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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, 2019, through May 31, 2020, in which principles of administrative law were a central focus of the case.[1] Exhaustion of remedies will be the first topic discussed, followed by a review of decisions by administrative agencies, followed by cases discusses 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 *Amazing Amusements Group, Inc. v. Wilson*,[2] the Georgia Court of Appeals held O.C.G.A. § 50-27-76(a)[3] did not permit Amazing Amusements Group, Inc. (AAG) to bypass administrative exhaustion requirements before seeking judicial review of the Georgia Lottery

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[1] For an analysis of administrative law during the prior survey period, see Alan Gregory Poole, Jr. & Chelsea M. Lamb, *Administrative Law, Annual Survey of Georgia Law*, 71 MERCER L. REV. 1 (2019).

[2] 353 Ga. App. 256, 835 S.E.2d 781 (2019).

[3] O.C.G.A. § 50-27-76(a) (2019).

Corporation's (GLC) decision.[4] AAG held a master license issued by the GLC, which provided AAG with a license to lease coin operated amusement machines (COAMs) to licensed retail businesses.[5] In 2016, the GLC issued a citation to AAG alleging violations of GLC's rules, which AAG contested. Thereafter, a hearing officer conducted a three-day evidentiary hearing with both parties present and represented by counsel. The hearing officer considered the evidence presented and issued a twenty-seven page "Executive Order" listing his findings, analysis, and conclusions. The Executive Order revoked AAG's master license for ten years, revoked any other business licenses, and fined AAG $75,000.[6] Rather than pursue an appeal of the hearing officer's decision available under GLC Rule 13.2.1,[7] AAG filed a petition in the Superior Court of Fulton County seeking a writ of certiorari under O.C.G.A. § 5-4-1[8] and judicial review under O.C.G.A. § 50-27-76(a),[9] and the GLC filed a motion to dismiss the petition.[10] The superior court granted the GLC's motion to dismiss and denied AAG's motion for reconsideration. AAG then sought discretionary review with the court of appeals, which was granted.[11]

On appeal, AAG argued that based on the language of O.C.G.A. § 50-27-76(a) any and all actions by the GLC or its Chief Executive Officer are appealable to the superior court at any time, regardless of whether the decision was appealed at the agency level.[12] The GLC's rules state that "[a] party must follow the intra-agency appeal procedure as outlined in this Rule. The failure of a party to follow such appeal procedure shall constitute a waiver of its appeal rights."[13] On the other hand, O.C.G.A. § 50-27-76(a) provides that an "[a]ppeal by an affected person from all actions of the [GLC] or chief executive officer shall be to the Superior Court of Fulton County. The review shall be conducted by the court and shall be confined to the record."[14] AAG

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[4] *Amazing Amusements Group, Inc.*, 353 Ga. App. at 256–57, 835 S.E.2d at 782.

[5] *Id*. at 256, 835 S.E.2d at 783.

[6] *Id*. at 256–57, 835 S.E.2d at 783.

[7] *Georgia Lottery Commission Coin Operated Amusement Machines*, GLC Rule 13.2.1, https://www.gacoam.com/API/Documents/Document?documentID=191#:~:text=RU%2013.2.1%20APPLICABILITY&text=(2)%20Administrative%20hearings%20will%20be,a%20reasonable%20period%20of%20time. (last visited September 23, 2020).

[8] O.C.G.A. § 5-4-1 (2019).

[9] O.C.G.A. § 50-27-76(a) (2019).

[10] *Amazing Amusements Group, Inc.*, 353 Ga. App. at 257, 835 S.E.2d at 783.

[11] *Id.* at 257, 835 S.E.2d at 783.

[12] *Id*. at 258, 835 S.E.2d at 783–84; O.C.G.A. § 50-27-76(a) (2019).

[13] *Amazing Amusements Group, Inc.*, 353 Ga. App. at 259, 835 S.E.2d at 784 (quoting GLC Rule 13.2.5.)

[14] O.C.G.A. § 50-27-76(a) (2019).

contended that "all actions" should be read in the broadest sense, regardless if the action is final, temporary, pending, or otherwise, and thus, AAG did not have to engage in the appeal process required by the GLC's rules.[15] AAG reasoned that because the language in the GLC's rules conflicted with the statutory language of O.C.G.A. § 50-27-76(a), the GLC's rules must yield to the statutory language.[16] The Supreme Court of Georgia, however, disagreed and held that AAG failed to exhaust its administrative remedies as required by the GLC's rules.[17]

In reviewing the GLC's rules and the statutory language, the supreme court noted that because "all actions" is not defined by the statute, the court must "presume the statute was enacted by the legislation with full knowledge of existing condition of the law."[18] The legislature authorized the GLC to establish the intra-agency appeal process and did not limit the exclusivity of the administrative remedy.[19] In addition, the supreme court determined that reading O.C.G.A. § 50-27-76 in the manner AAG requested would render meaningless other statutes applicable to the GLC's authority and the process for aggrieved parties to challenge certain GLC actions.[20] Thus, the supreme court held the phrase "all actions" must be read in conjunction with "the statutory provisions that authorize parties to challenge GLC actions and the statutory provisions that authorize the GLC to establish an appeal process for those."[21] Moreover, the supreme court stated that this determination upholds long-standing Georgia law that requires parties aggrieved by a state agency's decision to raise all issues before the agency and exhaust all available administrative remedies.[22] "[B]ecause AAG failed to exhaust the required administrative remedies available to it," the supreme court upheld the superior court's dismissal of AAG's petition for review.[23]

In *Amusement Leasing, Inc. v. Georgia Lottery Corporation*,[24] the Georgia Court of Appeals held Amusement Leasing, Inc. (Amusement Leasing) could directly appeal the trial court's dismissal of a petition for review of the GLC's decision, but Amusement Leasing failed to exhaust

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[15] *Amazing Amusements Group, Inc.*, 353 Ga. App. at 258, 835 S.E.2d at 784.

[16] *Id.* at 260, 835 S.E.2d at 784–85.

[17] *Id.* at 263, 835 S.E.2d at 787.

[18] *Id.* at 260, 835 S.E2d at 785 (quoting City of Atlanta v. City of College Park, 292 Ga. 741, 744, 741 S.E.2d 147 (2013)).

[19] *Id.* at 261, 835 S.E.2d at 785–86.

[20] *Id.* at 262, 835 S.E.2d at 786.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 263, 835 S.E.2d at 787.

[24] 352 Ga. App. 243, 834 S.E.2d 330 (2019).

administrative remedies.[25] Amusement Leasing held a master license issued by the GLC to operate COAMs in Georgia. In 2016, the GLC issued three citations to Amusement Leasing for violations of the GLC's rules and COAM laws, which Amusement Leasing contested. Thereafter, a GLC-appointed hearing officer conducted an evidentiary hearing. The hearing officer issued an executive order finding Amusement Leasing violated the GLC's rules and COAM laws, revoking Amusement Leasing's master license, and fining Amusement leasing $10,000. Amusement Leasing filed a timely request for reconsideration with the hearing officer. The hearing officer issued a "Reconsideration Order," denying the request. Over a year after receiving the Reconsideration Order, Amusement Leasing filed an untimely motion for review with the Chief Executive Officer (CEO) of the GLC. The motion for review was ultimately deemed denied under the GLC rules.[26] After this denial, Amusement Leasing filed a petition for judicial review in the Superior Court of Fulton County, arguing in part that the GLC erred in revoking its master license. The superior court dismissed Amusement Leasing's petition for failure to exhaust administrative remedies, and Amusement Leasing filed a notice of appeal from that order to the Georgia Court of Appeals.[27]

In response, the GLC filed a motion to dismiss the direct appeal, arguing Amusement Leasing failed to follow the discretionary application procedure required by O.C.G.A. § 5-6-35(a)[28] to obtain appellate review.[29] O.C.G.A. § 5-6-35(a) outlines several categories of trial courts for which an application for discretionary review is required, including "[a]ppeals from decisions of the superior courts reviewing decisions of . . . state and local administrative agencies."[30] The court of appeals dismissed the GLC's motion, holding Amusement Leasing was permitted to file a direct appeal from the superior court's final order pursuant to O.C.G.A. § 5-6-34[31] "because the General Assembly has expressly provided that the GLC is not to be treated as a state agency."[32] As such, the GLC's motion to dismiss the appeal was denied.[33]

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[25] *Id.* at 243–44, 834 S.E.2d at 331.

[26] *Id.*

[27] *Id.* at 244, 834 S.E.2d at 331–32.

[28] O.C.G.A. § 5-6-35(a) (2019).

[29] *Amusement Leasing, Inc.*, 352 Ga. App. at 244–45, 834 S.E.2d at 332.

[30] O.C.G.A. § 5-6-35(a)(1) (2019).

[31] O.C.G.A. § 5-6-34 (2019).

[32] *Amusement Leasing, Inc.*, 352 Ga. App. at 245, 834 S.E.2d at 332 (citing O.C.G.A. § 50-27-4); O.C.G.A. § 5-6-34.

[33] *Amusement Leasing, Inc.*, 352 Ga. App. at 247, 834 S.E.2d at 333.

Nonetheless, the court of appeals upheld the superior court's order and dismissed Amusement Leasing's appeal for failure to exhaust available administrative remedies.[34] Under the GLC's rules, an aggrieved party seeking relief from a hearing officer's executive order "must follow a two-step appeal procedure within the GLC, including requesting reconsideration from the hearing officer and then moving for review by the GLC's CEO."[35] Failure to follow this procedure within the applicable timelines provided by the GLC will result in a waiver of appeal rights.[36] Here, Amusement Leasing filed a timely request for reconsideration but failed to file a motion for review with the GLC's CEO within the ten-day timeframe. Thus, the court of appeals held that by failing to comply with the mandatory deadline provided by the GLC's rule, Amusement Leasing failed to exhaust its available administrative remedies before seeking review in the superior court.[37]

III. REVIEW OF DECISIONS MADE BY ADMINISTRATIVE AGENCIES

In *Cobb Hospital, Inc. v. Georgia Department of Community Health*,[38] the Supreme Court of Georgia held the Georgia Department of Community Health (DCH) Commissioner was not required to rule on a constitutional claim in order for the claim to be preserved for appellate review.[39] In 2016, Emory University Hospital Smyrna (EUHS) applied with the DCH for a new certificate of need (CON) to undertake improvements and renovations totaling $33.8 million.[40] 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."[41] The DCH granted EUHS's application, awarding it a new CON, and, in accordance with O.C.G.A. § 31-6-44,[42] Wellstar appealed to the Certificate of Need Appeals Panel.[43] 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

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[34] *Id.* at 247–48, 834 S.E.2d at 334.

[35] *Id.* at 247, 834 S.E.2d at 333.

[36] *Id.* at 247, 834 S.E.2d at 334

[37] *Id.*

[38] 307 Ga. 578, 837 S.E.2d 371 (2020).

[39] *Id.* at 578, 837 S.E.2d at 372.

[40] Cobb Hosp. Inc. v. Department of Community Health, 349 Ga. App. 452, 452–53, 825 S.E.2d 886, 887–88 (2019).

[41] *Id.* at 453, 825 S.E.2d at 888.

[42] O.C.G.A. § 31-6-44 (2019).

[43] *Cobb Hosp. Inc.*, 349 Ga. App. at 453, 825 S.E.2d at 888.

the authority to review the determination of the original CON. Wellstar appealed that decision to the DCH commissioner, arguing in part that the decision violated Wellstar's constitutional right to due process. The DCH commissioner affirmed the panel officer's decision, and Wellstar appealed to the Superior Court of Cobb County, who denied the petition for judicial review. Wellstar then appealed to the Georgia Court of Appeals.[44]

In Division 2 of its opinion, the court of appeals held the constitutional due process claim enumerated by Wellstar was not preserved for appellate review because it was not ruled on during the administrative proceeding that led to the filing of this case in the trial court.[45] Wellstar petitioned for writ of certiorari, arguing in part that the court of appeals erred in its holding because it was not ruled on during the administrative proceeding.[46] The Supreme Court of Georgia reversed this portion of the court of appeal's holding, stating that "the Court of Appeals appears to have confused the requirement that a constitutional claim be raised during the administrative proceeding to preserve it for review by the trial court with the separate requirement that the trial court distinctly rule on the claim to preserve it for review on appeal."[47] Because administrative agencies generally have no authority to rule on constitutional claims, the supreme court held the court of appeals holding that Wellstar's constitutional claim was not preserved because it was not ruled on during the administrative proceeding was erroneous.[48] Therefore, Wellstar's writ of certiorari was granted with regard to the constitutional claim issue, Division 2 of the court of appeal's opinion was reserved, and the case was remanded to the court to reconsider the constitutional claim.[49]

In *Central Georgia Electric Membership Corp. v. Public Service Commission*,[50] the Georgia Court of Appeals held that the superior court correctly determined the city was entitled to supply electricity to a new building because the new building was an expansion of existing premises and thus fell within O.C.G.A. § 46-3-1's[51] grandfather clause.[52] Since 1989, the City of Jackson (the City) has provided electric service to Jackson High School, including additional structures that have been

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[44] *Id.* at 453, 825 S.E3d at 888.

[45] *Id.* at 465, 825 S.E.2d at 895.

[46] *Cobb Hosp.*, 307 Ga. at 579, 827 S.E.2d at 373.

[47] *Id.* at 580, 837 S.E.2d at 373.

[48] *Id.*

[49] *Id.* at 580, 837 S.E.2d at 373–74.

[50] 351 Ga. App. 69, 830 S.E.2d 459 (2019).

[51] O.C.G.A. § 46-3-1 (2020).

[52] *Central Georgia Electric Membership Corp.*,351 Ga. App. at 69, 830 S.E.2d at 460.

added to the high school, such as trailers. In 2015, the high school built a new gymnasium next to the high school, and Butts County Board of Education chose Central Georgia Electric Membership Corporation (Central Georgia) to provide electric services to the new gym building. Thereafter, the City filed a petition against Central Georgia with the Georgia Public Service Commission (PSC) requesting the PSC to issue a ruling that granted the City the exclusive right to provide electric service to the new gym building under the Georgia Territorial Electric Service Act, codified at O.C.G.A. § 46-3-1. After conducting a hearing, the PCS-appointed hearing officer issued findings of facts and conclusions of law in an initial decision, concluding that the City, and not Central Georgia, has the exclusive right to provide electricity to the new gym building. Central Georgia filed a petition in the Superior Court of Fulton County seeking a judicial review of the PSC's decision, and the superior court affirmed the PSC's decision.[53] Central Georgia then filed an appeal with the court of appeals, arguing the PSC erred by finding the grandfather clause granted the City the right to provide electric service to the new gym building.[54]

Specifically, Central Georgia argued the grandfather clause does not apply to the new gym building because the clause only grants the right to continue serving existing buildings or structures.[55] O.C.G.A. § 46-3-8(b)[56] states "every electric supplier shall have the exclusive right to continue serving any premises lawfully served by it."[57] O.C.G.A. § 46-3-3(b)[58] defines the term premises as "the building, structure, or facility to which electricity is being or is to be furnished, provided that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer shall together constitute one premises."[59] Agreeing with the hearing officer, the court of appeals held that the grandfather clause protected "premises," which includes two or more buildings, structures, or facilities, and "it does not matter that the [new gym building] is a separate building."[60] Because one premises can consist of multiple buildings, "the grandfather clause can protect a new building if the new building is an expansion of existing premises already served by an

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[53] *Id.* at 69–71, 830 S.E.2d at 460–61.

[54] *Id.* at 72, 830 S.E.2d at 462.

[55] *Id.*

[56] O.C.G.A. § 46-3-8(b) (2019).

[57] *Id.*

[58] O.C.G.A. § 46-3-3(6) (2019).

[59] *Id.*

[60] *Central Ga. Elec. Membership Corp.*, 351 Ga. App. at 73, 830 S.E.2d at 462–63.

electric supplier."[61] As such, the court of appeals affirmed the superior court's order.[62]

IV. SCOPE OF AUTHORITY

In *Development Authority of Cobb County v. State*,[63] the Georgia Supreme Court reversed the judgment of the trial court, holding that O.C.G.A. § 36-62-2(6)(N)[64] could authorize certain revenue bonds sought by the Development Authority of Cobb County and that O.C.G.A. § 36-62-2(6)(N) did not violate the uniformity provision of the Development Authorities Clause of the Georgia Constitution.[65] In 2018, the Development Authority of Cobb County sought to issue $35 million in revenue bonds under O.C.G.A. § 36-62-2(6)(N) with the goal of financing a retail development in east Cobb County that would include construction of a facility suitable for the operation of a grocery store.[66] As part of this plan, the Development Authority of Cobb County would lease the facility to the Kroger Company, "which would relocate a nearby grocery store to the newly constructed facility."[67] However, pursuant to O.C.G.A. § 36-82-77(a),[68] a Cobb County resident objected to the bonds, which led to the Superior Court of Cobb Court denying validation of the bonds on the rationale that O.C.G.A. § 36-62-2(6)(N) did not authorize the bonds and that subparagraph (6)(N) was unconstitutional.[69]

Known as the "catchall provision,"[70] O.C.G.A. § 36-62-2(6)(N) authorizes development authorities to finance:

> The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any

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[61] *Id.* at 73, 830 S.E.2d at 463.

[62] *Id.* at 75, 830 S.E.2d at 464.

[63] 306 Ga. 375, 829 S.E.2d 160 (2019).

[64] O.C.G.A. § 36-62-2(6)(N) (2019).

[65] *Development Authority of Cobb,* 306 Ga. at 375, 829 S.E.2d at 160.

[66] *Id.* at 375, 829 S.E.2d at 160.

[67] *Id.*

[68] O.C.G.A. § 36-82-77(a) (2019).

[69] *Development Authority of Cobb* at 375–76, 829 S.E.2d at 160–61.

[70] *Id.* at 376, 829 S.E.2d at 161.

> industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter.[71]

Per the court, the superior court provided two reasons for its conclusion that subparagraph (6)(N) did not authorize the bonds sought by the Development Authority of Cobb County.[72] First, the superior court took the position that subparagraph (6)(N) only authorizes a development authority to finance a project "to the extent that the project is *essential* to the development of trade, commerce, industry, and employment opportunities."[73] Second, the superior court, citing *Haney v. Development Authority of Bremen*,[74] said that the employment opportunities at the new grocery store were not the sort of "employment opportunities" with which subparagraph (6)(N) was concerned.[75]

In response to these arguments, the Georgia Supreme Court unequivocally stated that the superior court misunderstood both subparagraph (6)(N) and *Haney*.[76] With respect to subparagraph (6)(N), the court noted that, while the word "essential" appears in subparagraph (6)(N), "it is used to describe the purposes for which a development authority may finance projects, not the projects themselves."[77] Put differently, "[t]o say that the 'development of trade, commerce, industry, and employment opportunities' is an 'essential' purpose of development authorities is not to say that anything financed by a development authority must be 'essential' to such a development."[78] In sum, the superior court erred when it concluded that financing for the project in question was not authorized under subparagraph (6)(N), because projects themselves need not be "essential" to "the development of trade, commerce, industry, and employment opportunities" to be eligible for financing.[79]

Looking to the superior court's reliance on *Haney*, the supreme court held that it was error to conclude that *Haney* implied that additional employment opportunities at the new grocery store were "not the sort of 'employment opportunities' with which subparagraph (6)(N) is

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[71] O.C.G.A. § 36-62-2(6)(N) (2019).

[72] *Development Authority of Cobb County*, 306 Ga. at 376, 829 S.E.2d at 161.

[73] *Id.* at 376, 829 S.E.2d at 161–62 (internal quotations omitted) (emphasis added).

[74] 271 Ga. 403, 519 S.E.2d 665 (1999).

[75] *Development Authority of Cobb County*, 306 Ga. at 376, 829 S.E.2d at 162.

[76] *Id.*

[77] *Id.* at 377, 829 S.E.2d at 162.

[78] *Id.*

[79] *Id.*

concerned."[80] Indeed, the court noted that, while it was unclear what principle the superior court gleaned from *Haney*, the case was easily distinguishable insofar as it stood for the proposition that "'employment opportunities' in subparagraph (6)(N) means 'employment opportunities' resulting directly from the trade, commerce, or industry that the development authority financed."[81] Given this and that the facility at issue was clearly intended for trade and commerce, the court determined that the employment opportunities at the new grocery store were "'opportunities resulting directly from the trade, commerce, or industry' that the Development Authority propos[ed] to finance, and, [therefore, were] 'employment opportunities' within the meaning of subparagraph (6)(N)."[82] In short, the court concluded that "*Haney* is nothing like this case" and that the superior court erred in concluding otherwise.[83]

With respect to the superior court's determination that subparagraph (6)(N) is unconstitutional, the court noted that superior court's decision was based on a misunderstanding of the Development Authorities Clause[84] of the Georgia Constitution.[85] The superior court's rationale was based on its understanding that the Development Authorities Clause requires that "the terms of conditions of the bonds issued by the development authorities must be uniform," and its assumption that bonds issued under subparagraph (6)(N) will have varying terms and conditions that would be inconsistent with the uniformity required under the Development Authorities Clause.[86] The court explained that the superior court misunderstood the uniformity provision, because the Development Authorities Clause, by its plain terms, requires "the creation of *development authorities* under 'uniform terms and conditions.'"[87] In sum, the court held that bonds issued by the development authorities for different projects with different terms and conditions may be issued pursuant subparagraph (6)(N) and that the superior court erred in concluding that subparagraph (6)(N) was unconstitutional.[88]

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[80] *Id.*

[81] *Id.* at 377–78, 829 S.E.2d at 162 (quoting *Haney*, 271 Ga. at 408, 519 S.E.2d at 669).

[82] *Id.* at 378, 829 S.E.2d at 162.

[83] *Id.*

[84] GA. CONST. art. IX, § 6, para. 3.

[85] *Development Authority of Cobb County*, 306 Ga. at 378, 829 S.E.2d at 162.

[86] *Id.* at 379, 829 S.E.2d at 162–63.

[87] *Id.* at 379, 829 S.E.2d at 163. (emphasis in original)

[88] *Id.*

In *C.W. v. Department of Human Services*,[89] the Georgia Court of Appeals propounded a limit on the Division of Family and Children Services' (DFCS) authority to place a parent's name in the central child abuse registry for prenatal use of marijuana.[90] After being placed on the child abuse registry by DFCS based on its determination that C.W. had committed child abuse while pregnant by using a controlled substance, C.W. petitioned for a hearing pursuant to O.C.G.A. § 49-5-183(c).[91] While THC was found in C.W.'s newborn daughter's meconium, DFCS' evidence substantiating C.W.'s placement on the child abuse registry was based on C.W.'s marijuana use.[92] Given this and the plain language of the statutes at issue, an administrative law judge determined that "marijuana is not a controlled substance, so a mother's use of marijuana while pregnant does not amount to prenatal abuse."[93] After DFCS appealed to the superior court, the superior court reversed the administrative law judge's decision based on the fact that, under O.C.G.A. § 16-13-21(4),[94] THC is a controlled substance.[95] Thereafter, C.W. filed for discretionary appeal.[96]

On appeal, it is notable that C.W. and DFCS took the same position, on account of DFCS admitting that C.W. was correct in arguing that marijuana use does not constitute "prenatal abuse" under O.C.G.A. § 15-11-2[97] because marijuana is not a controlled substance as defined in O.C.G.A. § 16-13-21.[98] On this point, the court noted that "a drug is a 'controlled substance' as defined in O.C.G.A. § 16-13-21 only if it is listed as such in both Georgia *and* federal schedules."[99] Given this and the fact that Georgia does not list marijuana in its schedules, the court held that "a mother's use of marijuana while pregnant does not amount to prenatal abuse."[100] Applying this rationale to the superior court's decision, the court reversed after noting that there was no evidence on which the superior court could have based its finding that C.W. exposed her newborn daughter to the controlled substance THC because Georgia law distinguishes marijuana from THC.[101] Elaborating on this point,

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[89] 353 Ga. App. 360, 836 S.E.2d 836 (2019).

[90] *Id.*

[91] *Id.* at 360–61, 836 S.E.2d at 836–37; O.C.G.A. § 49-5-183(c) (2019).

[92] *Id.* at 361, 836 S.E.2d at 837.

[93] *Id.*

[94] O.C.G.A. § 16-13-21(4) (2020).

[95] *C.W.*, 353 Ga. App. at 361, 836 S.E.2d at 837.

[96] *Id.*

[97] O.C.G.A. § 15-11-2 (2019).

[98] *C.W.*, 353 Ga. App. at 361–62, 836 S.E.2d at 837; O.C.G.A. § 16-13-21 (2019).

[99] *Id.* at 362, 836 S.E.2d at 837 (emphasis in original).

[100] *Id.*

[101] *Id.* at 362, 836 S.E.2d at 837–38.

the court noted that there "was no evidence that C.W. used any drug other than marijuana, such as synthetic THC, that could have resulted in the presence of THC" in C.W.'s daughter's meconium.[102] Given the above, the court reversed the superior court's decision, which had reinstated DFCS' decision to list C.W.'s name on the central child abuse registry.[103]

V. STATUTORY CONSTRUCTION

In *Georgia Department of Community Health v. Emory University*,[104] the Georgia Court of Appeals revisited the issue of whether the Certificate of Need was required.[105] Specifically, the question was whether a university hospital could severe its CON for a sixteen-bed comprehensive in-patient rehabilitation program from its hospital license and transfer both the program and CON to a separately licensed facility, such that the facility did not have to seek prior CON approval.[106] The Commissioner of the Georgia Department of Community Health determined that the facility was required to obtain its own CON for the sixteen additional beds it sought to acquire from the hospital; the Superior Court of DeKalb County disagreed.[107] The trial court found that no prior CON approval was needed because the facility's acquisition of the hospital's rehabilitation program was the equivalent of acquiring a health care facility.[108] On appeal, the Department argued, and the court of appeals agreed, that the trial court's order conflicted with the plain language of Georgia's CON statute and the administrative regulations promulgated thereunder.[109]

First, the court of appeals examined the relevant language of Georgia's CON statute:

> A certificate of need shall be valid only for the defined scope, location, cost, service area, and person named in an application . . . *unless such certificate of need owned by an existing health care facility is transferred to a person who acquires such existing facility. In such case, the certificate of need shall be valid for the person who acquires*

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[102] *Id.* at 362, 836 S.E.2d at 838.

[103] *Id.*

[104] 351 Ga. App. 257, 830 S.E.2d 628 (2019).

[105] *Id.* at 257, 830 S.E.2d at 629–30.

[106] *Id.* at 257–58, 830 S.E.2d at 629–30.

[107] *Id.*

[108] *Id.* at 260, 830 S.E.2d at 631.

[109] *Id.* at 258, 830 S.E.2d at 630.

> *such a facility* and for the scope, location, cost, and service area approved by [the Department of Community Health or DCH].[110]

The court of appeals observed that the trial court erred in relying only on the above-italicized language in the statute.[111] When examining the CON statute as a whole, including the definition of a "health care facility," the court made clear that the definition "does not encompass a specialized program operated by and within a licensed health care facility, such as a hospital."[112] Thus, given the statutory definition of a "health care facility," the court of appeals held that treating the hospital's program as a health care facility, as the Department determined in its prior opinion letters, "violated the plain language of the CON statute and therefore exceeded DCH's authority."[113] Significantly, the court of appeals noted it was "not bound by any DCH determination that [the hospital's] program, standing alone, constitute[d] a health care facility."[114] Moreover, examining the controlling plain language of O.C.G.A. § 31-6-40(a)(4)—which requires a CON for "any increase in the bed capacity of a health care facility"—the court of appeals concluded that the facility must obtain a CON to add sixteen additional beds to its program.[115]

In *Moosa Company, LLC v. Commissioner of Ga. Department of Revenue*,[116] the Georgia Court of Appeals addressed the issue of whether a specific statute dictates the appellate procedure available to a tobacco retailer, Moosa Company, LLC (Moosa).[117] Moosa disputed a tobacco tax assessment by the Commissioner of the Georgia Department of Revenue before the Georgia Tax Tribunal. The Tribunal dismissed Moosa's appeal for lack of subject matter jurisdiction, which was affirmed by the Superior Court of Fulton County. The court of appeals granted Moosa's application for discretionary review.[118]

On appeal, Moosa contended that the trial court's finding resulted from its "exercise of flawed statutory construction."[119] The court of

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[110] *Id.* at 263–64, 830 S.E.2d at 633–34 (quoting O.C.G.A. § 31-6-41(a) (2020) (emphasis in original)).

[111] *Id.* at 264, 830 S.E.2d at 634.

[112] *Id.* at 265, 830 S.E.2d at 634.

[113] *Id.* at 266, 830 S.E.2d at 635.

[114] *Id.*

[115] *Id.* at 267, 830 S.E.2d at 635–36 (emphasis omitted).

[116] 353 Ga. App. 429, 838 S.E.2d 108 (2020).

[117] *Id.* at 429, 838 S.E.2d at 109.

[118] *Id.*

[119] *Id.* at 430, 838 S.E.2d at 110.

appeals disagreed.[120] The court of appeals began its analysis "with familiar and binding canons of construction":

> When we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. We must also seek to avoid a construction that makes some language mere surplusage. Further, when the language of a statute is plain and susceptible of only one natural and reasonable construction, courts must construe the statute accordingly.[121]

With these canons in mind, the court of appeals examined the relevant statute governing taxes on tobacco products, which provides that "[a]ny person aggrieved because of any final action or decision of the commissioner, after hearing, *may appeal from the decision to the superior court of the county in which the appellant resides*."[122] The court of appeals explained that the language in the statute "is clear and unambiguous in its identification of the forum available to tobacco taxpayers for appeal—the superior court of the county in which the taxpayer resides."[123] The court found no need, therefore, to address any of the other canons of construction.[124]

Nonetheless, Moosa contended that other Georgia statutes, O.C.G.A. §§ 48-2-59[125] and 50-13A-9,[126] "authorize the Tribunal to exercise jurisdiction over the Commissioner's final decision concerning a tobacco tax."[127] Rejecting that argument, the court of appeals followed clear case precedent that "for purposes of statutory interpretation, a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent in the relevant statutory text."[128] The court recognized that the specific statute governing tobacco tax appeals prevailed over the general jurisdictional statutes concerning the Tribunal.[129]

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[120] *Id.*

[121] *Id.* at 430–31, 838 S.E.2d at 110 (internal quotation marks and citations omitted).

[122] *Id.* at 431, 838 S.E.2d at 110 (quoting O.C.G.A. § 48-11-18(b) (2020)) (emphasis added).

[123] *Id.*

[124] *Id.* at 432, 838 S.E.2d at 111.

[125] O.C.G.A. § 48-2-59 (2020).

[126] O.C.G.A. § 50-13A-9 (2020).

[127] *Moosa Company, LLC*, 353 Ga. App. at 432, 838 S.E.2d at 111.

[128] *Id.* (internal quotation marks and citations omitted).

[129] *Id.*

Finally, the court of appeals was not convinced by Moosa's argument that another statute, O.C.G.A. § 50-13A-2,[130] demonstrated contrary "legislative intent" for the Tribunal's general jurisdictional statute to prevail over the specific provisions of § 48-11-18(b).[131] Notably, the court of appeals emphasized the General Assembly's decision not to amend the specified appellate procedure codified in § 48-11-18 "so as to broaden the scope of appellate forums available to tobacco taxpayers."[132] Absent such amended language, Moosa's "legislative intent" argument failed. The court of appeals concluded that "the general intention behind the creation of the Tribunal does not permit this Court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco taxpayers."[133]

VI. STANDARD OF REVIEW

In *Henry County Board of Education v. Rutledge*,[134] the Georgia Court of Appeals reversed the superior court's decision to vacate the State Board of Workers' Compensation (the Board) denial of Rutledge's claim for workers' compensation benefits.[135] In 2014, Rutledge was a sixty-nine-year-old bus driver who "passed out" when he noticed smoke or steam was coming out of the dash of his bus while he was warming up the air brakes.[136] After being taken to the hospital, it was determined that Rutledge had suffered a stroke. Rutledge and his employer took different positions on Rutledge's stroke, with Rutledge arguing that "his exposure to smoke on the bus was either an aggravating factor or precipitating cause of this stroke," and his employer arguing that the stroke was caused by factors unrelated to this job.[137] An administrative law judge (ALJ) found at a hearing that Rutledge "suffered from hypertension, was a diabetic, and for a month prior to his stroke was unable to check his glucose due to his monitor being broken."[138]

Noting that this case had a complicated procedural history, the court detailed how Rutledge's claim twice made its way to the superior court on appeals from the Board. At the outset, the ALJ, finding that

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[130] O.C.G.A. § 50-13A-2 (2020).

[131] *Moosa Company, LLC*, 353 Ga. App. at 433, 838 S.E.2d at 111.

[132] *Id.*

[133] *Id.* at 433, 838 S.E.2d at 112.

[134] 354 Ga. App. 643, 839 S.E.2d 684 (2020).

[135] *Id.* at 643, 839 S.E.2d at 685.

[136] *Id.*, 839 S.E.2d at 686.

[137] *Id.*

[138] *Id.* at 644, 839 S.E.2d at 686.

preponderance of the evidence indicated that, while Rutledge suffered a stroke while on a school bus, the stroke was not caused by Rutledge being on the bus. While the Board adopted the ALJ's decision, the superior court found the ALJ's analysis lacking insofar as it "only considered whether the stroke was caused by Rutledge being on the bus and not also whether 'being on the bus contributed to or worsened his stroke,'" and remanded the case back to the Board for application of the appropriate causation standard.[139]

The Board then remanded to the ALJ for an inquiry in to whether Rutledge's injury was the result of aggravation of a preexisting condition "arising out of and in the course of employment."[140] On remand, the ALJ found, despite conflicting evidence, Rutledge's claim was compensable because Rutledge met his burden in showing "that his work duties and an incident at work significantly contributed to his medical problems on the date of the incident."[141] Rutledge's employer appealed the ALJ's award to the Board, which disagreed with the ALJ, vacated its award, and denied Rutledge's claim. The Board based its decision on its findings that the record was "equivocal, inconclusive, conflicting, and insufficient to show causation of an aggravation injury by a preponderance of the evidence."[142] Rutledge appealed the Board's decision to the superior court, which again "vacated the Board's decision and remanded the case 'for a specific finding as to whether aggravation of injury did exist.'"[143]

Rutledge's employer appealed, arguing that, when the Board determined "Rutledge's exposure to the substance on the bus did not contribute to or worsen his stroke," it applied the proper legal standard.[144] In order for a stroke to be compensable under the Workers' Compensation Act,[145] an employee must show "by a preponderance of competent and credible evidence" that his work was a "contributing factor" to the stroke.[146] In evaluating whether an employee's work contributed to their stroke,[147] the Board may consider whether only pre-

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[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.* at 645, 839 S.E.2d at 686.

[145] O.C.G.A. § 34-9-1 (2019).

[146] *Henry County Board of Education*, 354 Ga. App. at 645, 839 S.E.2d at 686–87.

[147] While the court of appeals' opinion phrases the Board's evaluation in terms of an employee's heart attack and points out that most case law interpreting the relevant statute, O.C.G.A. § 34-9-1(4), focuses on heart attacks, the court also notes that there is no legal distinction between heart attacks and strokes under O.C.G.A. § 34-9-1(4). *Id.* at 645 n.2, 839 S.E.2d at 687 n.2.

existing risk factors were the cause, or whether any job-related conditions aggravated said risk factors to cause the stroke.[148] The court noted that this is a difficult line to find, but that, "[o]nce the Board has found that line, we must affirm if there is any evidence to support the Board's determination."[149] Applying this rationale, the court found that, because the Board "analyzed Rutledge's claim under the framework of whether his exposure on the bus contributed to or aggravated his injury," the Board applied the appropriate legal framework.[150] Because the Board applied the appropriate legal framework, the court concluded that the superior court erred in vacating the Board's decision.[151]

In *Burch v. STF Foods, Inc.*,[152] the Georgia Court of Appeals affirmed a superior court order that affirmed the Appellate Division of the State Board of Workers' Compensation (the Board) application of the "any evidence" standard in evaluating Burch's workers' compensation claim.[153] In January 2013, Burch, an employee at a Wendy's fast food restaurant, "injured his upper back while attempting to move a stock pot full of chili," and "[injured his] upper back/shoulder area after trying to lift a trash bag into a dumpster."[154] After Burch aggravated his injuries at work twice in 2013, he was given instructions not to lift anything unless he was given permission to do so by a member of management. Despite these instructions, Burch continued to lift items, which resulted in in his termination for insubordination. Following his termination, Burch filed a workers' compensation claim seeking temporary partial disability (TPD) from January 21, 2013, the date of his second injury in January 2013, through December 19, 2013, the date of his termination, temporary total disability (TTD) from December 20, 2013, onward, and medical expenses.[155]

At the hearing on his claim, the administrative law judge (ALJ) found his employer responsible for Burch's medical expenses related to incidents at work in January and November 2013, but rejected Burch's claim for TPD benefits from the time of January 21, 2013, injury until his termination on the basis that Burch continued to work following his work-related accidents and that his weekly wage increased during that

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[148] *Id.* at 645, 839 S.E.2d 687.

[149] *Id.* (quoting Phillips Correctional Institute v. Yarbrough, 248 Ga. App. 693, 695, 548 S.E.2d 424, 426 (2001)).

[150] *Id.* at 645, 839 S.E.2d at 687.

[151] *Id.* at 645–46, 839 S.E.2d at 687.

[152] 353 Ga. App. 172, 836 S.E.2d 573 (2019).

[153] *Id.* at 172, 836 S.E.2d at 574.

[154] *Id.* at 173, 836 S.E.2d at 575.

[155] *Id.*

period.[156] Interestingly, while the ALJ also "found that the 'main reason' for Burch's termination was his insubordination, namely Burch's refusal to heed his supervisor's instructions to avoid lifting at his workplace," the ALJ determined that the instructions from his supervisor arose from Burch's restricted work capacity caused by his previous on-the-job accidents and that Burch ceased work and became disabled because of his work injuries.[157] Based on this and medical reports, the ALJ determined that Burch was entitled to TTD benefits from December 20, 2013, onward.[158]

After Burch's employer appealed this decision to the Board, the Board upheld the ALJ's award of medical benefits but reversed the award of TTD benefits on the rationale that the ALJ "erred in finding that a relationship between Burch's work-related injuries and his stopping work on December 19, 2013, was conclusive as to whether Burch carried his burden of proving disability."[159] The result of this was that the Board found Burch had "failed to prove that any loss of earning capacity was attributable to this compensable work injuries."[160] On Burch's appeal to the superior court, it affirmed the Board's decision, "noting that there was 'sufficient, competent evidence in the record to support the Board's findings.'"[161]

On appeal to the court of appeals, Burch argued that he was entitled to TTD benefits because the Board ought not have reversed the ALJ's "finding that he was terminated for reasons connected to his work injury."[162] The court disagreed, noting that, with respect to workers' compensation claims, the employee must prove that he "sustained a disabling injury arising out of and in the course of his employment," and that an employee is entitled to total disability benefits "if the employee can show by a preponderance of credible evidence that he or she has experienced a loss of earning capacity due to the injury and not due to the employee's unwillingness to work or to economic conditions of unemployment."[163] In reviewing the findings of the ALJ and Board, the court noted that the ALJ tied Burch's termination to his work injury, while the Board reversed the ALJ after finding the "preponderance of the competent and credible evidence" showed the proximate cause of

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[156] *Id.* at 174, 836 S.E.2d at 575.

[157] *Id.*

[158] *Id.*

[159] *Id.* at 174, 836 S.E.2d at 575–76.

[160] *Id.* at 174, 836 S.E.2d at 576.

[161] *Id.*

[162] *Id.*

[163] *Id.* at 175, 836 S.E.2d at 576 (quoting Dasher v. City of Valdosta, 217 Ga. App. 351, 352–53, 457 S.E.2d 259, 261 (1995)).

Burch's termination was not his injuries or the need for light duty, but rather for disobeying the instructions put in place to accommodate his injury.[164]

In reviewing the Board's decision, the court applied the following standard of review:

> [W]hen the Board reviews an ALJ's grant or denial of workers' compensation benefits, the Board is authorized to vacate an ALJ's findings of fact and conclusions of law as unsupported by a preponderance of the competent and credible evidence, and to substitute its own alternative findings. And in so doing, the Board is also authorized to assess witness credibility, weigh conflicting evidence, and draw different factual conclusions from those reached by the ALJ who initially heard the dispute . . . . In stark contrast, however, neither this Court nor the superior court has any authority to substitute itself as a factfinding body in lieu of the Board. Indeed, as a reviewing court, our role is not to return to the findings of the ALJ and examine whether that decision was supported by a preponderance of the evidence, but is instead to review the Board's award for the sole purpose of determining if whether its findings are supported by any record evidence. If this Court answers that question in the affirmative, the Board's findings are conclusive and binding, regardless of whether we would have reached the same result if given the opportunity to weigh the evidence in the first instance.[165]

In applying this standard of review, the court noted that neither it nor the superior court is permitted to "substitute itself as a factfinding body in lieu of the Board" and that it would affirm if the Board's "findings are supported by any record evidence."[166] Looking to the record, the court stated there was ample evidence to support the Board's determination that insubordination was the proximate cause of Burch's firing, namely that he was instructed via writing and in a meeting to not lift anything and his separation notice explicitly stated Burch was terminated for insubordination for not following said instructions.[167] In sum, in applying the "any evidence standard," the court of appeals found that there was evidence in record to support the Board's finding.[168]

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[164] *Id.* at 175, 836 S.E.2d at 576.

[165] *Id.* at 175–76, 836 S.E.2d at 576–77 (quoting Emory Univ. v. Duval, 330 Ga. App. 663, 665–67, 768 S.E.2d 832, 834–35 (2015) (internal quotations and citations omitted)).

[166] *Id.* at 176, 836 S.E.2d at 577 (quoting *Emory Univ.*, 330 Ga. App. at 666, 768 S.E.2d at 835).

[167] *Id.* at 176–77, 836 S.E.2d at 577.

[168] *Id.* at 177, 836 S.E.2d at 577.