

Rel: June 12, 2020

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

---

2190075

---

City of Trussville

v.

Personnel Board of Jefferson County

Appeal from Jefferson Circuit Court  
(CV-19-904034)

THOMPSON, Presiding Judge.

The City of Trussville ("the city") appeals from a preliminary injunction that the Jefferson Circuit Court ("the trial court") entered prohibiting the city from separating

2190075

from the Personnel Board of Jefferson County ("the PBJC") and forming its own civil-service system.

The PBJC was created by two acts passed by the Alabama Legislature in 1935 and 1945, respectively, which together are commonly referred to as "the enabling act." Act No. 284, Ala. Acts 1935, and Act No. 248, Ala. Acts 1945. Pursuant to the enabling act, the PBJC was authorized to administer the civil-service system for Jefferson County and for municipalities within the county whose populations were 5,000 or more according to the last federal census.

In 1977, the legislature passed two amendments to the enabling act at the same time on the same day. The amendments each purport to be the most current version of the enabling act, but they contain inconsistent or contradictory provisions. It appears that those inconsistencies have never been addressed by an appellate court, and we are not asked to do so in this case. The PBJC points out in its appellate brief that, at trial and on appeal, the parties relied exclusively on the language in the higher numbered act, Act No. 782, Ala. Acts 1977; thus, this court, too will rely on

2190075

the language in Act No. 782. That act states, in pertinent part:

"In the event the governing body of any municipality whose corporate limits lie partly within [Jefferson C]ounty and partly within any other county and having a population of five thousand or more inhabitants, according to the last federal census, or any succeeding federal census, shall adopt a resolution in favor of such municipality coming under the provisions of this [A]ct, and transmit or cause to be transmitted a certified copy of such resolution to the [PBJC], then, sixty days after the effective date of such resolution, the provisions of this Act shall apply to any such municipality having a required number of inhabitants and whose corporate boundaries lie party within [Jefferson C]ounty and partly without said county. Any municipality which adopts a resolution and comes under the provisions of this Act, as herein provided, shall thereafter remain under this Act, and may not repeal or rescind such action either by the adoption of a resolution or otherwise."

Act No. 782, § 1 (amending § 2 of Act No. 248).

The city lay entirely within Jefferson County until June 1986, when the city annexed property in St. Clair County, thus extending its boundaries into St. Clair County. The federal census of 1990 showed that, for the first time, the city had reached a population of more than 5,000. In September 1991, the PBJC passed a resolution to exercise jurisdiction over the city's qualified public employees. In October 1991, the city filed an action in the trial court against the PBJC in an

2190075

effort to prevent its inclusion within the PBJC's authority. One year later, on October 3, 1992, the city and the PBJC entered into a settlement agreement ("the agreement") pursuant to which the city agreed that all of its classified and regular employees were deemed to be under the PBJC's jurisdiction. Furthermore, the city agreed "to comply with all of the rules and regulations" of the PBJC. The parties agreed to the entry of a final judgment incorporating the agreement, which was binding on them, their successors, and assigns. The trial court entered the judgment on October 29, 1992 ("the 1992 judgment").

On June 20, 1992, and again on May 5, 2005, the city annexed additional property outside of Jefferson County. On April 23, 2019, the city passed an ordinance forming its own civil-service system. On September 8, 2019, the city filed this action in the trial court seeking a judgment declaring that it had the authority to separate from the PBJC and to create its own civil-service system. The city also began advertising for openings for public-employee positions and hired a personnel director, among other things.

2190075

On October 8, 2019, the PBJC filed a motion to dismiss the city's action on the ground that it was barred by the doctrines of judicial estoppel and res judicata. Specifically, the PBJC argued that, because of the agreement reached in the previous action and the 1992 judgment, the city could not sustain the current action. Also on October 8, 2019, the PBJC filed a motion for a temporary restraining order ("TRO") and for a preliminary injunction and attached four exhibits in support of the motion.

On October 10, 2019, the trial court held a hearing on the motion for a TRO and a preliminary injunction. The trial court heard the arguments of the parties at that hearing, but no testimony was taken at that time. We note, however, that the record on appeal does not show that the city ever objected to the exhibits the PBJC submitted in support of the motion for a TRO and a preliminary injunction.

On October 10, 2019, the trial court entered an order granting the PBJC's request for a preliminary injunction. The order read:

"This matter came before the court on a motion for a temporary restraining order and preliminary injunction. Based upon the Court's review of the written submissions of the Parties and extensive

oral argument by counsel, the court finds that the material facts are without dispute, that [PBJC] faces an imminent threat of irreparable harm in the absence of injunctive relief which substantially outweighs any harm that may be caused to [the city] by the imposition of the injunctive relief sought. Therefore, the court concludes that the motion is due to be and is hereby granted and further orders as follows:

1. [The city] is ordered and directed to cease and desist from:

a. Separating or purporting to separate from the PBJC;

b. Forming its own civil service system; or

c. Taking any actions related thereto or in furtherance thereof.

2. [The city] is ordered and directed to comply with all PBJC Rules and Regulations."

The order also stated that the preliminary injunction would stay in effect until the final disposition of the matter. The city filed a timely appeal of the order granting the preliminary injunction to the Alabama Supreme Court on October 21, 2019. See Rule 4(a)(1), Ala. R. App. P. The Supreme Court transferred the case to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

2190075

On appeal, the city argues that the trial court entered the preliminary injunction without evidence or with insufficient evidence to support its decision to grant the injunction. It also argues that the order fails to meet the requirements of Rule 65(d)(2), Ala. R. Civ. P.

"When reviewing a preliminary injunction, this Court must consider both whether the evidence in the record supports the issuance of the preliminary injunction and whether the form of the preliminary-injunction order itself complies with the requirements of Rule 65(d)(2), Ala. R. Civ. P." Stephens v. Colley, 160 So. 3d 278, 282 (Ala. 2014).

"When this Court reviews the grant or denial of a preliminary injunction, "[w]e review the ... [c]ourt's legal rulings de novo and its ultimate decision to issue the preliminary injunction for [an excess] of discretion." Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008) (quoting Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428, 126 S.Ct. 1211, 163 L.Ed. 2d 1017 (2006))."

Monte Sano Research Corp. v. Kratos Defense & Sec. Solutions, Inc., 99 So. 3d 855, 861-62 (Ala. 2012).

"The decision to grant or to deny a preliminary injunction is within the trial court's sound discretion. In reviewing an order granting a preliminary injunction, the Court determines whether the trial court exceeded that discretion."

2190075

SouthTrust Bank of Alabama, N.A. v. Webb-Stiles Co.,  
931 So. 2d 706, 709 (Ala. 2005).

"A preliminary injunction should be issued only when the party seeking an injunction demonstrates:

""(1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the [party opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction].""

Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003) (quoting Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994)).

"To the extent that the trial court's issuance of a preliminary injunction is grounded only in questions of law based on undisputed facts, our longstanding rule that we review an injunction solely to determine whether the trial court exceeded its discretion should not apply. We find the rule applied by the United States Supreme Court in similar situations to be persuasive: 'We review the District Court's legal rulings de novo and its ultimate decision to issue the preliminary injunction for abuse of discretion.' Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428, 126 S.Ct. 1211, 163 L.Ed. 2d 1017 (2006)...."

Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1175-76 (Ala. 2008).



2190075

Rule 65(d)(2), Ala. R. Civ. P., provides, in pertinent part, that "[e]very order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; [and] shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; ...."

In Monte Sano Research Corp., supra, our supreme court held that a recitation of the elements required to warrant the entry of a preliminary injunction is insufficient to meet the requirements of Rule 65(d)(2). In that case, the judgment granting the preliminary injunction stated:

"This matter is before the Court on [Kratos's] Motion for Preliminary Injunction against Defendants Steven L. Thornton ("Thornton"), Steven B. Teague ("Teague") and Monte Sano Research Corporation ("MSRC") (collectively referred to as "Defendants"). A hearing on this motion was held before this Court on July 19-20, 2011. After considering the evidence and testimony, arguments from counsel, and briefs submitted in this action, [Kratos's] Motion is hereby GRANTED.

"The Court finds that [Kratos has], under the facts and circumstances of this case, a protectable interest in [its] relationships with [its] employees, customers, including the United States Army, and in [its] confidential information. The Court further finds that there is a substantial likelihood that [Kratos] will prevail on the merits of [its] breach of duty of loyalty claims against Thornton and Teague, [its] breach of contract claims

2190075

against Thornton and Teague and [its] tortious interference claims against Thornton, Teague, and MSRC. The Court additionally finds that a balancing of the harms favors granting this injunction and that irreparable injury to [Kratos] will result if a preliminary injunction is not issued."

99 So. 3d at 862. The trial court then enjoined MSRC, Thornton, and Teague from certain enumerated conduct. Id. at 863.

Our supreme court held that "an examination of the trial court's order reveals that it violated Rule 65(d)(2), Ala. R. Civ. P., by failing to provide the reasons for the issuance of the injunction and failing to be specific in its terms." Id. After quoting from the rule, the court explained:

"It is apparent that the order does not comply with Rule 65(d)(2). Here, although the trial court does recite three of the four requirements for the issuance of a preliminary injunction as outlined in Holiday Isle, [ LLC v. Adkins, 12 So. 3d 1173 (Ala. 2008)], and does state that Kratos had established each of those requirements, it does not give specific reasons for its decision. The trial court did not address whether an adequate remedy at law existed for Kratos. Pursuant to Rule 65, it is mandatory that a preliminary-injunction order give reasons for the issuance of the injunction, that it be specific in its terms, and that it describe in reasonable detail the act or acts sought to be restrained. Therefore, because the provisions of Rule 65(d)(2) were not complied with and because there was no evidence of an irreparable injury or the lack of an adequate remedy at law, the trial court erred in issuing the preliminary injunction."

2190075

99 So. 3d at 863.

In Stephens v. Colley, *supra*, our supreme court reversed an order granting a preliminary injunction because it also failed to set forth the reasons for its issuance. In that case, our supreme court stated:

"Pursuant to Rule 65, it is mandatory that a preliminary-injunction order give reasons for the issuance of the injunction, that it be specific in its terms, and that it describe in reasonable detail the act or acts sought to be restrained.' Monte Sano Research Corp., 99 So. 3d at 863. The February 27, 2014, order in this case is sufficiently specific in its terms and describes in reasonable detail the acts sought to be restrained; however, it contains no explanation of the reasons for its issuance. Instead, the order opens by stating that the court has 'considered [Colley's] motion for injunctive relief [and] finds said motion well taken.' Then the order immediately proceeds to detail the specific acts that it requires or prohibits. What is missing from the order is any discussion of the reasons Colley's motion for injunctive relief was 'well taken.'"

160 So. 3d at 283. The Stephens court explained:

"This Court has repeatedly held that the language of Rule 65(d)(2) is mandatory and requires that an order issuing a preliminary injunction state reasons for issuing the injunction and that it be specific in its terms.' Butler v. Roome, 907 So. 2d 432, 434 (Ala. 2005). Moreover, we have repeatedly reaffirmed the mandatory nature of Rule 65(d)(2) in every case in which we have considered the issue. See, e.g., Marathon Constr. & Demolition, [LLC v. King Metal Recycling and Processing Corp.], 129 So. 3d [272] at 279 [(Ala. 2013)] (concluding that the trial court

'exceeded the scope of its discretion in issuing the ... preliminary injunction because it did not comply with the requirements set forth in Rule 65'); Monte Sano Research Corp., 99 So. 3d at 863 ('[A]n examination of the trial court's order reveals that it violated Rule 65(d)(2), Ala. R. Civ. P., by failing to provide the reasons for the issuance of the injunction....'); Walden v. ES Capital, LLC, 89 So. 3d 90, 111 (Ala. 2011) ('Because the reasons for the issuance of the injunction were clearly indicated on the face of the order and because those reasons were, as demonstrated by the present case, well founded, we reject [the appellant's] contentions that the trial court's order fails to satisfy the mandatory requirements of Rule 65(d)(2).'); and Hall v. Reynolds, 27 So. 3d 479, 481 (Ala. 2009) ('Although the trial court may have intended to grant injunctive relief by simply entering a judgment in favor of the [appellees], it did not do so, and it followed none of the mandatory requirements of Rule 65(d)(2), Ala. R. Civ. P.'). In sum, the circuit court's failure to include in the preliminary-injunction order the reasons for granting Colley's motion for injunctive relief requires the reversal of that order regardless of the fact that the circuit court presumably had its reasons for granting the order, though those reasons were not articulated in the order."

160 So. 3d at 283-84.

In granting the preliminary injunction in this case, the trial court found that "the material facts are without dispute, that [PBJC] faces an imminent threat of irreparable harm in the absence of injunctive relief which substantially outweighs any harm that may be caused to [the city] by the imposition of the injunctive relief sought." As was the case

2190075

in Monte Sano Research Corp., supra, the trial court's order merely recited two of the elements to be proven to warrant the granting of the preliminary injunction and did not specify its own reasons for issuing the injunction. Thus, the order does not comply with the mandatory requirements of Rule 65(d)(2), and this court is required to reverse the order issuing the preliminary injunction. As a result, "we need not consider whether the evidence ultimately supports the issuance of the preliminary injunction because the order is due to be reversed regardless of whether the evidence supports the issuance of the injunction." Stephens, 160 So. 3d at 283. See also Marathon Constr. & Demolition, LLC v. King Metal Recycling & Processing Corp., 129 So. 3d 272, 276 n. 3 (Ala. 2013) ("The defendants make other complaints about the trial court's November 28, 2012, order .... Because the trial court's failure to comply with the requirements of Rule 65 is dispositive, we need not reach the other arguments."). This holding should not be construed as precluding the PBJC from requesting the trial court to again issue a preliminary injunction should it still deem such an injunction advisable. See Stephens, 160 So. 3d at 284.

2190075

REVERSED AND REMANDED.

Moore and Donaldson, JJ., concur.

Edwards, J., concurs in the result, without writing.

Hanson, J., recuses himself.