

Case Law of Relevance to County Attorneys Update

NC County Attorney's Summer Conference

July 9, 2020

ZONING CASES

Hampton v. Cumberland County –Sept. 2019

- NC Supreme Court affirmed COA decision remanding back to Board of Adjustment to make more Findings of Fact
- Superior Court should not make Findings of Fact under NCGS § 160A-393(l)
- COA's 72 page decision with Tyson Dissent dealt with use of a firing range built without a permit
- County exempted “occasional target practice” and land owners claimed it was farm use, they had a Farm Identification No from USDOA and only allowed family and friends
- Best analogy by the majority : Just because you can operate a motor vehicle does not mean you can build a private race track in your back yard.
- HOLDING: Board of Adjustment needs to make more findings of Fact on frequency, number of invitees, etc
- (also see PHG v Asheville April 2020.)

EMPLOYMENT LAW CASES

Rouse v Forsyth County DSS = Feb. 2020

- 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.

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 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.

ELECTION LAW CASE

Rotruck v Guilford County Board of Elections- Sept. 2019

- Court of Appeals affirmed trial court's affirmation of BOE sustain 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

PUBLIC RECORD CASE

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

MISCELLANEOUS

Gift Surplus, LLC v State of NC – October 2019

- Latest in almost 10 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)

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

IMMUNITY AND SUIT CAPACITY CASES

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

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.

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

SUMMARY OF OTHER CASES OF NOTE

- There were two published impact fee cases. JVC Enterprises v City of Concord- Dec 2019 and Kidd Construction v Greenville Utilities- May 2020
- One inverse condemnation case Wagner vs. City of Charlotte –COA Feb 2020 (flooding)
- Chavez v McFadden-SC- June 2020- State Court judges should summarily dismiss Habeas Corpus petition based on 287(g) detainer
- Holmes v Moore – COA-Feb 2020 was the voter id case on SB 824 ordering a preliminary injunction
- Cooper v Berger –SC- 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.

Best of the Appellate Decisions

- **BEST LINE**

- Weatherington v NCDPS
- “It is unlikely so many lawyers have ever before written so many pages because of a lost hat.”

- **MOST UNSUSAL**

- Gift Surplus v State of NC
- One opinion and two concurring opinions is actually 3 opinions.