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Holland v. Pearson, No. 2070996 [*Administrative Law: Periods of employment at separate post-secondary education institutions cannot be aggregated for purposes satisfying three-year length of employment required for protection under the Fair Dismissal Act nor does the "post-secondary" education system qualify as an employer under the Act.*] (Moore, J., 4-0-1).

Chanev v. Ala West-AL, LLC, No. 2070599 [*Statute of Limitations: A statute of limitations does not begin to run on any claim until the plaintiff is entitled to maintain a cause of action.*] (Thompson, P.J., 5-0).

CASE SUMMARIES

Montgomery County Board of Education v. Cedrick Webb, No. 2070436. Cedrick Webb was a tenured teacher and head football coach at Bellinghach Junior High School ("BJHS") in Montgomery County. Following a May 2006 incident in which Webb directed profane language at, and assaulted, a student, the interim superintendent of the Montgomery County Board of Education (the "Board") informed Webb by letter dated January 26, 2007, that she intended to recommend that the Board cancel his teaching contract based on the May 2006 incident. The letter also listed a litany of prior disciplinary actions the Board had taken against Webb, which the superintendent said provided additional support for canceling Webb's contract. Based on the recommendation, the Board voted to cancel Webb's contract. Webb contested the Board's decision, and a three day hearing was held before a hearing officer. At the outset of the hearing, Webb moved for judgment as a matter of law, arguing that the Board could not make the May 2006 incident a basis for canceling his contract because the Board failed to notify him of the proposed cancellation before the 2005-2006 school term ended. The hearing officer agreed. During the hearing, the Board introduced witnesses and documents to substantiate its allegations regarding the May 2006 and prior incidents. Webb presented rebuttal witnesses disputing most of the Board's testimonial and documentary evidence. The hearing officer reversed the Board's cancellation of Webb's contract, but held that the May 2006 incident could trigger less severe disciplinary action. Accordingly, the hearing officer imposed a ten day suspension without pay. The hearing officer noted that Webb admitted to one prior instance of misconduct, but that he had already been punished for that incident. The hearing officer found that Webb could only be penalized for one of the remaining prior instances, for which the hearing officer imposed a ten day suspension as well. With regard to the other prior instances of misconduct, the hearing officer found that Webb was either not guilty of the charged conduct or that he had been the victim of disparate discipline because other teachers who had engaged in the same conduct had not been disciplined. The hearing officer ordered the Board to expunge those disciplinary actions from Webb's personnel file. The Board appealed the hearing officer's decision to the Alabama Court of Civil Appeals based on three enumerations of error. Webb cross-appealed the hearing officer's decision to impose a ten day suspension on him for one of the prior allegations of misconduct. The Court of Civil Appeals held that the hearing officer erred by ordering the Board to expunge the prior allegations of misconduct from Webb's personnel file. The Court explained that the prior actions were relevant only for the hearing officer to consider Webb's prior employment history when deciding the type of disciplinary action that would be appropriate for the May 2006 incident. The Court further held that the hearing officer erred by allowing Webb to attack the previous disciplinary actions taken against him because Webb failed to contest those actions when they were made. The Court also held that the hearing officer's holding that the Board could not make the May 2006 incident the basis for Webb's termination was erroneous. The Court explained that the May 2006 incident was still being investigated at the end of that year's school term. Because the Board put Webb on notice that his conduct was being investigated and suspended him with full pay and benefits, Webb was not prejudiced by the Board's later decision to terminate him based on his May 2006 conduct. The Court remanded the case to the hearing officer with instructions to reconsider the appropriate disciplinary action that should be imposed on Webb in light of the principles outlined in the Court's decision.

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Alabama Department of Revenue v. Jim Beam Brands Company, No. 2070768. The Alabama Department of Revenue disallowed certain interest-expense tax deductions claimed by Jim Beam Brands Company, Inc., which was a multistate corporation, under the statutory "gross-income-ratio" formula in effect during the pertinent tax years. The Department of Revenue contended that Jim Beam Brands should have apportioned its interest-expense deductions using the three-factor formula set forth in its regulations, not the gross-income-ratio formula provided in Ala. Code § 40-18-35. An administrative law judge upheld the Department of Revenue's assessment, but the trial court reversed the ALJ's order. The Court of Civil Appeals affirmed the trial court's decision. Noting that "[t]he provisions of a statute will prevail in any case of a conflict between a statute and an agency regulation," the Court held that the gross-income-ratio formula specifically enumerated by statute must control over the conflicting formula in the regulations. The Court also rejected the Department of Revenue's argument that more general statutory language in Ala. Code § 40-318-35(a) allowed it to adopt a different formula than the one specifically provided in Ala. Code § 40-18-35(a)(2). The Court held that a specific statutory provision, such as the gross-income-ratio formula provided in Ala. Code § 40-18-35(a)(2), must prevail over a more general statutory provision, such as the broad reference to compliance with Department of Revenue regulations in Ala. Code § 40-18-35(a).

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Tidwell v. Pritchett-Moore, Inc., et al.; Nos. 2070966 and 2071100. Amber Tidwell signed a lease agreement with Pritchett-Moore Inc., an agent for J.W. Properties. This lease contained an automatic-renewal provision, which required notice that one would vacate the apartment at least 90 days prior to the expiration of the lease. If such notice was not given, the lease would renew automatically. Tidwell's lease renewed automatically for a third year after Tidwell failed to give timely notice. Tidwell subsequently filed a two-count action against Pritchett-Moore and J.W. Properties, seeking a judgment that the automatic-renewal provision of her lease was invalid and alleging claims of fraud. Pritchett-Moore and Tidwell filed cross-motions for summary judgment. While these motions were pending, Tidwell filed an amended complaint without leave from the court. The trial court ultimately granted summary judgment in favor of Pritchett-Moore and entered final judgment in its favor. Subsequently, the trial court struck Tidwell's amended complaint and entered summary judgment dismissing all remaining claims, including claims against J.W. Properties. Tidwell separately appealed these two orders. Regarding the judgment in favor of Pritchett-Moore, Tidwell argued that the trial court erred in finding that the automatic-renewal provision was valid. Addressing this issue, the Court of Civil Appeals recognized that leases are governed by contract principles under Alabama law, and courts enforce clear and unambiguous contracts pursuant to their terms. Accordingly, the Court held that, because the automatic-renewal provision was clear and unequivocal, the trial court's judgment was proper. Regarding the judgment in favor of J.W. Properties, Tidwell argued that, because J.W. Properties did not sign the lease, the trial court erred in determining that the lease was valid, relying on the Statute of Frauds. The Court of Civil Appeals dismissed this argument, however, finding that the Statute of Frauds does not require the signatures of both the lessor and the lessee to be enforceable. Instead, only the signature of the party charged with a particular obligation is required. The Court thus affirmed both summary judgments.

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Starr v. Wilson, No. 2070281. Plaintiff Michael Wilson sued Rodney Jones and William Starr for equitable relief and damages on theories of breach of contract, intentional interference with business or contractual relations, and conspiracy to commit a lawful act by unlawful means. Jones had sold Wilson a parcel of land (Lot-2B). In connection with the purchase of Lot-2B, Jones agreed to allow Wilson a right of first refusal which gave him the first right to purchase an adjacent parcel of land that was also owned by Jones (Lot-2A). Later, Jones sold the Lot-2A to Starr without notifying Wilson or giving him an opportunity to exercise his right of first refusal. Starr filed a counterclaim which alleged that Wilson had recorded the agreement containing the right of first refusal after Starr purchased the parcel from Jones and asserted a claim under the Alabama Litigation Accountability Act, as well as claims for intentional interference with business or contractual relations and slander of title. The trial court determined that Wilson's right of first refusal was void because (a) the sales contract failed to separately enumerate consideration for the right of first refusal, (b) the parties failed to timely consummate their agreement, and (c) the first parcel was ultimately conveyed to Wilson's company, a non-signatory to the agreement. The trial court also dismissed Starr's claims as moot. On appeal, Wilson challenged the correctness of the trial court's ruling as to his breach-of-contract claim against Jones and his intentional-interference claim against Starr. Starr appealed the correctness of the trial court's ruling as to the claims asserted against Wilson in Starr's counterclaim. While the Court affirmed the trial court's dismissal of Wilson's intentional-interference claim against Starr because he lacked knowledge of Wilson's contract with Jones, the Court reversed the order of summary judgment on Wilson's breach of contract claim against Jones. The Court held that the right of first refusal was supported by consideration even though the agreement did not delineate separate consideration for the option. Separate consideration is only required when the option contract would otherwise not contain any consideration. The Court then held that Jones waived his right to require strict compliance with the closing deadline and his rights under the time-is-of-the-essence provision under the contract by his actions in performing the contract two months after the deadline and by attempting, after the fact, to provide Wilson with notice of his right of first refusal. The Court also held that Jones's ultimate conveyance of the parcel to Wilson's company, as opposed to Wilson, personally, did not void the contract because the conveyance was done at Wilson's direction. Finally, the Court rejected Starr's argument that the right of first refusal was lost under the doctrine of merger by deed. Merger by deed functions to nullify contractual terms that were stated in the sales contract but left out of the deed, but a preemptive right of first refusal is independent and collateral to the preliminary sales agreement and, as such, survives the deed. With regard to Starr's claims, the Court held that the trial court erred in dismissing Starr's claims as moot. The trial court's determination that Starr was entitled to a judgment as a matter of law as to Wilson's claim did not prevent Starr from prevailing on his slander-of-title and intentional-interference claims against Wilson. Finally, the Court held that the issue whether Wilson, without justification, brought his claims against Starr in this action remains undecided, but noted that a conflict remained as to Starr's and Wilson's existing rights before the trial court.

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Payne v. Shelby County Commission, et al., No. 2070545. At the request of the owner of a tract of land located adjacent to the residence of the Plaintiffs, Defendant county commission adopted a resolution to rezone the tract from an "E-2 Single Family Estate" to an "O-1 Office and Institutional District" subject to certain restrictions. A subsequent owner of the tract later filed a site plan with the Defendants, which could not be approved until the owner addressed several deficiencies in the plan. The owner began clearing and grading the tract triggering several complaints from adjacent landowners, including Plaintiffs, regarding runoff of water and sediment. After discussions with the Plaintiffs and other adjacent landowners, the owner agreed to build a berm to block the view of the construction. The owner resubmitted his site plan to the Defendants. Plaintiffs objected to approval of the plan alleging that the owner had not complied with the zoning restrictions, had not constructed the berm, and had not addressed the runoff problem. Defendants later voted to approve the site plan subject to the owner's satisfaction of certain conditions. Plaintiffs filed suit against Defendants claiming they were liable for negligence, wantonness, misrepresentation, suppression, oppression, fraud, promissory fraud, and breach of contract. Plaintiffs alleged that at the time of the action, the owner had not fully complied with the conditions set forth by Defendants and thus had not been issued any building permits from the Defendants. The trial court granted summary judgment in favor of the Defendants. Plaintiffs appealed. The Court affirmed holding that Defendants were entitled to substantive immunity as to the exercise of their zoning powers and, therefore, Defendants owed no duty to Plaintiffs as a result of the officer of the resolution or as a result of their enforcement of the resolution. The Court, therefore, found that Plaintiffs could not maintain their tort claims against Defendants. The Court further reasoned that there was no evidence presented binding Defendants to any agreement between Plaintiffs and the owner regarding construction of the berm and, therefore, the breach of contract claim failed as a matter of law.

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Greater Mobile Chrysler-Jeep, Inc. v. Atterberry, No. 2070562. Plaintiff employee sued defendant employer for workers' compensation benefits after being hospitalized for severe respiratory distress allegedly caused by occupational exposure to noxious chemicals. Plaintiff sought benefits under the theory he either contracted an occupational disease or sustained of a non-accidental injury. The only issues before the trial court were whether his illness was compensable under the Workers' Compensation Act, and, if so, what type and amount of temporary benefits were due. The trial court determined that plaintiff had injured himself, suffered a non-accidental injury, contracted an illness, and that his illness was compensable and awarded temporary total-disability benefits. After its post-judgment motion was denied, defendant incorrectly sought review by a petition for a writ of mandamus. The Court of Civil Appeals treated the petition as a timely notice of appeal and granted review to determine whether there was substantial evidence that supported the trial court's findings. The Court reversed, concluding that while there was sufficient evidence to establish a potential occupational disease, there was insufficient evidence to conclude that plaintiff contracted the disease through exposure to chemicals at his workplace. Plaintiff failed to identify any causal link between exposure and contraction, and therefore, his lung disease could not be considered an occupational disease under the statute. The Court also determined that there was insufficient evidence of non-accidental injury. The entirety of the evidence could not be said to create a firm conviction that plaintiff's exposure to the chemicals was materially in excess of the exposure to those same chemicals others face in their everyday lives.

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Solomon Motor Co. v. Dean, No. 2060957. A mechanic sued his employer for benefits under the Alabama's Workers' Compensation Act (the "Act") after he fell and injured his right knee and leg while performing his duties at work. The trial court found that the mechanic was permanently and totally disabled, and held that he was entitled to benefits in conformance with that determination. On appeal, the issue was whether the injury to the mechanic's right knee also resulted in a measure of permanent loss to his left knee and back, thus qualifying the mechanic as permanently and totally disabled, or whether the mechanic was permanently disabled only in his right knee, in which case such injury is equated to the loss of a leg. The loss of a single leg under the Act is categorized as permanent-partial disability, and damages are capped pursuant to the Act's damages schedule. The Court of Civil Appeals held that the mechanic's injury resulted only in his partial-permanent disability, for which scheduled damages were appropriate, because the mechanic did not testify that the injury resulting to his left knee and back was permanent, and there was testimony that the work-related accident was not the main cause of the pain in his left knee and back. The Court, therefore, reversed and remanded the judgment of the trial court.

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Alabama Department of Revenue v. Harris, No. 2070628. Pursuant to Ala. Code § 40-2A-8(a), the Alabama Department of Revenue ("DOR") notified Edna Harris that it was revoking the certificate of title to her vehicle. Pursuant to the same statute, Harris appealed to the DOR's Administrative Law Division. Following an Administrative Law Judge's decision to uphold the revocation, Harris filed a notice of appeal to the Mobile Circuit Court. In the circuit court, both Harris and the DOR filed motions for summary judgment. Following the circuit court's entry of summary judgment in favor of Harris ordering the DOR to issue a valid certificate of title, the DOR appealed to the Alabama Court of Civil Appeals. The Court of Civil Appeals instructed the circuit court to vacate its judgment in favor of Harris, explaining that Ala. Code § 40-2A-9(g)(1) requires the circuit court to dismiss any appeal that is not filed with both the Administrative Law Division and the circuit court, and there was no indication in the record that Harris ever filed a notice of appeal with the DOR's Administrative Law Division.

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Holland v. Pearson, No. 2070996. After termination of her employment by Southern Union State Community College ("SUSCC"), Holland filed an administrative appeal pursuant to the Fair Dismissal Act, Ala. Code § 36-26-100 et seq. An administrative law judge dismissed Holland's appeal, concluding that Holland had not been employed by SUSCC for the requisite three years to qualify her as a non-probationary employee entitled to due-process rights under the FDA. Holland then filed a petition for common-law certiorari which the circuit court denied, giving rise to Holland's appeal to the Alabama Court of Civil Appeals. The circuit court's review was limited to whether the ALJ's decision was supported by legal evidence and if the law had been correctly applied to the facts. Reviewing the record before the ALJ, the trial court found that Holland was hired by the Department of Secondary Education on February 16, 2004 and assigned to work at Chattahoochee Valley Community College ("CVCC") for training. Based partly on paperwork submitted by the trial court determined that Holland was never an employee of CVCC. Holland then transferred to SUSCC on July 21, 2005, but remained an employee of the Department until September 21, 2005, when SUSCC officially hired her. Holland was terminated on August 7, 2008. Thus, the trial court did not err as a matter of law in dismissing Holland's appeal because she had not been an employee of an educational institution for more than three years. The trial court did not err by failing to aggregate Holland's time with the Department and her time at SUSCC despite Holland's argument that the postsecondary education system was unified such that it should be considered the integrated employer of all workers within the system. Even if Holland's argument were correct, she would not be due the protection of the FDA since Ala. Code § 36-26-100 defines "employees" to include those employed by education and city boards of education but not persons employed by the Department or the "post-secondary education system" as was Holland during part of her tenure. Therefore, neither the ALJ nor the trial court committed any error of law, and the judgment denying Holland's petition was affirmed.

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Chanev v. Ala West-AL, LLC, No. 2070599. Before the 1940s, Consolidated Coal Company granted permission to certain individuals to construct a cemetery on a portion of its property in Walker County. Several relatives of the plaintiffs were thereafter buried in the cemetery. In 1998, the current owner of the property, Ala West-AL, contracted with Taylor Logging to cut and remove timber from the property. On September 30, 2004, the plaintiffs sued Ala West-AL and Taylor Logging for allegedly damaging and disturbing the graves contained in the cemetery. Their claims included, among others, claims for trespass and intentional infliction of emotional distress. The trial court granted the defendants' motion for summary judgment, finding that any damage to the cemetery occurred in June of 1998 and that each of the plaintiffs' claims were therefore barred by the applicable statute of limitations. On appeal, the Alabama Court of Civil Appeals noted that, regardless of the length of the applicable limitations period, a cause of action does not accrue until the plaintiff is entitled to maintain a cause of action. The plaintiffs based their appeal on the trespass claim on an affidavit stating that the damage to the cemetery may have occurred after June of 1998 and less than 6 years before the lawsuit was filed. In affirming summary judgment on the trespass claims, the Court held that the affidavit did not constitute substantial evidence sufficient to create a question of fact as to the date the damage to the property occurred. The Court then noted that the plaintiffs' cause of action for their intentional infliction of emotional distress claims could not accrue until they learned of the damage to the cemetery. Because the record did not disclose the date the plaintiffs first learned of the damage, the Court reversed the trial court's grant of summary judgment as to that claim and remanded the case for a determination of whether those claims accrued within the 2-year limitations period.

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