality, the ending of a controversy or suit." Id. These law-dictionary definitions might lead to a conclusion that Rule 4(a)(1)(C) requires a final decision on a person's right to public office, in the sense of a decision that is conclusive, ends the trial court's consideration of the controversy, and is not open to interlocutory reconsideration by that court, i.e., a final judgment.

But that interpretation of "determining" would render Rule 4(a)(1)(C) superfluous. Final judgments are already generally appealable, § 12-22-2, Ala. Code 1975, so interpreting Rule 4(a)(1)(C) as requiring a final judgment would cause the provision to serve no function. Like a statute, a rule of procedure should be interpreted in such a way that "'"'effect is given to all its provisions, so that no part will be inoperative or superfluous,'"'" Ex parte Lambert, 199 So. 3d 761, 766 (Ala. 2015) (quoting Ex parte Wilson, 854 So. 2d 1106, 1110 (Ala. 2002)); see Ex parte State ex rel. Daw, 786 So. 2d 1134, 1137 (Ala. 2000) (explaining that this Court has applied principles of statutory interpretation to rules of court).

Moreover, Rule 4(a)(1)(C) itself specifies that it applies only to "interlocutory" determinations, meaning determinations that are not final. Thus, Rule 4(a)(1)(C) must require a decision that comes short of a final judgment but somehow is nevertheless decisive enough to be accurately called a "determin[ation]" of the right to public office. An interpretive quandary, indeed.

But all hope is not lost. The federal courts have lit the way to a solution in the process of interpreting very similar language in a federal statute. The statute permits appeals from "[i]nterlocutory decrees ... determining the rights and liabilities of the parties to admiralty cases ...." 28 U.S.C. § 1292(a)(3) (emphasis added). Interpreting the word "determining," federal courts have held that the statute permits appeals of orders deciding the merits of a claim but not orders deciding procedural issues. For example, the United States Court of Appeals for the First Circuit has explained that the phrase "determining the rights and liabilities of the parties" means that "the ruling must be on the merits; it must determine substantive rights, as opposed to merely procedural, tactical, or adjectival entitlements." Martha's Vineyard Scuba

Headquarters, Inc. v. Unidentified, Wrecked & Abandoned Steam Vessel, 833 F.2d 1059, 1063 (1st Cir. 1987). Similarly, the Fifth Circuit has held that an order denying a motion to dismiss for lack of jurisdiction did not "determin[e] the rights and liabilities of the parties" because "[i]t did not go to the merits of the claim." Jack Nelson, Inc. v. Tug Peggy, 428 F.2d 54, 55 (5th Cir. 1970). More recently, the Ninth Circuit has held that an order denying a summary-judgment motion did not determine the parties' rights and liabilities, although without citing this merits/procedural distinction. Barnes v. Sea Hawaii Rafting, LLC, 889 F.3d 517, 527-29 (9th Cir. 2018). See also Upper Mississippi Towing Corp. v. West, 338 F.2d 823, 825 (8th Cir. 1964) (holding that denial of summary-judgment motion did not determine parties' rights and liabilities); Francis ex rel. Francis v. Forest Oil Corp., 798 F.2d 147, 149-50 (5th Cir. 1986) (same).

The main opinion attempts to distinguish the federal cases because the federal statute was "designed" to apply to an admiralty-case scenario in which the trial court has decided liability but has left determination of damages for a special master. ___ So. 3d at ___ n.3 (quoting appellants' response to appellee's motion to dismiss appeal, quoting in turn Treasure

Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560, 564 (5th Cir. 1981)). But the federal courts have not confined the statute's application to that scenario; instead, they have applied it to a variety of other scenarios in which there has been a "determin[ation]" because the merits of a claim have been decided. As the Fifth Circuit has explained:

> "Despite its original purpose, section 1292(a)(3) has been applied in numerous other contexts. For example, this Court has applied section 1292(a)(3) to an otherwise unappealable order dismissing a maritime action as to only one of two defendants. Similarly, this Court has permitted appeals under section 1292(a)(3) from orders dismissing on the merits only one of several separate claims for relief. As a general rule, whenever an order in an admiralty case dismisses a claim for relief on the merits it is appealable under section 1292(a)(3)."

Francis, 798 F.2d at 149 (citations omitted). Thus, the relevance of the federal cases is not limited by the statute's original purpose. In any event, my point is not that the procedural context in which the federal statute applies is identical to a quo warranto case; my point is that the statute is similar enough in language and function that the federal courts' application of it provides useful guidance in interpreting the otherwise enigmatic language of Rule 4(a)(1)(C).

Further, the federal courts' merits/procedural distinction is the only one I have found that makes sense of the language of Rule 4(a)(1)(C) without rendering it superfluous or internally incoherent. And notably, the resulting category of appealable orders -- nonfinal decisions on the merits -- is not vacuous. In many instances, including cases involving a quo warranto claim, a trial court's ruling may decide the merits of a claim but not be a final judgment. For example, in a single action, a quo warranto claim contesting a right to public office might be joined with another claim.[9] If the trial court rules on the merits of the quo warranto

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[9]To illustrate, one of many conceivable scenarios of this kind would be an action challenging a municipal election, in which, due to the circumstances, it might be unclear whether the challenge is authorized under the municipal-election-contest statute, § 11-46-69, Ala. Code 1975, or the quo warranto statute, § 6-6-591. The challenger might bring alternative claims under the two statutes. Cf., e.g., Etheridge v. State ex rel. Olson, 730 So. 2d 1179 (Ala. 1999) (discussing, but not deciding, question of under which of these two statutes certain municipal-election challenges might be proper); § 6-6-598 ("The validity of an election which may be contested under this Code cannot be tried under the provisions of this [quo warranto] article."); Johnson v. Roberson, 682 So. 2d 58, 60 n.3 (Ala. 1996) ("A safe practice for the filing of [certain election-related] contest[s] would be to join a quo warranto proceeding against the purported nominee or independent candidate with a petition for a writ of mandamus or prohibition against the appropriate election officers to prevent them from placing that person's name on the general election

claim but not the other claim, the order is not a final judgment because it does not dispose of all claims as to all parties, see James v. Rane, 8 So. 3d 286, 288 (Ala. 2008). Instead, it is a nonfinal decision on the merits of the quo warranto claim alone, thus qualifying for appeal under Rule 4(a)(1)(C).

Under this merits/procedural distinction, the order in this case was clearly not an "order determining the right to public office." It decided nothing of the merits of the claim that the judicial appointment was invalid. Instead, like virtually all denials of summary-judgment motions, it was an exclusively procedural ruling, concluding that the case could not be decided as a matter of law and deferring the merits for trial. "Orders which do not determine parties' substantive rights or liabilities ... are not appealable ..., even if those orders have important procedural consequences." Francis, 798 F.2d at 150.

But even if I am wrong about the precise meaning of "determining," the term still is not satisfied in this case. Whatever a "determin[ation of]

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ballot.").

the right to public office" means, it cannot mean a refusal to determine a right to public office. That turns the rule's language on its head.

I fully understand and appreciate the need for the appointment-power issue involved in this case to be resolved, for the sake of the Governor, the Jefferson County Judicial Commission, and the people of Jefferson County. And I agree that it needs to be resolved expeditiously, for the sake of Judge Naftel and the parties who appear before him. But the text of the rule is the text of the rule. And whatever "determining" includes, it cannot possibly include a refusal to determine.

BRYAN, Justice (dissenting in case number 1200755).

I respectfully dissent from the holding of the main opinion that Governor Kay Ivey's appointment of James P. Naftel II to the office of Judge of Probate of Jefferson County, place no. 1, does not violate the pertinent provisions of the Alabama Constitution. As is explained in the main opinion, the Jefferson Circuit Court denied the respective summary-judgment motions filed by Governor Ivey and Judge Naftel on the one hand and the State of Alabama, on the relation of Charles R. Driggars, on the other. In my view, the question of law decided by the main opinion is not properly before the Court because the circuit court has not yet reached an adjudication regarding that issue.

By denying both cross-motions for a summary judgment, the circuit court expressly declined to decide the central issue in this case: whether Governor Ivey's appointment of Naftel was constitutional. Therefore, the circuit court's order did not actually determine who has the right to the public office at issue and, consequently, does not appear to meet the exact parameters of Rule 4(a)(1)(C), Ala. R. App. P., which allows appeals from "any interlocutory order determining the right to public office." (Emphasis

added.) I do not believe this Court should decide the central issue in this case in the first instance without an adjudication by the circuit court.

However, I write specially to express my opinion that the circuit court was mistaken in concluding that a trial is needed in this case. As is explained in the main opinion, the question presented by the parties' cross-motions for a summary judgment is a pure question of law. Moreover, as is also explained in the main opinion, quo warranto actions should be resolved as expeditiously as possible. Therefore, I believe the circuit court should have granted one of the respective summary-judgment motions and denied the other. Had the circuit court done so, this Court could properly exercise its appellate jurisdiction to review that adjudication.