Administrative Law

by Jennifer B. Alewine[*]

Alan Gregory Poole, Jr.[**]

Chelsea M. Lamb[***]

and Emily R. Wright[****]

I. INTRODUCTION

This Article surveys cases from the Georgia Supreme Court and the Georgia Court of Appeals from June 1, 2017 through May 31, 2018, in which principles of administrative law were a central focus of the case.[1] Exhaustion of administrative remedies will be the first topic discussed, followed by review of decisions by administrative agencies, then on to scope of authority, with statutory construction to follow. The Article will conclude with standard of review.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In *Shelley v. Town of Tyrone*,[2] the Georgia Supreme Court held the property owner, Richard Shelley, "failed to exhaust his administrative remedies before seeking relief" from Fayette County Superior Court, and thus, his challenges to the Town of Tyrone's zoning ordinances were not

[*]Associate, Troutman Sanders LLP, Atlanta, Georgia. Georgia State University (B.A., 2000); Mercer University School of Law (J.D., 2004). Member, State Bar of Georgia.

[**]Associate, Troutman Sanders LLP, Atlanta, Georgia. Georgia Institute of Technology (B.S., 2009); University of Georgia (J.D., 2013). Member, State Bar of Georgia.

[***]Associate, Troutman Sanders LLP, Atlanta, Georgia. University of Georgia (B.A., 2010); Mercer University School of Law (J.D., 2015). Member, State Bar of Georgia.

[****]Associate, Troutman Sanders LLP, Atlanta, Georgia. East Tennessee State University (B.A., 2014); Mercer University School of Law (J.D., 2017). Member, State Bar of Georgia.

1. For an analysis of administrative law during the prior survey period, see Jennifer B. Alewine, Courtney E. Farrell & Allison W. Pryor, *Administrative Law*, *Annual Survey of Georgia Law*, 69 MERCER L. REV. 15 (2017).

2. 302 Ga. 297, 806 S.E.2d 535 (2017).

ripe for judicial review.[3] Shelley had been waging "a long-running battle" against the Town of Tyrone's zoning ordinances, and in March of 2014, Shelley filed suit in superior court asserting declaratory judgment and inverse condemnation claims.[4] After the superior court granted summary judgment in favor of the Town of Tyrone, Shelley filed an appeal to the Georgia Supreme Court.[5] Although noting that Shelley opposed the Town of Tyrone's zoning ordinance allegedly limiting the use of his property, the court held Shelley could not bring an action for declaratory judgment because he "never sought permission through the town's established zoning processes to use his properties for any of the uses that he . . . claims were improperly taken away by the 2011 ordinance."[6] The court also held Shelley had not shown that exhaustion would be futile where he only presented evidence of two alleged denials of potential tenants' planned uses of his property but had refused to seek any type of formal zoning relief from the Town of Tyrone.[7] Because Shelley failed to exhaust his administrative remedies, the court affirmed the superior court's grant of summary judgment to the Town of Tyrone on Shelley's as-applied claims.[8]

On the same day, the Georgia Supreme Court also decided its opinion in *Women's Surgical Center, LLC v. Berry*,[9] holding that the Women's Surgical Center, LLC (the Center) was not required to exhaust its administrative remedies before filing a declaratory action challenging the constitutionality of section 31-6-40(a)(7)(C) of the Official Code of Georgia Annotated[10] (O.C.G.A.) on its face.[11] The Center provides outpatient surgery services and desired "to add a second operating room to its premises."[12] However, under O.C.G.A. § 31-6-40(a)(7)(C), the Center must first obtain a certificate of need (CON) from the Georgia Department of Community Health (the Department) before making any changes to its premises.[13] In an attempt to avoid the CON requirement, the Center "filed an action for declaratory and injunctive relief against the Department in an effort to have Georgia's applicable CON law and

3. *Id.* at 297–98, 806 S.E.2d at 536.
4. *Id.* at 297, 301, 806 S.E.2d at 536, 539.
5. *Id.* at 301, 806 S.E.2d at 539–40.
6. *Id.* at 303, 806 S.E.2d at 540.
7. *Id.* at 304–06, 806 S.E.2d at 541.
8. *Id.* at 306, 806 S.E.2d at 542.
9. 302 Ga. 349, 806 S.E.2d 606 (2017).
10. O.C.G.A. § 31-6-40(a)(7)(C) (2018).
11. *Women's Surgical Ctr.*, 302 Ga. at 350–51, 806 S.E.2d at 609–10.
12. *Id.* at 349, 806 S.E.2d at 608.
13. *Id.* at 349, 806 S.E.2d at 608–09.

the regulations authorizing it declared unconstitutional." The Department moved to dismiss the complaint on grounds that Fulton County Superior Court lacked jurisdiction because the Center had not exhausted its administrative remedies and, thus, did not have standing. "The trial court denied the [Department's] motion to dismiss."[14]

On appeal, the Georgia Supreme Court first assessed whether the Center faced an injury in fact that is "actual and imminent, not conjectural or hypothetical" and, thus, had standing to bring a declaratory action.[15] The court determined the Center was confronted with an injury in fact when it faced only two options—punishment for expanding its facilities without a CON or "endur[e] much expense and effort to obtain the [new CON]."[16] "Because the Center ha[d] standing to pursue . . . a direct facial constitutional challenge to [O.C.G.A.] § 31-6-40(a)(7)(C)," the court held "the Center was not required to exhaust its administrative remedies before filing its declaratory action" and affirmed the trial court's order.[17]

In *Doctors Hospital of Augusta, LLC v. Department of Community Health*,[18] the Georgia Court of Appeals reversed Fulton County Superior Court's order dismissing Doctors Hospital of Augusta, LLC's (the Hospital) petition for judicial review.[19] Prior to reaching the court of appeals, the Hospital petitioned the superior court for judicial review of the decision of the Georgia Department of Community Health to grant a certificate of need (CON) to MCG Health, Inc. following dismissal of the Hospital's declaratory judgment action for failure to exhaust administrative remedies.[20] The Georgia Court of Appeals determined the superior court erred in finding the instant case and the previous declaratory judgment action "involve the same cause of action" and, thus, were barred under the prior pending action doctrine.[21] The court held "the final agency decision raised additional substantive issues that could not have been brought in the declaratory judgment action until after the final agency decision was issued."[22] Therefore, the doctrine did not apply, and the superior court improperly dismissed the case on those grounds.[23]

14. *Id.* at 350, 806 S.E.2d at 609.

15. *Id.* at 350–51, 806 S.E.2d at 609–10 (quoting Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009)).

16. *Id.* at 351, 806 S.E.2d at 610.

17. *Id.*

18. 344 Ga. App. 583, 811 S.E.2d 64 (2018).

19. *Id.* at 587, 811 S.E.2d at 67.

20. *Id.* at 584–85, 811 S.E.2d at 66.

21. *Id.* at 585–86, 811 S.E.2d at 66–67.

22. *Id.*

23. *Id.* at 586, 811 S.E.2d at 67.

The court also addressed MCG Health, Inc.'s argument that "the trial court's decision to dismiss [the Hospital's] petition for judicial review, as opposed to considering the merits, renders the final agency decision affirmed by operation of law pursuant to [O.C.G.A.] § 31-6-44.1(b)."[24] O.C.G.A. § 31-6-44.1(b)[25] provides in part that, if a case is heard more than 120 days from "the date of docketing in the superior court" or if a dispositive order is not entered by the court within thirty days of the required hearing, then "the decision of the department shall be considered affirmed by operation of law."[26] In disagreeing with MCG's argument, the court noted that "the trial court held a hearing on the Department of Community Health and [MCG's] motion to dismiss within 120 days" of docketing and issued an order granting said motion less than thirty days later.[27] In the court's view, this satisfied the requirements set forth in O.C.G.A. § 31-6-44.1(b).[28] Accordingly, the court reversed the "trial court's order dismissing [the Hospital's] petition for judicial review of the final agency decision."[29]

Georgia Power Co. v. Cazier (Cazier I)[30] was revisited again in 2018 in *Georgia Power Co. v. Cazier* (Cazier II)[31] when the Georgia Supreme Court affirmed the Georgia Court of Appeals' ruling. The court based its decision on the fact the "plaintiffs d[id] not seek judicial relief of any kind from the orders of the [Public Service] Commission," but rather were seeking "damages for the collection of fees allegedly in excess of the amounts authorized by the orders of the Commission."[32] The court discussed the fact that, while the Commission had exercised its exclusive jurisdiction to set just and reasonable rates, resolving the putative class action would not infringe on the Commission's jurisdiction, as there is no Georgia law that indicates the plaintiffs would have to exhaust administrative remedies before bringing such a suit.[33] The court went on to say, while it would be possible for the trial court to misconstrue the Commission's orders resulting in a "resolution of the lawsuit [that] would be inconsistent with the policy determinations made by" the Commission, "the law provides a mechanism by which the trial court can take care

24. *Id.*
25. O.C.G.A. § 31-6-44.1(b) (2018).
26. *Id.*
27. *Doctors Hosp. of Augusta,* 344 Ga. App. at 587, 811 S.E.2d at 67.
28. *Id.*
29. *Id.*
30. 321 Ga. App. 576, 740 S.E.2d 458 (2013), *aff'd*, 303 Ga. 820, 815 S.E.2d 922 (2018).
31. 303 Ga. 820, 815 S.E.2d 922 (2018), *aff'g* 339 Ga. App. 506, 793 S.E.2d 668 (2016).
32. *Id.* at 823, 815 S.E.2d at 926.
33. *Id.* at 823–24, 815 S.E.2d at 926.

that its resolution of the case does not undercut the rate structure approved by the Commission."[34] Indeed, should such a scenario arise, "[t]he trial court may permit the Commission to construe its own orders under the doctrine of 'primary jurisdiction,'" which "does not require the outright dismissal of a lawsuit," but instead suspends the judicial process until the administrative body reviews the issues.[35] Relying on this rationale, the supreme court affirmed the judgment of the court of appeals.[36]

III. REVIEW OF DECISIONS BY ADMINISTRATIVE AGENCIES

In *Oxendine v. Government Transparency & Campaign Finance Commission*,[37] a former gubernatorial candidate (Oxendine) sought review of a ruling by the Government Transparency and Campaign Finance Commission (the Commission) that denied, in part, his motion to dismiss a complaint alleging he violated the Ethics in Government Act (the Act).[38] In this case, the Georgia Court of Appeals had to first determine whether it had jurisdiction over the appeal before deciding whether the Fulton County Superior Court "erred by finding it lacked jurisdiction to review the 'interim decision' of the Commission under [O.C.G.A.] § 50-13-19(a)"[39] due to Oxendine not demonstrating that he would suffer irreparable harm.[40]

First, the court held it did have jurisdiction to hear Oxendine's appeal because "the superior court's order was an appealable final judgment under [O.C.G.A.] § 50-13-20."[41] As to the second issue, the court affirmed the superior court's decision that an immediate interlocutory appeal was not available from the Commission's interim decision under O.C.G.A. § 50-13-19(a).[42] In so holding, the court discussed how Oxendine had not satisfied the requirement of showing that one would suffer irreparable harm from an incorrect administrative ruling necessary under O.C.G.A. § 50-13-19(a) to trigger the right to an immediate appeal.[43] The court did so by applying principles from *Schlachter v. Georgia State Board of*

34. *Id.* at 824, 815 S.E.2d at 926.
35. *Id.* (quoting United States v. W. Pac. R.R. Co., 352 U.S. 59, 63–64 (1956)).
36. *Id.* at 827, 815 S.E.2d at 928.
37. 341 Ga. App. 901, 802 S.E.2d 310 (2017).
38. O.C.G.A. § 21-5-41 (2018); *Oxendine*, 341 Ga. App. at 901–02, 802 S.E.2d at 311.
39. O.C.G.A. § 50-13-19(a) (2018).
40. *Oxendine*, 341 Ga. App. at 902–03, 802 S.E.2d at 312.
41. *Id.* at 902, 802 S.E.2d at 312; O.C.G.A. § 50-13-20 (2018).
42. *Oxendine*, 341 Ga. App. at 902–03, 802 S.E.2d at 312.
43. *Id.* at 903–04, 802 S.E.2d at 312.

Examiners of Psychologists[44] and by distinguishing it from *Wills v. Composite State Board of Medical Examiners*[45] based on the facts of each case.[46] Additionally, echoing the language of O.C.G.A. § 50-13-19(a), the court held that accepting Oxendine's arguments would "render virtually every interlocutory administrative decision subject to immediate review."[47]

Judge McFadden, however, wrote separately, concurring in part and dissenting in part.[48] In his opinion, Judge McFadden concurred with the majority on the issue of whether the court had jurisdiction to hear the appeal but differed from the majority opinion on the issue of whether a final agency decision would provide a remedy to Oxendine so as to preclude irreparable harm.[49] In particular, the dissenting opinion argued that the superior court is authorized in a case such as the one at issue to exercise discretion as to whether a final agency decision would provide a sufficient remedy.[50] While noting that the superior court's decision was flawed on three grounds, the main point of the dissent appears to be focused on the third basis of error.[51] In short, the dissent argued, "the mere fact that Oxendine could obtain appellate review of a final agency decision in this case does not, on its own, support a finding that such review would be an adequate remedy."[52] Instead, the dissent stressed that O.C.G.A. § 50-13-19(a) "expressly contemplates that there will be some cases in which judicial review of a final agency decision will *not* be an adequate remedy" and that "it permits immediate review of an interim ruling 'if review of the final agency decision would *not* provide an adequate remedy.'"[53] As such, the dissent recommended remanding the case to allow the superior court to exercise discretion as to whether appellate review would provide an adequate remedy, thereby properly determining whether it would have jurisdiction to hear the interim decision of the Commission.[54]

44. 215 Ga. App. 171, 450 S.E.2d 242 (1994).

45. 259 Ga. 549, 384 S.E.2d 636 (1989).

46. *Oxendine*, 341 Ga. App. at 903–04, 802 S.E.2d at 312–13.

47. *Id.* at 903, 802 S.E.2d at 312.

48. *Id.* at 904, 802 S.E.2d at 313 (McFadden, J., concurring in part and dissenting in part).

49. *Id.*

50. *Id.*

51. *See id.* at 905–06, 802 S.E.2d at 314.

52. *Id.* at 906, 802 S.E.2d at 314.

53. *Id.* (quoting O.C.G.A. § 50-13-19 (2018)).

54. *Id.* at 906–07, 802 S.E.2d at 314.

In *Broad Street Supermarket, Inc. v. Department of Public Health*,[55] the Georgia Court of Appeals granted a discretionary application filed by Broad Street Supermarket "seeking review of the [Fulton County Superior Court's] order affirming a decision of the Department of Public Health ("DPH"), which disqualified Broad Street's grocery stores from participating in the federal Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC")[56] in Georgia."[57] Upon finding a violation of the program's guidelines during an on-site investigation of the supermarket (Moon's), DPH disqualified Moon's from the WIC program for three years. An Administrative Law Judge (ALJ) reversed the disqualification. On agency appeal, the agency disagreed with the ALJ and reinstated the disqualification, and the superior court subsequently affirmed the agency's decision.[58] The Georgia Court of Appeals reversed the order of the superior court because it disagreed with DPH's interpretation of the notice regulation, an interpretation that absolved DPH from having to comply with notice requirements before imposing a three-year sanction on Moon's.[59] The court found that interpretation absurd, as it would require notice and evidence of violations discovered during an undercover "compliance buy," but not require notice of any kind for violations found during an "overt monitoring visit" like the one at issue in the case, which would effectively "eviscerate the notice requirement" in many cases to which it appeared to explicitly apply.[60]

IV. SCOPE OF AUTHORITY

During this survey period, the Georgia Supreme Court reviewed the Georgia Court of Appeals' decision in *New Cingular Wireless PCS, LLC v. Georgia Department of Revenue*,[61] discussed in last year's Survey.[62] The court of appeals held that the Department of Revenue's interpretation of Ga. Comp. R. & Regs. Rule 560-12-1-.25(2)[63] was reasonable and that the Department could require wireless internet service providers to refund

55. 345 Ga. App. 1, 812 S.E.2d 325 (2018).

56. 42 U.S.C. § 1786 (2018).

57. *Broad St. Supermarket*, 345 Ga. App. at 1, 812 S.E.2d at 325–26.

58. *Id.* at 2, 812 S.E.2d at 326.

59. *Id.* at 5–6, 812 S.E.2d at 328–29.

60. *Id.* at 6, 812 S.E.2d at 328.

61. 340 Ga. App. 316, 797 S.E.2d 190 (2017) (reversed in part, vacated in part by New Cingular Wireless PCS, LLC v. Ga. Dep't of Rev., 303 Ga. 468, 813 S.E.2d 468 (2018)).

62. *See supra* note 1, at 21–22.

63. Ga. Comp. R. & Regs. r. 560-12-1-.25(2) (2017).

to its customers taxes erroneously paid before seeking a refund from the Department.[64]

On appeal to the Georgia Supreme Court, the court first held, as a threshold matter, that the court of appeals erred by not considering whether "AT&T lacked standing to seek a refund on behalf of its customers prior to" the effective date of the statute permitting service providers to do so.[65] Reminding the court of appeals that "standing is a jurisdictional issue," the court vacated and remanded the "portion of the Court of Appeals [decision that related] to the period from November 1, 2005 to May 5, 2009."[66]

Next, the court examined the text of Ga. Comp. R. & Regs. rule 560-12-1-.25(2) using the canons of statutory construction.[67] Agreeing with appellants, the court held that the plain language of the regulation precludes the Department's interpretation, because the regulation permits a service provider to "secure a refund" after pre-paying a potential refund to its customers.[68] But while the Department urged an interpretation that "secure a refund" means "apply for a refund," the court held the following:

> [T]he regulation requires a dealer to pay any refund amount to its customers prior to the point that the dealer, itself, may acquire repayment of those funds from the Department. It does not require a dealer to repay funds to its customers prior to filing a *request* for a refund or prior to the Department's *determination* of whether or not any refund is due.[69]

Resultantly, the Georgia Supreme Court vacated the portion of the below decision that related to the time period before O.C.G.A. § 48-2-35.1(d)[70] became effective and remanded to the court of appeals to determine whether AT&T lacked standing to pursue a refund on behalf of its customers before it was explicitly authorized to do so by statute.[71] The court moreover instructed the court of appeals to determine for any periods of time for which AT&T has standing whether AT&T's refund action was barred by Georgia's class action law.[72] The court reversed the

64. *New Cingular Wireless PCS,* 340 Ga. App. at 319, 797 S.E.2d at 193.
65. *New Cingular Wireless PCS,* 303 Ga. at 470, 813 S.E.2d at 391.
66. *Id.*
67. *Id.* at 470–71, 813 S.E.2d at 391–92.
68. *Id.* at 472, 813 S.E.2d at 392.
69. *Id.*
70. O.C.G.A. § 48-2-35.1(d) (2018).
71. *New Cingular Wireless PCS,* 303 Ga. at 473–74, 813 S.E.2d at 393.
72. *Id.* at 474, 813 S.E.2d at 393.

remainder of the court of appeals' decision and reinstated the service provider's action.[73]

In *Gould v. Housing Authority of Augusta*,[74] the Georgia Court of Appeals reversed a Richmond County Superior Court order dismissing an action seeking review of a decision made by a hearing officer with the Housing Authority of the City of Augusta (the Authority).[75] The plaintiff in this case received notice that her housing vouchers issued under the federal Section 8 Housing Assistance Payments Program for Existing Housing (Section 8)[76] would be terminated by the Authority because the Authority found that the plaintiff failed to comply with the requirements to qualify for continuing vouchers.[77] The plaintiff sought a writ of certiorari at the superior court pursuant to O.C.G.A. § 5-4-1(a),[78] and the superior court issued the writ.[79] The Authority moved to dismiss, arguing the superior court lacked jurisdiction to review the decision because it was administrative, rather than judicial, in nature.[80] The superior court vacated the writ of certiorari and granted the Authority's motion to dismiss, and the plaintiff sought review.[81]

A nine-member panel of the court of appeals[82] granted the plaintiff's request for discretionary review and reversed the dismissal of the plaintiff's action.[83] The court reasoned that, because "the hearing officer exercised authority under federal law, conducted a hearing in accordance with judicial procedure, and his decision was binding," the hearing officer's decision to terminate the plaintiff's housing assistance was quasi-judicial and subject to review by the superior court.[84] Writing in

73. *Id.*

74. 343 Ga. App. 761, 808 S.E.2d 109 (2017).

75. *Id.*

76. 24 C.F.R. § 982.54(a) (2018).

77. *Gould*, 343 Ga. App. at 762, 808 S.E.2d at 111.

78. O.C.G.A. § 5-4-1(a) (2018).

79. *Gould*, 343 Ga. App. at 762, 808 S.E.2d at 111.

80. *Id.* at 762–63, 808 S.E.2d at 111.

81. *Id.*

82. At the time this case was decided, a judge's dissent triggered consideration of the case by a nine-member, "whole court" panel. *See* Stephen Louis A. Dillard, *Open Chambers Revisited: Demystifying the Inner Workings and Culture of the Georgia Court of Appeals*, 68 MERCER L. REV. 1, 23 (2016). On December 4, 2017, the Georgia Court of Appeals adopted the "2-1 rule," which permits a single judge on a three-member panel to dissent from the opinion of the court without requiring consideration by additional judges. *See* Christina Smith, *Court of Appeals Adopts Transformative Changes to Procedures*, CT. OF APPEALS OF GA. (Dec. 1, 2017), http://www.gaappeals.us/news2.php?title=Court%20of%20Appeals%20Adopts%20Transformative%20Changes%20to%20Procedures.

83. *Gould*, 343 Ga. App. at 767, 808 S.E. 2d at 113–14.

84. *Id.*

dissent, Judge Bethel argued that the majority's opinion "improperly expands the role of the judiciary," because the hearing officer acted pursuant to authority granted by the Authority rather than exercising his own judgment under the law, and because in some circumstances the hearing officer's decision is not binding on the parties.[85] The majority disagreed, however, and held that the hearing officer "was required to 'determine the facts and apply the [appropriate] legal standards to them, which is a decision-making process akin to a judicial act.'"[86] Moreover, the majority held that "it is irrelevant that in certain limited circumstances a housing authority can make a 'determin[ation] that it is not bound by a hearing decision,'" because the hearing officer's decision at issue was binding on the plaintiff.[87] Accordingly, the court held that the hearing officer's decision was quasi-judicial in nature and was therefore subject to appeal before the superior court.[88]

V. STATUTORY CONSTRUCTION

In *Barrow v. Dunn*,[89] a Chatham County Superior Court order affirming an interpretation by an ALJ of Georgia's antidegradation rule[90] was reversed by the Georgia Court of Appeals.[91] The plaintiff in that case challenged a permit issued by Georgia's Environmental Protection Division (EPD) to the City of Guyton to install a land application system to treat wastewater collected in the City's sewer system. After the EPD issued the permit, the plaintiff administratively appealed the issuance, and the ALJ found he had standing but affirmed the issuance of the permit, relying on an interpretation of the antidegradation rule that requires pre-permitting degradation analysis only where a new or expanded point source discharge could degrade water quality.[92]

The court of appeals examined the language of the antidegradation rule in light of the Georgia Water Quality Control Act[93] and ultimately adopted the plaintiff's urged interpretation and held that the EPD was required by the plain language of the Rule to make a finding "that

85. *Id.* at 767, 808 S.E.2d at 114 (Bethel, J., dissenting).

86. *Id.* at 765, 808 S.E.2d at 112 (majority opinion) (alteration in original) (quoting City of Cumming v. Flowers, 300 Ga. 820, 824, 797 S.E.2d 846, 851 (2017)).

87. *Id.* at 765, 808 S.E.2d at 112 (alteration in original) (quoting 24 C.F.R. § 982.555(f)(3) (2018)).

88. *Id.* at 767, 808 S.E.2d at 113–14.

89. 344 Ga. App. 747, 812 S.E.2d 63 (2018).

90. Ga. Comp. R. & Regs. r. 391-3-6-.03(2)(b) (2018).

91. *Barrow*, 344 Ga. App. at 747, 812 S.E.2d at 64.

92. *Id.* at 747–48, 812 S.E.2d at 64–65.

93. O.C.G.A. § 12-5-20 to -53 (2018).

degradation of the water quality is necessary to accommodate important economic or social development in the relevant area" before issuing a permit that lowers the quality of nearby waters.[94] In an opinion authored by Chief Judge Dillard this survey period, the court of appeals consolidated two appeals of administrative decisions and reversed in both cases.[95] In the first case, the court held that the Fulton County Superior Court erred in concluding that the Georgia Outdoor Advertising Control Act (OACA)[96] "regulates signs located inside a building."[97] In deciding that the OACA regulates signs that are outside, the court turned to "familiar and binding canons of [statutory] construction" including reading for the plain language of the text, "consider[ing] the text contextually," reading the text "in its most natural and reasonable way," and "seek[ing] to 'avoid a construction that makes some language mere surplusage.'"[98]

In addition to relying on canons of construction, the court looked to legislative policy behind the OACA found in O.C.G.A. § 32-6-70(a),[99] and it applied *ejusdem generis* to definitions of the types of signs O.C.G.A. § 32-6-71(14)[100] regulates.[101] The court expressly discounted an argument in favor of interpreting the statute to achieve the statute's policy goals.[102] Ultimately, the court reversed the superior court's order that affirmed the initial decision by the Department of Transportation in holding that the OACA applies to outdoor, not indoor signs.[103]

In the second case, the court held that "the superior court erred in concluding that the City's sign ordinances prohibited [Monumedia's] signs."[104] When the court interprets ordinances, it applies the same principles used in interpreting the meaning of statutes.[105] Accordingly, the court attributed to text of the ordinance its plain meaning, read the ordinance as a whole without resorting to forced constructions, and construed the ordinance in the context of other ordinances.[106] The court

94. *Barrow*, 344 Ga. App. at 752, 812 S.E.2d at 67.

95. Monumedia II, LLC v. Dep't of Transp., 343 Ga. App. 49, 806 S.E.2d 215 (2017).

96. O.C.G.A. § 32-6-70 to -97 (2018).

97. *Monumedia II,* 343 Ga. App. at 49, 806 S.E.2d at 217.

98. *Id.* at 51–52, 806 S.E.2d at 218–19 (quoting Holcomb v. Long, 329 Ga. App. 515, 517–18, 765 S.E.2d 687, 689–90 (2014)).

99. O.C.G.A. § 32-6-70(a) (2018).

100. O.C.G.A. § 32-6-71(14) (2018).

101. *Monumedia II,* 343 Ga. App. at 53–54, 806 S.E.2d at 220–21.

102. *Id.* at 55, 806 S.E.2d at 221.

103. *Id.*

104. *Id.* at 50, 806 S.E.2d at 218.

105. *Id.* at 56, 806 S.E.2d at 222.

106. *Id.*

noted that, while "the various sections of the City's sign ordinance at issue here create ambiguity as to whether Monumedia's signs can be regulated . . . 'the decisive rule of construction in this case is that ambiguities in a zoning ordinance must be resolved in favor of the property owner.'"[107] Further still, the court noted that "the City Council of Atlanta amended the ordinance to specifically address signs located inside of buildings" after the Board of Zoning Adjustment concluded that Monumedia's signs violated said ordinance.[108] The court therefore reversed the superior court's ruling.[109]

In *Quigg v. Georgia Professional Standards Commission*,[110] Quigg, a former school superintendent, appealed to the Georgia Court of Appeals the Oconee County Superior Court's order "affirming the final decision of the Georgia Professional Standards Commission ("Commission") to suspend her educator's certificate for [sixty] days."[111] On appeal, the court of appeals partially affirmed the superior court's order.[112] The court found, however, that

> the Commission's decision to sanction Quigg for dishonesty under Standard 4 of the Code of Ethics for Educators ("Ethics Code") for her involvement in a revision made to her daughter's high school transcript to include a personal fitness credit was clearly erroneous in the view of the whole record.[113]

Applying the rules of statutory construction to the Ethics Code, the court first looked to the plain meaning of the statute to determine its meaning.[114] In doing so, the court determined that the Ethics Code section at issue required the conduct in question occur "during the time of professional practice of an educator."[115] Because the Commission and ALJ "expressly found that Quigg's efforts to have her daughter's transcript change[d] occurred [a]fter [Quigg] was removed as Superintendent," the court held that the ALJ and Commission erred in sanctioning Quigg under Standard 4 for said conduct.[116] Accordingly, the

107. *Id.* at 58–59, 806 S.E.2d at 223 (quoting JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417, 603 S.E.2d 247, 248 (2004)).

108. *Id.* at 59, 806 S.E.2d at 223.

109. *Id.* at 59, 806 S.E.2d at 223–24.

110. 344 Ga. App. 142, 809 S.E.2d 267 (2017).

111. *Id.* at 142, 809 S.E.2d at 269.

112. *Id.* at 158–59, 809 S.E.2d at 279–80.

113. *Id.* at 142, 809 S.E.2d at 269.

114. *Id.* at 158, 809 S.E.2d at 279.

115. *Id.*

116. *Id.* at 159, 809 S.E.2d at 279–80.

court reversed the superior court's order to the extent that it affirmed the Commission's decision regarding sanctioning Quigg for her participation in the altering of her daughter's transcript.[117]

VI. STANDARD OF REVIEW

In *Cartersville City Schools v. Johnson*,[118] a workers' compensation action, the Georgia Court of Appeals affirmed the ruling of the Bartow County Superior Court reinstating benefits to the appellee fifth-grade teacher on the grounds that the Appellate Division of the State Board of Workers' Compensation misconstrued the application of the law regarding scope of employment to the appellee's injuries.[119] The appellee injured her knee during class time while walking from her computer to the front of the classroom. The appellee filed a workers' compensation claim, heard in the first instance by an ALJ.[120] The appellee–teacher's recovery centered on whether the injury "arose out of her employment or was a noncompensable 'idiopathic' injury."[121] The ALJ found in favor of the appellee on this issue and granted workers' compensation benefits, ruling that the injury arose from the peculiar setup of the classroom as well as the appellee's need to move about the classroom to perform her duties as a teacher, and that "external factors . . . created a risk and caused a danger which was peculiar to her work environment that causally connects her employment to her injury."[122]

The school appealed to the Appellate Division of the State Board of Workers' Compensation (the Appellate Division) as provided by statute.[123] The Appellate Division reversed, ruling that the injury arose from the normal risks of turning while walking, that such risk was "not a risk unique to [her] work, and is a risk to which she would have been equally exposed apart from the employment," and that the "injury was caused by an idiopathic fall."[124] On appeal by the appellee–teacher, the superior court reversed the Appellate Division's ruling, holding that the Appellate Division misconstrued the applicable legal standard, instead using an erroneous standard that "would label any injury that could be incurred off-site as 'idiopathic.'"[125] On the appeal at issue in this case, the

117. *Id.*
118. 345 Ga. App. 290, 812 S.E.2d 605 (2018).
119. *Id.* at 298, 812 S.E.2d at 612.
120. *Id.* at 292, 812 S.E.2d at 608–09.
121. *Id.* at 292, 812 S.E.2d at 609.
122. *Id.* (alteration in original).
123. *Id.*
124. *Id.* at 292–93, 812 S.E.2d at 609 (alteration in original).
125. *Id.* at 293, 812 S.E.2d at 609.

appellant–school system argued, among other things, that the superior court impermissibly re-weighed factual evidence considered by the Appellate Division and failed to weigh the evidence in a light most favorable to the party prevailing in front of the Appellate Division pursuant to the applicable statutes.[126]

To determine the appropriate standard of review, the court turned to O.C.G.A. § 34-9-105(c)[127] under Georgia's workers' compensation statutes.[128] That statute provides the following:

> [I]n the absence of fraud, the factual findings of the Appellate Division are conclusive, but its decision may be set aside if it is found that the facts do not support the decision, there is not sufficient competent evidence in the record to warrant making the decision, or the decision is contrary to law, among other things.[129]

As applied to these facts and procedural posturing, the court of appeals held that it must "consider whether the Appellate Division correctly applied the law, and whether the record establishes some evidence that Johnson's knee injury was not compensable because it did not arise out of her employment" to determine whether the superior court correctly reversed the Appellate Division.[130] Applying this standard, the court of appeals held that the superior court did indeed overstep its bounds by substituting its judgment over the facts for that of the Appellate Division, but, as explained below, the superior court was nevertheless authorized to overturn the ruling of the Appellate Division because it applied the incorrect legal standard in deciding that the appellee–teacher's injury did not arise out of her employment.[131]

Regarding the weight of evidence, "the superior court held that the Appellate Division's conclusion that Johnson's fall was idiopathic was not supported by the evidence because her injury 'arose out of her performing her duties as a classroom teacher.'"[132] However, the court of appeals held that the superior court should have deferred to the Appellate Division so long as there was "any evidence to support it."[133]

126. *Id.*

127. O.C.G.A. § 34-9-105(c) (2018).

128. *Cartersville City Sch.*, 345 Ga. App. at 293, 812 S.E.2d at 609.

129. *Id.*

130. *Id.* at 294, 812 S.E.2d at 610.

131. *Id.* at 295–96, 812 S.E.2d at 611.

132. *Id.* at 293, 812 S.E.2d at 609.

133. *Id.* at 295, 812 S.E.2d at 610 (citing Chambers v. Monroe Cty. Bd. of Comm'rs, 328 Ga. App. 403, 407, 762 S.E.2d 133, 135 (2014)).

The court of appeals held that the superior court failed to defer to the Appellate Division as factfinder under applicable law.[134] Nevertheless, it remained to "review the legal framework within which the factfinder operated, and thus to define what 'arising out of' employment means as a matter of law."[135] In this aspect, the Appellate Division erred by focusing too narrowly on the possibility that the appellee–teacher's injury may occur outside of her capacity as a school teacher.[136] Though the Appellate Division's ruling was, to the court of appeals, understandable due to a "quagmire" in the law focusing on "equal exposure" as a means to find no proximate relation between an injury and the scope of employment, the Appellate Division failed to apply the more fundamental proximate cause requirement, and in doing so applied a legal standard that would have denied coverage to "virtually any case in which an employee is walking, turning, or standing (or some combination of these activities) while performing his or her job."[137] The Appellate Division, the court of appeals held, should have focused on the undisputed fact that the appellee–teacher was injured while performing functions "required of her as a classroom teacher."[138] Thus, the Appellate Division misapplied the law, which authorized the superior court to overturn the ruling notwithstanding the superior court's impermissible weighing of the evidence.[139]

In *Autozone, Inc. v. Mesa*,[140] another workers' compensation case, the court of appeals overturned the Columbia County Superior Court for misapplying the any-evidence standard to a ruling of the State Board of Workers' Compensation.[141] Here, the appellee worked for the appellant as a clerk and delivery driver when, in November 2010, the appellee was rear ended while driving a delivery truck and subsequently suffered back and neck injuries. The appellee underwent numerous medical scans and examinations, but continued to experience lower back pain despite numerous examinations reporting normal results.[142] After a Dr. Jonathan Hyde recommended surgery in December 2014, for which the

134. *Id.* at 295–96, 812 S.E.2d at 611. "It has been so repeatedly held that where there is any competent evidence to sustain a finding by the board such finding is conclusive and binding on a reviewing court, that no citations are deemed necessary." *Chambers*, 328 Ga. App. at 407, 812 S.E.2d at 135.

135. *Cartersville City Sch.*, 345 Ga. App. at 296, 812 S.E.2d at 611.

136. *Id.*

137. *Id.* at 296–97, 812 S.E.2d at 611–12.

138. *Id.* at 298, 812 S.E.2d at 612.

139. *Id.*

140. 342 Ga. App. 748, 804 S.E.2d 734 (2017).

141. *Id.* at 748, 804 S.E.2d at 735.

142. *Id.* at 748–50, 804 S.E.2d at 735–37.

appellee sought workers' compensation coverage, the appellant sent the appellee for an independent medical examination with Dr. Peter Millheiser, who recommended surgery would not be necessary.[143] Based on this independent examination, the appellant denied coverage for the surgery, and the parties submitted the coverage issue to an ALJ for determination on briefs and documented evidence.[144] The ALJ denied the claim, based in large part on the independent examination. Despite the recommendation from Dr. Hyde that the surgery was necessary, the ALJ found the independent examination by Dr. Millheiser more persuasive, and specifically noted that both examinations were based on substantially the same medical history and other information. The Appellate Division adopted the ALJ's ruling on appeal.[145]

The appellant sought a reversal of this determination from the superior court, which granted the request. The superior court reasoned that the independent examination failed to pass the "any evidence" standard afforded to the ALJ; the independent examination by Dr. Millheiser could not justify a ruling that the surgery was unnecessary in the face of Dr. Hyde's opinion, which the superior court found was based "on the results of a diagnostic sacroiliac joint injection, unlike Dr. Millheiser, who performed no 'medical testing of any kind' on the [a]ppellee but, instead, relied upon his physical examination of the [a]ppellee and his review of her medical records and test results."[146]

The appellant sought relief from the court of appeals, arguing that the superior court impermissibly substituted its judgment of the facts for that of the ALJ.[147] The court of appeals reversed, holding that the superior court impermissibly substituted its own judgment of the facts for that of the administrative law factfinder.[148] Although the superior court claimed the authority to overrule the ALJ because the independent examination by Dr. Millheiser "did not [involve] any 'objective' medical tests on the [a]ppellee," the undisputed facts showed that Dr. Millheiser's opinion relied on the same "objective" testing as Dr. Hyde's opinion, including numerous results showing no abnormalities.[149] Thus, the opinions of Dr. Hyde and Dr. Millheiser merely reached differing conclusions based on the very same evidence. This purely factual conflict

143. *Id.* at 749, 804 S.E.2d at 737.
144. *Id.* at 751, 804 S.E.2d at 737.
145. *Id.*
146. *Id.* at 751–52, 804 S.E.2d at 737–38.
147. *Id.* at 752–53, 804 S.E.2d at 738.
148. *Id.* at 754, 804 S.E.2d at 739.
149. *Id.* at 753, 804 S.E.2d at 738.

belonged solely to the ALJ to determine based upon its own judgment of credibility.[150]

150. *Id.* at 754, 804 S.E.2d at 739.