

Rel: February 21, 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.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180395

Talladega County Commission

v.

State of Alabama ex rel. City of Lincoln

Appeal from Talladega Circuit Court
(CV-18-900281)

STEWART, Justice.

The Talladega County Commission ("the Commission") appeals from a judgment of the Talladega Circuit Court ("the trial court") dismissing a mandamus petition filed against the Commission by the City of Lincoln ("the City") but leaving in

1180395

place a prior order interpreting provisions of a local act. For the reasons below, we instruct the trial court to vacate the judgment in part, and we dismiss the appeal.

Facts and Procedural History

This case involves a dispute between the Commission and the City regarding the interpretation of Act No. 91-533, Ala. Acts 1991 ("the Act"), as amended by Act No. 2000-758, Ala. Acts 2000 ("the amended Act").¹ The Act, which is a local act applicable to and operative only in Talladega County, levied special county "privilege license and excise taxes" in parts of Talladega County located outside the corporate limits of cities within the county. Initially, the Act required the revenues from the taxes to be used for the retirement of the County's indebtedness. The amended Act, enacted after the retirement of the County's indebtedness, created the "Talladega County Special Tax Fund" ("the fund") into which all revenues from the taxes, less the costs of collection, were to be deposited. The amended Act authorized the expenditure of up to \$50,000 annually from the fund for

¹The Act was further amended in 2017 by Act No. 2017-252, Ala. Acts 2017, but the changes effected by that amendment are not relevant to this appeal.

1180395

certain "personnel and/or professional services" as approved by the Talladega County legislative delegation. The amended Act further authorized the pro rata distribution of any remaining amount in the fund to various entities, projects, and other funds, including:

"(6) Ten percent for development of water lines to serve Talladega County residents and industry for improved fire protection and rural development. The Talladega Economic Development Authority shall make recommendations to the Talladega County Commission as to the expenditure of these funds. Approval by the Talladega County legislative delegation, as defined above, is required prior to the expenditure of any funds. If the Talladega Economic Development Authority fails to make a recommendation acceptable to the Talladega County legislative delegation, then final disposition of said funds shall be at the sole discretion of the Talladega County legislative delegation. Distribution of these discretionary funds shall be approved by the Talladega County legislative delegation, as defined above."

The amended Act defines "approval by the Talladega County legislative delegation" to mean "the approval of the Senate member and any two (2) House representatives from said county."

On February 2, 2018, the Talladega County Economic Development Authority ("the TCEDA") adopted a resolution recommending that the Commission authorize the expenditure of \$494,639 from the portion of the fund designated for rural

1180395

water development to the City to expand water service to certain residents within the City's corporate limits. The resolution was signed as "approved by" four members of the Alabama Senate and four members of the Alabama House of Representatives representing Talladega County in the Alabama Legislature (hereinafter referred to collectively as "the delegation").² The Commission, however, did not disburse the funds to the City.

On July 6, 2018, the City, in the name of the State of Alabama, filed a petition for a writ of mandamus, naming the Commission as the respondent.³ The City claimed in its

²The resolution was approved by Representatives Ron Johnson, Steve Hurst, Randy Wood, and Barbara Boyd and by Senators James McClendon, Del Marsh, Shay Shelnett, and Slade Blackwell.

³This Court has previously explained that

"[a] mandamus proceeding to compel a public officer to perform a legal duty in which the public has an interest, as distinguished from an official duty, affecting a private interest merely, is properly brought in the name of the State on the relation of one or more persons interested in the performance of such duty to the public, unless the matter concerns the sovereign rights of the State, in which event it must be instituted on the relation of the Attorney General, the law officer of the State."

Morrison v. Morris, 273 Ala. 390, 392, 141 So. 2d 169, 170 (1962).

1180395

petition that the Commission did not have any discretion to withhold the disbursement of moneys contained in the fund once the delegation had authorized the disbursement. The City asked the trial court to order the Commission to disburse the \$494,639 to the City as had been recommended by the TCEDA and approved by the delegation.

The Commission filed a motion to dismiss the City's petition, asserting, among other defenses, that the trial court lacked subject-matter jurisdiction. On September 11, 2018, the Commission filed an answer to the City's petition. The Commission also filed a counterclaim seeking a judgment declaring its authority to determine the proper composition of the Talladega County legislative delegation as that term is defined in the amended Act, its authority to approve expenditures from the fund, and the authority of the delegation to dictate to the Commission expenditures from the fund. The City filed a motion to dismiss the Commission's declaratory-judgment counterclaim.

On October 30, 2018, the trial court entered an order denying the Commission's motion to dismiss, stating that the parties had stipulated, among other things, that the issue for

1180395

the trial court's resolution on the declaratory-judgment counterclaim was "what authority, if any, the ... Commission has to veto, overrule or otherwise deny the resolution of the [TCEDA] and the approval of the [delegation]." The trial court determined in the order that the amended Act required all the State senators representing Talladega County and at least two State representatives of Talladega County to approve the expenditures from the fund. The trial court also determined that the Commission had no discretion to "disapprove, veto, reject or otherwise refuse to follow the authorization by the Talladega County Legislative Delegation for the expenditure of funds." The trial court further concluded that the delegation's approval of the expenditures under the amended Act "is a directive and a mandate to [the Commission] to pay funds from [the fund]."

The Commission filed a motion to alter, amend, or vacate the trial court's order denying its motion to dismiss the City's mandamus petition. The Commission also filed a motion for leave to amend its answer to the City's mandamus petition and an amended answer, asserting that, on November 7, 2018, the four State representatives had withdrawn their approval of the TCEDA's initial resolution. The City filed a motion to

1180395

add as respondents the members of the Commission, individually and in their official capacities as members of the Commission.

At a hearing on the Commission's motion to amend its answer and the City's motion to add respondents, the City agreed to dismiss its mandamus petition. On November 30, 2018, the trial court entered a judgment dismissing the City's mandamus petition without prejudice. The order stated, however: "It is this Court's intent that the dismissal of the Petition for Writ of Mandamus does not vacate, amend, or set aside the Court's order dated the 30th day of October, 2018 ruling on the declaratory judgment action." The trial court stated in the November 30 judgment that all pending issues had been resolved, and it expressly denied any relief not already granted.

On December 28, 2018, the Commission filed a motion for a new trial or, in the alternative, to alter, amend, or vacate the trial court's November 30 judgment to the extent that it purported to preserve its ruling on the declaratory-judgment counterclaim. The trial court denied the Commission's motion. The Commission appealed.

Discussion

1180395

The Commission asserts that this action became moot on November 7, 2018, when the four State representatives withdrew their approval of the TCEDA's recommendation to disburse funds to the City. According to the Commission, there is no longer a justiciable controversy and the case has become moot.

"'A moot case or question is a case or question in or on which there is no real controversy; a case which seeks to determine an abstract question which does not rest on existing facts or rights, or involve conflicting rights so far as plaintiff is concerned.'" Case v. Alabama State Bar, 939 So. 2d 881, 884 (Ala. 2006) (quoting American Fed'n of State, Cty. & Mun. Emps. v. Dawkins, 268 Ala. 13, 18, 104 So. 2d 827, 830-31 (1958)). "Unless the trial court has before it a justiciable controversy, it lacks subject matter jurisdiction and any judgment entered by it is void ab initio." Ex parte State ex rel. James, 711 So. 2d 952, 960 n.2 (Ala. 1998). "[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Steffel v. Thompson, 415 U.S. 452, 459 n. 10, 94 S.Ct. 1209, 1216 n. 10, 39 L.Ed.2d 505 (1974). Accordingly, "[a]n action that originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised in it

1180395

have become moot by subsequent acts or events." Case, 939 So. 2d at 884.

"Alabama has recognized two exceptions to the mootness doctrine: questions of great public interest and questions that are likely of repetition of the situation." Underwood v. Alabama State Bd. of Educ., 39 So. 3d 120, 127 (Ala. 2009) (quoting Arrington v. State ex rel. Parsons, 422 So. 2d 759, 760 (Ala. 1982)).

This Court has stated:

"The criteria for applying the public interest exception to the mootness doctrine include the public nature of the question, the desirability of an authoritative determination for the purpose of guiding public officers, and the likelihood that the question will generally recur." [1A C.J.S. Actions § 81 (2005)] (footnote omitted). However, this 'exception is construed narrowly ... and a clear showing of each criterion is required to bring a case within its terms.' In re Adoption of Walgreen, 186 Ill. 2d 362, 365, 238 Ill. Dec. 124 [125], 710 N.E.2d 1226, 1227 (1999)."

Chapman v. Gooden, 974 So. 2d 972, 989 (Ala. 2007). In McCoo v. State, 921 So. 2d 450, 458 (Ala. 2005), this Court stated:

"The capable-of-repetition-but-evading-review exception has been applied in contexts that generally involve a significant issue that cannot be addressed by a reviewing court because of some intervening factual circumstance, most often that the issue will be resolved by the passage of a relatively brief period of time. See, e.g., Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147

1180395

(1973) (involving the termination of a pregnancy); Moore v. Ogilvie, 394 U.S. 814, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969) (involving challenges to election procedures after the completion of the election); and [State ex rel.] Kernells [v. Ezell], 291 Ala. 440, 282 So. 2d 266 (1973)] (same)."

We first note that the Commission did not raise the mootness doctrine in the first instance in the trial court, thus depriving the trial court of the opportunity to consider that argument. Generally, an appellate court will not hold the trial court in error based on a legal argument that was not presented to it. See Ex parte Elba Gen. Hosp. & Nursing Home, Inc., 828 So. 2d 308, 312 (Ala. 2001) ("[T]his Court cannot hold the trial court in error on the basis of arguments made for the first time on appeal."). As noted above, however, mootness implicates a court's subject-matter jurisdiction, and arguments related to a court's subject-matter jurisdiction can be raised at any time. Ex parte V.S., 918 So. 2d 908, 912 (Ala. 2005).

Regarding declaratory-judgment actions, this Court has stated:

"This Court has recognized that a purpose of the Declaratory Judgment Act, codified at §§ 6-6-220 through -232, Ala. Code 1975, is 'to enable parties between whom an actual controversy exists or those between whom litigation is inevitable to have the issues speedily determined when a speedy

1180395

determination would prevent unnecessary injury caused by the delay of ordinary judicial proceedings.' Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 224 (Ala. 2003) (some emphasis added). Further, '[w]e have recognized that a justiciable controversy is one that is "'definite and concrete, touching the legal relations of the parties in adverse legal interest, and it must be a real and substantial controversy admitting of specific relief through a [judgment].'" MacKenzie v. First Alabama Bank, 598 So. 2d 1367, 1370 (Ala. 1992) (quoting Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)).' Harper, 873 So. 2d at 224 (emphasis added). Thus, the Declaratory Judgment Act does not "'empower courts to decide ... abstract propositions, or to give advisory opinions, however convenient it might be to have these questions decided for the government of future cases.'" Bruner v. Geneva County Forestry Dep't, 865 So. 2d 1167, 1175 (Ala. 2003) (quoting Stamps v. Jefferson County Bd. of Educ., 642 So. 2d 941, 944 (Ala. 1994), quoting in turn Town of Warrior v. Blaylock, 275 Ala. 113, 114, 152 So. 2d 661, 662 (1963)) (emphasis added in Stamps)."

Gulf Beach Hotel v. State ex rel. Whetstone, 935 So. 2d 1177, 1183 (Ala. 2006).

In order to resolve the Commission's declaratory-judgment counterclaim, the trial court was required to determine whether the Commission had authority under the amended Act to "veto, overrule, or otherwise deny" the delegation's approval of the TCEDA's recommendation. At the time the trial court entered the October 30 order on the Commission's declaratory-judgment counterclaim, there existed a clear justiciable

1180395

controversy between the City and the Commission concerning the Commission's duties and authority under the amended Act. Once the State representatives withdrew their approval, a necessary precursor to the disbursement of moneys from the fund under the amended Act, the City was no longer entitled to the funds and there ceased to be a controversy between the City and the Commission. Whether the City and the Commission continue to disagree about how the amended Act should be interpreted in the future is irrelevant, because "[t]he Declaratory judgment Act does not ... 'empower courts to decide moot questions, abstract propositions, or to give advisory opinions, however convenient it might be to have these questions decided for the government of future cases.'" Stamps v. Jefferson Cty. Bd. of Educ., 642 So. 2d 941, 944 (Ala. 1994) (quoting Town of Warrior v. Blaylock, 275 Ala. 113, 114, 152 So. 2d 661, 662 (1963)) (emphasis omitted). Accordingly, the trial court had no option but to dismiss the action once the case became moot. State v. Property at 2018 Rainbow Drive known as Oasis, 740 So. 2d 1025, 1029 (Ala. 1999). The trial court correctly dismissed the mandamus petition, but it exceeded its discretion by stating in its November 30 judgment that the declaratory-judgment ruling would remain in effect.

1180395

Although the trial court made determinations regarding the Commission's authority in its October 30 order, that order was not a final judgment. The entry of the November 30 judgment did not make the October 30 order final because the trial court was without jurisdiction to enter any judgment, other than one dismissing the action, once the action became moot on November 7, 2018. See Property at 2018 Rainbow Drive, 740 So. 2d at 1029. Accordingly, the November 30 judgment, insofar as it stated that the October 30 order would remain in full force and effect, is void. See id. "Our remedy in such a situation, when we find no subject-matter jurisdiction in the trial court, is to dismiss the appeal and vacate the trial court's judgment." Ex parte Alabama Dep't of Human Res., 999 So. 2d 891, 898 (Ala. 2008). Because we are dismissing the appeal based on the doctrine of mootness, we pretermit discussion on the other arguments raised by the Commission in its brief, i.e., that the trial court erroneously denied the Commission's motion to dismiss the mandamus petition and that the trial court misinterpreted Act No. 1991-535, as amended by Act No. 2000-758.

Conclusion

1180395

Because the lack of a justiciable controversy rendered the action moot and the trial court's November 30 judgment void in part, we instruct the trial court to vacate that judgment insofar as it purports to leave in place the October 30 order, and we dismiss the appeal. See Underwood v. State, 439 So. 2d 125, 128 (Ala. 1983).

APPEAL DISMISSED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.