

Pharmacists—limit on working hours—validity of rule

The Court of Appeals decision in this case is reversed for the reason stated in the dissenting opinion in the Court of Appeals that the statute allowing the Board of Pharmacy to “adopt rules governing the filling, refilling and transfer of prescription orders” authorized the Board to adopt a rule limiting the number of continuous hours that a licensed pharmacist may work. N.C.G.S. § 90-85.32(a).

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 174 N.C. App. 301, 620 S.E.2d 893 (2005), affirming orders entered on 6 February 2004 and 5 April 2004 by Judge Evelyn W. Hill in Superior Court, Wake County. On 6 April 2006, the Supreme Court allowed plaintiff’s petition for discretionary review as to additional issues. Heard in the Supreme Court 18 October 2006.

Ellis & Winters LLP, by Matthew W. Sawchak, Julia F. Youngman, and Stephen D. Feldman, for plaintiff-appellant.

McMillan, Smith & Plyler, by William W. Plyler and Stephen T. Smith, for defendant-appellees.

Roy Cooper, Attorney General, by Christopher G. Browning, Jr., Solicitor General, and Gary R. Govert, Special Deputy Attorney General, for defendant-intervenor-appellee.

Smith Moore LLP, by Robert R. Marcus and Angela L. Little, for the National Association of Boards of Pharmacy, amicus curiae.

Southern Environmental Law Center, by Amy E. Pickle, for the North Carolina Coastal Federation, North Carolina Shellfish Growers Association, Environmental Defense, and North Carolina Trout Unlimited, amici curiae.

Everett, Gaskins, Hancock & Stevens, LLP, by C. Amanda Martin, for the American Pharmacists Association and North Carolina Association of Pharmacists, amici curiae.

Kennedy Covington Lobdell & Hickman, L.L.P., by Stanford D. Baird, Ann M. Anderson, and Daniel J. Palmieri, for North Carolina Citizens for Business and Industry, North Carolina Home Builders Association, North Carolina Pork Council, Inc., North Carolina Retail Merchants Association, North Carolina Association of Realtors, Inc., North Carolina Forestry Association, North Carolina Aggregates Association, Carolinas Associated General Contractors, National Federation of Independent Businesses Legal Foundation, North Carolina Farm Bureau, and Manufacturers & Chemical Industry Council of North Carolina, amici curiae.

Broughton Wilkins Smith Sugg & Thompson, PLLC, by Benjamin E. Thompson, III, for the North Carolina Retail Merchants Association, amicus curiae.

PER CURIAM.

As to the appeal of right based on the dissenting opinion, we reverse the Court of Appeals for the reasons stated in the dissent. We further conclude that the petition for discretionary review as to additional issues was improvidently allowed.

This case is remanded to the Court of Appeals for further remand to the Wake County Superior Court for further proceedings not inconsistent with this opinion.

REVERSED IN PART AND REMANDED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

Justice TIMMONS-GOODSON did not participate in the consideration or decision of this case.