

Rel: September 17, 2021

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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George Harvey Russell d/b/a Carl's Country

v.

**Joe Sedinger, in his capacity as sheriff of Autauga County;
Autauga County; Bill Gillespie, in his capacity as mayor of City
of Prattville; City of Prattville; and H. Mac Gipson, in his
capacity as administrator of the Alabama Alcoholic Beverage
Control Board**

**Appeal from Autauga Circuit Court
(CV-20-900159)**

SELLERS, Justice.

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George Harvey Russell, doing business as Carl's Country, appeals from an order of the Autauga Circuit Court dismissing his declaratory-judgment action, pursuant to Rule 12(b)(6), Ala. R. Civ. P., because the action did not state a justiciable controversy. We affirm.

Facts and Procedural History

Russell operates a bar known as Carl's Country, pursuant to a Class 1 lounge liquor license issued by the Alcoholic Beverage Control Board ("the ABC Board"). The bar is located in Autauga County, outside the corporate limits of the City of Prattville ("the City") but within the City's police jurisdiction.

Section 28-3A-23(h), Ala. Code 1975, a part of the Alcoholic Beverage Licensing Code, § 28-3A-1 et seq., Ala. Code 1975, provides, in part:

"Draft or keg beer may be sold or dispensed within this State within those counties in which and in the manner in which the sale of draft or keg beer was authorized by law on September 30, 1980 or in which the sale of draft or keg beer is hereafter authorized by law."

As of September 30, 1980, there was no law authorizing the sale of draft beer in Autauga County, and, as of the date that Russell commenced

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his declaratory-judgment action, there was no law or ordinance in effect authorizing the sale of draft beer in Autauga County.

Effective May 2013, the legislature enacted § 45-1A-40.01, Ala. Code 1975, pertaining to the City's authority to regulate the sale and distribution of draft beer:

"(a) This section shall apply to the regulation of the sale and distribution of alcoholic beverages in the City of Prattville in Autauga County and Elmore County.

"(b) The city council, by resolution or ordinance, may authorize the sale and distribution of draft beer by retail licensees of the Alcoholic Beverage Control Board. ..."

Pursuant to § 45-1A-40.01, the City enacted Ordinance No. 6-9, which states, in relevant part: "The sale of draft beer for on-premises consumption only by retail licensees of the Alabama Alcoholic Beverage Control Board within the corporate limits and the police jurisdiction of the City of Prattville is hereby authorized and shall be legal." (Emphasis added.)

In May 2020, after the enactment of Ordinance No. 6-9, the sheriff of Autauga County ordered Russell to cease and desist selling draft beer at his bar; Russell did not comply. The ABC Board also contacted

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Russell's draft-beer distributors and ordered them to cease delivering draft beer to the bar. Thereafter, an attorney for the Autauga County Commission, an attorney for the ABC Board, and the "City of Prattville-Police Committee" discussed whether the City could enact an ordinance authorizing the City to regulate the sale and distribution of draft beer within its police jurisdiction in Autauga County. It was determined by that assemblage that the City did not have the authority to regulate the sale and distribution of draft beer in the portions of Autauga County outside the City's corporate limits because such authority was reserved for the local governing body of Autauga County, i.e., the County Commission, and not the City. See § 45-1-20(b), Ala. Code 1975. The Prattville City Council thereafter amended Ordinance No. 6-9 to exclude the language "and the police jurisdiction" from the ordinance.

On August 24, 2020, after ordinance No. 6-9 had been amended, Russell, acting pro se,¹ commenced a declaratory-judgment action, naming as defendants: Joe Sedinger, in his capacity as sheriff of Autauga County;

¹Russell is represented by an attorney on appeal.

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Autauga County; Bill Gillespie, in his capacity as mayor of the City of Prattville; the City of Prattville; and H. Mac Gipson, in his capacity as administrator of the ABC Board. In his complaint, Russell alleged that all the defendants have engaged in a conspiracy to deny him the privilege of selling draft beer at his bar. Russell sought a judgment declaring that the City has the authority to enact an ordinance extending the sale of draft beer to its police jurisdiction and, specifically, a judgment declaring the legality of draft-beer sales at his bar. Russell also sought an injunction prohibiting the defendants from interfering with his ability to sell draft beer. All the defendants moved to dismiss the action pursuant to Rule 12(b)(6), Ala. R. Civ. P., for failure to state a claim upon which relief could be granted. Following a hearing, the trial court entered an order dismissing the declaratory-judgment action on the basis that there was no justiciable controversy to be resolved. Russell filed a Rule 59, Ala. R. Civ. P., motion to alter, amend, or vacate the order, which was denied by operation of law. This appeal followed.

Standard of Review

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The issue before us is whether Russell's declaratory-judgment action alleges a bona fide justiciable controversy between him and the defendants so as to withstand the trial court's order of dismissal. In determining whether Russell has stated a bona fide justiciable controversy, we must accept the allegations of his complaint as true, and we must also view the allegations of the complaint most strongly in his favor. Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220 (Ala. 2003). "The test for the sufficiency of a complaint seeking a declaratory judgment is whether the pleader is entitled to a declaration of rights at all, not whether the pleader will prevail in the declaratory-judgment action." Id. at 223. If there is no justiciable controversy at the commencement of a declaratory-judgment action, a court lacks jurisdiction over the action and it must be dismissed. Chapman v. Gooden, 974 So. 2d 972 (Ala. 2007).

Discussion

Russell operates his bar pursuant to a license issued by the ABC Board; that license permits the sale of beer. However, the sale of "draft beer" is not permitted by statute, ordinance, or otherwise in Autauga

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County, where Russell's bar is located. Although the City originally enacted Ordinance No. 6-9, making it legal for retail licensees of the ABC Board to sell draft beer within the City's corporate limits and its police jurisdiction, it was later determined by the City that it had no authority to regulate the sale and distribution of draft beer outside its corporate limits. Accordingly, the Prattville City Council amended Ordinance No. 6-9 to remove the language "and the police jurisdiction" from the ordinance. After Ordinance No. 6-9 was amended, Russell commenced this action seeking a judgement declaring that the City has the authority to enact an ordinance extending the sale of draft beer to its police jurisdiction and, specifically, a judgment declaring the legality of draft-beer sales at his bar. Russell, however, makes no claim that Ordinance No. 6-9, as amended, is invalid or otherwise unreasonable. It is well settled that "municipal ordinances are presumed to be valid and reasonable, to be within the scope of the powers granted to municipalities to adopt such ordinances, and are not to be struck down unless they are clearly arbitrary and unreasonable." Cudd v. City of Homewood, 284 Ala. 268, 270, 224 So. 2d 625, 627 (1969). It is further settled that "an ordinance

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enacted by a local governing body 'is presumed reasonable and valid, and that the burden is on the one challenging the ordinance to clearly show its invalidity.' " Brown v. Board of Educ. of Montgomery Cnty., 863 So. 2d 73, 75 (Ala. 2003). Because Ordinance No. 6-9, as amended, is presumed reasonable and valid and because Russell does not claim otherwise, the trial court had no choice but to dismiss Russell's action because it presented no justiciable controversy to be settled.

As a last resort, Russell argued before the trial court, and argues on appeal, that he is not prohibited from selling draft beer at his bar because, he says, his liquor license permits the sale of beer and, he says, the legislature has made no distinction between "beer" and "draft beer." We disagree.

"It is this Court's responsibility to give effect to the legislative intent whenever that intent is manifested. State v. Union Tank Car Co., 281 Ala. 246, 248, 201 So. 2d 402, 403 (1967). When interpreting a statute, this Court must read the statute as a whole because statutory language depends on context; we will presume that the Legislature knew the meaning of the words it used when it enacted the statute. Ex parte Jackson, 614 So. 2d 405, 406-07 (Ala. 1993). Additionally, when a term is not defined in a statute, the commonly accepted definition of the term should be applied. Republic Steel Corp. v. Horn, 268 Ala. 279, 281, 105 So. 2d

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446, 447 (1958). Furthermore, we must give the words in a statute their plain, ordinary, and commonly understood meaning, and where plain language is used we must interpret it to mean exactly what it says. Ex parte Shelby County Health Care Auth., 850 So. 2d 332 (Ala. 2002)."

Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003).

Section 28-3-1, Ala. Code 1975, which provides definitions for terms used in Title 28, Ala. Code 1975, defines "beer, or malt or brewed beverages," as

"any beer, lager beer, ale, porter, malt or brewed beverage, or similar fermented malt liquor containing one-half of one percent or more of alcohol by volume and not in excess of thirteen and nine-tenths percent by volume, by whatever name the same may be called."

§ 28-3-1(3), Ala. Code 1975.

Even though draft beer would seem to fall within this definition for "beer," it is nonetheless clear that our legislature has, by statute, distinguished draft beer from other forms of beer by, for example, using language such as "[a]ll beer, except draft or keg beer, sold by retailers"

§ 28-3A-23(g), Ala. Code 1975. Section 28-3A-23(h) pertains solely to draft or keg beer and provides that it may be sold "within those counties

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in which and in the manner in which the sale of draft or keg beer was authorized by law on September 30, 1980," or "in which the sale of draft or keg beer is hereafter authorized by law." The legislature then enacted § 45-1A-40.01 to specifically address the City's authority to regulate the sale and distribution of "draft beer" by retail licensees of the ABC Board. See also § 28-3A-17, Ala. Code 1975 ("Upon applicant's compliance with the provisions of [the Alcoholic Beverage Licensing Code] ..., the [ABC Board] shall issue to applicant a retail beer license which will authorize the licensee to purchase beer, including draft beer in counties or municipalities where the sale thereof is permitted" (emphasis added)).

Based on the foregoing, the legislature clearly intended to distinguish draft beer from other forms of beer. To conclude otherwise would have the effect of legalizing draft beer throughout the State of Alabama despite existing law providing that it may be sold only in those counties where permitted by law; in this case, none of the parties dispute

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that there is no law or ordinance authorizing the sale of draft beer in Autauga County.²

Conclusion

Based on the foregoing, there is no bona fide justiciable controversy to be settled between Russell and the defendants. At the time Russell commenced his action seeking declaratory and injunctive relief, Ordinance No. 6-9 provided that the City could regulate the sale and distribution of draft beer only within its corporate limits. Russell has not claimed that the ordinance is either invalid or unreasonable, nor has he presented a viable argument to support his theory that there is no distinction between beer and draft beer. Accordingly, the trial court's order dismissing Russell's declaratory-judgment action is affirmed.

AFFIRMED.

Bolin and Stewart, JJ., concur.

Parker, C.J., and Mitchell, J., concur specially.

²Draft beer, then, is regulated based on the means by which the beer is sold, i.e., its delivery system. All beverages within the definition of "beer" could be considered "draft or keg beer" if distributed that way. We can only assume that the legislature was more interested in restricting how beer was dispensed and not limiting sales of beverages that could be generally defined as beer.

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MITCHELL, Justice (concurring specially).

I join the Court's opinion, but I write separately to address a confusion that has muddled the issues in this case. The circuit court dismissed the complaint filed by George Harvey Russell d/b/a Carl's Country for lack of a justiciable controversy -- which is a jurisdictional ruling. See Moore v. City of Center Point, 319 So. 3d 1223, 1229 (Ala. 2020); Chapman v. Gooden, 974 So. 2d 972, 983-84 (Ala. 2007). But its reasons for doing so -- that the amended Prattville ordinance is valid and that Russell is wrong to think his liquor license covers the sale of draft beer -- were essentially on the merits. In framing the issues, the circuit court took its cue from the defendants, all of whom seem to have assumed that the justiciability of Russell's complaint was intertwined with the merits of his underlying legal positions. The parties' appellate briefs largely reflect the same assumption.

The Court's opinion tacitly accepts this framing, and understandably so. No party before us has drawn attention to this matter, and "it is neither this Court's duty nor its function to perform all the legal research for an appellant." Sea Calm Shipping Co. v. Cooks, 565 So. 2d 212, 216

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(Ala. 1990). Rather, it is the appellant's job to "convince us that every stated ground for the judgment against him is incorrect." Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 680 (11th Cir. 2014). And Russell makes no argument that the circuit court erred in its justiciability analysis.

Nevertheless, the existence of a justiciable dispute and the merits of that dispute are two distinct questions. When a court asks whether a declaratory-judgment complaint presents a justiciable dispute, it is asking whether the plaintiff has alleged "a definite and concrete controversy regarding the legal relationship between" genuinely adverse parties. Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 225 (Ala. 2003); see also MacKenzie v. First Alabama Bank, 598 So. 2d 1367, 1370 (Ala. 1992) (" 'It must be a controversy which 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 decree.' " (quoting Copeland v. Jefferson Cnty., 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969))). That question is jurisdictional -- if a complaint fails to allege a justiciable controversy, the court must dismiss

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it for lack of subject-matter jurisdiction. See Moore, 319 So. 3d at 1229; City of Montgomery v. Hunter, 319 So. 3d 1213, 1222 (Ala. 2020); Chapman, 974 So. 2d at 983-84; State ex rel. Baxley v. Johnson, 293 Ala. 69, 73-74, 300 So. 2d 106, 110 (1974); Jefferson Cnty. v. Johnson, 232 Ala. 406, 406-07, 168 So. 450, 451-52 (1936).³ On the other hand, if there is a justiciable dispute, the court may proceed to resolve the merits of that dispute, which simply means determining which of the parties is legally in the right. Litigants in future cases should be mindful of the distinction. With these observations, I concur in the Court's opinion.

Parker, C.J., concurs.

³Some of this Court's decisions have either assumed or stated in passing that complaints not raising justiciable controversies should be dismissed under Rule 12(b)(6), Ala. R. Civ. P., for failure to state a claim upon which relief can be granted. See, e.g., Moore, 319 So. 2d at 1226-27, 1231 (affirming lower court's dismissal under Rule 12(b)(6) for lack of a justiciable controversy); Harper, 873 So. 2d at 223 (stating as much in dicta). But given the well-settled, longstanding doctrine that justiciability is jurisdictional, it seems clear that such dismissals are really for lack of subject-matter jurisdiction and thus belong under Rule 12(b)(1). The choice of label will not always make a practical difference, but it can. Dismissals under Rules 12(b)(1) and (b)(6) are subject to different waiver and preservation rules, compare Rule 12(h)(2), Ala. R. Civ. P., with Rule 12(h)(3), Ala. R. Civ. P., and have different res judicata consequences. See Havis v. Marshall Cnty., 802 So. 2d 1101, 1103 n.2 (Ala. Civ. App. 2001) (noting that Rule 12(b)(6) dismissals ordinarily "operate as adjudications on the merits" under Rule 41(b), Ala. R. Civ. P.).