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Administrative Law

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Administrative Law

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I. INTRODUCTION

This Article surveys cases from the Georgia Supreme Court and the Georgia Court of Appeals from June 1, 2018 through May 31, 2019, 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 a review of decisions by administrative agencies, followed by cases discussing the administrative scope of authority, with statutory construction to follow. The Article will conclude with cases discussing the standard of review of decisions by administrative agencies.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In *Georgia Department of Human Services v. Addison*,[2] the Georgia Supreme Court held that teachers and administrators were required to exhaust available administrative remedies before bringing any as-applied constitutional challenges to Georgia's child abuse registry statute and administrative rules.[3] The plaintiffs, a group of high school teachers and administrators who worked with special education students at Albany High School, were accused of child neglect for failing to provide adequate supervision after two incidents of alleged sexual abuse between students. The claims were investigated by the Division of Family and Children Services (DFCS), which found the allegations to

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1. For an analysis of administrative law during the prior survey period, see Jennifer B. Alewine, Alan Gregory Poole, Jr., Chelsea M. Lamb & Emily R. Wright, *Administrative Law, Annual Survey of Georgia Law*, 70 MERCER L. REV. 1 (2018).

2. 304 Ga. 425, 819 S.E.2d 20 (2018).

3. *Id.* at 432, 819 S.E.2d at 26.

be "substantiated."[4] DFCS informed the plaintiffs through notices that they had a right to an administrative hearing in accordance with section 49-5-183(a)[5] of the Official Code of Georgia Annotated (O.C.G.A.).[6] Though the administrative process was still pending, the plaintiffs' names were added to the Georgia Child Abuse Registry,[7] and the plaintiffs filed suit in the Dougherty County Superior Court requesting a declaratory judgment and injunctive relief against the defendants.[8] The superior court ruled in favor of the plaintiffs, holding that "the Registry statutes violate due process because alleged child abusers [were] not given an opportunity to be heard before being added to the Registry; the notices . . . were insufficient" because they were insufficiently specific about the abuse, and "the definition of 'substantiated case' in OCGA § 49-5-180 [was] vague."[9] As a result, the superior court declared O.C.G.A. §§ 49-5-180 through 49-5-187[10] "unconstitutional 'on their face and as applied to' the plaintiffs."[11] The defendants filed a notice of appeal, arguing in part that the plaintiffs failed to exhaust their "administrative remedies before seeking judicial review of their claims."[12]

On appeal, the plaintiffs contended that they "were not required to exhaust their available administrative remedies because their constitutional challenges to the Registry statutes are entirely facial rather than as-applied."[13] The court agreed with the plaintiffs, holding that under Georgia law facial challenges do not require exhaustion of administrative remedies.[14] The court also held, however, that as-applied challenges do require exhaustion of administrative remedies.[15] As such, the trial court should have dismissed the as-applied challenge because the plaintiffs had failed to exhaust their administrative remedies by

4. *Id.* at 426, 819 S.E.2d at 22.
5. O.C.G.A. § 49-5-183(a) (2019).
6. *Addison*, 304 Ga. at 426, 819 S.E.2d at 22.
7. *Id.* at 426, 819 S.E.2d at 22.
8. *Id.* at 428, 819 S.E.2d at 24.
9. *Id.* at 429, 819 S.E.2d at 24.
10. O.C.G.A. §§ 49-5-180–49-5-187 (2019).
11. *Addison*, 304 Ga. at 429, 819 S.E.2d at 25.
12. *Id.* at 431, 819 S.E.2d at 26.
13. *Id.* at 432, 819 S.E.2d at 26.
14. *Id.* (citing Women's Surgical Ctr., LLC v. Berry, 302 Ga. 349, 351, 806 S.E.2d 606, 608 (2017) (stating that no exhaustion requirement exists when a plaintiff challenges a statute's constitutionality on its face)).
15. *Id.*

filing the action during the pendency of the related administrative proceeding.[16]

In *C&M Enterprises of Georgia, LLC v. Williams*,[17] the Georgia Court of Appeals held that the plaintiff's appeal was "not barred by a failure to exhaust administrative remedies."[18] In March 2016, Mark Williams, the Commissioner of the Georgia Department of Natural Resources, determined that a portion of riverfront property in Bryan County was illegally located in a protected estuarine area.[19] Williams directed the structure's owner, C&M Enterprises of Georgia, LLC, to remove the structure, which C&M appealed to an administrative law court[20] pursuant to O.C.G.A. § 12-5-283.[21] The Administrative Law Judge (A.L.J.) granted Williams' motion for summary judgment, and the Fulton County Superior Court affirmed.[22]

On appeal, Commissioner Williams argued that because C&M failed to appeal a related cease and desist order in 2010 (which sparked the eventual determination of the Department of Natural Resources in 2016) that C&M failed to exhaust its administrative remedies.[23] The Georgia Court of Appeals agreed that there is a "[l]ong-standing Georgia law [that] requires that a party aggrieved by a state agency's decision must raise all issues before that agency and exhaust available administrative remedies before seeking any judicial review of the agency's decision."[24] The court, however, ultimately concluded that the 2010 cease and desist letter was only a preliminary occurrence in a greater proceeding that resulted in a final administrative ruling in 2016, which C&M properly appealed.[25]

Next, in *Carson v. Brown*,[26] the Georgia Court of Appeals held that the "release" of a permit application back to an applicant during a

16. *Id.*

17. 346 Ga. App. 79, 816 S.E.2d 44 (2018).

18. *Id.* at 86, 816 S.E.2d at 50.

19. *Id.* at 79, 816 S.E.2d at 46. As a note, "estuarine areas" are usually found where a river meets the ocean, most notably having the feature of brackish water (water that is partially fresh and partially salt). *See National Estuarine Research Reserves*, NOAA OFFICE FOR COASTAL MANAGEMENT https://coast.noaa.gov/nerrs/ (last visited Nov. 1, 2019).

20. *C&M Enters. of Ga.*, 346 Ga. App. at 79, 816 S.E.2d at 46.

21. O.C.G.A. § 12-5-283(b) (2019).

22. *C&M Enters. of Ga.*, 346 Ga. App. at 80, 816 S.E.2d at 47.

23. *Id.* at 84–85, 816 S.E.2d at 49–50.

24. *Id.* at 85, 816 S.E.2d at 50 (quoting Ga. Dept. of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 629, 724 S.E.2d 386, 389 (2012)).

25. *Id.*

26. 348 Ga. App. 689, 824 S.E.2d 605 (2019).

permit moratorium is not a decision on the permit application, and therefore the permit application was not "rejected" for the purpose of triggering the administrative process of O.C.G.A. § 5-6-34.[27] The plaintiffs, Carson and Red Bull Holdings II, LLC (collectively Carson), filed for construction permits with the Forsyth County Department of Planning and Community Development (the Department).[28] The Department returned the permits back to Carson, stating that the permits were "released" due to a county-imposed moratorium, but did not expressly reject the permits.[29] Carson filed a mandamus petition seeking to "compel Brown and Williams"—Tom Brown, the director of the Department, and Carroll Williams, the planner of the Department—"to process his application for a land-disturbance permit submitted in anticipation of developing certain real property in Forsyth County."[30] The trial court granted Carson a partial motion for judgment on the pleadings against Brown and Williams. One of the issues in question was whether the trial court should have dismissed the action due to the plaintiff's failure to exhaust administrative remedies.[31] Brown and Williams claimed that the trial court had erred in not rejecting the application for failure to appeal the application's rejection as required by the County's Unified Development Code.[32] The court of appeals determined, however, that the trial court did not err in failing to dismiss for this reason as the defendants contended.[33] In so determining, the court noted that there was no decision made on the permit application, and therefore, the plaintiffs could not appeal the permit's "rejection" as would otherwise be required by the statute.[34] The County's "release" of the permit application was not a decision, nor was the County's letter an "independent rejection of the application."[35] Therefore, Carson's action was not barred due to a theory of exhaustion of administrative remedies.[36]

27. O.C.G.A. § 5-6-34 (2019); *Carson*, 348 Ga. App. at 710, 824 S.E.2d at 621.
28. *Carson*, 348 Ga. App. at 693, 824 S.E.2d at 610.
29. *Id.* at 700–01, 824 S.E.2d at 615.
30. *Id.* at 689–90, 824 S.E.2d at 608.
31. *Id.* at 690, 824 S.E.2d at 608.
32. *Id.* at 710, 824 S.E.2d at 621.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*

III. REVIEW OF DECISIONS MADE BY ADMINISTRATIVE AGENCIES

In *Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC*,[37] the Georgia Court of Appeals remanded a case concerning water quality standards back to the deciding A.L.J. due to the use of an incorrect legal standard.[38] Altamaha Riverkeeper (Riverkeeper) petitioned the Georgia Court of Appeals to review the Wayne County Superior Court's reversal of the refusal to issue a permit by an A.L.J. The permit was initially issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, and the A.L.J. reversed the issuance.[39] In deciding to reverse, the A.L.J. "interpreted the phrase 'interfere[nce] with legitimate water uses'"[40] from the Georgia Water Quality Control Act (WQCA)[41] "to mean 'any interference' with such uses," concluding that this standard applied to all waterways for all uses without exception.[42] Further, the A.L.J. concluded that "to show interference with legitimate water uses, the 'use of the river [must be] actually hindered or disrupted.'"[43] Finding this standard unmet, the A.L.J. overturned the issuance of the permit by the EPD. On review, the Wayne County Superior Court found that the A.L.J. erred in interpreting the standard in the WCQA, concluding instead that the EPD's interpretation of the standard as one of "unreasonable interference" was correct, and reversed the decision of the A.L.J.[44]

In deciding this issue, the court of appeals read the text of the standard "in its most natural and reasonable way, as an ordinary speaker of the English language would."[45] To assist with that reading, the court considered the common and customary usage of the word, the context of the word, and dictionary definitions.[46] Given an analysis of these sources, the court of appeals held that the EPD could reasonably conclude that the standard "does not require that 'all people get to use all sections of every waterbody at all times.'"[47] Accordingly, the court of

37. 346 Ga. App. 269, 816 S.E.2d 125 (2018).

38. *Id.* at 276, 816 S.E.2d at 131.

39. *Id.* at 269, 816 S.E.2d at 127.

40. *Id.* at 270, 816 S.E.2d at 127.

41. O.C.G.A. §§ 12-5-20–12-5-53 (2019).

42. *Altamaha Riverkeeper, Inc.*, 346 Ga. App. at 270, 816 S.E.2d at 127.

43. *Id.*

44. *Id.* at 270–71, 816 S.E.2d at 128.

45. *Id.* at 272, 816 S.E.2d at 128 (quoting Tibbles v. Teachers Ret. Sys. of Ga., 297 Ga. 557, 558, 775 S.E.2d 527, 529 (2015)).

46. *Id.* at 272, 816 S.E.2d at 129.

47. *Id.* at 274, 816 S.E.2d at 130.

appeals held that the superior court correctly decided that the standard prohibits "unreasonable" interference congruent with the EPD standard contrary to the A.L.J. finding.[48] However, the court of appeals held that the proper remedy was for the trial court to remand the case back to the A.L.J. for a determination based upon the correct legal standard.[49]

In *Grogan v. City of Dawsonville*,[50] the Georgia Supreme Court held that the plaintiff, Grogan, was entitled to a direct appeal from the City of Dawsonville's decision to remove Grogan as mayor.[51] The Dawsonville City Council (City) voted to remove the mayor of the city, W. James Grogan, from his position, citing "provisions of former Section 5.16 (1) of the Dawsonville Charter."[52] Grogan sought review of the decision by filing an appeal with the Dawson County Superior Court; the City filed a counterclaim against Grogan for attorney's fees and money had and received.[53] Grogan then moved to dismiss the City's counterclaim pursuant to O.C.G.A. § 9-11-11.1,[54] Georgia's Anti-SLAPP statute.[55] The superior court dismissed Grogan's appeal, holding that Grogan should have first sought discretionary review, and granted the City partial summary judgment on its money had and received claim.[56] Grogan appealed this decision directly to the Georgia Supreme Court, which granted certiorari.[57] On appeal, the Georgia Supreme Court held that Grogan was not required to appeal via discretionary appeal.[58] In so holding, the court held that "[i]n denying Grogan's motion to dismiss . . . the superior court was not reviewing the decision of an administrative agency" that would have otherwise required a discretionary appeal.[59] Rather, the dismissal was a determination of whether the City's counterclaim violated the Anti-SLAPP statute, not a review of an administrative body's decision.[60]

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48. *Id.* at 275–76, 816 S.E.2d at 131.

49. *Id.* at 276, 816 S.E.2d at 131.

50. 305 Ga. 79, 823 S.E.2d 763 (2019).

51. *Id.* at 83, 823 S.E.2d at 767.

52. *Id.* at 80, 823 S.E.2d at 765.

53. *Id.* at 79, 823 S.E.2d at 765.

54. O.C.G.A. § 9-11-11.1 (2019).

55. SLAPPs is shorthand for "Strategic Lawsuits Against Public Participation." *See What is a SLAPP?*, PUBLIC PARTICIPATION PROJECT, https://anti-slapp.org/what-is-a-slapp (last visited Oct. 13, 2019).

56. *Grogan*, 305 Ga. at 79, 823 S.E.2d at 765.

57. *Id.* at 81, 823 S.E.2d at 766.

58. *Id.* at 83, 823 S.E.2d at 767.

59. *Id.* at 83, 823 S.E.2d at 768.

60. *Id.*

In *Cobb Hospital, Inc. v. Georgia Department of Community Health*,[61] the Georgia Supreme Court held that a hearing officer of the Certificate of Need (CON) Appeals Panel does not have the authority to review a decision by the Georgia Department of Community Health (DCH) regarding a health care facility's existing CON.[62] In 2016, Emory University Hospital Smyrna (EUHS) applied with the DCH for a new CON to undertake improvements and renovations totaling $33.8 million.[63] Other hospitals, such as Cobb Hospital, Kennestone Hospital, and Wellstar Kennestone Hospital (collectively Wellstar), objected to the application, "arguing that the application 'seeks to develop a new hospital' rather than reopening and renovating the former Emory-Adventist Hospital."[64] The DCH granted EUHS's application, awarding it a new CON, and Wellstar appealed to the CON Appeals Panel in accordance with O.C.G.A. § 31-6-44.[65] A panel officer affirmed the DCH decision on the ground that Wellstar's appeal concerned the scope and validity of EUHS's original CON, and the CON Appeals Panel lacked the authority to review the determination of the original CON.[66] Wellstar appealed that decision to the DCH commissioner. The DCH commissioner affirmed the panel officer decision, and Wellstar appealed to the Superior Court of Cobb County, which denied the petition for judicial review.[67]

On appeal to the Georgia Court of Appeals, Wellstar argued that the CON Appeal Panel erroneously concluded that it lacked the authority to review the status of an existing CON.[68] In deciding this issue, the Georgia Court of Appeals considered the plain language of O.C.G.A. § 31-6-44.[69] The language of that statutory section is read in light of Section 274-1-.09 of the Georgia Administrative Code,[70] which includes a mandate that certain issues, such as "'the correctness . . . of the considerations, rules, or standards by which the proposed project was reviewed by the [DCH],'" "shall not be considered at an initial

61. 349 Ga. App. 452, 825 S.E.2d 886 (2019).

62. *Id.* at 453, 825 S.E.2d at 888.

63. *Id.* at 452, 825 S.E.2d at 887–88.

64. *Id.* at 453, 825 S.E.2d at 888.

65. O.C.G.A. § 31-6-44 (2019); *Cobb Hosp., Inc.*, 349 Ga. App. at 453, 825 S.E.2d at 888.

66. *Cobb Hosp., Inc.*, 349 Ga. App. at 455, 825 S.E.2d at 889.

67. *Id.* at 453, 825 S.E.2d at 888.

68. *Id.*

69. *Id.*

70. GA. COMP. R. & REGS. 274-1-.09 (2019).

administrative appeal hearing and are immaterial to the hearing.'"[71] Accordingly, the Georgia Court of Appeals concluded that the CON Appeals Panel can only conduct a *de novo* review of the decision made by DCH[72] and cannot review the status of an existing CON.[73] The Georgia Court of Appeals noted that after the *de novo* review, the aggrieved party can still "petition the DCH commissioner for review of the panel hearing officer's decision," and can thereafter appeal directly in superior court.[74]

IV. SCOPE OF AUTHORITY

During this survey period, the Georgia Supreme Court reviewed the Georgia Court of Appeals's decision in *Gould v. Housing Authority of Augusta*,[75] which was discussed in last year's Survey.[76] In *Housing Authority of Augusta v. Gould*[77] the Georgia Supreme Court held that "[i]f a local government exercises a quasi-judicial power," the acts are generally "subject to [the] review . . . [of] a superior court," but where the local government "exercises . . . only an executive or administrative power, the writ of certiorari will not lie."[78] The Georgia Supreme Court noted that in the majority opinion of the court of appeals, Presiding Judge McFadden determined that because the underlying decision in *Gould* was "quasi-judicial . . . it was within the certiorari jurisdiction of the superior court."[79] The majority opinion was joined by Judges Branch, McMillian, and Mercier, and dissented to by then-Judge Bethel.[80] In determining whether certiorari was properly granted, the Georgia Supreme Court considered the statutory text of O.C.G.A. § 5-4-1(a),[81] which states that "'[t]he writ of certiorari [in the superior court] shall lie for the correction of errors committed by any inferior judicatory or any person exercising judicial powers . . . .'"[82] The court noted that "[l]ong settled precedents of this Court establish that the

71. *Cobb Hosp., Inc.*, 349 Ga. App. at 458, 825 S.E.2d at 891 (quoting GA. COMP. R. & REGS. 274-1-.09(2)(a) (2019)) (emphasis omitted).

72. *Id.*

73. *Id.* at 461, 825 S.E.2d at 893.

74. *Id.* at 458, 825 S.E.2d at 891.

75. 343 Ga. App. 761, 808 S.E.2d 109 (2017), *rev'd*, 305 Ga. 545, 826 S.E.2d 107 (2019).

76. *See* Alewine, et al., *supra* note 1, at 9–10.

77. 305 Ga. 545, 826 S.E.2d 107 (2019).

78. *Id.* at 550–51, 826 S.E.2d at 111.

79. *Id.* at 549–50, 826 S.E.2d at 110–11.

80. *Id.* at 550, 826 S.E.2d at 111.

81. O.C.G.A. § 5-4-1(a) (2019).

82. *Gould*, 305 Ga. at 550, 826 S.E.2d at 111 (quoting O.C.G.A. § 5-4-1(a)).

writ runs not only to judicial proceedings in inferior courts, but also to quasi-judicial proceedings before agencies of local government."[83] Importantly, the Georgia Supreme Court laid out three essential characteristics that qualify an act as quasi-judicial: (1) first, acts to which "'all parties are as a matter of right entitled to notice and to a hearing, with the opportunity afforded to present evidence under judicial forms of procedure;'"[84] (2) second, "a quasi-judicial act is one that requires a decisional process that is judicial in nature, involving an ascertainment of the relevant facts from evidence presented and an application of preexisting legal standards to those facts;"[85] and (3) third, "a quasi-judicial decision reviewable by writ of certiorari is one that is final, binding, and conclusive of the rights of the interested parties."[86]

Using this formulation, the Georgia Supreme Court held that the act of the local government was quasi-judicial and therefore subject to the review of the superior court.[87] In this case, the Housing Authority of the City of Augusta (the Authority) terminated Gould's Section 8 housing assistance, and gave Gould the right to appeal the decision in the first instance via an informal hearing. The hearing officer upheld the Authority's revocation, which Gould appealed.[88] The court held that the informal hearing decision failed the third criterion of the test set forth above because the decision did not bind the Authority.[89]

V. STATUTORY CONSTRUCTION

In *Georgia Lottery Corporation v. Tabletop Media, LLC*,[90] the Georgia Court of Appeals held that the trial court properly conducted an independent review of the Georgia Lottery Corporation's interpretation of a statute.[91] Tabletop Media, LLC, (Tabletop) developed a product called "Ziosk," a seven-inch Android-based touchscreen tabletop computer tablet that it leases to restaurants.[92] "[T]he Georgia Lottery Corporation ("GLC") issued an executive order finding that the Ziosk [tablets were] . . . coin-operated amusement machine[s] ("COAM") and

83. *Id.*

84. *Id.* at 551, 826 S.E.2d at 111 (quoting S. View Cemetery Ass'n v. Hailey, 199 Ga. 478, 481, 34 S.E.2d 863, 866 (1945)).

85. *Id.* at 551, 826 S.E.2d at 112.

86. *Id.*

87. *Id.* at 558, 826 S.E.2d at 116.

88. *Id.* at 548, 826 S.E.2d at 109–10.

89. *Id.* at 555, 826 S.E.2d at 114–15.

90. 346 Ga. App. 498, 816 S.E.2d 438 (2018).

91. *Id.* at 498, 816 S.E.2d at 440.

92. *Id.* at 498, 816 S.E.2d at 439–40.

[were therefore] subject to the licensing requirements and regulations of GLC pursuant to O.C.G.A. § 50-27-70."[93] Tabletop filed a petition for review in the Fulton County Superior Court, and the superior court reversed the GLC's decision.[94] On appeal, the GLC argued that the trial court, among other things, failed to give deference to the GLC's interpretation of the relevant statute, O.C.G.A. § 50-27-70(b)(2)(A),[95] and erred in concluding that Ziosk did not constitute a COAM subject to GLC regulation.[96] As to the first issue, the Georgia Court of Appeals noted that O.C.G.A. § 50-27-70(b) provides the standard of review when courts review GLC decisions, which is described as "'essentially identical' to the standard of review provided in the Administrative Procedure Act."[97] Accordingly, the Georgia Court of Appeals determined that the superior court used the appropriate standard to review the administrative decision.[98] In quoting the rationale provided in *Handel v. Powell*,[99] the Georgia Supreme Court explained that:

> "While judicial deference is afforded an agency's interpretation of statutes it is charged with enforcing or administering, the agency's interpretation is not binding on the courts, which have the ultimate authority to construe statutes. It is the role of the judicial branch to interpret the statutes enacted by the legislative branch and enforced by the executive branch, and administrative rulings will be adopted only when they conform to the meaning which the court deems should properly be given. The judicial branch makes an independent determination as to whether the interpretation of the administrative agency correctly reflects the plain language of the statute and comports with the legislative intent."[100]

Accordingly, the Georgia Court of Appeals concluded that the superior court had applied the appropriate level of deference in analyzing the GLC decision.[101]

The GLC additionally argued that the superior court erred by concluding that the Ziosk tablet was not a COAM.[102] The Georgia Court

93. O.C.G.A. § 50-27-70 (2019); *Georgia Lottery Co.*, 346 Ga. App. at 498, 816 S.E.2d at 439.

94. *Georgia Lottery Co.*, 346 Ga. App. at 498, 816 S.E.2d at 439–40.

95. O.C.G.A. § 50-27-70(b)(2)(A) (2019).

96. *Georgia Lottery Co.*, 346 Ga. App. at 498, 816 S.E.2d at 440.

97. *Id.* at 500, 816 S.E.2d at 441 (citing O.C.G.A. § 50-13-19(h) (2019)).

98. *Id.* at 501, 816 S.E.2d at 441.

99. 284 Ga. 550, 670 S.E.2d 62 (2008).

100. *Georgia Lottery Co.*, 346 Ga. App. at 501, 816 S.E.2d at 441–42 (quoting *Handel*, 284 Ga. at 553, 670 S.E.2d at 65).

101. *Id.* at 502, 816 S.E.2d at 442.

of Appeals applied the language of O.C.G.A. § 50-27-70(b)(2)(A), which defines a COAM as a "machine of any kind or character used by the public to provide amusement or entertainment whose operation requires the payment of or the insertion of a coin . . . the result of whose operation depends in whole or in part upon the skill of the player . . . ."[103] In determining whether the superior court properly applied the language of Section 50-27-70(b)(2)(A), the Georgia Court of Appeals looked at the plain language of the statute and the parties' agreement that the language was unambiguous.[104] Given these two factors, the court concluded that because the Ziosk tablets can be operated without requiring payment, the Ziosk tablet is not a COAM according to the plain language of the statute.[105]

In *City of Guyton v. Barrow*,[106] the Georgia Supreme Court reviewed a Georgia Court of Appeals decision holding that the antidegradation rule required Environmental Protection Division (EPD) analysis for nonpoint source discharges.[107] EPD issued a permit to the City of Guyton to build and operate a land application system (LAS) designed to treat wastewater collected in the City's sewer system.[108] The plaintiff, Craig Barrow III, challenged the issuance of the permit on the basis of violation of water quality standard because "[the permit] failed to determine whether any resulting degradation of water quality in the State waters surrounding the proposed LAS was necessary to accommodate important economic or social development in the area."[109] An A.L.J. rejected this argument, and Barrow appealed to the superior court.[110] The superior court affirmed the administrative ruling and, on appeal, the Georgia Court of Appeals reversed, concluding that the plain language "required EPD to perform the antidegradation analysis for nonpoint source discharges, and that EPD's internal guidelines to the contrary did not warrant deference."[111]

The Georgia Supreme Court granted certiorari to consider what level of deference courts should afford EPD's interpretation and whether the Georgia Court of Appeals erred by concluding that the antidegradation

102. *Id.*
103. *Id.* at 504, 816 S.E.2d at 443 (quoting O.C.G.A. § 50-27-70(b)(2)(A)).
104. *Id.* at 505, 816 S.E.2d at 444.
105. *Id.*
106. 305 Ga. 799, 828 S.E.2d 366 (2019).
107. *Id.* at 800, 828 S.E.2d at 368.
108. *Id.* at 799, 828 S.E.2d at 367.
109. *Id.* at 799–800, 828 S.E.2d at 367.
110. *Id.* at 800, 828 S.E.2d at 367–68.
111. *Id.* at 800, 828 S.E.2d at 368.

analysis was required for the City's LAS.[112] The court declined to answer the first question,[113] claiming that because EPD is an agency, the court is required to follow that agency's interpretation of its own regulation "unless 'it is plainly erroneous or inconsistent' with the regulation."[114] The application of this principle requires a court to follow agency interpretation so long as the interpretation is reasonable.[115] This principle can be overcome where the statutory interpretation is in doubt or an ambiguity exists,[116] but in this case the court concluded that there was no doubt and no ambiguity.[117] Using the tools of construction to make this determination, the court determined that "[b]ecause the rule is not ambiguous, [the court did] not reach the question of whether deference is appropriate in the case of true ambiguity."[118]

VI. STANDARD OF REVIEW

In *Crittenden v. White*,[119] Lissia White, a British citizen and legal permanent resident of the United States, was denied Medicaid benefits in 2016 on the ground that she had not been a permanent legal resident for five years. White appealed, and an A.L.J. affirmed the agency's decision. White sought final review, but her claim was denied by the Commissioner of the Department of Community Health. White petitioned the superior court for review, and the court reversed the final decision, finding that the five-year period did not apply in this case because White entered the United States prior to the legislation's enactment date.[120]

On appeal, the Georgia Court of Appeals assessed the superior court's application of the Georgia Administrative Procedure Act.[121] This act states that the superior court may only reverse an agency decision if:

[S]ubstantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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112. *Id.*

113. *Id.*

114. *Id.* at 802, 828 S.E.2d at 369 (quoting Atlanta Journal & Const. v. Babush, 257 Ga. 790, 792, 364 S.E.2d 560, 562 (1988)).

115. *Id.*

116. *Id.*

117. *Id.* at 804, 828 S.E.2d at 370.

118. *Id.*

119. 346 Ga. App. 179, 816 S.E.2d 308 (2018).

120. *Id.* at 179–80, 816 S.E.2d at 309–10.

121. *Id.* at 180, 816 S.E.2d at 310.

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[122]

In light of this standard of review, the court found that the Department of Community Health unlawfully withheld benefits in violation of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[123] According to that federal statute, only continued physical presence is required in order to be eligible for Medicaid.[124] The statute required, in pertinent part, that legal residents enter the United States before August 22, 1996, and be continuously present in the United States until such time that they obtain their qualified alien status.[125] Because White entered prior to August 22, 1996, and was continuously present until she obtained qualified alien status, the A.L.J. made a determination on an unlawful procedure.[126] As such, White fell under the purview of Title IV and qualified for Medicaid.[127]

122. *Id.* at 180–81, 816 S.E.2d at 310 (quoting O.C.G.A. § 50-13-19(h)).

123. *Id.* at 184, 816 S.E.2d at 312 (citing Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997) [hereinafter Interim Guidance]); *see also* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

124. *Crittenden*, 346 Ga. App. at 182, 816 S.E.2d at 311.

125. *Id.* at 183, 816 S.E.2d at 311 (citing Interim Guidance, *supra* note 123, at 61,415).

126. *Id.* at 184–85, 816 S.E.2d at 312.

127. *Id.* at 185, 816 S.E.2d at 312.