Rel: January 14, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200493

Baldwin County Sewer Service, LLC

v.

The Gardens at Glenlakes Property Owners Association, Inc., et al.

Appeal from Baldwin Circuit Court
(CV-14-900044.80 and CV-17-900052)

STEWART, Justice.

This appeal arises from an order entered by the Baldwin Circuit Court ("the trial court") in two consolidated actions. In the first action ("the 2014 action"), The Gardens at Glenlakes Property Owners Association, Inc., Lake View Villas Association, Inc., Lake View Estates Property Owners Association, Inc., Glenlakes Unit One Property Owners Association, Inc., and Glenlakes Master Association, Inc. ("the Associations"), sued Baldwin County Sewer Service, LLC ("BCSS"), challenging a sewer-service rate increase. In the second action ("the 2017 action"), Dan Gormley, Mike Willis, Janet Maxwell, Larry Morgan, David Vosloh, and Dick Dayton ("the individual plaintiffs") sued BCSS, challenging the same rate increase. The trial court ultimately consolidated the actions in 2020, and it entered an order determining that the Associations and the individual plaintiffs are the real parties in interest in the actions. BCSS has appealed from that order. As explained more fully below, we dismiss the appeal because it is from a nonfinal order.

Factual and Procedural Background

In Gardens at Glenlakes Property Owners Ass'n v. Baldwin County Sewer Service, LLC, 225 So. 3d 47 (Ala. 2016)("Glenlakes"), an earlier

appeal from a judgment entered in favor of BCSS in the 2014 action, this Court provided a detailed factual background of that case. In 1985, South Alabama Sewer Service, Inc. ("SASS"), and Lake View Developers, Ltd. ("Lake View"), entered into an agreement that governed their relationship with respect to SASS's construction of a sewer line from its waste-treatment facility to a subdivision developed by Lake View known as Lake View Estates.[1] 225 So. 3d at 48-49. In 1991, Lakeview Realty Co. ("Lakeview Realty") purchased the development, excluding lots that had already been sold. Id. at 49. On November 13, 1991, SASS and Lakeview Realty entered into a new sewer agreement ("the 1991 agreement") that provided, in part:

> " 'C. The parties desire to set out herein their agreement whereby future purchasers of the lots in Lakeview Estates will purchase sewer taps from [SASS] and [SASS] will furnish sewer service to such owners of lots in Lakeview Estates.
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> " 'NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties do agree as follows:

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[1]The record reflects that Lake View Estates is currently known as "Glenlakes"; however, for the purpose of continuity, in this opinion we will refer to the subdivision as "Lake View Estates," as we did in Glenlakes.

> " '1. Sewer Taps and Services. [SASS] agrees to furnish sewer taps and sewer service to all lots in Lakeview Estates, both those lots now developed and all lots developed in the future. [Lakeview Realty] agrees to include a provision in its real estate sales contracts requiring that all purchasers of its lots in Lakeview Estates purchase sewer taps exclusively from [SASS] upon the terms and conditions contained in this Agreement.
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> " '....
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> " '5. Waste Water. [SASS] agrees to accept waste water from Lakeview Estates for treatment at its waste treatment facility for all lots with respect to which sewer tap fees and monthly service fees have been paid to [SASS]. [SASS] shall charge regular monthly sewer serve rates to all users within Lakeview Estates that are competitive with charges made by others for similar services in the South Baldwin County vicinity. The charges for customers in Lakeview Estates shall not be more than charges for all other customers of the same class or type.' "

Glenlakes, 225 So. 3d at 49-50.

By 2004, BCSS had purchased SASS's sewer lines and facilities in Baldwin County, and, in 2004, it purchased all the stock of SASS; since then, all monthly sewer fees related to Lake View Estates have been billed by and paid to BCSS. At some point after its acquisition of SASS's sewer

system, BCSS enacted a rate increase affecting customers in Lake View Estates. Id. at 50.

In 2014, the Associations sued BCSS in the trial court, generally asserting that BCSS had violated the sewer-service-rate provision of the 1991 agreement and contending that the rate increase effected by BCSS resulted in a rate that exceeded the rate permitted by the 1991 agreement. The Associations filed a joint motion for a partial summary judgment, and BCSS filed a cross-motion for a summary judgment in which it argued, among other things, that the Associations lacked standing to enforce the 1991 agreement on behalf of the individual property owners in Lake View Estates. On September 23, 2015, the trial court entered a summary judgment in favor of BCSS, concluding that the Associations lacked standing to enforce the 1991 agreement. Id. On October 20, 2015, the trial court entered a final judgment dismissing all remaining claims. Id. at 51. The Associations appealed, and this Court held: "The Associations ... may have a 'cause of action' problem; they may have a 'real-party-in-interest' problem .... There is, however, no 'standing'

problem." Id. at 53. Therefore, this Court reversed the judgment in favor of BCSS and remanded the 2014 action for further proceedings. Id. at 56.

In January 2017, after the appeal in Glenlakes, the individual plaintiffs, who are residents in Lake View Estates, commenced the 2017 action, in which, among other things, they sought to certify their claims as a class action. BCSS moved to dismiss that action based on the abatement statute, § 6-5-440, Ala. Code 1975, and the trial court denied the motion. BCSS then filed a petition for a writ of mandamus requesting that this Court direct the trial court to dismiss the 2017 action; that petition was denied without an opinion. Ex parte Baldwin Cnty. Sewer Serv., LLC (No. 1170462, Mar. 28, 2018). Then, in May 2019, the trial court entered an order in the 2017 action denying the individual plaintiffs' request for class certification and entering a partial summary judgment in favor of BCSS; as part of that order, the trial court dismissed, by stipulation, Willis, Maxwell, Morgan, and Vosloh as potential class representatives. Gormley and Dayton appealed to this Court, challenging the order denying class certification, and we affirmed that order without an opinion. Gormley v. Baldwin Cnty. Sewer Serv., LLC (No. 1180741,

Mar. 13, 2020), ___ So. 3d ___ (Ala. 2020)(table). In September 2020, the 2017 action was consolidated with the 2014 action.

Meanwhile, in September 2017, while the 2017 action was still proceeding separately, BCSS filed a motion for a summary judgment in the 2014 action, contending that the Associations were not the real parties in interest and that the Associations could no longer timely substitute or join other parties. The Associations filed a response in opposition to BCSS's summary-judgment motion, and, in October 2017, the Associations filed a motion to substitute the members of the Associations as parties, arguing that, pursuant to Rule 17, Ala. R. Civ. P.,[2] the Associations should

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[2]Rule 17(a) provides:

> "Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same

be afforded an opportunity to substitute parties rather than have the action dismissed. In October 2017, the trial court entered an order denying BCSS's summary-judgment motion.

In October 2020, after the actions had been consolidated, the Associations moved for a partial summary judgment on the real-party-in-interest issue, asserting that BCSS had been unwilling to participate in previously ordered mediation because of its continuing belief that the Associations were not real parties in interest. In support of their motion, the Associations attached a map of Lake View Estates, a copy of the 1991 agreement, and approximately 500 pages of powers of attorney executed in September 2015 by numerous members of the Associations granting the Associations the authority to prosecute the 2014 action on their behalf. It is not clear whether the submitted powers of attorney encompass every resident in Lake View Estates or every member of the Associations. The Associations later amended their motion to include the individual

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effect as if the action had been commenced in the name of the real party in interest."

plaintiffs as movants; however, the motion did not include any argument as to why the individual plaintiffs should be considered real parties in interest. BCSS filed a cross-motion for a summary judgment in which it referred the trial court to its argument regarding the real-party-in-interest issue in its summary-judgment motion that the trial court had denied in October 2017, in which it had asserted that no named plaintiff was a real party in interest.

On March 5, 2021, the trial court entered an order determining that the Associations and the individual plaintiffs are the real parties in interest in the consolidated actions. On March 10, 2021, the trial court entered an amended order in which it purported to certify the March 5 order as final pursuant to Rule 54(b), Ala. R. Civ. P. BCSS appealed.

Discussion

Before addressing the merits of BCSS's appeal, we must address whether there is a final judgment that will support an appeal. See Fuller v. Birmingham-Jefferson Cnty. Transit Auth., 147 So. 3d 907, 911 (Ala. 2013)("[J]urisdictional matters, such as whether an order is final so as to support an appeal, are of such importance that an appellate court may

take notice of them ex mero motu."). The parties and the trial court referred to the order from which BCSS appeals as a "summary-judgment order." That order granted the Associations and the individual plaintiffs' summary-judgment motion, but it also, in effect, denied BCSS's cross-motion for a summary judgment by determining that the Associations and the individual plaintiffs are the real parties in interest. We have consistently held that this Court will not entertain the attempted appeal of a denial of a motion for a summary judgment because " ' "[s]uch an order is inherently non-final and cannot be made final by a Rule 54(b) certification .... An order denying summary judgment is interlocutory and nonappealable." ' " Continental Cas. Co. v. SouthTrust Bank, N.A., 933 So. 2d 337, 340 (Ala. 2006) (quoting Fahey v. C.A.T.V. Subscriber Servs., Inc., 568 So. 2d 1219, 1222 (Ala.1990), quoting in turn Parsons Steel, Inc. v. Beasley, 522 So. 2d 253, 257-58 (Ala. 1988)).

The substance and result of the "summary-judgment order," however, is more akin to a denial of BCSS's attempt to have the Associations' and individual plaintiffs' claims dismissed based on the argument that they are not the real parties in interest. An order denying

a motion to dismiss is, likewise, not a final, appealable judgment. See Ex parte Noland Hosp. Montgomery, LLC, 127 So. 3d 1160, 1165 (Ala. 2012). Although the trial court purported to certify the March 5, 2021, order as final pursuant to Rule 54(b), Ala. R. Civ. P., for a Rule 54(b) certification to be effective, "the order must dispose of at least one of a number of claims or one of multiple parties, must make an express determination that there is no just reason for delay, and must expressly direct the entry of a judgment as to that claim or that party." Ex parte Noland Hosp. Montgomery, LLC, 127 So. 3d at 1165-66 (citing Jakeman v. Lawrence Grp. Mgmt. Co., 82 So. 3d 655, 659 (Ala. 2011), citing in turn Committee Comments on 1973 Adoption of Rule 54(b), Ala. R. Civ. P.)). "In other words, for a Rule 54(b) certification of finality to be effective, [the order being certified as final] must fully adjudicate at least one claim or fully dispose of the claims as they relate to at least one party." Haynes v. Alfa Fin. Corp., 730 So. 2d 178, 181 (Ala.1999)(emphasis omitted). The order at issue here does not fully dispose of any claims or parties -- instead, it effectively permits the consolidated actions to proceed by determining that the Associations and the individual plaintiffs are the real parties in

interest. Therefore, "the trial court's purported Rule 54(b) certification was not effective to create a final judgment, and the order to which that certification related was not appealable as of right." Haynes, 730 So. 2d at 181-82. This Court must, therefore, dismiss this appeal from a nonfinal order. Id. at 182.

Conclusion

Because BCSS has appealed from a nonfinal order, we dismiss the appeal.

APPEAL DISMISSED.

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