Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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O'CONNOR V. FULTON COUNTY ET AL. (S17A0880)

The Supreme Court of Georgia has ruled against **Fulton County's** former Chief Financial Officer and Interim County Manager, Patrick J. O'Connor, who sued the County for firing him.

In today's unanimous opinion, written by **Justice Carol Hunstein**, the high court has upheld the Fulton County Superior Court's ruling that O'Connor had no legitimate claim of breach of contract, is not entitled to get his job back, and has no right to have his legal fees reimbursed.

O'Connor was hired in 1996 as Chief Financial Officer/Finance Director of Fulton County, reporting directly to the County Manager. During his employment, he was an unclassified, at-will employee. In October 2014, after the County Manager position became vacant, the County Board of Commissioners appointed O'Connor as Interim County Manager. At the same time, the Board appointed Sharon Whitmore as Interim Finance Director. According to O'Connor, upon his appointment as Interim County Manager, he asked Fulton County Board of Commissioners Chairman John Eaves for a severance agreement in the event he was not selected as the permanent County Manager. He said Eaves assured him, however, that he would not need such a package because if he were not given the permanent appointment, he would automatically return to his position as Finance Director. On Feb. 12, 2015, Eaves and the Board's Vice Chairwoman, Liz Hausmann, called O'Connor and informed him that he was being suspended immediately as the Interim County Manager. According to briefs filed in the case, Eaves and Hausmann told him they took this action because a co-worker had surreptitiously recorded O'Connor making critical comments about Board members. On Feb. 16, 2015, the

Board formally voted to end O'Connor's tenure as Interim County Manager and to appoint Sharon Whitmore to the position. During the same meeting, the Board also voted to replace O'Connor as Chief Financial Officer, effective immediately, although the County's attorney later informed O'Connor that the Board would allow him to resign from the Finance Director position in lieu of termination.

In September 2015, O'Connor sued the County and County Manager, alleging breach of contract against Fulton County and seeking a "writ of mandamus" against the new County Manager, Richard Anderson, to force Anderson to provide O'Connor with back pay and reinstate him as Finance Director. He also asked for his costs of litigation to be paid by the County and Anderson. In May 2016, following a hearing, the trial court ruled in the County's favor, concluding that O'Connor could not support a claim for breach of contract, or any entitlement to mandamus relief or litigation expenses. O'Connor then appealed to the state Supreme Court.

"As O'Connor recognizes in his brief, this appeal turns on whether the Fulton County Personnel Regulations amount to an employment contract and, if they do, whether they apply to him," today's opinion says. O'Connor argued that the regulations constituted an employment contract and that under regulation 300-4 (7), he was entitled to be returned to his former position as Finance Director after he was removed as Interim County Manager. He also argued that once he was reinstated to his former position, he could only be terminated by the County Manager, not by the Board, which was the basis for his seeking a writ of mandamus to compel Anderson to return him to his former position.

"Generally speaking, the policies and information in personnel or employee manuals neither create a contract nor support a claim for breach of contract," today's opinion says. "Simply put, Regulation 300-4 (7) controls the administration of certain temporary appointments and does not amount to a promise of future compensation; accordingly, the provision does not form the basis of an employment contract."

O'Connor's argument that under the same regulation, he should have been automatically returned to his former position as Finance Director also fails, the opinion says. For one thing, the regulation does not apply to O'Connor because he was an at-will, "set-range" employee, as opposed to an "on-range" employee. (A "set-range" employee has a salary that is specifically approved by the County Manager or Board of Commissioners; an "on-range" employee is paid according to a pay scale.)

"Second, as a public, at-will employee with no vested right in his continued employment, O'Connor cannot demonstrate that he has a clear legal right to be reinstated to his position as Finance Director," the opinion says. "Finally, because O'Connor has not prevailed on his claim for damages, the trial court correctly concluded that he was not entitled to attorney fees under Georgia Code § 13-6-11."

Attorney for Appellant (O'Connor): J. Matthew Maguire, Jr.
Attorneys for Appellees (County): Kaye Burwell, Dominique Martinez

<u>WILLIAMS V. HEARD</u> (S17A1004)

The Supreme Court of Georgia has ruled in favor of Brendette Williams, who more than a year ago won a Democratic primary election for a seat on the **Baker County** school board, then ran unopposed and was elected in last November's general election.

With today's unanimous ruling, the high court has thrown out a judge's refusal to dismiss a lawsuit by her opponent, Sharon Heard, who challenged the primary election as fraudulent and irregular.

"We conclude that Heard's challenge to the primary election is now moot, and we therefore vacate the trial court's order and remand this case for the contest action to be dismissed," **Justice Michael P. Boggs** writes for the Court.

Williams and Heard ran for the Elmodel District seat on the Baker County Board of Education in the Democratic primary election held May 24, 2016. Following Heard's defeat by 21 votes, the results were certified on May 27 as accurate, but Heard requested a recount. On June 3, 2016, a recount was conducted and the results were recertified as accurate. Heard then filed a "Petition to Contest Primary Election," alleging "misconduct, fraud or irregularity" on the part of the Baker County Board of Elections, claiming that some poll workers allegedly urged voters in the polling place to vote for Williams and not for Heard. Judge O. Wayne Ellerbee, a retired juvenile court judge, was appointed to preside over the matter. Williams presented a motion asking to intervene as a party in the case, as well as a motion asking the judge to dismiss Heard's petition as having been filed too late and a motion asking the judge to recuse himself because he was not qualified to preside over the action. The judge granted Williams' motion to intervene and also granted Heard's request to access the election materials, which included the Recertification of Results from the June 3 primary. The trial court subsequently denied Williams' motion to dismiss the case and her motion to disqualify the judge.

The general election was held Nov. 8, 2016 and Williams, who was unopposed, was elected to the school board. On Nov. 14, 2016, the Georgia Supreme Court granted Williams' application to appeal the trial court's denial of Williams' motions. In her appeal, Williams argued that 1) Heard's challenge was moot because there had been a general election since the primary; 2) even if it were not moot, the trial court erred in denying the motion to dismiss because Heard missed the deadline for filing her petition to contest the primary results; and 3) the trial court erred by denying Williams' motion asking the judge to disqualify himself.

"[T]he established rule in Georgia is that a primary election contest becomes moot after the general election has taken place," today's opinion says. As this Court explained in its 1997 decision in *Payne v. Chatman* and cases following, "[we] adhere to the rule that litigants should make every effort to dispose of election disputes with dispatch and that the courts should not interfere with the orderly process of elections after the general election has been held."

"Heard could have requested an expedited hearing on her contest petition in the trial court, moved to stay the general election, or requested expedited consideration of Williams' application for interlocutory appeal," the opinion says. "But Heard took no action to ensure that her challenge to the primary election result was considered in a timely manner."

Because it has ruled that Heard's challenge is moot, the high court does not address Williams' motion asking the court to dismiss Heard's petition as untimely. The Court has ruled however, on Williams' motion asking Judge Ellerbee, a retired juvenile court judge, to be disqualified.

"We hold that he does not so qualify, and that a different judge, who satisfies the requirements of Georgia Code § 21-2-523 must be selected to preside," the opinion says. Specifically, the statute says that, "The *superior court having jurisdiction* of a contest case governed by this article shall be presided over by a *superior court judge or senior judge.*"

Therefore, "upon remand, in compliance with § 21-2-523, a superior court judge or senior superior court judge must be selected to preside over the dismissal of this contest action," today's opinion says.

Attorney for Appellant (Williams): Henry Williams
Attorney for Appellee (Heard): Lawton Heard, Jr.

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IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* James Edwin Anderson (Wayne Co.)	**ANDERSON V. THE STATE (S17A0894)**
* Joseph Lamar Arnold (DeKalb Co.)	**ARNOLD V. THE STATE (S17A1041)**
* Demetrius Daniels (Colquitt Co.)	** **DANIELS V. THE STATE (S17A0931)**
* Willie Dublin, Jr. (Floyd Co.)	**DUBLIN V. THE STATE (S17A0822)** (The Supreme Court has upheld Dublin's convictions for murder conviction and other crimes, but it is sending the case back to the trial court to fix a sentencing error. The trial court erred by merging the count of "aggravated assault with intent to rob" into the offense of felony murder and sentencing him only for felony murder because the aggravated assault count required proof of intent to rob that the State did not have to prove to convict him of felony murder. Therefore the Court has thrown out the judgment in part and remanded the case to the trial court to also sentence Dublin on the aggravated assault count.)
* Thomas Houston (Muscogee Co.)	**HOUSTON V. THE STATE (S17A0769)**
* Maurilio M. Martinez (Lowndes Co.)	**MARTINEZ V. THE STATE (S17A0901)**
* Michael York Miller (Muscogee Co.)	**MILLER V. THE STATE (S17A1101)**
* Truseno Al Neely (Brooks Co.)	**NEELY V. THE STATE (S17A1145)**
* Jermaine Revere (Fulton Co.)	**REVERE V. THE STATE (S17A0806)**
* Tyshawn Roscoe (Fulton Co.)	**ROSCOE V. THE STATE (S17A0718)**
* Jeremy Scott (Fulton Co.)	**SCOTT V. THE STATE (S17A0721)** (The Supreme Court has upheld Scott's murder conviction and life-without-parole prison sentence, but it is sending the case back to the trial court to fix a sentencing error. When the trial court sentenced Scott on felony murder based on aggravated assault, the felony murder count based on possession of a firearm by a convicted felon should have been vacated for sentencing purposes. It wasn't, and then the judge incorrectly merged a second firearms

charge into the felony murder count that was vacated by law. The Court is therefore canceling the merger of that firearms charge and remanding the case for sentencing on that charge.)

* Tobias Demere Thomas (Colquitt Co.) **<u>**THOMAS V. THE STATE**</u> **(S17A0932)**

* Charles Rodney Wilson (Clarke Co.) <u>**WILSON V. THE STATE**</u> **(S17A0950)**

(The Supreme Court has upheld Wilson's murder conviction and life prison sentence for the shooting death of Jesse Howard, but it is sending the case back to the trial court to fix sentencing errors. "To the extent the sentencing order purports to impose a life sentence for each of the three murder counts, this was error, as a defendant may be sentenced only on a single verdict of murder where there is but one victim," the opinion says. Because the jury found Howard guilty of malice murder, the judge should have sentenced him on that count only, and vacated the two felony murder counts. The trial court furthermore erred by improperly merging the gun possession charge into one of the felony murder count that should have been vacated. Therefore, the Supreme Court is throwing out that portion of the sentencing order that imposes life sentences for the two felony murder counts and is sending the case back to the trial court to impose a sentence for the gun possession charge.)

** Daniels and Thomas were co-defendants.

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorney:

* Anthony Sylvester Kerr <u>**IN THE MATTER OF: ANTHONY SYLVESTER KERR**</u> **(S17Y1499, S17Y1502, S17Y1623)**