

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-577

Filed: 2 May 2017

Buncombe County, No. 14 CVS 4300

THE CITY OF ASHEVILLE, Petitioner,

v.

ROBERT H. FROST, Respondent.

Appeal by petitioner from order entered 22 December 2015 by Judge William H. Coward in Buncombe County Superior Court. Heard in the Court of Appeals 10 January 2017.

McGuire, Wood & Bissette, P.A., by Sabrina Presnell Rockoff, and Asheville City Attorney Robin Currin, Deputy City Attorney Kelly Whitlook, and Assistant City Attorney John Maddux, for petitioner-appellant.

John C. Hunter for respondent-appellee.

BRYANT, Judge.

Where North Carolina Session Law 2009-401 specifically provides that a petitioner may request a trial by jury and then provides that the matter shall proceed “as any other civil action,” the specificity of the session law controls and the trial court erred in denying petitioner’s motion to strike respondent’s demand for a jury trial.

This matter was first brought before the Civil Service Board of the City of Asheville (“the Civil Service Board”) as a quasi-judicial matter on 9 September 2014. The Civil Service Board was tasked with a review of the process by which Senior

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

Police Officer Robert H. Frost had been terminated from employment on 12 March 2014. Officer Frost's termination resulted from an accusation of excessive force.

In an order entered 25 September 2014, the Civil Service Board made findings of fact which indicated that on 2 February 2014, Officer Frost was in uniform, driving a marked police vehicle, working as a patrol officer for the Asheville Police Department when he was "flagged down" by a store clerk for the "Hot Spot" located at 70 Asheland Avenue. The clerk directed Officer Frost's attention to a woman, Amber Banks, who had previously been banned from the store. As Banks was leaving the area, Officer Frost yelled for her to stop and ran to catch up with her as she kept walking away. Officer Frost arrested Banks for trespassing.

As he escorted Banks back toward his vehicle, a struggle ensued. Officer Frost took Banks to the ground with a leg sweep, called for backup, and placed Banks in handcuffs. As they again proceeded toward the police vehicle, it appeared to Officer Frost that Banks was getting ready to kick him. In order to defend himself, he began running with Banks and then pushed her onto the hood of his police vehicle. On the car hood, Banks rolled over and Officer Frost believed she was attempting to bite him. So, he took her to the pavement, admitting that he lost his grip and that Banks landed harder than he had intended. Banks laid still and quiet on the ground until another officer arrived. Emergency Medical Services also arrived, checked Banks at the scene, and cleared her to go to the detention facility.

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

The same day of the incident, Officer Frost completed an “Asheville PD Use of Force Report.” The report was reviewed by Officer Frost’s chain of command, and ultimately, the incident was investigated by the State Bureau of Investigation and Office of Professional Standards. On 14 February 2014, Officer Frost was placed on paid non-disciplinary investigative suspension. Following a 28 February 2014 panel hearing convened upon a supervisor’s recommendation of disciplinary action, a recommendation was made that Officer Frost be terminated from employment. On 12 March 2014, Officer Frost was terminated from employment with the City of Asheville Police Department. Officer Frost timely appealed the termination to the Civil Service Board. The Civil Service Board found that termination of Officer Frost was improper and in violation of city policies as Officer Frost was not provided adequate due process protection. Therefore, the Civil Service Board concluded that the City’s termination of Officer Frost was not justified, that the termination should be rescinded, and that Officer Frost should be reinstated with back pay and all benefits.

On 3 October 2014, the City of Asheville filed a civil summons and a petition for trial de novo in Buncombe County Superior Court. Shortly thereafter, on the same day, Officer Frost likewise filed with Buncombe County Superior Court a petition for a trial de novo.

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

In his petition for a trial de novo, Officer Frost requested a trial by jury pursuant to Section 8(g) of the Asheville Civil Service Law. In its petition, the City of Asheville did not request a trial by jury. However, on 12 November 2014, in response to Officer Frost’s petition for trial de novo, the City filed an answer, a motion to dismiss, and a motion to strike. The City challenged Officer Frost’s standing to appeal, given that the order he attempted to appeal ruled in his favor—that his termination was not justified and he was to be reinstated with full back pay. The City further challenged that due to the City’s appeal—filed before Officer Frost’s appeal—involving the same parties and relating to the same subject matter, Officer Frost’s petition was unlawful and “wholly unnecessary.”

Following a hearing in Buncombe County Superior Court, the Honorable Mark E. Powell entered a 25 February 2015 order granting the City’s motion to dismiss with prejudice Officer Frost’s petition for a de novo trial by jury, as Officer Frost lacked standing and his petition was abated by the doctrine of prior pending action.

On 30 November 2015, a hearing was held on Officer Frost’s demand for a jury trial in response to the City of Asheville’s petition for a trial de novo, the Honorable William H. Coward, Judge presiding. On 22 December 2015, Judge Coward entered an order noting that the City of Asheville filed a 9 November 2015 motion to strike Officer Frost’s demand for a jury trial “on the grounds that the [Asheville Civil Service Law, 1953 N.C. Session Laws Chapter 747, as amended by 2009 N.C. Session

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

Law Chapter 401 (“the Act”)] only allows the ‘petitioner’ to request a jury trial.” The court acknowledged the language of the Act, stating “either party may appeal to the Superior Court Division . . . for a trial de novo. . . . If the petitioner desires a trial by jury, the petitioner shall so state. . . . [And] [t]here[after], the matter shall proceed to trial as any other civil action.” The court reasoned that because the Act directs “the matter shall proceed . . . as any other civil action,” Rule 38 of our Rules of Civil Procedure (“Jury trial of right”), allows Officer Frost, as the respondent, to request a trial by jury. Thus, the trial court denied petitioner City of Asheville’s motion to strike respondent Officer Frost’s demand for a jury trial. Petitioner City of Asheville appeals.

Interlocutory Appeal

Judgments and orders of the Superior Court are divisible into these two classes: (1) Final judgments; and (2) interlocutory orders. . . . An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.

Veazey v. Durham, 231 N.C. 357, 361–62, 57 S.E.2d 377, 381 (1950) (citations omitted). “An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, which affects a substantial right claimed

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

in any action or proceeding[.]” N.C. Gen. Stat. § 1-277(a) (2015). “[A]ppeal lies of right directly to the Court of Appeals . . . (3) [f]rom any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that . . . : a. Affects a substantial right.” *Id.* § 7A-27(b)(3)a.

Our Supreme Court has held that a trial court order denying “the defendant’s motion that the plaintiffs’ demand for a jury trial be invalidated as an interlocutory order which does not affect a substantial right” is properly overruled, as “an order denying a jury trial is appealable, an order requiring a jury trial should be appealable.” *Faircloth v. Beard*, 320 N.C. 505, 506–07, 358 S.E.2d 512, 513–14 (1987)¹ (citing *In re McCarroll*, 313 N.C. 315, 327 S.E.2d 880 (1985); *In re Ferguson*, 50 N.C. App. 681, 274 S.E.2d 879 (1981)). *See generally In re Foreclosure of Elkins*, 193 N.C. App. 226, 227, 667 S.E.2d 259, 260 (2008) (“[A]n order denying a motion for a jury trial . . . affects a substantial right.”). Therefore, we address this appeal.

Analysis

On appeal, petitioner City of Asheville argues that the trial court erred by denying its motion to strike respondent Officer Frost’s demand for a jury trial. The City of Asheville contends that N.C. Session Law 2009-401, governing appeals from

¹ *Fairthcloth* was distinguished on other grounds by *Kiser v. Kiser*, 325 N.C. 502, 385 S.E.2d 487 (1989), but as the Court noted, the *Kiser* decision “does not disturb the result in *Faircloth*.” *Kiser*, 325 N.C. at 510, 385 S.E.2d at 491.

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

the Asheville Civil Service Board, allows only the petitioner to request a jury trial.

We agree.

“[W]here an appeal presents a question of statutory interpretation, this Court conducts a *de novo* review of the trial court's conclusions of law.” *Ennis v. Henderson*, 176 N.C. App. 762, 764, 627 S.E.2d 324, 325 (2006) (citation omitted).

Pursuant to the North Carolina Constitution, “[t]he General Assembly shall provide for the organization and government . . . and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.” N.C. Const. art. VII, § 1.

The General Assembly delegates express power to municipalities by adopting an enabling statute

. . . If the language of [the enabling] statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning. A statute clear on its face must be enforced as written.

Quality Built Homes Inc. v. Town of Carthage, ___ N.C. ___, ___, 789 S.E.2d 454, 457 (2016) (alteration in original) (citations omitted).

“We preface our analysis by noting that statutory interpretation begins with the plain meaning of the words of the statute. Where the plain meaning of the statute is clear, no further analysis is required. Where the plain meaning is unclear,

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

legislative intent controls.” *Sharpe v. Worland*, 137 N.C. App. 82, 85, 527 S.E.2d 75, 77 (2000) (citations omitted).

“First, it is a well established principle of statutory construction that a section of a statute dealing with a specific situation controls, with respect to that situation, [over] other sections which are general in their application.” *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment*, 354 N.C. 298, 304, 554 S.E.2d 634, 638 (2001) (citations omitted). “In such situation the specially treated situation is regarded as an exception to the general provision.” *Utilities Comm’n v. Elec. Membership Corp.*, 275 N.C. 250, 260, 166 S.E.2d 663, 670 (1969) (citation omitted).

The rule of statutory construction *ejusdem generis* provides that:

where general words follow a designation of particular subjects or things, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designations and as including only things of the same kind, character and nature as those specifically enumerated.

Knight v. Town of Knightdale, 164 N.C. App. 766, 769, 596 S.E.2d 881, 884 (2004) (quoting *State v. Lee*, 277 N.C. 242, 244, 176 S.E.2d 772, 774 (1970)).

North Carolina Session Law 1953-757 established a Civil Service Board as part of the government of the City of Asheville. 1953 N.C. Sess. Law 757 § 1. As amended in 2009 by Session Law 2009-401, entitled “An act to revise the laws relating to the Asheville Civil Service Board,” our General Assembly provided the following:

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

Within ten days of the receipt of notice of the decision of the Board, *either party may appeal to the Superior Court Division of the General Court of Justice for Buncombe County for a trial de novo*. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the fact upon which the petitioner relies for relief. *If the petitioner desires a trial by jury, the petition shall so state.* . . . Therefore, the matter shall proceed to trial as any other civil action.

2009 N.C. Sess. Laws 401 § 7(g) (emphasis added). While “either party may appeal . . . for a trial de novo,” the session law names the petitioner as the party to designate whether a trial by jury is desired. *Id.* However, the superior court in its 22 December 2015 order and respondent Officer Frost in his argument before this Court contend that the last sentence of the session law, “[t]here[after], the matter shall proceed to trial as any other civil action,” gives rise to a respondent’s right to request a trial by jury.²

Respondent argues that “proceed[ing] to trial as any other civil action” invokes our Rules of Civil Procedure, specifically Rule 38, “Jury trial by right.” Per Rule 38, “[a]ny party may demand a trial by jury of any issue triable of right by a jury” N.C. Gen. Stat. § 1A-1, Rule 38(b) (2015). And thus, respondent Officer Frost, as a party to a civil action filed in Buncombe County Superior Court may demand a trial

² We note that Officer Frost did not appeal from the 25 February 2015 order of Judge Powell granting the City’s motion to dismiss with prejudice Officer Frost’s petition for a trial by jury.

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

by jury on the issues appealed from the Civil Service Board. For the following reasons, we disagree with respondent's argument.

“The primary objective of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014) (citation omitted). Where one rule is more specific in describing the rights afforded a party in action than another rule, we are guided by the construction “that a section of a statute dealing with a specific situation controls, with respect to that situation, [over] other sections which are general in their application.” *Westminster Homes, Inc.*, 354 N.C. at 304, 554 S.E.2d at 638 (citation omitted). Moreover, “it is a fundamental principle of statutory interpretation that courts should evaluate [a] statute as a whole and . . . not construe an individual section in a manner that renders another provision of the same statute meaningless.” *Lunsford*, 367 N.C. at 628, 766 S.E.2d at 304 (alteration in original) (citation omitted).

Session Law 2009-401 specifically provides for appeals to Buncombe County Superior Court from orders entered by the Asheville Civil Service Board and states that either party may appeal the decision of the Civil Service Board. But the session law designates only the petitioner as a party who may request a jury trial. This designation, that a petitioner may request a jury trial in appeals from decisions of the Civil Service Board to the Buncombe County Superior Court, is more specific than the right more generally conferred in Civil Procedure Rule 38, allowing any party to

THE CITY OF ASHEVILLE V. FROST

Opinion of the Court

a civil action to demand a jury trial. Thus, pursuant to the construction favoring the rule tailored to a specific circumstance as controlling over a more generally applicable rule, the language of Session Law 2009-401 naming only the petitioner as the party who may request a jury trial is controlling over the more generally applicable right of any party to demand a jury trial, as provided in Civil Procedure Rule 38. *See Westminster Homes, Inc.*, 354 N.C. at 304, 554 S.E.2d at 638. Moreover, to read Session Law 2009-401's language that "the matter shall proceed to trial as any other civil action" as an incorporation of the Rules of Civil Procedure, including the right of any party to demand a jury trial, would render the language designating only the petitioner as the party who may request a jury trial meaningless. This, too, violates our rules of statutory interpretation. *See Lunsford*, 367 N.C. at 628, 766 S.E.2d at 304. Therefore, based on our well-established rules of statutory construction, only petitioner City of Asheville had the right to request a jury trial. Accordingly, we hold the trial court erred in failing to dismiss respondent Officer Frost's request for a jury trial, and the trial court's 22 December 2015 order is

REVERSED.

Judge DIETZ concurs in a separate opinion.

Judge HUNTER, Jr., dissents in a separate opinion.

DIETZ, Judge, concurring.

The dissent’s reasoning demonstrates that this is a difficult case with issues about which reasonable jurists can disagree. I write separately to highlight what are, in my view, three key reasons why the dissent is unpersuasive.

First, the fact that Rule 38 of the Rules of Civil Procedure applies to the trial court’s review below (and I agree that it does), says nothing of whether Frost, as the respondent, has a right to a jury trial. Rule 38 does not create a substantive right to a jury trial—it merely creates the procedure to request a jury trial where there is a right to one. N.C. Gen. Stat. § 1A-1, Rule 38(a), (b). Were it otherwise, there would be a right to a jury trial in every civil action; there is not. *See Kiser v. Kiser*, 325 N.C. 502, 508, 385 S.E.2d 487, 490 (1989).

Instead, the right to a jury trial in a civil action is conferred in one of two ways: by statute or by our State constitution. A statutory right to a jury trial exists if the right is conferred “in the express language of the statute itself.” *Id.* at 509, 385 S.E.2d at 490. A constitutional right to a jury trial exists if the right “existed by statute or at common law at the time the Constitution of 1868 was adopted.” *Id.* at 507, 385 S.E.2d at 490.

Neither means of conveying a right to jury trial is present here. As explained in the majority opinion, the express language of the statute only confers a right to jury trial on the petitioner, not the respondent. And this Civil Service Act claim, like

the claim for equitable distribution in *Kiser*, “did not exist prior to 1868, but was newly created by the General Assembly”—in this case, by the Civil Service Act of 1953. *Id.* at 508, 385 S.E.2d at 490. Thus, the respondent in these Civil Service Act proceedings does not have a right to demand a jury trial.

Second, I do not agree that the majority opinion reads the term “only” into the statute where it does not exist. The statute says “either party may appeal,” “[t]he appeal shall be effected by filing . . . a petition for trial in superior court,” and “[i]f the petitioner desires a trial by jury, the petition shall so state.” 2009 N.C. Sess. Laws ch. 401, § 7. Thus, the reason that only the petitioner may request a jury trial is not because this Court inserted the word “only” into the text, but because the statute’s plain language only gives that right to the petitioner, not the respondent.

Third, while I acknowledge that we must interpret statutes in a manner that avoids absurd results, the majority’s interpretation does not lead to absurd results. The absurdity canon applies “[w]here the plain language of the statute would lead to patently absurd consequences” that the legislature “could not *possibly* have intended.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 470, (1989) (Kennedy, J., concurring). Permitting only the losing side to request a jury trial in an administrative proceeding is unusual, but it is something the General Assembly certainly *could* have intended. Thus, I do not believe we can invoke the absurdity canon to ignore the statute’s plain language in this case.

No. COA16-577 – *The City of Asheville v. Frost*

HUNTER, JR., Robert N., Judge, dissenting.

The majority concludes North Carolina Session Law 2009-401 allows for a petitioner, and only a petitioner, seeking a trial de novo, the right to a trial by jury. Under the majority’s construction, the option to request a trial by jury is a unilateral right extended only to one party. Because the majority’s textual construction resolves a statutory ambiguity in a manner which misapplied the canons of statutory construction achieves an “absurd” result, I respectfully dissent.

This case concerns an ambiguity created by the Asheville’s Civil Service Act. The ambiguity is whether the statute grants a right to have facts determined by a jury to only the party whom petitions for judicial review from a ruling by the Asheville Civil Service Board or whether that right is also given to the respondent or the other party whom may also cross petition from a ruling.

The General Assembly first codified Asheville’s Civil Service Act (“the Act”) in 1953. The Act’s purpose was to protect the City of Asheville’s employees. *City of Asheville v. Aly*, 233 N.C. App. 620, 623, 757 S.E.2d 494, 498 (2014). The Act established the Asheville Civil Service Board (“the Board”) and charged it with the “duty to make rules for ‘the appointment, promotion, transfer, layoff, reinstatement, suspension and removal of employees in the qualified service.’” *Id.* at 623, 757 S.E.2d at 498 (quoting 1953 N.C. Sess. Laws ch. 757, § 4). Although the Act did not provide a mechanism for judicial review of the Board’s determinations, our Supreme Court

concluded a discharged City employee could petition a trial court to review the Board's decision:

[i]n view of the provisions of the statute creating the Civil Service Board of the City of Asheville, and the procedure outlined in Section 14 thereof, we hold that a hearing pursuant to the provisions of the Act with respect to the discharge of a classified employee of the City of Asheville by said Civil Service Board, is a quasi-judicial function and is reviewable upon a writ of certiorari issued from the Superior Court.

Id. at 623, 757 S.E.2d at 498 (quoting *In re Burris*, 261 N.C. 450, 453, 135 S.E.2d 27, 30 (1964)).

In 1977, our Legislature codified a party's right to a judicial review of the Board's decision by enacting the following provision which is at issue on this appeal:

Within ten days of the receipt of notice of the decision of the Board, *either party* may appeal to the Superior Court Division of the General Court of Justice for Buncombe County for a trial *de novo*. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the fact[s] upon which the petitioner relies for relief. If the *petitioner* desires a trial by jury, the petition shall so state. Upon the filing of the petition, the Clerk of the Superior Court shall issue a civil summons as in [a] *regular civil action*, and the sheriff of Buncombe County shall serve the summons and petition on all parties who did not join in the petition for trial. . . . Therefore, the matter shall proceed to trial as any other *civil action*.

2009 N.C. Sess. Laws 401 § 7 (emphasis added).

This Court interpreted the scope of a *de novo* appeal to the Buncombe County Superior Court from a decision by the Board upholding the discharge of an Asheville

THE CITY OF ASHVILLE V. FROST

HUNTER, JR., J., dissenting

City police officer. *Warren v. City of Asheville*, 74 N.C. App. 402, 328 S.E.2d 859 (1985). In *Warren*, this Court concluded a *de novo* appeal to the trial court “vests a court with full power to determine the issues and rights of all parties involved, *and to try the case as if the suit had been filed originally in that court.*” *Id.* at 405, 328 S.E.2d at 862 (quoting *In re Hayes*, 261 N.C. 616, 622, 135 S.E.2d 645, 649 (1964)) (emphasis added).

“When construing a statute, ‘we are guided by the primary rule of construction that the intent of the legislature controls.’” *Woodlief v. N.C. State Bd. Of Dental Examiners*, 104 N.C. App. 52, 58, 407 S.E.2d 596, 600 (1991) (quoting *In re Hardy*, 294 N.C. 90, 95, 240 S.E.2d 367, 371 (1978)). Here, the Act’s purpose is to ensure Asheville City employees receive fair treatment in all aspects of their employment, including discharge. This purpose is even clearer following the Legislature’s codification of the mechanism allowing for a trial court’s review of the Board’s decision. Furthermore, this Court has ruled a trial court’s *de novo* review following the Board’s decision is a full trial proceeding. *See Warren* at 405-06, 328 S.E.2d at 862. In light of this, I cannot see how the Act or the Legislature ever contemplated, much less intended, for only one party to an appeal from the Board’s decision to have the right to a jury trial.

“Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it its plain and definite meaning,

and are without power to interpolate, or superimpose, provisions and limitations not contained therein.” *Walters v. Cooper*, 226 N.C. App. 166, 169, 739 S.E.2d 185, 187 (2013) (quoting *State v. Camp*, 286 N.C. 148, 152, 209 S.E.2d 754, 756 (1974)). “When a literal interpretation of statutory language yields absurd results, however, or contravenes clearly expressed legislative intent, ‘the reason and purpose of the law shall control and the strict letter thereof shall be disregarded.’” *AVCO Financial Services v. Isbell*, 67 N.C. App. 341, 343, 312 S.E.2d 707, 708 (1984) (quoting *State v. Barksdale*, 181 N.C. 621, 625, 107 S.E. 505, 507 (1921)). “We also assume that the legislature acted with full knowledge of prior and existing law in drafting any particular statute.” *Walters* at 169, 739 S.E.2d 185, 187 (citation omitted).

In concluding only a petitioner may request a jury trial, it seems the majority fails to consider the provision in its entirety. The majority instead focuses on the single statutory phrase, “if the petitioner desires a trial by jury, the petition shall so state.” In interpreting that language, the majority neglects to consider the legislature couched that phrase between the opening words “either party” and the closing sentence, “[t]herefore, the matter shall proceed to trial as any other civil action.” This final sentence, and especially the term “civil action,” directs the reader to Rule 38 of the North Carolina Rules of Civil Procedure: “[a]ny party may demand a trial by jury of any issue triable of right by a jury.” N.C. Gen. Stat. § 1A-1, Rule 38(b) (2016) (emphasis added).

Here, it naturally and logically follows our Rules of Civil Procedure apply. Our Legislature expressly provided “either party” has the right to request a trial *de novo*. Our Legislature further provided this trial *de novo* to proceed as “any other civil action.” Therefore, the invocation of Rule 38 indicates all the consequences of designating this mechanism for judicial review a “civil action” are in effect here: especially the fundamental right to a trial by jury.

The statutory phrase at the cornerstone of the majority’s decision simply serves as the mechanism for a petitioner to request a jury trial in an appeal from the Board’s decision. If the Legislature intended for this provision to mean only a petitioner may ask for a jury trial, the Legislature would have stated its intention by including the word “only.” Rather, the Legislature omitted the term “only” and instead provided for “either party[’s]” appeal to Superior Court to proceed as “any other civil action.” I cannot contemplate another civil action in this State which allows for only one party to designate whether a trial includes a jury.

In concluding only a Petitioner has a right to a jury trial, the majority’s construction superimposes the term “only.” Their view is the Legislature intended for only one party, the petitioning party in the proceeding below, to have the right to a jury trial. It does not account for the situation where both parties petition for review. This leads to the illogical result in violation of the cannon of statutory construction prohibiting an interpretation that leads to an absurd result. *AVCO*

Financial Services at 343, 312 S.E.2d at 708. At best, this interpretation results in a race between the City and the discharged employee to first appeal the Board's decision³. At worst, this interpretation creates an incentive for a party to lose its proceeding in front of the Board. In order for a party to qualify as a petitioner, and have the right to a jury trial, a party must first lose before the Board.

Mindful of the Act's purpose to protect discharged City employees, and the reasoning behind the Legislature's subsequent codification of section 7, I conclude either a petitioner or a respondent has a right to a jury trial following the Board's determination. I would therefore affirm the trial court's order denying Petitioner's motion to strike Respondent Frost's demand for a jury trial.

³ In fact, this is exactly what happened. Frost filed his petition for a trial *de novo* approximately 45 minutes after the City of Asheville filed its petition.