

North Carolina Civil Case Update

Public Law for the Public's Lawyer
UNC School of Government
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EMPLOYMENT LAW CASES

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Rouse v Forsyth County DSS = Feb. 2020

- Supreme Court Decision
- Employment Law case involving fired 19 year DSS employee for allegedly mishandling a sex abuse allegation
- Employee Prevailed with ALJ but Court of Appeals vacated back pay and attorney's fees saying they were not authorized by NCGS § 150B-33(b)(11)
- NC Supreme Court reversed and allowed award of back pay and attorney's fees for local government employee prevailing under NC Human Resources Act NCGS § 126-34
- HOLDING: reinstatement, back pay and attorney's fees available to prevailing local government employee
- (See also Warren v NCDPS for just cause discussion-Sept 2019 and Weathering vs NCDPS-Feb 2020 for "law of the case" discussion.

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Ayers v Currituck County DSS- Oct. 2019

- Director of DSS heard Director of Child Protective Services use racial slur
- Fairly convoluted facts concerning exactly what was said.
- Employee was fired for unacceptable personal conduct, which was (a) conduct for which no reasonable person should expect to receive prior warning; (d) the willful violation of known or written work rules; and (e) conduct unbecoming a state employee that is detrimental to state service.
- NC Supreme Court in previous cases said to find just cause, look at "the severity of the violation, the subject matter involved, the resulting harm, the [career State employee's] work history, or discipline imposed in other cases involving similar violations."
- Here, ALJ erred by finding one version of what was said even though employee admitted to another.
- HOLDING: ALJ reversed and remanded to find facts but was not directed how to rule.

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Warren v. NCDPS –COA Sept. 2019

- This is the 2nd appeal.
- COA affirmed superior court decision to reverse termination of state trooper arrested at a Nash county party.
- Weatherington v DPS factors on just cause for unacceptable personal conduct: the severity of the violation, the subject matter involved, the resulting harm, the work history, or discipline imposed in other cases involving similar violations
- COA concluded that termination was inconsistent with respondent's treatment of similar conduct and there was no resulting harm.

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Carlton v UNC Chapel Hill – COA –Oct. 2019

- Plaintiff was dismissed but reinstated after filing an internal grievance. She filed a contested case petition with OAH citing a lack of progress in the reinstatement process. OAH dismissed saying it had no jurisdiction
- Contested case petition after agency grievance procedure is allowed only in the following cases pursuant to NCGS 126-34.02(b): discrimination or harassment, retaliation, just cause, veteran's preference, failure to post or give priority consideration, and whistleblower.

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Prickett v OSHR –COA-Nov. 2019 (exempt employees)

- (some constitutional law also) Plaintiff was “confidential assistant” and deemed exempt from the State Human Resources Act, NCGS 126-5(c)(2). He was changed from exempt December 22, 2016. Following election of Gov. Cooper, General Assembly reduced number of exempt employees from 1500 to 425 with Career Status Law. Cooper challenged the new law, returned plaintiff to exempt status on Jan. 19, 2017 and terminated him that day. Career Status law was repealed and ALJ granted petitioner’s MSJ.
- COA reversed ALJ and reinstated dismissal because 1) Gov. McCrory did not have authority to “unexempt” plaintiff; 2) career statute law was unconstitutional as found by 3 judge panel; 3) ten (10) day notice requirement was not substantive.

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Brown v. Fayetteville State University –COA- Jan 2020

- Petitioner was terminated for allegedly stealing a charger but respondent later raised misrepresentation on his application (criminal record) as just cause.
- COA concluded that the ALJ was correct in applying after acquired evidence rule to termination of career state employee.
- North Carolina Human Resources Act is consistent with the application of the McKennon rule and petitioner was given the opportunity to cross examine witness on the newly acquired evidence.

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Weatherington v NCDPS-COA-Feb 2020

- On remand from SC-
- Trooper misplaced his hat during a traffic stop, lied about how he lost it and it was recovered mostly intact. Case went to Supreme Court and then back to COA for 2nd time.
- COA concluded that upon de novo review of just cause, the ALJ erred upon remand
- Trooper was ordered reinstated and ALJ ordered to fashion an appropriate discipline.

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ELECTION LAW CASE

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Rotruck v Guilford County Board of Elections-
Sept. 2019

- Court of Appeals affirmed trial court's affirmation of BOE sustaining a voter challenge under NCGS § 163A-911
- Trial Court properly conducted "whole record review"
- Trial court did not "misallocate the burden of proof" by noting that plaintiff had not presented evidence that he ever moved from old address
- Political motivation as well as evidence of results of challenges to other Summerfield Town Council members not relevant and properly excluded
- HOLDING: Board of Elections' decision to sustain a challenge of plaintiff's right to vote was Affirmed

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PUBLIC RECORD CASES

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Ochsner v. NC Dept of Revenue – Nov. 2019

- Public records case
- Plaintiff was a reporter who alleged he reported on several politicians and then received a notice about back taxes
- Parties were ordered to mediate and thereafter signed Memo of Understanding- department would look for more records
- Defendant produced over 13,000 pages of information
- Plaintiff insisted that he had shown a reasonable inference of undisclosed documents under SEANC v State Treasurer
- HOLDING: Court of Appeals affirmed trial court's decision that State met its obligations under MOU and dismissal of case as moot was proper

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DHT Media v. Folt and UNC Chapel Hill –May 2020

- Whether FERPA prohibits disclosure under Public Records Act of disciplinary records of students found to have violated the university's sexual assault policy.
- Plaintiffs sought all records of person found responsible for sexual misconduct. UNC denied request as "educational records" and FERPA preempts state PR law.
- UNC also declined in its discretion release records because it would undermine the Title IX program, deter and possibly identify victims. (FERPA gives University discretion to release name and sanction)
- SC concluded that the state PR and FERPA did not conflict and affirmed COA's decision to require disclosure under PR Act.

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Constitutional Case Law

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State v Robinson – SC- August 2020

- Whether the repeal of the Racial Justice Act may be retroactive.
- Defendant was successful in his RJA challenge to his capital conviction – as were three (3) others.
- NC General Assembly limited the evidentiary standard in 2012 and repealed the RJA in 2013.
- SC held that the RJA’s retroactive application to any defendant who previously received a sentence of life violated 5th Amendment prohibition on double jeopardy.

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In Re Matter of Duvall- Oct 2019

- Denial of a permit to purchase a handgun
- Plaintiff was conditionally approved and then received notice from Mecklenburg County Sheriff that he was being denied “based on information received from Veteran’s Affairs.” This contained some medical information concerning alcohol use and suicidal thoughts in the past.
- Court of Appeals reversed District Court judge’s affirmation of denial holding no due process and remanding for consideration of evidence in light of definition of “addict” under federal regulation definition
- HOLDING: Denial reversed and remanded for more findings

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New Hanover BOE vs Attorney General of NC – SC- April 2020

- Whether payments from a settlement agreement with Smithfield Foods over hog waste pollution was a civil penalty, forfeiture or fine under Art. IX, Sec. 7 (which goes exclusively to maintain free public schools)
- Payments went to Environmental Enhance Grants Program overseen by AG which provided grants up to 500K
- SC, noting this was an issue of law, held that the label attached to the money does not control, but determination is whether the money is punitive or remedial to deter noncompliance or measure damages resulting from the violation.
- Payments did not settle liability that might arise, nor did they arise from an enforcement proceeding. COA’s opinion that question of fact remained was reversed.

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Washington v. Cline –COA – Sept. 2019

- Plaintiff sought civil damages under Art. 1, Sec. 18 of NC Constitution for violating his right to a speedy trial.
- Plaintiff was tried and convicted four (4) years and nine (9) months after his arrest for an alleged home invasion, robbery and sexual assault.
- COA held both US and NC rights to speedy trial were violated and dismissed case.
- There is no civil cause of action for violation of right to speedy trial.
- Bivens v Six Unknown Agents only extended to 4th amendment, 5th Amendment and 8th Amendment claims. Not speedy trial.
- Only relief is dismissal of criminal case.

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Cooper v. Berger- COA Dec. 2019

- Court of Appeals rejected Governor’s challenge to the General Assembly’s appropriation of federal block grant funds awarded to the State in a manner inconsistent with the Governor’s recommended budget.
- Governor said GA’s action violated Art. III, Sec. 5(3) & (4) (take care that the laws are faithfully executed and duty to administer the budget).
- COA Held that block grant funds are, despite their source in the federal government, subject to appropriation by the General Assembly.

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Common Cause v. Forest, et al –COA –Jan 2020

- Challenge to Special Session in Dec. 2016 alleging that the speed with which the GA passed laws in two days without advance public notice violated Art. I, Sec. 12 which provides that “the people have a right . . . to instruct their representatives.”
- COA held that courts could not “wade into this legislative process and dictate how much time our General Assembly must spend contemplating legislative action.”

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Common Cause v Tim Moore –COA-2020

- COA reversed trial court ruling that a gerrymandered general assembly could not propose amendments to the constitution and that their adoption was void ab initio because the “General Assembly lost its claim to popular sovereignty,” did “not represent the people of North Carolina,” and therefore was “not empowered to pass legislation that would [propose, for the people’s consideration, amendments to] the state’s constitution.”

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IMMUNITY AND SUIT CAPACITY CASES

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Topping v Meyers and McGuire Woods-March 2020

- Defamation and negligence suit against law firm hired by LME to investigate allegations of mismanagement after state audit. Attorney held press conference
- Defendants raised absolute immunity as 12(b) defense-
- In North Carolina, absolute privilege or “complete immunity” from suit applies to communications which are so much to the public interest that the defendant should speak out his mind fully and freely, that all actions in respect to the words used are absolutely forbidden, even though it be alleged that they were used falsely, knowingly, and with express malice.
- Includes lawyers in course of judicial proceeding if relevant to the litigation
- Court of Appeals held that neither absolute immunity nor legislative immunity (LME is a political body) applied since the alleged defamatory statements were made in a press conference, not court.
- HOLDING: Absolute immunity did not apply and thus denial of 12(b) motions was not immediately appealable. Appeal dismissed

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Cabarrus Board of Education vs. State Treasurer and State Retirement System – April 2020

- Challenge to Anti-Pension Spiking legislation codified at NCGS 135-5(a3)
- Intended to prevent public employees making over 100,000 from spiking retirement via salary increase
- Superintendent Shepherd retired and retirement system demanded county BOE contribute \$208K
- Board of Trustees adopted a "cap factor" which they contend was not required to be adopted as an agency rule under the APA
- SC affirmed COA decision that such a rule was required to be adopted under the APA

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Long v. Fowler – March 2020

- Suit against NCSU for wrongful death of a contractor in Industrial Commission and suit was filed in superior court against individuals.
- This case has a good discussion of proper capacities for suit against public employees.
- The inquiry is not the nature of the act of omission, but the nature of the relief sought.
- The suit caption only said individual, but trial court held that it was actually official capacity and thus barred by sovereign immunity.
- Court of Appeals reversed trial court dismissal saying the plaintiff appropriately named the public employees in their individual capacity.
- HOLDING: 12(b) motion was reversed.
- NOTE: There was a dissent (cited Pasigraf case).

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Bartley v. City of High Point – July 2020

- Public Official Immunity Case
- Simple Traffic Stop, plaintiff pulls his vehicle into private driveway
 - Officers has sirens and blue lights on unmarked car.
 - Plaintiff exits vehicle and walks towards defendant- told to get back in car, plaintiff claims he did not know he was a police officer and refused, proceeds to open his back door to retrieve a sick cat. Officer "body slams" him, cuffs and cites him
 - Citations were dismissed after plaintiff took driving courses then plaintiff sued city and officer. Court dismissed city and official capacity claims but denied Public official immunity
 - COA said there is a question of fact whether slamming him was excessive and "wanton", ie: with malice
 - HOLDING: Denial of Summary Judgment affirmed on assault and battery, false imprisonment/arrest and malicious prosecution

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Doe v City of Charlotte COA- Aug 2020

- Plaintiff sued CPD officer and city for malicious prosecution, false imprisonment and negligence after plaintiff was charged with child abuse for leaving her children in her car to ask for directions.
- Discussion of motion to reconsider-and Rule 59 (new trials; amendment of judgments). Good discussion of timely appeal, certiorari.
- COA reversed SJ finding disputed issues of fact on malice – ie: other officers disagreed with decision to charge plaintiff, racial and/or socioeconomic animus, etc.

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MISCELLANEOUS

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Gift Surplus, LLC v State of NC – October 2019

- Latest in almost 10 years of sweepstakes challenges
- Sweepstakes games have been modified to have some more dexterity and skill
- Court of Appeals reversed trial court decision that they were legal
- COA found they violated NCGS §14-306.4
- Dissolved statewide injunction
- HOLDING: this latest incarnation of sweepstakes are illegal
- (unusual opinion with 2 concurring opinions)

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