

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA, CAPE TOWN

Reportable

Labour Appeal Court case no: CA14/18

Labour Court case no: C297/17

In the matter between:

LEGAL AID SOUTH AFRICA

Appellant / Respondent *a quo*

and

DANIEL CORNELIS THEUNISSEN

Respondent/Applicant *a quo*

Heard: 30 August 2019

Delivered: 25 November 2019

Summary: Breach of contract – specific performance – employee contending that employer unlawfully terminating his contract when he reached the retirement age of 60 – employer amending terms and conditions that set the retirement at 60 - employee submitting that in terms of his terms and condition of employment the retirement age is 65- court holding that the determination of the dispute revolves around the interpretation of the employer's terms and

condition governing the employment – court finding that: In the absence of any express entitlement to retire at the age of 65 years in employee’s letter of employment, the position applicable to him was governed by Legal Aid SA’s terms and conditions, as amended. Once the 2007 terms and conditions had been revised, employee no longer had any entitlement to retire at 65 years. Instead, the retirement age was set at 60 years in the revised terms and conditions. It follows that employee’s retirement age is 60 years, as governed by the 2009 and subsequent terms and conditions, as his individual contract of employment does not fall within the narrow ambit of the savings clause. In the light of employee’s failure to object, and the extensive consultative processes that Legal Aid SA undertook in putting in place the 2009, 2012 and 2015 terms and conditions, the contention that the retirement age was altered unilaterally lacks foundation. Appeal upheld and Labour Court’s judgment set aside.

Coram: Davis JA, Murphy and Kathree-Setiloane AJJA

JUDGMENT

KATHREE-SETILOANE AJA

[1] This is an appeal against the judgment and order of the Labour Court (Prinsloo J) reinstating the respondent, Mr Daniel Cornelis Theunissen (“Mr Theunissen”), on the grounds that his employment was prematurely terminated by the appellant, Legal Aid South Africa (“Legal Aid SA”) when he reached 60 years of age.

[2] The appeal concerns the question whether the retirement age of Mr Theunissen who was employed by Legal Aid SA is 65, rather than 60.

Background

[3] Legal Aid SA is an independent public entity, established by section 2 of the Legal Aid South Africa Act.¹ The objects of Legal Aid SA are to make available legal aid and advice, to provide legal representation to persons who

¹ 39 of 2014.

otherwise would not be able to access such representation, and to provide education and information on legal rights and obligations.² The board of Legal Aid SA is empowered to appoint employees in light of these objects, “on such conditions and at such remuneration ... to assist in the performance of its functions”.³

- [4] Mr Theunissen was appointed by Legal Aid SA as a High Court Unit Professional Assistant on 1 May 2008. His letter of employment, dated 7 April 2008, provides for a range of employment conditions including a provision for termination of employment.

- [5] Mr Theunissen’s letter of employment is, however, silent on his retirement age. At the time of his appointment, Legal Aid SA had in place the Human Resources Policy and Procedure Manual 2007, which included terms and conditions of employment (“2007 terms and conditions of employment”). Clause 3.7.1 of these terms and conditions provided that the retirement age for all employees of Legal Aid SA is 65 years. The 2007 terms and conditions are generalised. They applied, in terms of clause 1, to all employees of the Legal Aid Board (the predecessor of Legal Aid SA), irrespective of their position within the organisation, their seniority or the length of their service with the organisation.

- [6] In terms of clause 3.7.1 of the 2007 terms and conditions, the “[r]etirement age for all employees was sixty-five (65) years”.

- [7] In addition, clause 3.11 of these terms and conditions refers to “*flexibility*” as an “inherent requirement” and records, in this context, that Legal Aid SA will “consult appropriately if there is a need to vary conditions of employment due to operational needs”.

- [8] The core value of flexibility is also referred to in paragraph 16 of Mr Theunissen’s letter of employment which emphasises that:

² Section 3 of the Legal Aid South Africa Act.

³ Section 18(1) read with section 17(3)(b) of the Legal Aid South Africa Act 39 of 2014.

'In order to achieve the professional service excellence to which [Legal Aid SA] is committed it is consequently necessary that employees undertake to accept and adapt to changes in working conditions with the appropriate degree of flexibility indicated by an acknowledgement that the needs of [Legal Aid SA's] clients are paramount. By accepting this offer of employment you agree that you will be flexible in adapting to change in your working conditions.'

[9] The Minister of Justice and Constitutional Development, in consultation with the Minister of Finance, approved the 2009, 2012 and 2015 terms and conditions.

[10] The 2009, 2012 and 2015 terms and conditions provide for a retirement age of 60 years of age, rather than 65 years. Clause 3.8.1 of the 2009 terms and conditions provides:

'Retirement age for employees is sixty (60) years save in respect of employees

(i) expressly entitled to retire at 65 in terms of their individual contracts of employment with the Legal Aid SA; or

(ii) who had reached the age of 55 years on or before 1 August 2009 whilst being in the permanent employment of the Legal Aid SA, in respect of whom the retirement age shall be 65..."

("the savings clause")

[11] Clause 3.8.2 of the 2009 terms and conditions provides that "when employees reach the age of 60 they will be compelled to retire". Clauses 3.8.1 and 3.8.2 of the 2012 terms and conditions, and clauses 3.9.1 and 3.9.2 of the 2015 terms and conditions are identical to clauses 3.8.1 and 3.8.2 of the 2009 terms and conditions.

[12] Clause 3.9.2 of the 2015 terms and conditions is unambiguous: "*When employees reach the age of 60 they will be compelled to retire*". The exceptions to this position are captured in the savings clause (clauses 3.9.1(a) and (b).

- [13] Legal Aid SA took the position that because Mr Theunissen did not fall within the ambit of either the first or the second part of the savings clause, his retirement age is 60 years. Accordingly, on 29 August 2016, it wrote to Mr Theunissen advising him that he was due for retirement on 30 June 2017, when he turned 60 years of age.
- [14] Mr Theunissen's services were duly terminated on 30 June 2017.
- [15] Aggrieved by what he claimed to be the early termination of his contract of employment, Mr Theunissen launched proceedings in the Labour Court in terms of section 77(3) of the Basic Conditions of Employment Act⁴ ("BCEA"). Mr Theunissen contended that Legal Aid SA breached his employment contract when it terminated his employment on turning 60 years old.

In the Labour Court

- [16] On 20 June 2018, the Labour Court handed down its judgment and order. It ordered the reinstatement of Mr Theunissen on the grounds that he was entitled to retire at the age of 65, and that Legal Aid SA breached his contract of employment by terminating his employment on turning 60 years old.
- [17] The Labour Court records as "common cause" that Mr Theunissen's "written agreement ... as supplemented by [Legal Aid SA's] policies and procedures" was regarded by Legal Aid SA as Mr Theunissen's "individual contract of employment". It then held that "the terms and conditions contained in [Legal Aid SA's] 'Human Resources Policy and Procedure Manual 2007' ... were incorporated and formed part of the Applicant's individual contract of employment".
- [18] The Labour Court furthermore found that Mr Theunissen's individual contract of employment comprised both his letter of employment (which contained specific, individual terms of employment) as well as the 2007 terms and conditions. It, therefore, held that Mr Theunissen's contract of employment falls within the ambit of the first part of the savings clause in the 2009, 2012 and 2015 terms and conditions respectively, and he was therefore specifically

⁴ No. 75 of 1997.

entitled to retire at the age of 65 years. Lastly, the Labour Court found that Legal Aid SA “*unilaterally*” changed Mr Theunissen’s contract of employment. It accordingly made the following order:

- ‘1. [Mr Theunissen’s] retirement age in terms of his contract of employment with [Legal Aid SA] is declared to be 65 years;
2. [Legal Aid SA’s] decision to terminate [Mr Theunissen’s] employment on 30 June 2017 upon his attaining the age of 60 years constituted a breach of the terms of [his] contract of employment;
3. The termination of [Mr Theunissen’s] employment is set aside;
4. [Mr Theunissen] is reinstated in [Legal Aid SA’s] employ on the same terms and conditions which applied as at 30 June 2017, retrospectively with effect from 1 July 2017;
5. [Legal Aid SA] is to pay the costs.

[19] The appeal lies against this order with leave of the Labour Court.

The Appeal

Legal Aid SA’s submissions

[20] Central to the determination of the issue on appeal is the interpretation of the savings clause which is expressed in identical terms in the 2009, 2012 and 2015 terms and conditions. Legal Aid SA argues that in interpreting the savings clause, the Labour Court erred in three respects.

- (a) First, it incorrectly interpreted the term “individual contracts of employment” as used in the 2009, 2012 and 2015 terms and conditions respectively, as applying to all existing employees (i.e. as at 2009). It argues that this interpretation effectively renders the word “*individual*” as well as the entire savings clause superfluous. In other words, notwithstanding the purpose of the savings clause which was to provide for two narrow exceptions to the compulsory retirement age of 60, on Mr Theunissen’s interpretation it is regarded as redundant.

- (b) Second, its erroneous interpretation also renders the second part of the savings clause pointless, as all existing (i.e. at the time of the 2009 terms and conditions) employees are excluded from the 60-year retirement age, whether or not they had reached the age of 55 in 2009. This interpretation of the savings clause bears no relation to its wording, read plainly or contextually and undermines its core purpose; and
- (c) Thirdly, the Labour Court failed to take account of its contractual right to terminate Mr Theunissen's contract of employment on at least one month's notice, which it had given him.

Mr Theunissen's submissions

[21] Mr Theunissen does not contest the lawfulness or contractual permissibility of the successive revisions of the terms and conditions. Rather, he contends that on its express wording, the savings clause makes the new retirement age of 60 years inapplicable to him thus entitling him to retire at the age of 65. In addition, he contends that properly interpreted, his individual contract of employment includes both his letter of employment and the generalised 2007 terms and conditions, through express reference and incorporation by virtue of the introductory words to clause 3.8.7.1 of the 2009 terms and conditions which reads:

"[U]nless specifically otherwise agreed in an individual contract of employment with a specific employee, the same terms and conditions apply in respect of both permanent employees and employees on a fixed term employment contract".

[22] He furthermore contends that the letter of appointment and the 2007 general terms and conditions together reflected the terms of his individual contract of employment, and the reference is to "their contracts of employment as individuals" in the employment of Legal Aid SA. The term "individual contracts of employment", he points out, was specifically included in order to preserve individual employees' existing rights of retirement at the age of 65.

Interpretation of the savings clause

- [23] In interpreting the savings clause, the Court is required by *Endumeni*⁵ to apply a purposive, contextual, interpretation that takes account of the objects sought to be achieved by the creation and approval of the 2009 terms and conditions, and all subsequent terms and conditions. It is required to interpret these terms and conditions in a manner that is consistent with the plain and unambiguous wording of the clauses, and ensure that all words used have a functional meaning, and none is rendered superfluous or obsolete.⁶
- [24] The Labour Court correctly concluded that the *Endumeni* approach applies but unfortunately erred in failing to apply this indicated approach to its interpretation of the 2009 terms and conditions, as well as its successive 2012 and 2015 terms and conditions.
- [25] The core purpose of the 2009, 2012 and 2015 terms of conditions was to change the generalised 2007 terms and conditions; in particular the age of retirement of 65 years that applied to all employees of Legal Aid SA regardless of their seniority, length of service etc due to its operational needs. This is common cause. However, the interpretation adopted by the Labour Court runs counter to this purpose.
- [26] Further, the interpretation adopted by the Labour Court rendered words contained in both clauses 3.8.1 (i) and (ii) of the 2009 terms and conditions as well as both clauses 3.8.1 (a) and (b) of the 2012 terms and conditions and clauses 3.9.1(a) and (b) of the 2015 terms and conditions, entirely superfluous.
- [27] Properly construed, the term “their individual contracts of employment” as used in the 2009, 2012 and 2015 terms and conditions suggests a document extraneous to the terms and conditions. Interpreted as such, both clauses

⁵ *Natal Municipal Pension Fund v Endumeni* 2012 (4) SA 593 (SCA).

⁶ In *Wellworths Bazaars Limited v Chandlers Limited and Another* 1947 (2) SA 37 (A) 43, the Appellate Division quoted with approval the following passage from *Ditcher v Denison*:

“It is a good general rule in jurisprudence that one who reads a legal document, whether public or private, should not be prompted to ascribe – should not, without necessity or some sound reason impute – to its language tautology or superfluity, and should rather at the outset be inclined to suppose every word intended to have some effect or be of some use.”

3.8.1 (i) and (ii) of the 2009 terms and conditions (and its counterpart in clause 3.8.1(a) and (b) of the 2012 terms and conditions and clauses 3.9.1(a) and (b) of the 2015 terms and conditions) have a functional meaning. The savings clause in all three versions specifically limits its ambit to employees who expressly are entitled to retire at 65 years of age in terms of their individual contracts of employment.

[28] Since Mr Theunissen's letter of employment is silent on his retirement age, it cannot be said that he is expressly (or tacitly for that matter) entitled to retire at the age of 65 in terms of his individual contract of employment with Legal Aid SA. In the absence of any express entitlement to retire at the age of 65 years in Mr Theunissen's letter of employment, the position applicable to him was governed by Legal Aid SA's terms and conditions, as amended. Once the 2007 terms and conditions had been revised, Mr Theunissen no longer had any entitlement to retire at 65 years. Instead, the retirement age was set at 60 years in the revised terms and conditions.

[29] The savings clause contained in clause 3.8.1(i) of the 2009 terms and conditions and 3.8.1(a) of the 2012 terms and conditions and 3.9.1(a) of the 2015 terms and conditions, only apply to employees whose individual contracts of employment expressly provide for their retirement age to be at 65 years of age. It is common cause that at no point during the consultative processes did Mr Theunissen indicate any objection to the proposed changes to the 2007 terms and conditions or otherwise seek to conclude an agreement with Legal Aid SA specifying that his individual retirement age would be 65 years.

[30] It follows that Mr Theunissen's retirement age is 60 years, as governed by the 2009 and subsequent terms and conditions, as his individual contract of employment does not fall within the narrow ambit of the savings clause as provided by clause 3.8.1(i) of the 2009 terms and conditions and its counterparts in the subsequent 2012 and 2015 terms and conditions.

- [31] Clause 3.8.1(ii) of the 2009 terms and conditions and its counterparts in the 2102 and 2013 terms and conditions are also instructive. They provide as follows:

'Retirement age for employees is sixty (60) years save in respect of employees who had reached the age of 55 years on or before 1 August 2009 whilst being in the permanent employment of the Legal Aid SA, in respect of whom the retirement age shall be 65.'

- [32] Prior to the changes effected by the 2009, 2012 and 2015 terms and conditions, all employees of Legal Aid SA were required to retire on **reaching** 65 years of age in terms of the generalised 2007 terms and conditions. Clause 3.8.1(ii) of the 2009 terms and conditions (and its counterparts in the 2012 and 2015 terms and conditions) provided a second category of employee, additional to the category envisaged in clause 3.8.1(i), permitting permanent employees, who were 55 years or older on 1 August 2009, to retire at 65 years of age.

- [33] On the interpretation contended for by Mr Theunissen, clause 3.8.1(ii) would be rendered entirely superfluous. The effect of this would be that those employees who were 55 years or older on 1 August 2009 would already have the right to retire at 65 years of age (by virtue of the 2007 terms and conditions being incorporated into their "individual" contracts of employment). Were this to be the position, then there would be no need for clause 3.8.1(ii) specifically to regulate the position with respect to this category of employee. Thus, given the presumption against the inclusion of superfluous words, I am unable to conclude that Mr Theunissen's individual contract of employment incorporated the provisions of the 2007 terms and conditions.

- [34] The consequence of the interpretation favoured by the Labour Court would be that all employees who worked for Legal Aid SA, when the 2007 terms and conditions came into effect, would also have incorporated into their "*individual contracts of employment*" the 2007 terms and conditions. But this is a flawed construction as it renders incomprehensible and obsolete a number of clauses in the 2009, 2012 and 2015 terms and conditions; most significantly the two

parts of the savings clause (in all three versions respectively) which were unambiguously drafted to avoid this implication.

- [35] If the position advanced by Mr Theunissen was intended, then one would have expected the inclusion of a clause in the 2009, 2012 and 2015 terms and conditions respectively, expressly stipulating that the 60-year retirement age only applies prospectively, or that all persons employed prior to the date of coming into force of the 2009 terms and conditions are entitled to work until 65 years of age. In other words, if the intention was to save the retirement age for all existing employees as at 2007, the clause would have expressly said so, but it did not. This failure is edifying.
- [36] The reference in the first part of the savings clause (in all three versions of the terms and conditions) to “*individual contracts of employment*” is not a reference to letters of employment read with the 2007 terms and conditions (that is, with those terms and conditions necessarily incorporated into the letters of employment). Instead, the first part of the savings clause in all three versions of the terms and conditions makes it clear that all Legal Aid SA’s employees – both existing and future –are subject to the new retirement age of 60 years, subject only to them not falling into one of two narrow exceptions. Since Mr Theunissen does not fall into either of these exceptions, he is outside the ambit of the savings clause and is not entitled to retire at the age of 65 years.
- [37] Additionally, the Labour Court erred in recording that Mr Theunissen’s “written agreement ... as supplemented by [Legal Aid SA’s] policies and procedures” was regarded by Legal Aid SA as Mr Theunissen’s “individual contract of employment”. This error is repeated in the third paragraph of the judgment, where it is recorded as common cause that “the terms and conditions contained in [Legal Aid SA’s] ‘Human Resources Policy and Procedure Manual 2007’ ... were incorporated and formed part of the Applicant’s individual contract of employment.” Again, this was never common cause. The evidence makes clear that Legal Aid SA’s stance throughout was to the contrary i.e. that only the written agreement between Mr Theunissen and Legal Aid SA was his “individual contract”, not the 2007 terms and conditions.

Retirement age not changed unilaterally

[38] I agree with the contention advanced by Legal Aid SA that the Labour Court erred in concluding that Legal Aid SA “unilaterally” changed Mr Theunissen’s contract of employment, for two primary reasons. First, this conclusion ignores the extensive consultative processes that occurred prior to the approval and publication of the 2009, 2012 and 2015 terms and conditions. Second, it fails to account for Mr Theunissen’s failure to object to the amendments during the consultative processes.

[39] Mr Theunissen does not dispute that Legal Aid SA possessed the power to vary the general conditions of employment in line with operational requirements, after appropriate consultation with relevant stakeholders (including employees) has occurred. Significantly, the 2007 terms and conditions included a flexibility provision in clause 3.11. This provision is reproduced in its entirety as clause 3.12 and clause 3.14 respectively in the 2009, 2012 and 2015 terms and conditions. Properly interpreted, this provision empowered Legal Aid SA to vary employees’ conditions of employment where there was a need to do so, provided it consulted with employees in advance.

[40] The core value of flexibility is also referred to in Mr Theunissen’s individual letter of employment as clause 16, in terms of which it is recorded that—

‘In order to achieve the professional service excellence to which the Legal Aid Board is committed it is consequently necessary that employees undertake to accept and adapt to changes in working conditions with the appropriate degree of flexibility indicated by an acknowledgement that the needs of the Legal Aid Board’s clients are paramount. By accepting this offer of employment you agree that you will be flexible in adapting to change in your working conditions.’

[41] Legal Aid SA was contractually entitled to change the terms and conditions of employment, and employees were obliged to accept and adapt to these changes. Mr Theunissen accepted as much when he signed the employment contract. Moreover, before the 2009, 2012 and 2015 terms and conditions

were put in place, a comprehensive and extensive consultation process was followed. It involved circulating a draft policy to all employees, provisional approval by the board, and recirculation to all employees for comments. The board then took those comments into consideration before approving the terms and conditions. Following this, the Minister of Justice and Constitutional Development (as he then was), in consultation with the Minister of Finance, approved the terms and conditions.

[42] Thus, contrary to the Labour Court's finding, this process was not unilateral, but rather multilateral and consultative, with employees afforded numerous opportunities to participate in the process and to safeguard their individual interests.

[43] The consultative process followed by Legal Aid SA is consistent with the value of flexibility. It is not in dispute that the consultative process was implemented prior to the introduction of the 2009, 2012 and 2015 terms and conditions.

[44] Section 18(2) of the Legal Aid South Africa Act 39 of 2014 provides that when the Legal Aid SA terms and conditions of employment are determined, the provisions of the Labour Relations Act 66 of 1995 relating to collective bargaining are applicable. Mr Theunissen was represented by his union. Although in a position to do so, his union did not declare a dispute or resort to industrial action. What it did, however, was to provide an initial objection to the proposed change to the retirement age.

[45] In response, Legal Aid SA proposed the inclusion of the second part of the savings clause which provides that employees who reach the age of 55 years on or before 1 August 2009 whilst in the permanent employ of Legal Aid SA may retire at 65 years". No further objections to retain the retirement age as 65 years were made by either Mr Theunissen or his union. In the light of Mr Theunissen's failure to object, and the extensive consultative processes that Legal Aid SA undertook in putting in place the 2009, 2012 and 2015 terms and conditions, the contention that the retirement age was altered unilaterally lacks foundation.

[46] Accordingly, I see no fault in the conduct of Legal Aid SA. It put in place the revised terms and conditions in furtherance of its statutory objectives, and only did so after an extensive consultation process. The approved terms and conditions further accommodated comments received by Legal Aid SA's employees and the representative trade union, and were only made effective pursuant to ministerial approval. As far as Mr Theunissen is concerned, he was given notice well in advance of the termination of his employment as a result of reaching the retirement age of 60 years.

Acquiescence

[47] In my view, Mr Theunissen acquiesced to the changes to his retirement age pursuant to the 2009, 2012 and 2015 terms and conditions. In *McWilliams v First Consolidated Holdings*, the Appellate Division observed:

'I accept that 'quiescence is not necessarily acquiescence' and that a party's failure to reply to a letter asserting the existence of an obligation owed by such party to the writer does not always justify an inference that the assertion was accepted as the truth. But in general, when according to ordinary commercial practice and human expectation firm repudiation of such assertion would be the norm if it was not accepted as correct, such party's silence and inaction, unless satisfactorily explained, may be taken to constitute an admission by him of the truth of the assertion, or at least will be an important factor telling against him in the assessment of the probabilities and in the final determination of the dispute. And, an adverse inference will the more readily be drawn when the unchallenged assertion had been preceded by correspondence or negotiations between the parties relative to the subject matter of the assertion.'⁷

[48] Notably, Legal Aid SA commenced the consultation process in relation to the 2009 terms and conditions by emailing a version to staff in which "revisions, changes or new inclusions are indicated in bold italic font, strike through and a line in the right hand margin". It was thus expected of him to speak up, had he any objections to the altered retirement age. He, however, elected not to

⁷ *McWilliams v First Consolidated Holdings* 1982 (1) All SA 245 (A) at 10E-G.

object, thereby acquiescing to the revised retirement age of 65. He must be held to this election.

Entitlement to terminate the Employment Contract on notice

[49] Legal Aid SA was entitled to terminate its contract of employment with Mr Theunissen. Clause 12.1 of Mr Theunissen's letter of employment deals with termination of employment, and provides:

'One (1) calendar month's written notice of termination of service is required from either [Mr Theunissen] or the Legal Aid Board.'

[50] All that Legal Aid SA was required to do to lawfully terminate Mr Theunissen's employment contract was to give him at least one month's notice, which it did. It, in fact, provided Mr Theunissen with 10 months' notice; well in excess of the minimum period contractually stipulated to terminate his employment. This constituted an exercise of Legal Aid SA's contractual rights under the letter of employment.

[51] I accordingly, consider the Labour Court to have erred in ordering Mr Theunissen's reinstatement. This order effectively amounts to specific performance which is not readily granted by our courts in the context of an employment contract.⁸

[52] For all these reasons, I conclude that the appeal must succeed.

Costs

[52] This is not an unfair dismissal claim brought under the Labour Relations Act 66 of 1995, but rather a civil claim for breach of contract. In the ordinary course, costs would follow the result in both proceedings in the Labour Court and in this Court. However, Legal Aid SA does not seek a costs order against Mr Theunissen in the appeal and in the Labour Court.

Order

⁸ *Masetlha v President of the Republic of South Africa* 2008 (1) BCLR; 2008 (1) SA 566 (CC) para 88; *Selodi v Sun International (Bophuthatswana) Ltd* [1993] 3 All SA 21; 1993 (2) SA 174 (BG) 186I-190E.

[53] In the result, I order that:

1. The appeal is upheld with no order as to costs.
2. The order of the Labour Court is set aside and replaced with the following order:

“The application is dismissed with no order as to costs”.

F. Kathree-Setiloane AJA

DM Davis JA and J Murphy AJA concurring.

APPEARANCES:

FOR THE APPELLANT:

A Dodson SC with A Finn

Instructed by Legal Aid South Africa

FOR THE RESPONDENT:

RGL Steltzner SC

Instructed by Arlene Duval Attorneys