Cite as 2021 Ark. App. 305

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-19-595

ST. FRANCIS RIVER REGIONAL WATER DISTRICT APPELLANT V. CITY OF MARMADUKE, ARKANSAS APPELLEE	**Opinion Delivered** June 2, 2021 APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. 28CV-2017-219] HONORABLE MELISSA BRISTOW RICHARDSON, JUDGE AFFIRMED

WAYMOND M. BROWN, Judge

This appeal arises from cross-motions for summary judgment. The appellant is St. Francis River Regional Water District (the District), an Arkansas regional water district subject to the Regional Water Distribution District Act (RWDA), and appellee is the City of Marmaduke, Arkansas (the City), located in Greene County. The circuit court granted the City's motion for summary judgment. We affirm.

I. *Background Facts*

The District was established by an order of the Greene County Circuit Court on July 27, 1987, that stated: "There is a definite need for a water distribution system to service the above-described territory and the residents within said territory, due to the overall poor quality and quantity of water which is available to the residents of the district as a whole." The order also defined the geographical boundaries of the District.

American Railcar Industries, Inc. (ARI), is a manufacturing plant located in Marmaduke, Arkansas. In 1999, ARI built a plant (the West Plant) that was located entirely within the City. The City began providing water services to ARI upon completion of the West Plant in 1999. In 2006, ARI expanded and began construction of an additional facility located adjacent to and east of the West Plant (the East Plant) and the City began providing water to the East Plant that same year. The East Plant is located within the geographical boundaries of the District. In 2015, ARI expanded once again with the construction of the Refurbishing Plant (the Refurb Plant), and the City began providing water services to this plant in April 2016. The Refurb Plant is located within the geographical boundaries of the District.

Following the construction of the Refurb Plant, the District made demand on the City to discontinue water service to the East and Refurb Plants. After conferring with counsel and representatives of ARI, the City made the decision to continue providing water services to the entire ARI facility. On June 21, 2017, the District filed its complaint against the City, requesting an injunction to prevent the City from continuing to provide water services to the East and Refurb Plants as well as money damages. The District alleged the formation order granted it the exclusive right to serve all customers located within its geographical boundaries; therefore, the City was illegally providing water service to the East and Refurb Plants. In July 2018, the City annexed the area where the East and Refurb Plants are located. As a result, ARI's expansions are now located inside both the city limits of Marmaduke and the District's boundaries. The District did not file an objection to the annexation.

The District and the City each moved for summary judgment, and on April 8, 2019, the motions were heard. Both motions were premised on the parties' respective interpretations of Ark. Code Ann. § 15-22-223[1] and what effect, if any, the statute had on the City's providing water services to ARI. On April 17, 2019, the circuit court issued a letter opinion granting the City's motion for summary judgment, which effectively denied the District's motion, and ruled the City could continue providing water service to all ARI facilities. A judgment was entered on May 3, 2019, incorporating the letter opinion, and the case was dismissed with prejudice. The District filed a timely notice of appeal on May 9, 2019, and an amended notice of appeal on May 28, 2019.

On appeal, the District argues that Ark. Code Ann. § 15-22-223 gives it an exclusive right to provide water services to all persons or entities that are located within the District's geographical boundaries. Specifically, the District argues that the circuit court misinterpreted Ark. Code Ann. §§ 15-22-223 and 15-22-503[2] and erred in finding that (1) the City was the "current provider"; (2) the District had to be indebted to the Arkansas Natural Resources Commission (ANRC) at all applicable time frames; and (3) the City did not have to obtain permission from the ANRC prior to providing water service to the new ARI facilities. This appeal involves the interpretation of Ark. Code Ann. §§ 15-22-223 and 15-22-503 as well as an issue of first impression.[3]

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[1](Repl. 2016).

[2](Supp. 2019).

[3]Certification was denied by our supreme court on May 20, 2021.

II. *Standard of Review*

Ordinarily, on appeal from a summary-judgment disposition, the evidence is viewed in the light most favorable to the party resisting the motion, and any doubts and inferences are resolved against the moving party.[4] However, when the parties agree on the facts, we simply determine whether the appellee was entitled to judgment as a matter of law.[5] When parties file cross-motions for summary judgment, as was done in this case, they essentially agree that there are no material facts remaining, and summary judgment is an appropriate means of resolving the case.[6] As to issues of law presented, our review is de novo.[7]

Further, we review issues of statutory interpretation de novo.[8] Our supreme court has directed that the basic rule of statutory construction is to give effect to the intent of the General Assembly.[9] In determining the meaning of a statute, our first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language.[10] We construe the statute so that no word is left void, superfluous, or insignificant, and meaning and effect are given to every word in the statute if possible. When the language

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[4]*Aloha Pools & Spas, Inc. v. Emp.'s Ins. of Wausau*, 342 Ark. 398, 39 S.W.3d 440 (2000).

[5]*Id.*

[6]*McCutchen v. Patton*, 340 Ark. 371, 10 S.W.3d 439 (2000).

[7]*Preston v. Stoops*, 373 Ark. 591, 285 S.W.3d 606 (2008).

[8]*City of Ft. Smith v. Carter*, 372 Ark. 93, 270 S.W.3d 822 (2008).

[9]*Ryan & Co. AR, Inc. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007).

[10]*Id.*

of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction.[11]

III. *Discussion*

The District's overarching argument centers on whether it is entitled to the exclusive right to furnish water within the geographical boundaries set forth in the order creating the District. Therefore, we will briefly discuss the District's creation and powers conferred upon it under the RWDA. The District was created pursuant to the RWDA, codified at Ark. Code Ann. §§ 14-116-101 to -801.[12] The powers of regional water districts are set forth in Ark. Code Ann. § 14-116-402. None of the "powers" conferred upon a water district, however, include the exclusive right to furnish water within its geographical boundaries. Similarly, the 1987 order does not contain an exclusivity provision but instead merely grants the District the powers afforded by the RWDA. Because the RWDA does not specifically grant such powers to the District and because the 1987 order does not contain an exclusivity provision, the District's argument cannot be established solely by the terms of the RWDA or the 1987 order.

A. Arkansas Code Annotated Section 15-22-223

Appellant argues that section 15-22-223(a) and section 605.1 of Title 6, Arkansas Natural Resources Commission Water Plan Compliance Review Procedures[13] give the

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[11]*Id.*

[12](Repl. 1998 & Supp. 2019).

[13]Water Compliance Review Procedures tit. 6, § 605.1 (2012) (available at https://www.agriculture.arkansas.gov/wp-content/uploads/2020/05/tital_6_final1.pdf).

District the right to provide water service to all persons or entities that are located in its designated service area. Ark. Code Ann. § 15-22-223(a) provides as follows:

> It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the current provider that has pledged or utilizes revenue derived from services within the area to repay financial assistance provided by the Arkansas Natural Resources Commission, unless approval for such activity has been given by the commission and the new provider has received approval under the Arkansas Water Plan established in § 15-22-503, if applicable.

Section 601.3 of Title 6 defines "service area" as "either an area that is provided water or wastewater service by a system or an area not receiving water or wastewater service that is included within a system's approved Master Plan or water development project as an area where the system will provide service in the near future."[14]

The basic rule of statutory construction is to give effect to the intent of the General Assembly.[15] The first rule in interpreting a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. Words cannot be inserted, under the guise of interpretation, to add a significant additional qualification to the law enacted by the General Assembly.[16]

Regarding its interpretation of the statute, the circuit court held as follows:

> First, there is no dispute that City has been the provider of water services to ARI, from 1999 to present date. The District does not claim that it had the right to provide water services to ARI's main plant, and the instant dispute solely involves the area where ARI expanded its facilities. The Court declines to read this statute to characterize the District as a "current provider" to ARI's expanded facilities. Under

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[14]Water Compliance Review Procedures tit. 6, § 601.3 (available at https://www.agriculture.arkansas.gov/wp-content/uploads/2020/05/tital_6_final1.pdf).

[15]*Nolan v. Little*, 359 Ark. 161, 196 S.W.3d 1 (2004).

[16]*Brandt v. Willhite*, 98 Ark. App. 350, 255 S.W.3d 491 (2007).

> a plain reading of the statute, the "current provider" is the provider that is currently providing the services, and there is no dispute that ARI is a longstanding customer of the city. Further, there is no evidence that the District was indebted to ANRC during all applicable timeframes, as required by this statute.

The statute does not define "current provider"; however, both parties take the position that they should be considered the current provider of the East and Refurb Plants. The District contends that following its formation, it developed a water system throughout the service area that included what would later be the eastern portion of ARI's campus and began providing water service to customers who were located in its service area. Accordingly, the District argues that it is the "current provider" of water services throughout its designated service area and for purposes of section 15-22-223.

In response, the City points to the fact that the record establishes that before the District began providing water services to any customers located within its geographical territory, ARI was already the City's customer. The record does clearly reflect that the City has been the provider of water service to ARI since 1999 and then began providing water service in 2006 to the East Plant upon its completion. Furthermore, the District made no objection to the City's providing water services to the expanded facilities until 2016 after the Refurb Plant was completed. Therefore, ten years passed before the District objected to the City's providing water within its boundaries.

In light of the City's longstanding water and wastewater services to ARI, the circuit court declined to accept the District's argument that it was the current provider of the East and Refurb Plants. We agree. Given how long the City has provided water services to ARI, the District's attempt to paint this as a situation in which the City "raced" to be the first to provide water in the District's service area is illogical. Considering the plain language

of the statute, we find the circuit court was correct that, for purposes of Ark. Code Ann. § 15-22-223(a), "current provider" is the City because it is the entity currently providing the services.

Second, the District argues that the purpose of the statute is to protect water-service providers, such as itself, who pledge or utilize revenue derived from the water services within the area to repay financial assistance provided by the ANRC. The City argued that the District was never indebted to the ANRC during the applicable time frames, and the circuit court agreed.

Tonya Thompson, the District's manager, testified in her deposition that all outstanding loans from the United States Department of Agriculture (USDA) were paid in full on March 26, 2015. She confirmed that the District was not indebted to the ANRC or the USDA between such date and until the District obtained a loan from the ANRC in 2017. Jerome Alford, an engineer used by the District, testified at his deposition that he applied with the Water and Wastewater Advisory Committee (WWAC) for improvements at the District's original well with estimated construction costs at $50,000 in March 2016. Ms. Thompson testified that the District closed on the loan with the ANRC in the amount of $51,500 on January 9, 2017. Therefore, it is undisputed that the City was serving all three ARI plants at a time when the District was not indebted to the ANRC.

The District argues that the statute does not provide a time frame for when a provider must be indebted to the ANRC in order to be protected by the statute. The circuit court disagreed and held as follows:

> It seems clear that the purpose of A.C.A. § 15-22-223 is to protect water providers with existing customers in order to safeguard the entity indebted to ANRC and its

> ability to repay the loan with income derived from the service provided. Here, to accept the District's position, the Court would be disrupting ARI's water service from its provider of the last twenty years, a scenario which is neither fair nor contemplated by this statute. Put another way, while the District would use this statute as a sword to eliminate a current service relationship between the City and ARI, it strikes the Court that the statute's true purpose is to serve as a shield for existing providers, such as the City.

The record reflects that the District has never received revenue from the sale of water to ARI. Furthermore, Ms. Thompson testified at her deposition that when applying for the $51,500 loan from the ANRC, the District represented that it pledged to repay the loan from revenues the District was receiving from existing customers. We find the statute's intent is aligned with the circuit court's finding, which is further supported by the language of the General Assembly when it enacted the statute. Act 698 of 1997 reads:

> An act to protect existing water, and wastewater service areas of borrowers of the Arkansas Soil and Water Conservation Commission, allow the commission to approve, condition or prohibit service by another within an existing service area; limit to whom the commission may provide financial assistance and for other purposes.[17]

At the time the District filed its complaint against the City, it was not indebted to the USDA or the ANRC. Instead, after filing suit, the District closed on an ANRC loan and now wants to use that loan to garner protection under the statute. Our supreme court has held that it will not interpret a statute in a manner that defeats its legislative purpose nor interpret a statute to lead to an absurd result.[18] Accepting the District's logic would essentially interpret the statute as allowing a water district to wait ten years, then disrupt a longstanding relationship between a provider and customer, thereby forcing said customer

[17]Act of Mar. 19, 1997, No. 698, 1997 Ark. Acts. 3596.

[18]*City of Maumelle v. Jeffrey Sand Co.*, 353 Ark. 686, 120 S.W.3d 55 (2003).

to either purchase water services unwillingly from the District or go without water and wastewater services. Furthermore, if the General Assembly intended for a water district to have an absolute and exclusive right to sell water without regard to the preference of persons residing within the geographical boundaries of the district, it could have included such a provision in the law; however, it did not.

Pursuant to the plain language and intent of the statute, we affirm the circuit court's finding that Ark. Code Ann. § 15-22-223 does not grant the District an exclusive right to provide water within its geographical boundaries.

B. Arkansas Code Annotated Section 15-22-503

The District also claims the City was required to obtain approval from the ANRC under both Ark. Code Ann. § 15-22-503 and section 601.4 of the ANRC Water Plan Compliance Review Procedures before providing water service to ARI's East and Refurb Plants. Therefore, the District contends the circuit court erred in finding the City did not have to obtain such approval because the service did not constitute a "water development project."

The pertinent portion of Ark. Code Ann. § 15-22-503 (the Arkansas Water Plan) states as follows:

> (a) Under such rules and regulations as it may adopt, the Arkansas Soil and Water Conservation Commission is charged with the duty of preparing, developing, formulating, and engaging in a comprehensive program for the orderly development and management of the state's water and related land resources, to be referred to as the Arkansas Water Plan.
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> . . . .
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> (e)(1) No political subdivision or agency of the state shall spend any state funds on or engage in any water development project, excluding any water development

> project in which game protection funds or federal or state outdoor recreation assistance grant funds are to be spent, provided that such a project will not diminish the benefits of any existing water development project, until a preliminary survey and report therefor which sets forth the purpose of the water development project, the benefits to be expected, the general nature of the works of improvement, the geographic area to be served by the water development project, the necessity, feasibility, and the estimated cost thereof is filed with the commission and is approved by the Arkansas Natural Resources Commission to be in compliance with the plan.

The circuit court held that "the evidence of record supports the City's argument that the provision of water to ARI's expanded facilities does not constitute a water development project." Accordingly, the City wasn't required to seek prior approval from the ANRC in order to lawfully provide service to the East and Refurb Plants. The City attests that it never sought approval from the ANRC because it was not required to do so.

The ANRC adopted rules and regulations to be used in implementing the Arkansas Water Plan. Section 601.4 of the ANRC Water Plan Compliance Review Procedures provides that "all political subdivisions must obtain water plan compliance approval prior to construction of a water development project."[19] The regulations set forth nine definitions that fall under the term "project" for the purposes of compliance. Section 601.4(B)(4)(c) and section 601.4(B)(7) are the only two on review in this appeal. Section 601.4(B)(4)(c) includes any "system expansion that would result in an increase of more than twenty percent (20%) of the current average water usage or treatment capacity."[20] And section 601.4(B)(7) includes any "transfer of a service area not yet receiving service from a utility but included

[19]Water Compliance Review Procedures tit. 6, § 601.4 (available at https://www.agriculture.arkansas.gov/wp-content/uploads/2020/05/tital_6_final1.pdf).

[20]Water Compliance Review Procedures tit. 6, § 601.4(B)(4)(c) (available at https://www.agriculture.arkansas.gov/wp-content/uploads/2020/05/tital_6_final1.pdf).

within another political subdivision's approved service area or within another entity's application or water plan compliance approval."[21]

Crystal Phelps, legal counsel for the ANRC, was examined on section 601.4 and how it would apply, if at all, to the City's water service to the East and Refurb Plants. She testified that it would depend on whether service to the plants increased the City's water usage by more than 20 percent. The City produced an affidavit of Veneta Hargrove, the administrative assistant of Marmaduke since 1999, in which she attests the City's water usage never increased by more than 20 percent when it began supplying water to either the East Plant or the Refurb Plant.

By contrast, the District maintains the City's supply of water to ARI's expanded facilities constitutes a water-development project under section 604.1(B)(7). According to the District, the City's act of extending water services to an existing customer that happened to expand its facility into the District's service area equates to a "transfer" that required prior approval of the ANRC. The evidence, however, does not support the District's argument. To the contrary, Ms. Phelps testified that the City has not undertaken any action she would consider to be unlawful pursuant to the ANRC regulations.

The District asserts that the City's actions are similar to those of Bentonville in *Arkansas Soil and Water Conservation Commission v. City of Bentonville,* and the ruling in the case supports its position that the City needed prior approval from the ANRC before

[21]Water Compliance Review Procedures tit. 6, § 601.4(B)(7) (available at https://www.agriculture.arkansas.gov/wp-content/uploads/2020/05/tital_6_final1.pdf).

extending water service to the new ARI plants.[22] The appeal arose from a decision of the Arkansas Soil and Water Conversation Commission (ASWCC), the predecessor of the ANRC, to approve a water project submitted by the City of Centerton that included a portion of the City of Bentonville's five-mile extraterritorial planning area.[23] Bentonville appealed to the circuit court and argued it had exclusive rights over water projects within its five-mile extraterritorial planning area pursuant to Ark. Code Ann. § 14-56-413. The circuit court agreed, and the ASWCC appealed. The supreme court reversed the circuit court's decision.

Resolution of the conflict required the supreme court to construe two statutes, one granting municipalities exclusive planning jurisdiction over a five-mile area surrounding the city and the other empowering the ASWCC to approve all water projects. The court held that cities cannot engage in any water-development project until a project is approved by ASWCC and, furthermore, that Bentonville did not have the absolute power to control water projects within its own boundaries, much less within its five-mile extraterritorial planning area.[24] *City of Bentonville* provides no relevant guidance for this case because the facts are entirely different. Marmaduke has never contended its statutory rights trump the ANRC's authority under the statute. Furthermore, at no point has the City attempted to assert any sort of exclusive jurisdiction; rather, here it is the District asserting exclusivity.

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[22]351 Ark. 289, 92 S.W.3d 47 (2002).

[23]*Id.*

[24]*Id.* at 299-300, 92 S.W.3d at 53.

Accordingly, it provides no support for the District's position that the City needed prior approval from the ANRC before extending service to the expanded ARI plants.

The District has not set forth any evidence that it falls within the definition of a "water development project" pursuant to the ANRC rules and regulations other than bare assertions that it meets one of the definitions of a project. In fact, such assertion is directly contrary to the testimony of ANRC's legal counsel. Therefore, considering the plain language of the statute, the testimony of Ms. Phelps, and the affidavit of Ms. Hargrove, we affirm the circuit court's ruling that the City's provision of water to the East and Refurb Plants did not constitute a water-development project requiring prior approval from the ANRC.

IV. *Conclusion*

We find no error in the circuit court's ruling and therefore affirm judgment granting summary judgment in favor of the City.

Affirmed.

VIRDEN and MURPHY, JJ., agree.

Lyons & Cone, P.L.C., by: *Jim Lyons* and *David D. Tyler*, for appellant.

William C. Mann III and *Gabrielle Gibson*, for appellee.