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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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W.R. Meriwether, Factors and Drayage, LLC, and Gregory P. Thompson

v.

Pike Road Volunteer Fire Protection Authority, a corporation, et al.

Appeal from Montgomery Circuit Court
(CV-18-901961)

SELLERS, Justice.

A limited liability company, W.R. Meriwether, Factors and Drayage, LLC ("Meriwether"), and Gregory P. Thompson appeal from adverse judgments entered by the Montgomery Circuit Court

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in Meriwether and Thompson's action against the Pike Road Volunteer Fire Protection Authority, a corporation ("the Fire Authority"), and other defendants. We reverse the trial court's judgments and remand the cause for further proceedings.

Meriwether and Thompson each own parcels of real property that adjoin a 10-acre piece of property owned by the Fire Authority. All three parcels are located in the Town of Pike Road ("Pike Road"). Pursuant to a Pike Road zoning ordinance, the parcels are located in an area zoned for "low density, single-family residential development." Materials submitted to the trial court indicate that the Fire Authority plans to build a fire station on its 10-acre parcel.¹

Meriwether and Thompson sued the Fire Authority and Pike Road, along with the members of the Fire Authority's board of directors, the Pike Road Planning Commission, the chairman of the Planning Commission, and the Pike Road planning director. In their complaint, Meriwether and Thompson sought a judgment declaring that the Fire Authority is subject to the referenced

¹There is some suggestion in the record that the Fire Authority plans also to construct a firefighter-training facility on the parcel.

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zoning ordinance and that constructing a fire station on its property would be a violation of that ordinance.

Pike Road, the Pike Road planning director, the Pike Road Planning Commission, and the chairman of the planning commission answered Meriwether and Thompson's complaint and, thereafter, filed a motion for a judgment on the pleadings. The other defendants filed a motion to dismiss the action. Each of the defendants argued, among other things, that the Fire Authority is exempt from the Pike Road zoning ordinance. The trial court agreed and granted both motions, entering separate judgments dismissing the action. This appeal followed.

In 2007, this Court stated:

"It was once 'well settled that city zoning ordinances [did] not apply to the operation of a governmental function by a governing body, as opposed to a proprietary function.' Lane v. Zoning Bd. of Talladega, 669 So. 2d 958, 959 (Ala. Civ. App. 1995) See City of Birmingham v. Scogin, 269 Ala. 679, 690, 115 So. 2d 505, 514 (1959) ('The Alabama cases have long held that zoning does not apply to the operation of a governmental function by a municipality.');

Lauderdale County Bd. of Educ. v. Alexander, 269 Ala. 79, 86, 110 So. 2d 911, 918 (1959) ('If a city engaged in a governmental function is not subject to its own zoning regulations, certainly a county engaged in a governmental function is not subject to a city's zoning regulations.');

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v. Stephens, 262 Ala. 203, 78 So. 2d 267 (1955);
Alabama Alcoholic Beverage Control Bd. v. City of
Birmingham, 253 Ala. 402, 44 So. 2d 593 (1950)."

City of Selma v. Dallas Cty., 964 So. 2d 12, 16 (Ala. 2007)
(emphasis omitted). According to the Court in City of Selma,
the exemption from zoning regulation for the operation of a
governmental function by a governing body remains intact:
"[N]either the judiciary nor the legislature has heretofore
manifested an intent to abrogate the immunity from zoning
ordinances that has long been afforded to political
subdivisions in the operation of their governmental
functions." 964 So. 2d at 19 (emphasis omitted). The
question in the present case is whether the Fire Authority
qualifies as a "governing body" or a "political subdivision"
that, if engaged in governmental functions, is exempt from
zoning ordinances. City of Selma, 964 So. 2d at 16, 19. We
apply a de novo standard of review to that question of law.
See Alabama Republican Party v. McGinley, 893 So. 2d 337, 342
(Ala. 2004) (de novo standard applies where there are no
factual disputes and the issue to be resolved is one of law).²

²Several exhibits were submitted in support of, and in
opposition to, the motion to dismiss and the motion for a
judgment on the pleadings. Rule 12(b)(6), Ala. R. Civ. P.,
provides that, if matters outside the pleadings are presented

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According to the parties, the Fire Authority was duly created pursuant to § 11-88-1 et seq., Ala. Code 1975, which allows for the creation of public corporations, known as "authorities," to provide water, sewer, or fire-protection services.³ The materials submitted to the trial court indicate that, with the approval of the Montgomery County Commission, the Fire Authority was formed in 1992 by three resident owners of property located in a then unincorporated area in Montgomery County. See § 11-88-3, Ala. Code 1975 (allowing resident property owners desiring to create an authority under

with a motion to dismiss for failure to state a claim and are not excluded by the trial court, the motion is to be treated as one for a summary judgment. Rule 12(c), Ala. R. Civ. P., provides a similar requirement with respect to a motion for a judgment on the pleadings. See also Ex parte Safeway Ins. Co. of Alabama, Inc., 990 So. 2d 344, 350 (Ala. 2008) (noting that, on a motion to dismiss for lack of subject-matter jurisdiction that includes a challenge to the accuracy of the facts set out in a complaint, a trial court can consider "evidence beyond the face of the complaint"). The parties do not provide significant discussion of these concepts. It appears that the facts necessary for resolution of this appeal are undisputed and that the issue for this Court to consider is one of law.

³Although § 11-88-1 et seq., Ala. Code 1975, does not expressly refer to the creation of "volunteer" fire authorities, the parties agree for purposes of this appeal that volunteer fire authorities are included in the type of public corporations that may be created pursuant to the statutory scheme set out in § 11-88-1 et seq.

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Title 4, Chapter 88, to apply to "the governing body of that county in which the area or areas to be served by the proposed authority is located").⁴

The exemption from zoning regulation has been applied in Alabama to the governmental functions of counties and municipalities. See City of Selma, 964 So. 2d at 19; Lane v. Zoning Bd. of Adjustment of Talladega, 669 So. 2d 958, 959 (Ala. Civ. App. 1995); City of Birmingham v. Scogin, 269 Ala. 679, 690, 115 So. 2d 505, 514 (1959). It also has been applied to the governmental functions of county and city boards of education. Lauderdale Cty. Bd. of Educ. v. Alexander, 269 Ala. 79, 86, 110 So. 2d 911, 917 (1959); Alves v. Board of Educ. for Guntersville, 922 So. 2d 129, 133 (Ala. Civ. App. 2005). Notably, county and city boards of education have been described as "agencies of the state." Enterprise City Bd. of Educ. v. Miller, 348 So. 2d 782, 783 (Ala. 1977).

⁴Neither Pike Road nor any Pike Road officials were involved in the creation of the Fire Authority, and there is no indication that they are currently involved in its management or operations. Rather, the record suggests that Pike Road may have a contract with the Fire Authority, pursuant to which the Fire Authority has agreed to provide fire-protection services within Pike Road.

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We acknowledge that some of the reasoning set out in Water Works Board of Birmingham v. Stephens, 262 Ala. 203, 208, 78 So. 2d 267, 272 (1955), might possibly be read to suggest that a municipal waterworks board created pursuant to § 11-50-230 et seq., Ala. Code 1975, can be considered a governing body or political subdivision for purposes of an exemption from zoning regulation. The Court in Stephens, in discussing that exemption, described a waterworks board formed under the predecessor to § 11-50-230 et seq. as "an agency of the city" and stated that the board was "to be treated in the same light as the city itself." 262 Ala. at 209, 78 So. 2d at 272. Ultimately, however, the Court determined that the waterworks board, in selling water services, was exercising a proprietary function and therefore could not be exempt from zoning laws. It appears, however, that the Court's discussion of the zoning exemption in Stephens was dicta. We also note that more recent precedent states that a waterworks board formed under § 11-50-230 et seq. is "not a mere agency of the [municipality it serves] but a public corporation entirely separate and independent from [that municipality]." Water

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Works Bd. of Arab v. City of Arab, 231 So. 3d 265, 272 (Ala. 2016).⁵

There is support for the appellees' assertion that the Fire Authority's functions could be described as "governmental" in nature. For example, § 11-88-2, Ala. Code 1975, provides that § 11-88-1 et seq. "is intended to aid the state in the execution of its duties." Section 11-88-7(15), Ala. Code 1975, gives authorities created therein the power of eminent domain. Section 11-88-15, Ala. Code 1975, expressly declares the furnishing of fire-protection services by an authority a governmental function for purposes of immunity from tort liability. See also State ex rel. Hyland v. Baumhauer, 244 Ala. 1, 8, 12 So. 2d 326, 330 (1942) (not involving the exemption from zoning regulation but

⁵We also acknowledge that this Court in City of Huntsville v. Moring, 284 Ala. 678, 227 So. 2d 578 (1969), intimated that a municipal medical-clinic board, formed under the statutory scheme that is now codified at § 11-58-1 et seq., Ala. Code 1975, might be exempt from zoning laws if it is engaged in a governmental function. That suggestion, however, was included in dicta. Finally, we acknowledge that the Alabama Attorney General's Office has issued opinions stating that certain entities are exempt from zoning regulation. See, e.g., Ala. Op. Att'y Gen. No. 89-00446 (Sept. 27, 1989) (involving a State university). Those Attorney General opinions, however, do not involve authorities created under § 11-88-1 et seq.

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nevertheless stating that "[a] fire department, when organized and functioning, is performing a governmental rather than a proprietary function"); § 9-3-18, Ala. Code 1975 (stating that volunteer fire departments are "public in nature, as they protect the health, safety, and welfare of the public"); Ala. Const. 1901, Local Laws, Montgomery County § 5 ("[A]ll volunteer fire departments ... are organizations that are public in nature and serve to protect the health, safety, and welfare of the citizens of Montgomery County."); City of Selma, 964 So. 2d at 19 (stating that governmental functions include the promotion of public health and safety). We are not convinced, however, that, because the Fire Authority engages in functions that can be described as traditionally "governmental" in nature, the Fire Authority necessarily is a governing body or political subdivision for purposes of the exemption from the zoning ordinance. Cf. Limestone Cty. Water & Sewer Auth. v. City of Athens, 896 So. 2d 531, 537 (Ala. Civ. App. 2004) ("Possessing certain powers normally associated with the State does not necessarily make an entity part of the State.").⁶

⁶The Court does not suggest or imply that fire-protection authorities organized under § 11-88-1 et seq. can never be

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Authorities created pursuant to § 11-88-1 et seq. are incorporated by natural persons. See § 11-8-4, Ala. Code 1975 (providing that, after the appropriate county's governing body approves an application by three or more residents who own property in the area to be served, the applicants "shall proceed to incorporate an authority by filing for record in the office of the judge of probate of the determining county a certificate of incorporation"). Although the members of the Fire Authority's board of directors are chosen by the Montgomery County Commission, they cannot be officers of the state or of any county or municipality. § 11-88-6(c), Ala. Code 1975. Rather, they must be "duly qualified elector[s] of [the] county [in which the Fire Authority's service area is located] and shall be [residents] of and the owner[s] of real

engaged in "proprietary," as opposed to governmental, functions for purposes of the exemption from zoning regulation. Meriwether and Thompson, however, do not point to evidence indicating that the Fire Authority engages in proprietary functions, nor do they develop a persuasive argument on that issue. As noted, it appears that the Fire Authority, which was not created by Pike Road and is not a department of Pike Road, has contracted with Pike Road to provide fire-protection services within its municipal limits. Meriwether and Thompson have not persuasively argued that the existence of that contract demonstrates that the Fire Authority engages in a proprietary function with respect to Pike Road, and the Court expresses no opinion on that issue.

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property in that part of the service area of the [Fire Authority] which lies within that county." § 11-88-6(d), Ala. Code 1975. Section 11-88-8, Ala. Code 1975, which recognizes that authorities may issue bonds, provides that all such bonds are solely the obligation of the authority "and shall not create an obligation or debt of any county or municipality."

To be sure, § 11-88-2, Ala. Code 1975, describes authorities as "instrumentalities of the state." But in doing so, it specifically provides that such authorities are "independent" and have "full and adequate powers to fulfill their functions." In Limestone County Water & Sewer Authority, 896 So. 2d at 535, the Court of Civil Appeals considered § 11-88-2 and held that a water authority formed under § 11-88-1 et seq. is an entity "independent" of the State and should not be considered the equivalent of the State. As the Court of Civil Appeals acknowledged in Limestone County, the term "independent instrumentality of the state" is used several times throughout the Alabama Code in describing certain entities. 896 So. 2d at 536. The Court of Civil Appeals concluded:

"Despite the prevalent use of the phrase ['independent instrumentality of the state'] with

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respect to public corporations, we have not been referred to any case in which any of these public corporations have been adjudicated to be the equivalent of the State. In fact, as is apparent from the cases cited [earlier in the opinion], the courts have determined numerous times that public corporations are not entities of the State."

896 So. 2d at 536. Likewise, it does not appear that any of the entities described in the Code as "independent instrumentalities of the state" have been recognized by Alabama appellate courts as the equivalent of the State or its political subdivisions for purposes of exemption from zoning regulation.⁷

It is noteworthy that statutory provisions expressly exempt authorities created under Title 11, Chapter 88, from laws other than zoning regulations. Section 11-88-15, Ala. Code 1975, exempts such authorities from tort liability for acts committed by "any director, agent, servant, or employee of the authority in the furnishing of fire protection service

⁷Pike Road points to Alves v. Board of Education for Guntersville, 922 So. 2d 129, 133 (Ala. Civ. App. 2005), in which the Court of Civil Appeals used the term "public body" in referring to entities that are exempt from zoning regulation. Alves, however, involved a city board of education, not an "independent" authority formed under § 11-88-1 et seq. The court in Alves made a point to note that city boards of education are "agencies of the state." 922 So. 2d at 133 n.3.

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or in the construction, maintenance, or operation of any fire protection facility." Sections 11-88-7.1(d) and (e) and 11-88-16, Ala. Code 1975, exempt them from the payment of state taxes and probate fees. Section 11-88-17, Ala. Code 1975, exempts them from restrictions imposed by usury laws. Although these provisions could lend support to the proposition that authorities are engaged in activities that might be described as governmental in nature, that does not, as noted, necessarily make them bodies that are exempt from zoning regulation. Moreover, the existence of these express statutory exemptions serves to highlight the fact that the legislature, which knows how to exempt entities like the Fire Authority from other areas of law, chose not to exempt them from zoning regulation. Given the significance of a blanket exemption from zoning regulation, which results in the unfettered use and development of property without regard to a comprehensive land-use plan, the legislature would have, if it intended to do so, specifically granted the exemption from zoning regulation. Absent a specific exemption from zoning regulation, the Fire Authority must comply with the zoning ordinance affecting the property it possesses.

Zoning and other land-use regulations act to limit and restrict the development of private property. Because of the importance of protecting property rights, restricting the use of property or exempting property from existing zoning restrictions requires a process that will preserve a property owner's right to the peaceful enjoyment of his or her property and simultaneously allow property owners the confidence and assurance that neighbors will not develop their property for an inconsistent or nonconforming use that could diminish the value or use of other property. Thus, zoning ordinances serve the important purpose of facilitating the development of property in a consistent, stable manner based on land-use plans adopted by property owners for their mutual protection and benefit. The exemption from zoning regulation afforded governing bodies should not be readily awarded.⁸

⁸The appellees cite several opinions holding that certain public corporations are "governmental entities." Some of those opinions involved a statute that, for purposes of a damages cap enjoyed by "governmental entities," expressly defined that term to include "municipal or county public corporations." See § 11-93-1, Ala. Code 1975. There is no statute that specifically defines the Fire Authority as a body that is exempt from zoning laws. Likewise, citation to § 13A-10-8, Ala. Code 1975, which criminalizes the making of a knowingly false alarm to "an official or volunteer fire department or any other governmental agency," does not convince the Court that the legislature intended to make

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We conclude that the Fire Authority does not qualify as a body entitled to an exemption from zoning regulation. Accordingly, we reverse the trial court's judgments and remand the cause for further proceedings. Because of our holding, we pretermitt consideration of Meriwether and Thompson's other arguments in support of reversal.⁹

REVERSED AND REMANDED.

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

entities like the Fire Authority exempt from zoning regulation. Finally, we are not persuaded by citations to judicial precedent and Alabama Attorney General opinions involving the question whether certain public corporations, including volunteer fire departments, are subject to competitive-bidding laws, open-records laws, or open-meetings laws. Those rulings did not involve the exemption from zoning regulation.

⁹The record indicates that the Fire Authority's existing fire station may be located in the area that is zoned residential. That fire station, however, is not at issue in this appeal. The Fire Authority was created before Pike Road was incorporated. It is not entirely clear, but it appears likely that the existing fire station also was constructed before the incorporation of Pike Road and the adoption of the relevant zoning ordinance.