Rel: October 18, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180683

Courtyard Manor Homeowners' Association, Inc.

v.

City of Pelham

Appeal from Shelby Circuit Court
(CV-18-900823)

SELLERS, Justice.

Courtyard Manor Homeowners' Association, Inc. ("Courtyard Manor"),[1] appeals from the Shelby Circuit Court's dismissal of

[1]Courtyard Manor is the homeowners' association for all the residents of the Courtyard Manor residential subdivision.

its complaint filed against the City of Pelham ("the City"). We affirm.

In August 2018, Courtyard Manor filed a complaint against the City after the City failed to conduct a hearing or otherwise to respond to Courtyard Manor's petition, filed with the City in September 2017, seeking to be deannexed from the City's municipal limits. Courtyard Manor averred in its complaint that the City had agreed to apply its deannexation criteria to the matter, that the City had a duty to set the matter for a hearing, and that the City had de facto denied the petition by failing to take any action on it.[2] Courtyard Manor requested that the circuit court conduct a hearing on the petition and enter an order deannexing Courtyard Manor from the City. Alternatively, Courtyard Manor requested that the circuit court order the Pelham City Council to hold a

[2]The complaint asserts that the reasons stated in the petition for deannexation were that high-school-age children residing in Courtyard Manor were required to travel a distance of least 11 miles to Pelham High School; that the trip occurred in heavy traffic on crowded roads, posing a danger to the children; and that the round trip to and from Pelham High School consumed "most" of the children's day. Courtyard Manor also asserted that Courtyard Manor was closer to the City of Chelsea schools and that the City of Chelsea had agreed to annex Courtyard Manor if Courtyard Manor was deannexed from the City.

hearing on the petition and to report its decision to the circuit court.

The City moved the circuit court to dismiss the complaint pursuant to Rule 12(b)(6), Ala. R. Civ. P.,[3] for failure to state a claim upon which relief can be granted. The City argued that, in deciding whether to deannex property, a municipal governing body acts in a legislative capacity, that a municipal governing body has discretion to determine if and when to deannex property, that the governing body's discretion in determining if and when to deannex property is not subject to interference by the courts, that the City's governing body has not determined that the corporate limits of the City should be reduced in the manner requested by Courtyard Manor, and that the City had no duty to hold a hearing on Courtyard Manor's petition. The circuit court granted the City's motion to dismiss. This appeal followed.

I. Standard of Review

[3]The City also cited Rule 12(b)(1), Ala. R. Civ. P., as a ground for dismissal. This Court, however, is not convinced that the City's arguments for dismissal implicate the circuit court's subject-matter jurisdiction, i.e., its power to the hear the case.

> "On appeal, a dismissal is not entitled to a presumption of correctness. Jones v. Lee County Commission, 394 So. 2d 928, 930 (Ala. 1981); Allen v. Johnny Baker Hauling, Inc., 545 So. 2d 771, 772 (Ala. Civ. App. 1989). The appropriate standard of review under Rule 12(b)(6) is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle her to relief. Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985); Hill v. Falletta, 589 So. 2d 746 (Ala. Civ. App. 1991). In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether she may possibly prevail. Fontenot v. Bramlett, 470 So. 2d 669, 671 (Ala. 1985); Rice v. United Ins. Co. of America, 465 So. 2d 1100, 1101 (Ala. 1984). We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986)."

Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court reviews de novo questions of law concerning statutory construction. Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033 (Ala. 2005).

II. Analysis

Section 11-42-200, Ala. Code 1975, a part of Alabama's statutory scheme for the reduction of municipal corporate limits or deannexation, provides:

> "Whenever in the opinion of the council or governing body of any city or town the public health or public good requires that the corporate limits of such town or city be reduced and the boundaries thereof reestablished, said council shall pass a resolution defining the proposed corporate limits."

The language of the statute contemplates that, when the governing body of a municipality determines that the public health or public good requires the reduction of corporate limits, the governing body will pass a resolution defining the proposed new limits. Nothing in the plain language of the statute contemplates the filing of a petition for deannexation or requires any action on the part of the governing body in the event such a petition is filed. Rather, the mere passage of a resolution defining the proposed new municipal limits satisfies the statutory mandate.

This Court has never addressed the concept of court-ordered deannexation or whether or to what extent there can be judicial review of a governing body's de facto denial of a petition for deannexation by failing to take any action on the petition or to pass a resolution reducing the municipal limits. The Court has, however, considered the extent to which courts may review the decision of a municipality's governing body to deannex part of the municipality. See Evans v. Stone,

473 So. 2d 495, 497 (Ala. 1985) ("We hold that when the governing body of a city or town resolves to reduce its corporate limits, it acts in its legislative capacity, just as it does when it determines to enlarge its corporate limits. See [City of Birmingham v.] Mead [Corp., 372 So. 2d 825 (Ala. 1979)]. Consequently, when the reasonableness of the proposed reduction is fairly debatable, the courts will defer to the judgment of the governing body of the city or town and will interfere with its decision only to cure an abuse of discretion."). The Court also has considered the extent to which courts may review decisions by municipalities to annex territory. City of Birmingham v. Mead Corp., 372 So. 2d 825, 829 (Ala. 1979) (indicating that governing bodies of municipalities have broad discretion in deciding whether to annex property). In the present case, Courtyard Manor fails to provide any argument concerning § 11-42-200, and, more specifically, it fails to acknowledge our courts' deference to a municipal governing body's legislative role and discretion in matters relating to annexation and deannexation. See Spradlin v. Birmingham Airport Auth., 613 So. 2d 347 (Ala. 1993)(noting that it is neither this Court's duty nor its

function to perform an appellant's legal research); see also Rule 28(a)(10), Ala. R. App. P.

Rather than addressing § 11-42-200, Courtyard Manor argues that Article I, § 25, Ala. Const. 1901, establishes its right to petition the City for deannexation and to seek judicial review when the City fails to take any action on the petition. Section 25 provides: "[T]he citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance." (Emphasis added.) Courtyard Manor argues that § 25 requires "that the agencies of Government petitioned or remonstrated with by citizens owe those citizens the duty to listen and respond." Courtyard Manor, however, cites no legal authority supporting its contention that the City's failure to respond to Courtyard Manor's petition for deannexation implicates § 25. Spradlin, supra; Rule 28(a)(10), Ala. R. App. P. Rather, we are asked to create a new constitutional obligation requiring a municipality (or other governmental entity) not only to accept

citizen petitions, but also to respond in a format reviewable by the courts. This we decline to do.

Courtyard Manor concedes that the First Amendment to the United States Constitution, which contains a provision regarding petitions for the redress of grievances similar to § 25, would not require a response to a deannexation petition. That provision states that "Congress shall make no law ... abridging the freedom of speech, ... or the right of the people ... to petition the Government for a redress of grievances." See generally Smith v. Arkansas State Highway Emps., Local 1315, 441 U.S. 463, 465 (1979)(noting the right of a public employee to speak freely and to petition openly, but concluding that the First Amendment does not impose any affirmative obligation on the government to listen or respond). Courtyard Manor suggests that the words "address" and "remonstrance" in § 25 expand the meaning of that provision and require a hearing and response to Courtyard Manor's petition for deannexation. It is well settled that, in construing a constitutional provision, this Court has no right to broaden the meaning of the words used. City of Bessemer v. McClain, 957 So. 2d 1061 (Ala. 2006). Black's Law Dictionary

defines "remonstrance" as "[a] formal document stating reasons for opposition or grievance." Black's Law Dictionary 1549 (11th ed. 2019). Garner's dictionary defines "address," a verb, as "to direct (a question, etc.) to (someone)." Garner's Dictionary of Legal Usage 20 (3d ed. 2011). The use of the words "address" and "remonstrance" in § 25 merely denotes various methods of applying to the government for the redress of grievances; this Court is not at liberty to broaden the meaning of those words to impose on the government a duty to hold a hearing or otherwise to respond, as Courtyard Manor suggests. The right to petition or complain about governmental action or inaction is clearly within the Alabama Constitution; nothing can prevent citizens from asking their government to consider a request. But, requiring a response, or in this case mandating that a city hold a hearing, imposes a duty that does not exist under our law. We must respect the legislative function of governments and not intrude on their separate, but coequal, power to decide when, where, and whether to conduct hearings or respond to petitions. Legislative inaction in this case is cured not by court intervention, but at the ballot box. Absent any abuse of discretion by the governing body,

courts should not create a duty for a governing legislative body to hold, cancel, or extend any meeting to accept or reject legislative initiatives proposed by citizens. See, e.g., Piekarski v. Smith, 38 Del. Ch. 402, 411, 153 A.2d 587, 592 (1959)(noting that the contention that the right to petition, remonstrate, or address includes the right to a formal hearing "has the merit of novelty only" and that, "[h]istorically, the right of petition means just what it says: the right to present to the sovereign a petition or remonstrance setting forth a protest or grievance arising out of governmental action, past or contemplated. It would be a perversion of the right to hold that it carries with it the right to debate in person or through counsel the subject matter of the remonstrance").

III. Conclusion

For the foregoing reasons, the circuit court did not err in dismissing Courtyard Manor's complaint pursuant to Rule 12(b)(6), Ala. R. Civ. P., for failure to state a claim upon which relief can be granted. Accordingly, the circuit court's judgment is affirmed.

AFFIRMED.

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