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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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Winston County Board of Health

v.

Ricky James Clark, Dewanda S. Clark, and Wallace Clark

Appeal from Winston Circuit Court  
(CV-18-900023)

THOMPSON, Presiding Judge.

The Winston County Board of Health ("the board") appeals from a judgment of the Winston Circuit Court ("the trial court") in favor of Ricky James Clark ("Ricky"), Dewanda S. Clark ("Dewanda"), and Wallace Clark (Wallace). The board had

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filed an action against the Clarks seeking an injunction requiring the Clarks to install an onsite sewage disposal system, i.e., a septic tank, to serve their residence and to cease discharging sewage on the surface of the ground around their residence.

The evidence adduced at the trial indicated the following. Ricky and Dewanda live with their children in a cabin in rural Winston County. Ricky testified that Wallace, Ricky's father, had given him approximately 17 acres of land and that Ricky and his son had built the cabin under a bluff on that land. At the time of the trial, Ricky had lived in the cabin about ten years.

Ricky testified that the cabin had no indoor plumbing. He explained that there was water provided by the local municipality available at the top of a hill beside the house. There was a spigot in the ground at the top of the hill, and the Clarks had attached a hose to the spigot to provide water to a shower they had constructed at the top of the hill. Ricky said that Dewanda "toted" water to the house for cooking, drinking, and washing and that they tossed their wastewater into the woods.

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Ricky testified that, for purposes of using the bathroom, he dug what he called a pit privy in the woods. He said that the hole was "thigh deep," about two feet wide and three feet long, and "large enough to hold about 30 gallons." Ricky explained that the Clarks "sat a potty seat over [the hole] with a tarp over the top of that, with a dirt ridge around at the edge of the tarp to shed water away from where we're at." When the hole is about three quarters full, he said, he fills it and digs a new one. A new hole is needed about every three months, he said. Ricky explained that he lines the bottom of each hole with wood ash and that he covers the waste with wood ash before filling the hole.

A "tree stair" leads from the cabin to the pit privy. Ricky testified that the children cannot go to the pit privy late at night. Behind the cabin, beneath the bluff, the Clarks have what Ricky described as a "medical chair" with a bed pan that he said they use when they cannot go to the pit privy. They deposit the waste from that pan into the pit privy. Ricky denied that there was any human waste on the surface of the ground, saying "that would be nasty."

Thaddeus Matthew Harris, a senior environmentalist with the board, testified that the board began its investigation of the Clarks' lack of plumbing after receiving a report of human feces in their garbage.<sup>1</sup> He had visited the Clarks' cabin and had seen their system. Ricky acknowledged to Harris that the Clarks did not have a septic tank. Harris said that he had explained to Ricky that the Clark's lived in a building that was not serviced by a permitted "onsite sewage disposal system," which, he said, was a violation of the law. Ultimately, the Clarks submitted two applications for an onsite sewage disposal system. Harris said that he sent the Clarks an explanation of what information was required on the application. Both applications were denied because they were incomplete.

James Boyd Rogers, a site evaluator for the Alabama Department of Public Health ("the ADPH"), testified that he had inspected the area around the Clarks' cabin and had determined that it was suitable for a septic tank. Leigh

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<sup>1</sup>Ricky denied that the Clarks put human feces in their garbage container and pointed out that it had been several years since the children had been in diapers. Harris said that the board had not determined the veracity of the assertion against the Clarks that led to the investigation.

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Willis, who worked in the ADPH Bureau of Environmental Services, testified that there were a number of grants or loans available to assist the Clarks with the cost of installing a septic tank. During her testimony, Willis reviewed the statutes and regulations governing onsite sewage disposal systems. She also testified as to the general public-health concerns involved with raw sewage. Willis said that raw sewage contains bacteria, can spread viruses, and can contaminate groundwater. Additionally, she said, it attracts vectors, that is, insects and rodents, to the area and that those vectors can spread diseases to people.

After hearing the evidence, on September 23, 2019, the trial court entered a judgment finding that the board had "failed to meet its burden of proof" and ruling in favor of the Clarks. On October 21, 2019, the board filed a timely motion to alter, amend, or vacate the judgment. The trial court denied that motion on October 23, 2019, stating that it was "important to note that no exhibits were offered and therefore were not admitted." The board appealed to this court, which transferred the appeal to the Alabama Supreme Court for lack of subject-matter jurisdiction. In turn, our

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supreme court transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

On appeal, the board essentially argues that the evidence does not support the trial court's judgment and that the trial court's judgment is clearly erroneous. As mentioned, in its complaint, the board sought injunctive relief to require the Clarks to install an onsite sewage-disposal system and to stop discharging sewage onto the surface of the ground.

"To be entitled to a permanent injunction, a plaintiff must demonstrate success on the merits, a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and that granting the injunction will not disserve the public interest."

"TFT, Inc. v. Warning Sys., Inc., 751 So. 2d 1238, 1242 (Ala. 1999), overruled on another point of law, Holiday Isle, LLC v. Adkins, 12 So. 3d 1173 (Ala. 2008). The entry of a permanent injunction is reviewed de novo, TFT, Inc., 751 So. 2d at 1241; however, [the supreme court] has recognized that "a trial court's consideration of ore tenus testimony has a bearing upon the standard of review [an appellate court applies] to the entry of a permanent injunction." Classroomdirect.com, LLC v. Draphix, LLC, 992 So. 2d 692, 701 (Ala.

2008). See also Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683 (Ala. 2009) (according a presumption of correctness to portions of the trial court's decision based on representations of counsel regarding a settlement agreement where a permanent injunction was issued).'

"Sycamore Mgmt. Group, LLC v. Coosa Cable Co., 42 So. 3d 90, 93 (Ala. 2010). Thus, to the extent that a trial court's decision on a request for injunctive relief is based on disputed ore tenus evidence,

"'a presumption of correctness exists as to the trial court's findings on issues of fact, and a judgment based on such findings of fact will not be disturbed unless it is clearly erroneous, without supporting evidence, manifestly unjust, or against the great weight of the evidence. E.g., Traweek v. Lincoln, 984 So. 2d 439, 442 (Ala. Civ. App. 2007). That said, a presumption of correctness is not indulged when the trial court improperly applies the law to the facts, nor when the pertinent question involves the application of law to essentially undisputed facts. Id. at 442-43.'

"Maxwell v. Boyd, 66 So. 3d 257, 258-59 (Ala. Civ. App. 2010)."

Vestlake Communities Prop. Owners' Ass'n, Inc. v. Moon, 86 So. 3d 359, 364-65 (Ala. Civ. App. 2011). See also Ex parte Mt. Zion Water Auth., 599 So. 2d 1113, 1117-18 (Ala. 1992) (rejecting an argument by the Alabama Department of Environmental Management that proof of a violation of a

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public-health statute or regulation obviates the need for a trial court's consideration of equitable principles when determining whether to grant or deny a public-health agency's request for injunctive relief).

The trial court found that the board did not meet its burden of proof. In its appellate brief, the board cited Gess v. United States, 952 F. Supp. 1529 (M.D. Ala. 1996), for the proposition that, as the plaintiff in a civil action, its burden was to prove every element of its claim by a preponderance of the evidence, that is, that what it sought to prove is more likely than not. The board also set forth the statutes and regulations applicable to onsite sewage disposal systems and reiterated the facts regarding the lack of plumbing at the Clarks' cabin and the systems they used for showering, indoor water, and sewage. The board also asserts that the Clarks' method of disposing of their waste constitutes a nuisance per se.

However, in its appellate brief, the board does not mention the requirements for obtaining an injunction, and there is no discussion or analysis regarding whether it met those requirements in this case. Arguably, the board's



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discussion of the applicable statutes and the undisputed facts may be construed as an argument that it demonstrated success on the merits, but, as to the other elements required for the issuance of a permanent injunction, i.e., a showing that there exists a substantial threat of irreparable injury if the injunction is not granted, that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and that granting the injunction will not disserve the public interest, Vestlake Communities Prop. Owners' Ass'n, Inc., supra, the board's brief is silent.

As has been stated many times, it is not an appellate court's function to craft arguments for the parties. Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (""[I]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument." Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003) (quoting Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))."). To reach a determination that the trial court erred in denying the board's request for an injunction against the Clarks, this

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court would have to create legal arguments demonstrating that the board proved each of the required elements for an injunction. We decline to undertake that duty on behalf of the board.

The board has failed to demonstrate that the trial court erred in determining that it had not proven that it was entitled to an injunction. Accordingly, the judgment is affirmed.

The board's "request for recompense" appears to seek relief that is not within this court's authority to grant. Therefore, the request is denied.

AFFIRMED.

Moore, Donaldson, Edwards, and Hanson, JJ., concur.