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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2018

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Ex parte Advanced Disposal Services South, LLC, et al.

PETITION FOR WRIT OF MANDAMUS

(In re: Jerry Tarver, Sr.

v.

Advanced Disposal Services South, LLC, et al.)

(Macon Circuit Court, CV-17-900076)

SELLERS, Justice.

Advanced Disposal Services South, LLC; Advanced Disposal Services Alabama Holdings, LLC; Tallassee Waste Disposal

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Center, Inc.; Advanced Disposal Services, Inc.; and Stone's Throw Landfill, LLC (hereinafter referred to collectively as "Advanced Disposal"), petition this Court for a writ of mandamus directing the Macon Circuit Court either to join the City of Tallassee ("the City") as a necessary and indispensable party to the underlying action or, alternatively, to dismiss the action in its entirety, pursuant to Rule 19, Ala. R. Civ. P. We grant the petition and issue the writ.

I. Facts and Procedural History

The City owns and operates a sewer and stabilization pond ("the stabilization pond"), which, as of July 1, 2016, accepted and treated waste from 1,782 residential customers and 18 commercial customers. Advanced Disposal entered into an "Agreement for Acceptance and Treatment of Leachate" with the City ("the agreement") in which the City agreed to accept and treat, for a fee, leachate from Advanced Disposal's landfill. The agreement defines leachate as "any liquid, including any soluble, suspended or miscible components in the liquid, that has percolated through or emerged at the Landfill from solid waste other than construction/demolition waste

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and/or rubbish." The agreement also states that "[t]itle to and risk of loss with respect to the leachate shall pass from [Advanced Disposal] to [the] City at such time as the leachate is delivered to the City's facility and accepted by the City." Finally, the agreement includes indemnity clauses indemnifying both Advanced Disposal and the City. Specifically, the agreement provides that Advanced Disposal must "defend, indemnify and hold the City harmless from any and all liens, claims, judgments, liability, causes of action of any type or nature, whether in contract or in tort and whether legal or equitable ... arising from, related to and/or concerning the execution of this Agreement." The City agreed to indemnify Advanced Disposal only where the damage alleged is "caused by the negligent acts of the City during the term of this Agreement or any misrepresentation by the City or breach of this Agreement."

After the City accepts title to the leachate, it treats the leachate with chlorine at its stabilization pond. The City then discharges the effluent into the Tallapoosa River ("the river") pursuant to a National Pollutant Discharge Elimination System Permit ("the NPDES permit"). The effluent

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mixes with the river water, which flows several miles downstream to the intake point for the Utilities Board of Tuskegee ("the utilities board"), which treats the river water with chlorine and uses other methods to prepare the water for consumption by its consumers, including the plaintiff, Jerry Tarver, Sr.

In May 2017, Tarver sued Advanced Disposal, the utilities board, and fictitiously named defendants in the Macon Circuit Court, seeking monetary damages as well as injunctive relief for exposure to allegedly contaminated water that had been illegally "discharged" into the river and ultimately sold by the utilities board for consumption by its customers. The gist of the action can be gathered from the "overview" portion of the complaint, which states, in relevant part:

"2. As a result of the negligent, unauthorized, unpermitted, and illegal discharging of waste products and hazardous chemicals and compounds into the Tallapoosa River, the water treatment facilities in Tuskegee and Macon County have been providing polluted water to [Tarver] for drinking, cooking, bathing, and ... everyday use. Instead of properly treating the water from the Tallapoosa River, the water treatment facilities made the condition of the water worse."

(Emphasis added.) According to the complaint, both the City and the utilities board use chlorine to treat the leachate and

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the river water, respectively, and, when the chlorine interacts with leachate or polluted river water, it produces a number of harmful chemicals referred to as by-products with known short-term and long-term health effects--the most prevalent of those by-products being halo acetic acids ("HAAs") and total trihalomethanes ("TTHMs"). As for Advanced Disposal, the complaint alleges that Advanced Disposal unlawfully discharges its leachate into the City's stabilization pond, knowing that the leachate cannot be properly treated before the resulting effluent is discharged into the river. Tarver also alleges that Advanced Disposal discharges "pollutants" into various creeks and tributaries flowing into the river in violation of its storm-water discharge permit.¹

In lieu of filing an answer, Advanced Disposal moved to dismiss the action under Rule 12(b)(7), Ala. R. Civ. P., based on Tarver's failure to join the City as a necessary and

¹According to the complaint, Advanced Disposal does not have a permit for the discharge of leachate into the river or surrounding surface waters. Advanced Disposal does have a storm-water discharge permit, which governs discharges not containing leachate and which allows for small discharges into the surface waters around the landfill.

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indispensable party as required by Rule 19, Ala. R. Civ. P.² After conducting a hearing, the trial court entered an order denying the motion to dismiss, concluding, among other things, that it could afford relief to the existing parties without

²Tarver has argued that Advanced Disposal could achieve the same result by adding the City as a third-party defendant pursuant to Rule 14, Ala. R. Civ. P. Rule 14, which governs the procedure for adding a third-party defendant, provides, in pertinent part:

"At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action."

In this case, Rule 14 would require Advanced Disposal to answer the complaint and then file its own complaint against the City--in essence, forcing Advanced Disposal to do the work Tarver should have accomplished at the beginning of the litigation. This matter is before us on the denial of a Rule 12(b)(7), Ala. R. Civ. P., motion to dismiss, which, before an answer is filed, allows a trial court to dismiss the complaint "for failure to join a party under Rule 19." Advanced Disposal has a right to elect its defense, and we cannot make it choose Rule 14 over Rule 12(b)(7), nor can we remove the remedy of mandamus when another method might exist to ultimately achieve the same result. Rule 12(b)(7) and Rule 14 are vastly different rules requiring different strategies at different times during the litigation process.

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the addition of the City as a party.³ This petition for a writ of mandamus followed.

II. Standard of Review

"A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993). A writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal. Ex parte Drill Parts & Serv. Co., 590 So. 2d 252 (Ala. 1991)."

Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998). Rule 12(b)(7) provides for the dismissal of an action based on a "failure to join a party under Rule 19." Courts considering a Rule 12(b)(7) motion must look to Rule 19, which sets forth "a two-step process for the trial court to follow in determining whether a party is necessary or indispensable." Holland v. City of Alabaster, 566 So. 2d 224,

³Approximately 23 other individuals filed complaints in the Macon Circuit Court against Advanced Disposal and the utilities board, alleging the same injury as Tarver. In each case, Advanced Disposal filed an identical motion to dismiss pursuant to Rule 12(b)(7), Ala. R. Civ. P. The trial court noted in its order denying those motions that its order applied to all cases. Tarver is the only respondent in this mandamus proceeding.

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226 (Ala. 1990). In Ross v. Luton, 456 So. 2d 249 (Ala. 1984), this Court stated that mandamus review is a proper means by which to address whether a trial court has exceeded its discretion in refusing to join a party under Rule 19.

III. Analysis

Advanced Disposal asserts that the trial court was required to add the City as a necessary and indispensable party under Rule 19 because, it says, the City is an active participant in the allegations made in the complaint and, without the City's joinder, Tarver cannot be accorded complete relief. Advanced Disposal points this Court to the following factual allegations made in the complaint:

"51. Despite repeated violations and ongoing pollution, the [stabilization pond] continues to accept substantial amounts of waste from third party waste generators. Any entity disposing of waste at the [stabilization pond] ... knew or should have known that the [stabilization pond] was incapable of treating [that waste] and that any additional waste to the system would result in pollution of the Tallapoosa River.

".....

"55. Upon testing, [the City] has discharged and continues to discharge TTHMs, HAAs, and untreated or partially treated landfill leachate containing heavy metals into the Tallapoosa River, which have ultimately contaminated [Tarver's] water supply, causing damage to person and property."

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Advanced Disposal emphasizes that the City is the only entity that discharges effluent into the river by virtue of its NPDES permit and that the City is the only entity besides the utilities board that uses chlorine for the treatment of waste.

A. Rule 19, Ala. R. Civ. P.

"Rule 19, Ala. R. Civ. P., provides for joinder of persons needed for just adjudication. Its purposes include the promotion of judicial efficiency and the final determination of litigation by including all parties directly interested in the controversy." Byrd Cos. v. Smith, 591 So. 2d 844, 846 (Ala. 1991). "Rule 19 ... provides a two-step process for the trial court to follow in determining whether a party is necessary or indispensable." Holland, 566 So. 2d at 226. The question whether a nonparty is a necessary party is governed by Rule 19(a); the question whether a party is an indispensable party is governed by Rule 19(b). "There is no prescribed formula to be mechanically applied in every case to determine whether a party is an indispensable party or merely a proper or necessary one. This is a question to be decided in the context of the particular case." J.R. McClenney & Son, Inc. v. Reimer, 435 So. 2d 50, 52 (Ala. 1983). "It is the

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plaintiff's duty under [Rule 19] to join as a party anyone required to be joined." Holland, 566 So. 2d at 226. If the plaintiff fails to join a party required to be joined, then he or she must, pursuant to Rule 19(c), "state their names and the reasons why they are not joined." J.C. Jacobs Banking Co. v. Campbell, 406 So. 2d 834, 850 (Ala. 1981). "If there is a failure to join a person needed for just adjudication by a litigant, then, under subsection (a) of Rule 19, the trial court shall order that he be made a party." 406 So. 2d at 850.

Under the two-step process, the trial court must first determine, under the criteria set forth in Rule 19(a), whether the nonparty in question is one who should be joined if feasible. Rule 19(a) states, in material part:

"(a) Persons to be Joined If Feasible. A person who is subject to jurisdiction of the court shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. ..."

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If a nonparty satisfies either prong set forth in Rule 19(a)(1) or (2), then the party is a necessary party that should be joined, if feasible. Ross, supra. In other words, Rule 19(a) also requires a determination as to the feasibility of joinder. For example, Rule 19(a) states that "[i]f the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action."⁴ (Emphasis added.)

Next, if joinder of a necessary party is not feasible, then the trial court should proceed to determine under Rule 19(b) "whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed,

⁴In Liberty National Life Insurance Co. v. University of Alabama Health Services Foundation, P.C., 881 So. 2d 1013, 1024 (Ala. 2003), this Court noted that in determining feasibility of joinder the question is "whether the absentee party is subject to service of process, whether the absentee party's joinder will deprive the trial court of subject-matter jurisdiction, or whether the absentee party makes a valid objection to the court's venue after joinder." The Committee Comments to Rule 19 state that Rule 19 is identical to Rule 19 of the Federal Rules of Civil Procedure except for "the elimination of language dealing with problems related to service of process and subject matter jurisdiction with which we are not concerned in state practice." Accordingly, a determination of feasibility is now gauged by whether an absentee party makes a valid objection to venue after joinder.

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the absent person being thus regarded as indispensable."

Indispensable parties under Rule 19(b) are

"[p]ersons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."

Shields v. Barrow, 58 U.S. (17 How.) 130, 139 (1854). Rule 19(b) sets forth the following factors for the court's consideration of whether a party is indispensable:

"[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

"The determination of whether a party is indispensable under Rule 19(b) is based on equitable and pragmatic considerations." Ross, 456 So. 2d at 257. Finally, "[t]he absence of a necessary and indispensable party necessitates the dismissal of the cause without prejudice or a reversal with directions to allow the cause to stand over for amendment." J.C. Jacobs Banking Co., 406 So. 2d at 850-51.

B. The City--A Necessary Party

In applying the above-stated analysis, we conclude that the City is a necessary party under Rule 19(a)(1) because, in its absence, Tarver cannot be accorded complete relief. Specifically, Tarver seeks not only monetary damages, but also an injunction "precluding the Defendants from further destruction of the [river] and [Tarver's] water supply." Tarver argues that the sole basis for seeking injunctive relief is to enjoin Advanced Disposal from unlawfully discharging leachate into the City's stabilization pond and from discharging pollutants from its landfill, i.e., runoff, into various creeks and tributaries that flow to the river in violation of its storm-water discharge permit. Tarver has indicated to this Court that this case is solely about leachate. Advanced Disposal's leachate, however, is not the only waste being treated at the City's stabilization pond. As indicated, as of July 1, 2016, the City reported treating waste from 1,782 residential customers and 18 commercial customers. Advanced Disposal states in its petition that its maximum contractual delivery of leachate to the City's stabilization pond is 24,500 gallons per day, which, its says,

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is "1.75% of the City's permitted capacity and about 3.75% of its average daily flow." In other words, Advanced Disposal asserts that the leachate it delivers to the City's stabilization pond constitutes only a small portion of the total amount of waste being treated in the pond. Advanced Disposal further points out that, because its leachate mixes with hundreds of gallons of wastewater in the stabilization pond, enjoining the delivery of leachate to the pond will have little, if any, impact upon the nature or volume of the effluent the City ultimately discharges into the river.⁵ Accordingly, contrary to the trial court's finding,⁶ complete

⁵In preparation for oral arguments in this case, the Court ordered the parties to answer the question whether the City received and treated leachate from any other source and, if so, what approximate percentage of the effluent discharged into the river originated from Advanced Disposal's leachate. Tarver claims that Advanced Disposal discharges leachate in gross excess of the agreed-upon amount, i.e., he claims that, in January 2017, Advanced Disposal discharged 1,179,543.90 gallons of leachate into the stabilization pond (approximately 38,049 tons per day). Although that amount exceeds the daily contractual limit of 24,500 tons per day, it is still less than 6% of the average daily flow; meaning than 94% of the daily flow originates from sources other than Advanced Disposal.

⁶Tarver asserts that Ross, supra, supports the trial court's finding that complete relief can be accorded to him in the City's absence because, he says, Advanced Disposal and the City, as a result of the agreement, share the same interests and the City's interests will be adequately represented by

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relief cannot be afforded Tarver in the City's absence because the majority of the effluent being discharged into the river will continue to reach Tarver's water supply even if an injunction is ordered for Advanced Disposal's leachate. We further conclude that the City is a necessary party under Rule 19(a)(2) because, the City, by entering into the agreement, pursuant to which it takes title to the leachate and treats the leachate, has a legally protected interest relating to the subject matter of this case that will be affected by the

Advanced Disposal. We disagree. In Ross, supra, Ross, the owner of a well, contracted with a water utility to sell water commercially to the water utility. Nearby well owners sought an injunction against Ross after Ross's actions depleted water available from their wells. After Ross suffered an adverse judgment, he moved the trial court to join the water utility as an indispensable party under Rule 19. This Court held that the water utility was not an indispensable party because "Ross and [the water utility], as a result of the contract between them, share the same interests" and that "the interests of [the water utility were] adequately represented by Ross." 456 So. 2d at 257. In other words, Ross and the water utility had similar interests because they both benefited from the extraction of the well water. Here, although Advanced Disposal and the City operate under the agreement, their interests under the agreement are separate and distinct. Advanced Disposal, pursuant to the agreement, "desires to dispose" of its leachate and pays the City to accept it. In contrast, the City takes "title" to the leachate, treats the leachate in its stabilization pond, and releases the resulting effluent into the river. Advanced Disposal has denied any liability under the agreement. Accordingly, Advanced Disposal cannot adequately represent the interests of the City.

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outcome of Tarver's claims. See Liberty National Life Ins. Co. v. University of Alabama Health Servs. Found., P.C., 881 So. 2d 1013, 1023 (Ala. 2003) (noting that this Court has recognized that "an interest created by a contract is a legally protected interest"). Accordingly, the City is included within those "persons to be joined if feasible" under Rule 19(a). Although we conclude that the City is a necessary party to Tarver's action, we cannot determine at this juncture whether its joinder is feasible, insofar as the City, once joined, might object to venue in Macon County.⁷ Accordingly, we issue the writ of mandamus and direct the trial court to join the City as a necessary party under Rule 19(a). If the City, once joined, objects to venue, Rule 19(a) requires the trial court to dismiss it from the action and then proceed under Rule 19(b) to determine, in accordance with the stated

⁷Section 6-3-11, Ala. Code 1975, which controls the venue for actions against municipalities, provides:

"The venue for all civil actions for damages for personal injury, death, or property damage filed against a county or against a municipality shall be in the county or in the county within which the municipality is located or in the county in which the act or omission complained of occurred."

Under § 6-3-11, venue for the City would be proper in either Elmore County or Tallapoosa County.

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factors, "whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the [City] being thus regarded as indispensable."

IV. Conclusion

Advanced Disposal has demonstrated a clear legal right to the relief sought. Accordingly, we grant the petition for a writ of mandamus and direct the trial court to join the City as a necessary party under Rule 19(a).

PETITION GRANTED; WRIT ISSUED.

Stuart, C.J., and Bolin, Main, and Mendheim, JJ., concur.

Parker, Shaw, and Bryan, JJ., dissent.

Wise, J., recuses herself.

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SHAW, Justice (dissenting).

In this petition for the writ of mandamus, the defendant below, Advanced Disposal,⁸ challenges the trial court's denial of its Rule 12(b)(7), Ala. R. Civ. P., motion to require the City of Tallassee ("the City") to be made, by operation of Rule 19, Ala. R. Civ. P., a party to the underlying action. For the reasons stated below, I respectfully dissent from granting the petition and issuing the writ.

A trial court has discretion under Rule 19 to join a party to an action, and this Court reviews whether in so deciding such issue the trial court exceeded its discretion. See American Family Care, Inc. v. Irwin, 571 So. 2d 1053, 1057 (Ala. 1990) (reviewing a trial court's decision to add parties under Rule 19 for an "abuse" of discretion); Hannah v. Central Bank of Birmingham, 341 So. 2d 669, 670 (Ala. 1976) (holding that the trial court was "properly exercising its discretion" in determining that certain individuals "were not necessary parties"); and Felder v. State, 515 So. 2d 17, 18 (Ala. Civ.

⁸As does the main opinion, I use the name "Advanced Disposal" to refer collectively to Advanced Disposal Services South, LLC; Advanced Disposal Services Alabama Holdings, LLC; Stone's Throw Landfill, LLC; Tallassee Waste Disposal Center, Inc.; and Advanced Disposal Services, Inc.

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App. 1987) ("[Rule 19] gives the court discretion to permit or deny the joinder of an additional party."). This Court's review of the denial of Advanced Disposal's motion "is limited to those facts that were before the trial court." Ex parte Pike Fabrication, Inc., 859 So. 2d 1089, 1091 (Ala. 2002). See Ex parte Volvo Trucks North America, Inc., 954 So. 2d 583, 587 (Ala. 2006) ("[E]vidence not presented to the trial court will not be considered in a mandamus proceeding."), and Ex parte Ebbers, 871 So. 2d 776, 786 (Ala. 2003) ("In determining, on mandamus review, whether the trial court exceeded the limits of its discretion, 'the appellate courts will not reverse the trial court on an issue or contention not presented to the trial court for its consideration in making its ruling.'" (quoting Ex parte Wiginton, 743 So. 2d 1071, 1073 (Ala. 1999))). This is so because we are reviewing the trial court's exercise of discretion based on the arguments presented to it; we are not reviewing the legal merits of the issue in the abstract. See Ex parte Allianz Life Ins. Co. of North America, 25 So. 3d 411, 416 (Ala. 2008) (noting that a trial judge's order should not be reversed for the judge's failure to heed an argument never made to it).

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The materials filed in this Court show that the trial court had before it the complaint; the Rule 12(b)(7) motion to dismiss, with an attached exhibit that appears to be a copy of the agreement between the City and Advanced Disposal; and the response to the motion and its supporting memorandum filed by Jerry Tarver, Sr., the plaintiff. The motion to dismiss cites as support the complaint and the agreement between the City and Advanced Disposal pursuant to which the City accepts leachate from Advanced Disposal for treatment in its stabilization pond ("the pond"). The parties have attempted to submit to this Court other documents and records, but it appears that none of those was provided to the trial court or relied upon by the parties in that court. Those documents and records are thus not properly before us. Ex parte Pike Fabrication, Ex parte Volvo Trucks, Ex parte Ebbers, and Ex parte Wiginton, supra.⁹

⁹We have few prior cases providing the scope of a trial court's review of a Rule 12(b)(7) motion. Advanced Disposal provides cases indicating that, in the federal courts, a trial court may look to extrinsic evidence outside the pleadings in determining the issue. See, e.g., Davis Cos. v. Emerald Casino, Inc., 268 F.3d 477, 480 n.4 (7th Cir. 2001). This Court, on mandamus review, is nevertheless restricted to the arguments and materials presented to the trial court.

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The thrust of the complaint filed in this case is that leachate is polluting or causing to be polluted the Tallapoosa River, that Advanced Disposal is the source of the leachate, and that water is collected from the river by water utilities that serve Tarver and other customers. The complaint further alleges that Advanced Disposal is placing the leachate in the river by two means: (1) allowing the leachate to flow off its premises into the river through various tributaries and (2) delivering to the pond leachate it knows the City cannot treat, which the City later discharges into the river. The main opinion concludes that the total amount of water received by the City and delivered to the pond overall contains only a relatively small proportion of Advanced Disposal's leachate and that Advanced Disposal's leachate thus constitutes a small portion of the effluent the City releases into the river. Rule 19(a)(1) requires that a person "shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties." Enjoining Advanced Disposal from delivering leachate, the main opinion concludes, will have little impact on the total

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effluent released, and thus complete relief will not be afforded without the joinder of the City as a party.

The percentage figures relied upon by the main opinion to establish Advanced Disposal's relative contribution of fluid to the pond are not found in the materials considered by the trial court. Thus, this information is not properly before us. Additionally, although the complaint vaguely refers to contaminated water being received by the City into the pond from other sources, the trial court was within its discretion to determine that Tarver's allegations center around leachate, of which Advanced Disposal is the only source alleged. Because Tarver claims that the leachate is the root of the pollution sought to be remedied and enjoining Advanced Disposal--in connection with enjoining conduct of other defendants in this case--would prevent that leachate from allegedly polluting the drinking water, the City is not needed as a party for complete relief to be obtained in this case.

The main opinion also concludes that the City must be joined as a party under Rule 19(a)(2), which provides that a person shall be joined as a party if

"the person claims an interest relating to the subject of the action and is so situated that the

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disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest."

(Emphasis added.) The City, however, has not "claim[ed] an interest relating to the subject of the action." Rule 19(a)(2) thus appears inapplicable.

If Advanced Disposal believes that the City may be liable to it for Tarver's claims, then the City could easily be added to the case by means of a third-party complaint. See Rule 14, Ala. R. Civ. P. However, Advanced Disposal has not carried its burden under our mandamus standard of review of showing that it has a clear legal right to relief. Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001).

Bryan, J., concurs.