

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2004 CA 1448

CITY OF BATON ROUGE,
PARISH OF EAST BATON ROUGE
AND THE DEPARTMENT OF PUBLIC WORKS

VERSUS

ANTHONY DOUGLAS
AND THE PERSONNEL BOARD OF THE CITY OF
BATON ROUGE, PARISH OF EAST BATON ROUGE

Judgment Rendered: DEC 29 2005

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 466,636

Honorable Janice Clark, Judge Presiding

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Baton Rouge, LA

Attorney for Plaintiffs/Appellants,
City of Baton Rouge, Parish of East
Baton Rouge and Department of
Public Works

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Baton Rouge, Parish of East Baton
Rouge

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Attorney for Defendant/Appellee
Anthony Douglas

Guidry, J. concurs in the result.

Kuhn, J. DISSENTS AND WILL ASSIGN REASONS

CARTER, C.J., WHIPPLE, PARRO, KUHN, GUIDRY,
PETTIGREW, DOWNING, GAIDRY, MCDONALD,
MCCLENDON, HUGHES, AND WELCH, JJ.

McDonald, J. concurs believing the City has no right of action.

Pettigrew J. concurs and assigns reasons

McClendon J. concurs.

Hughes, J. dissents and assigns reasons. by Parro

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CARTER, C. J.

This is an appeal from a judgment of the district court ordering the Department of Public Works (DPW) for the City of Baton Rouge, Parish of East Baton Rouge (City/Parish), to reinstate Anthony Douglas's employment. This court has considered the matter en banc to resolve a direct conflict of two prior opinions of this court.

DISCUSSION

Anthony Douglas was terminated from his employment with DPW in 1999. Douglas appealed his termination to the Personnel Board. After a hearing, the Board members could not agree on an appropriate punishment. Because there were not enough votes to impose either penalty considered, the Board ruled that Douglas would be reinstated to his DPW position effective September 30, 1999.

The City/Parish appealed the Board's decision to the Nineteenth Judicial District Court, which affirmed the Board's decision. The City/Parish then appealed to this court. In an unpublished decision, this court reversed the district court's judgment and reinstated DPW's termination of Douglas. **City of Baton Rouge v. Douglas**, 00-1736 (La. App. 1 Cir. 9/28/01) (unpublished) (**Douglas I**). The Louisiana Supreme Court denied Douglas's subsequent application for a writ of certiorari. **City of Baton Rouge v. Douglas**, 01-2806 (La. 11/9/01), 801 So.2d 1066.

Approximately eighteen months after this court rendered its unpublished decision in **Douglas I**, a different panel of this court considered and decided the case of **City of Baton Rouge v. Bernard**, 01-2468 (La. App. 1 Cir. 1/22/03), 840 So.2d 4. As was the case in **Douglas I**, **Bernard** involved an appeal of a Personnel Board decision taken by the City/Parish.

In **Douglas I**, this court did not specifically address the issue of subject matter jurisdiction, although subject matter jurisdiction was presumed. However, in **Bernard**, the court did address the issue and concluded that the City/Parish has by its own charter limited its recourse as a juridical entity from adverse decisions of its own Personnel Board. Therefore, the court held, neither the district court nor this court has subject matter jurisdiction over appeals taken from the Personnel Board by the City/Parish. **Bernard**, 840 So.2d at 7. The Louisiana Supreme Court denied the City/Parish's application for a writ of certiorari. **City of Baton Rouge v. Bernard**, 03-1005 (La. 6/27/03), 847 So.2d 1278.

In April 2003, Douglas petitioned the district court, in the same suit record as the prior appeal taken by the City/Parish from the decision of the Personnel Board, for a writ of mandamus ordering DPW to reinstate his employment. Douglas contended that pursuant to this court's later decision in **Bernard**, the district court and this court lacked subject matter jurisdiction over the appeal the City/Parish had taken in his case and therefore the ensuing court decisions are null and void. The City/Parish excepted to the petition, raising various objections, including res judicata. After consideration, the district court overruled the exceptions urged by the City/Parish and issued the writ of mandamus ordering that Douglas be returned to his employment with DPW pursuant to the decision of the Personnel Board from which the original appeal was taken. The City/Parish now appeals.

It is apparent that this case concerns the direct conflict of two prior opinions of this court: **City of Baton Rouge v. Douglas**, 00-1736 (La. App. 1 Cir. 9/28/01) (unpublished), (**Douglas I**); and **City of Baton Rouge v.**

Bernard, 01-2468 (La. App. 1 Cir. 1/22/03), 840 So.2d 4. To resolve the conflict between **Douglas I** and **Bernard**, we hereby expressly overrule **Douglas I**. See **Walker v. Bossier Medical Center**, 04-1780 (La. 2/25/05), 894 So.2d 1095 (per curiam); **Walker v. Bossier Medical Center**, 04-1797 (La. 2/25/05), 894 So.2d 1096 (per curiam). In light of our decision to overrule **Douglas I**, we hereby affirm the result reached by the trial court.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. Costs of these proceedings in the amount of \$544.13 are assessed to the City of Baton Rouge, Parish of East Baton Rouge and Department of Public Works.

AFFIRMED.

CITY OF EAST BATON ROUGE,
PARISH OF EAST BATON ROUGE
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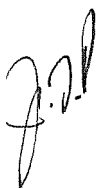
STATE OF LOUISIANA

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BEFORE: CARTER, C.J., WHIPPLE, PARRO, KUHN, GUIDRY, PETTIGREW, DOWNING,
GAIDRY, McDONALD, McCLENDON, HUGHES, AND WELCH, JJ.

PETTIGREW, J., CONCURS, AND ASSIGNS REASONS.

PETTIGREW, J., concurring.

 I respectfully concur with the majority opinion. However, I do point out that even though acquiescence (under La. Code Civ. P. art. 2003) and prescription were not factual or legal issues raised in this case, they very well could be issues to be considered by other courts presented with cases similar to this one.

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MCCLENDON, HUGHES, AND WELCH, JJ.**

PARRO, J., concurring.

HP
by SPY
I write in order to clarify this court's decision in this case with a discussion of Wooley v. State Farm Fire and Cas. Ins. Co., 04-882 (La. 1/19/05), 893 So.2d 746, in which the supreme court addressed a similar issue in the context of the Louisiana Insurance Commissioner's right to seek judicial review of the decision of an administrative law judge (ALJ) and the court's jurisdiction over such appeals. The Commissioner had disapproved a form that State Farm proposed to use, on the basis that it did not comply with the requirements of Louisiana law. After an adjudicatory hearing, an ALJ disagreed, finding that the form complied in wording and meaning with the applicable law and approving it for use by State Farm. The Commissioner sought judicial review of this decision in the district court. Citing two statutes¹ denying to agencies and their officials the right to petition for judicial review of an ALJ decision, State Farm filed a peremptory exception raising the objection of no right of action. The district court granted the exception and dismissed the petition for judicial review. This court affirmed the judgment, and the supreme court denied the Commissioner's

¹ See LSA-R.S. 49:964(A)(2) and LSA-R.S. 49:992(B)(3).

application for a writ of certiorari. Brown v. State Farm Fire & Cas. Co., 00-0539 (La. App. 1st Cir. 6/22/01), 804 So.2d 41, writ denied, 02-2504 (La. 12/7/01), 803 So.2d 37.

Thereafter, the Commissioner filed a petition for declaratory judgment, urging that the two statutes were unconstitutional on various grounds. The district court agreed, concluding that the statutes were unconstitutional; its judgment to this effect was appealed directly to the supreme court. The supreme court carefully examined all of the commissioner's arguments and determined that the statutes were not unconstitutional, stating:

We see no constitutional impediment to the legislature's decision to deny such an appeal right to the Commissioner. ... Instead of viewing the Commissioner's lack of a right to appeal the ALJ's adverse decision as a usurpation of judicial power, we view it as a lack of procedural capacity on the part of the Commissioner.

Wooley, 893 So.2d at 769-70.

The supreme court also addressed the effect of this court's judgment in the first round of litigation concerning this issue, noting that:

The final judgment ... [in Brown, 804 So.2d 41] was that the Commissioner had no right to appeal the decision and order of the ALJ; consequently, the court of appeal itself had no appellate jurisdiction because the district court had none. The court of appeal had no jurisdiction for the purpose of determining the merits of the parties' arguments outside of those relating to the courts' appellate jurisdiction.

Wooley, 893 So.2d at 771 (citations omitted).

Like the statutes prohibiting any agency from seeking judicial review of an ALJ's decision that controlled the result in the Brown and Wooley cases, the home rule charter of the City/Parish in this case has limited its right to seek judicial review of the decisions of its own Personnel Board. Therefore, like the Commissioner in Brown and Wooley, the City/Parish had no right of action and, as a consequence, neither the district court nor this court had appellate jurisdiction to review the merits of the Personnel Board's decision to reinstate Douglas.² Therefore, the result reached by the majority in this case is correct, and I respectfully concur.

² I further note, however, that in Wooley, the supreme court recognized that the Commissioner might be entitled to a declaratory judgment, since the dispute was in a regulatory context and involved a purely legal question. Wooley, 893 So.2d at 772.