Rel: 12/23/2016

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2016-2017

1150674

The Water Works Board of the City of Arab

v.

City of Arab

Appeal from Marshall Circuit Court
(CV-16-900062)

PARKER, Justice.

The Water Works Board of the City of Arab ("the Board") appeals the denial by the Marshall Circuit Court ("the circuit court") of the Board's motion to dismiss and the entry of a

preliminary injunction requested by the City of Arab ("the City"). We reverse and remand.

Facts and Procedural History

The relevant facts are undisputed. Pursuant to § 11-50-230 et seq., Ala. Code 1975, the Board operates a waterworks system that supplies water to the City and its residents ("the waterworks system"); the Board was incorporated for this purpose in 1947.

On September 19, 1972, the City adopted a resolution ("the 1972 resolution") stating that the Board "be, and it hereby is, directed to secure the necessary approval of the State Department of Health and to procure the necessary supplies and materials for the addition of fluoride to the water supply system of the City." After the City adopted the 1972 resolution, the Board began fluoridating the water it supplies to the City.

On August 1, 2015, the Board, citing studies indicating negative health consequences resulting from fluoride, stopped fluoridating the water it supplies to the City. The City disagreed with the Board's decision. On November 2, 2015, the City, citing studies indicating negative health consequences

resulting from the failure to fluoridate water, passed a resolution ("the 2015 resolution") ordering the Board "to immediately restart the addition of fluoride into the water supply system of the municipality." The 2015 resolution also stated

> "that if the Board desires to remove the fluoride from the water supply system, that any such removal request should be made to the City Council of Arab who will consider any request of such a drastic change in due time and after public notice and consideration of all scientific data available, so that an informed decision that is in the best interest of the public health and wellbeing of the citizens may be had."

On November 10, 2015, the Board wrote a letter to the City stating that it did not intend to comply with the 2015 resolution.

On February 17, 2016, the City filed an action against the Board requesting, among other things, that the circuit court enter an injunction requiring the Board to fluoridate the water it supplies to the City. The City also sought a judgment declaring

> "that both the [1972] [r]esolution and the [2015] resolution directing the ... Board are lawful directives of the City, and that the ... Board ..., as an agent and arm of the City, must follow said directive and that further ... the ... Board ... [did not have] the requisite authority to

> unilaterally cause the removal of fluoride from the public water system of the City, as it had been ordered by the City since 1972."

The City requested that the circuit court enter a preliminary injunction "enjoining [the Board] from removing the fluoridation from the public water system and/or requiring reintroduction of the same to maintain the status quo." Although the City recognized that there is no federal or state law requiring the Board to fluoridate the water it supplies to the City, the City argued that the Board's decision to stop fluoridating the water it supplies to the City is "unlawful."

On March 3, 2016, the Board filed a motion to dismiss the City's declaratory-judgment action pursuant to Rule 12(b)(6), Ala. R. Civ. P.; on March 7, 2016, the Board filed a motion in opposition to the City's request for a preliminary injunction. On March 17, 2016, the circuit court granted the City's request for a preliminary injunction, stating:

> "[T]he City ... filed a motion for a preliminary injunction seeking an order to require the [Board] to continue fluoridating the water supply of the City ... during the pendency of this lawsuit. After a hearing on March 8, 2016, and March 9, 2016, where both parties were present with their counsel, the court having considering the testimony, evidence presented, and legal argument, and applying the four-part standard which a party must meet in order

for a preliminary injunction to be issued,[1] the court finds as follows:

"The court heard ore tenus testimony from the Mayor of the City ..., Bob Joslin, regarding a resolution of permanent nature passed by the City ... in 1972 instructing the ... Board to fluoridate the City's water supply. The ... Board followed the resolution and did so for 43 years without objection, until some point around August of 2015, when the ... Board ... unilaterally removed fluoride from the water supply without notice to the City Council or to the citizens of Arab. After unsuccessful efforts to have fluoride reintroduced into the water supply, the City filed this lawsuit.

"The Court then heard ore tenus testimony from the Director of the Alabama Department of Public

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[1]The circuit court appears to be referring to the following four-part test:

"A preliminary injunction should be issued only when the party seeking an injunction demonstrates:

"'"(1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the [party opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction]."'

"Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003)(quoting Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994))."

Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008).

> Health, Dr. Robert Meador, from dentist Dr. Tom Willis, board certified pediatrician Dr. Don Jones, and board certified pediatric dentist, Dr. Steven Mitchell. All medical professionals in attendance were qualified as experts in their fields and each offered the opinion that systemic fluoride is important for the public health, and that removal of fluoride from the water supply would cause immediate, irreversible, irreparable harm -- especially to children who need systemic fluoride as their teeth develop, elderly, and poor citizens served by the ... Board .... In addition, the court notes that it found each of the experts to be credible and knowledgeable. It further accepts their collective testimony that the only reputable, reliable, and credible evidence on the issue of fluoridation of water is that it promotes public health. Based on the abundance of undisputed medical testimony on the issue of irreparable harm, the court finds that irreparable harm would result if no injunction is issued. And finally on this issue, based on the medical evidence presented that ceasing systemic fluoridation through treatment of the public water supply would result in immediate irreversible harm to the same groups noted above, especially to children with developing teeth, the court finds that there is no adequate remedy at law for the [City].
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> "The [City] presented Alabama Code [(1975),] § 11-45-1[,] and its 1972 Resolution (supported by its 2015 Resolution) to establish its authority to direct the [Board] to fluoridate [the City's] water. The [Board] offered no evidence of its authority to remove fluoride over the objection of the City. The [Board] offered no evidence at all of the procedure, parliamentary or otherwise, that it followed in determining that fluoride should be removed. The [Board] also failed to offer any evidence of harm that would result if it is required to fluoridate the water supply during the pendency of this litigation. To the contrary, the only evidence

before the court is that [the Board] fluoridated the water for 43 years without any complaint or claim of hardship. And while the [Board] has presented no evidence of hardship, the City has shown through the testimony presented that immediate and irreparable harm will indeed occur if fluoride is not reintroduced into the [C]ity['s] water system. Thus the court finds that no hardship will be suffered by the [Board] by the granting of the injunction; certainly any hardship imposed on the [Board] by the injunction will not unreasonably outweigh the benefit accruing to the [City].

"Based on the evidence offered and Alabama statutory and case law, the court finds that the City is properly acting within the scope of its authority in seeking to enforce its own resolutions as they relate to protecting the public health, especially in light of the fact that the ... Board abided by the instruction in the resolution for 43 years with no objection and only now argues that it should not have to follow it. See Water & Wastewater Bd. of City of Madison v. City of Athens, 17 So. 3d 241, 245 (Ala. Civ. App. 2009) (holding 'Despite the language in cases like [Water Works Bd. of Leeds v.]Huffstutler[, 292 Ala. 669, 299 So. 2d 268 (1974),] and [City of Mobile v.] Cochran[, 276 Ala. 530, 165 So. 2d 81 (1964),] regarding the separate and independent nature of public corporations, our supreme court has also long held that, in at least some respects, a public corporation like the [water] Board is an agency of the municipality it serves.'); See also, Wetumpka v. Central Elmore Water Auth., 703 So. 2d 907 (Ala. 1997) (the Alabama Supreme Court holding 'that a water works board organized and operating pursuant to §§ 11-50-230 through 11-50-241 is an agency of the municipality it serves') (citing City of Montgomery v. Water Works & Sanitary Sewer Board of the City of Montgomery, 660 So. 2d 588 (Ala. 1995)). Considering the 1972 resolution, the 43 year history of uninterrupted, unquestioned fluoridation of the water supply by the

> [Board], and based on the authority of the City under Alabama statutes including but not limited to § 11-45-1, Code of Alabama [(1975)], the caselaw presented (including that cited above), and the evidence offered at the hearing, the court finds that the [City] has a reasonable chance of success on the merits.
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> "Based on the [City's] having met all four elements required for the issuance of a preliminary injunction as detailed above, the court hereby orders as follows:
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> "The ... Board ... is to immediately resume the addition of fluoride to the water supply at the optimal level as recommended by the U.S. Department of Health and Human Services, currently 0.7 milligrams of fluoride per liter of water, and otherwise in accord with the same practices followed by the Board over the past 43 years prior to August, 2015, and is enjoined from ceasing the same until further orders of this court; and
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> "The City ... shall post a bond in the sum of $50,000.00 (fifty thousand and 00/100 dollars), which the court finds to be sufficient security.
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> "Additionally, the [Board's] motion to dismiss is hereby denied. The court instructs the [Board] to answer the complaint within 30 days."

On March 22, 2016, the Board appealed.

On March 23, 2016, the Board requested that the circuit court stay during the pendency of this appeal the preliminary injunction it had entered. The circuit court denied the Board's motion to stay on March 30, 2016. On the same day, the Board then requested that this Court stay the preliminary

injunction entered by the circuit court during the pendency of this appeal. This Court denied the Board's motion for a stay.

Standard of Review

> "When this Court reviews the grant or denial of a preliminary injunction, '"[w]e review the ... [c]ourt's legal rulings de novo and its ultimate decision to issue the preliminary injunction for [an excess] of discretion."' Holiday Isle, LLC v. Adkins, 12 So. 3d 1173, 1176 (Ala. 2008) (quoting Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006)).
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> > "'A preliminary injunction should be issued only when the party seeking an injunction demonstrates:
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> > > "'"'(1) that without the injunction the [party] would suffer irreparable injury; (2) that the [party] has no adequate remedy at law; (3) that the [party] has at least a reasonable chance of success on the ultimate merits of his case; and (4) that the hardship imposed on the [party opposing the preliminary injunction] by the injunction would not unreasonably outweigh the benefit accruing to the [party seeking the injunction].'"'
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> "Holiday Isle, 12 So. 3d at 1176 (quoting Ormco Corp. v. Johns, 869 So. 2d 1109, 1113 (Ala. 2003), quoting in turn Perley v. Tapscan, Inc., 646 So. 2d 585, 587 (Ala. 1994) (alterations in Holiday Isle))."

Monte Sano Research Crop. v. Kratos Defense & Sec. Solutions, Inc., 99 So. 3d 855, 861-62 (Ala. 2012).

Discussion

The Board argues that "[t]he preliminary injunction should be dissolved because the City does not have a likelihood of success on the merits" of its case. The Board's brief, at p. 31. The Board argues that the City has no authority or control over the Board, other than the City's statutory right to elect the members of the Board pursuant to § 11-50-234, Ala. Code 1975, because the Board is a statutorily created independent corporation tasked with operating the waterworks system. The Board argues that neither the 1972 resolution nor the 2015 resolution operates to curtail the Board's statutory authority to make operational decisions concerning the waterworks system. The Board is correct.

It is undisputed that the Board has authority over the waterworks system. This Court stated in Randall v. Water Works & Sewer Board of Birmingham, 885 So. 2d 757, 765 (Ala. 2003), that "Section 11-50-235, Ala. Code 1975, specifies the powers that [a public-utility corporation formed under § 11-

50-230 et seq., Ala. Code 1975,] shall have, once created."

Section 11-50-235, Ala. Code 1975, states, in pertinent part:

> "(a) Each corporation formed under this division shall have the following powers together with all powers incidental thereto or necessary to the discharge thereof in corporate form:
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> "....
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> "(4) To acquire, purchase, construct, operate, maintain, enlarge, extend, and improve any system or systems, the operation of which is provided for in the certificate of incorporation of such corporation (whether or not such system or systems were in existence or whether or not such system or systems were privately owned prior to acquisition by such corporation) and to receive, acquire, take, and hold, whether by purchase, gift, lease, devise, or otherwise, real, personal, and mixed property of any nature whatsoever that its board of directors may deem a necessary or convenient part of such system or systems."

(Emphasis added.) Pursuant to this statute, the Board has operational control over the waterworks system that supplies water to the City and its residents.

The City does not dispute that the Board has the authority to operate the waterworks system but argues that the Board must comply with the law in doing so and that the 1972 resolution and the 2015 resolution constitute law the Board must comply with in operating the waterworks system. This is

so, the City argues, because the Board is merely an agency of the City and, thus, under the City's authority. We disagree.

The pivotal question in this case concerns the competing jurisdictions of the City and the Board. Initially, we recognize that a municipality, such as the City, has general authority under § 11-45-1, Ala. Code 1975, to "adopt ordinances and resolutions not inconsistent with the laws of the state ... to ... preserve the health ... of [its] inhabitants." A municipality certainly has the authority to adopt ordinances and resolutions concerning the fluoridation of its water supply, an issue that concerns the preservation of the health of its inhabitants, under this general grant of authority. However, the plain language of § 11-45-1 limits a municipality's authority by noting that any ordinance or resolution adopted must be consistent with the laws of Alabama; § 11-45-1 must be read in pari materia with the other laws of Alabama. Under § 11-50-230 et seq., Ala. Code 1975, the Legislature has established the Board as an independent public-utility corporation and vested it with all authority over the waterworks system. In so doing, the Legislature limited the City's general authority under § 11-45-1 as it

relates to the waterworks system and gave that authority to the Board.

The independence of a public-utility corporation, such as the Board, formed pursuant to § 11-50-230 et seq., from the municipality it serves is well established under Alabama law. In Water Works Board of Leeds v. Huffstutler, 292 Ala. 669, 299 So. 2d 268 (1974), this Court considered a case in which "'[t]he central issue ... concern[ed] the independence of public corporations such as the water works board here involved and their right to manage their affairs free of control by the governing bodies of the cites they serve.'" 292 Ala. at 674, 299 So. 2d at 272 (quoting the trial court's final judgment adopted as the opinion of this Court). In addressing this issue, this Court, adopting the trial court's opinion, set forth the origins of public-utility corporations, such as the Board, which demonstrate that the Legislature intended public-utility corporations to be independent of the municipalities they serve:

> "'In order to make it possible for municipalities to finance utility systems without being blocked by the limitations contained in the Constitution of 1901 (particularly Sections 222 and 225 relating to the creation of debt by municipalities), a number of statutes permitting

municipalities to issue revenue bonds were enacted in the early 1930's, varying in detail, but in general making such bonds payable out of the revenues of the utility to be constructed, expanded or improved with the proceeds of such bonds. The opinions of the Justices of the Supreme Court of Alabama on the constitutionality of such statutes were sought in several instances, e.g., Opinion of the Justices[No. 21], 226 Ala. 18, 145 So. 481 (1933) (considering the Goodwyn Act, Act No. 265 adopted at the 1932 Extraordinary Session of the Legislature of Alabama (hereinafter called "the Legislature")), Opinion of the Justices[No. 26], 226 Ala. 570, 148 So. 111 (1933) (considering the Kelley Act, Act No. 102 adopted at the 1933 Extraordinary Session of the Legislature), Opinion of the Justices[No. 30], 228 Ala. 140, 152 So. 901 (1934) (considering the Carmichael Act, Act No. 107 adopted at the 1933 Extraordinary Session of the Legislature); and several leading test cases concerning such statutes were decided by the Supreme Court, Bankhead v. Town of Sulligent, 229 Ala. 45, 155 So. 869 (1934), Oppenheim v. City of Florence, 229 Ala. 50, 155 So. 859 (1934), Smith v. Town of Guin, 229 Ala. 61, 155 So. 865 (1934).

"'A considerable body of law developed from the State's experimentation with the power of a municipality to issue its revenue bonds and to use the proceeds thereof to construct or improve a utility which it owned. Although such body of law did in a great number of instances permit desired financing arrangements, the issuance of revenue bonds by a municipality itself was, nevertheless, circumscribed by a fairly elaborate set of rules which could not always accommodate reasonable projects. See Town of Opp v. Donaldson, 230 Ala. 689, 163 So. 332 (1935).

"'The ultimate solution to the complexity of financing municipal utility systems was achieved by legislation permitting the establishment of

> independent public corporations to own and operate the utility systems for the municipalities to be served by such system. Such public corporations derived their immense usefulness in this respect from their legal status as special political entities created by the Legislature which, so long as they maintained their corporate separation from the municipalities they served, were not subject to the constitutional limitations on such municipalities.'"

292 Ala. at 674-75, 299 So. 2d at 272-73 (quoting the trial court's final judgment adopted as the opinion of this Court). Concerning the independence of public-utility corporations formed under § 11-50-230 et seq., this Court adopted the trial court's statement that, "'[i]n a number of cases considering the status of boards organized under the [predecessor statutes to § 11-50-230 et seq.], the Supreme Court has emphasized the corporate independence of such boards, distinct and apart from the cities they serve, and has thereby preserved their usefulness in financing utility systems.'" 292 Ala. at 675, 299 So. 2d at 273 (quoting the trial court's final judgment). This Court further stated "'that water boards are independent corporations which do not derive their powers from the cities they serve,'" but "'that the grant of the franchise to operate a water system was from the Legislature in the exercise of its soverign [sic] power and not from the city.'" 292 Ala. at

675, 299 So. 2d at 274 (quoting the trial court's final judgment).

This Court, adopting the trial court's judgment as its own, definitively stated in Huffstutler:

> "'The cases considered establish that it is the law of this State that a public corporation organized under the [predecessor to § 11-50-230 et seq.], such as the Board in this case, is an entity separate and independent from the city which it serves and that the city can lawfully exercise only such power over such corporations as is conferred on the city by the charter of such corporation and the general laws of the State under which it is organized. If such corporation functioned as a mere arm or agency of the city, subject to the legislative power of the city, it could not, without making a mockery of the Constitution of this State, perform its intended function of financing and operating municipal utility systems.'"

292 Ala. at 677, 299 So. 2d at 275-76 (emphasis added).

Based on Huffstutler, we conclude that the Board is not a mere agency of the City but a public corporation entirely separate and independent from the City.[2]

[2]As the City notes in its brief, we recognize that this Court has stated that public-utility corporations formed pursuant to § 11-50-230 et seq. are, in limited respects, considered to be agencies of the municipalities they serve. See Jackson v. Hubbard, 256 Ala. 114, 120, 53 So. 2d 723, 728 (1951)("We agree with counsel for appellants, respondents below, that the supplying of water to a city and its inhabitants is a municipal function and that the Water Works Board of the City of Auburn is in that sence [sic] an agency of the city."). In fact, in Huffstutler, this Court noted

that very principle from Jackson. See Huffstutler, 292 Ala. at 676, 299 So. 2d at 275. However, even if the Board is considered to be an agency of the City in some limited respects, this does not mean that the Board is subject to the City's legislative power. This Court, adopting the trial court's judgment, explained in Huffstutler:

> "'The case of City of Mobile v. Cochran, 276 Ala. 530, 165 So. 2d 81 (1964), considered the question of whether an officer of the Board of Water and Sewer Commissioners of the City of Mobile was an employee or officer of the city itself within the meaning of the anti-conflict-of-interest statutes which prohibit the city from dealing with its own officers and employees.... Cochran was an agent for a fire insurance company, and while he was serving as an officer of the Board of Water and Sewer Commissioners, his company submitted a winning bid for fire insurance to cover a project owned by the city. Cochran would share in the premium paid for such insurance. The city declined to pay the premium because it was afraid that Cochran's status a[s] an officer of the Board of Water and Sewer Commissioners made it illegal for the city to have any business dealings with him or his company. Because of its interest in having the legal question decided, the Water Works Board of the City of Mobile, a board organized (like the Leeds Board) under the [predecessor to § 11-50-230 et seq.], intervened in the case.
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> "'The Court held that Cochran was an officer of a corporation separate and distinct from the City of Mobile and that the payment of the premium to his company was not barred by the conflict of interest statutes applicable to municipalities.
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> > "'"Being distinct and separate corporations, the relationship of appellee Cochran as an officer of the Board does not necessarily clothe him with any official

> duties in connection with the City of Mobile, nor is he necessarily cast as an employee of said municipality by virtue of his official connections with said Board.
>
> > "'"Although there may be some relationship in ultimate objectives of the two, and some kindred authority to engage in activities of a proprietary or governmental character for the benefit of the inhabitants of the City of Mobile, and in such respect the Board is an agency or arm of the City of Mobile, nevertheless, the two corporations are distinct, separate and independent corporations, each charged with respective separate and distinct duties and authority under the law. The legislature had defined and limited the functions of each corporation, and provided for its officers and prescribed their duties. There are no provisions for common or mutual control, nor do the same overlap. Each set of officers control in their own right with no cross-currents of authority." 276 Ala. at 531, 532, [165 So. 2d 81].

"'With respect to corporations organized under [the predecessor to § 11-50-230 et seq.], the Court further said that:

> > "'"What we have said above with reference to the distinctions and authority of the City of Mobile and the Board of Water and Sewer Commissioners apply with equal force to appellant, City of Mobile, and appellee, Water Works Board; and also to the authority and respective duties of the officers of each corporation. 276 Ala. at 532, [165 So. 2d 81]."'"

292 Ala. at 676-77, 299 So. 2d at 274-75 (quoting and adopting

Concerning operational decisions of the waterworks system, such as whether to fluoridate the water the Board supplies to the City, the Board is not subject to the legislative power of the City. Allowing the City to control the Board's operational decisions concerning the waterworks system by adopting ordinances or resolutions would make a mockery of the Constitution of Alabama in that the Board would not truly be an entirely separate and independent public corporation.

We hold that the Board is not required to comply with the 1972 resolution or the 2015 resolution. The City's entire case is based on its assertion that the Board is required to comply with those resolutions. Accordingly, we conclude that the City does not have a reasonable chance of success on the ultimate merits of its case.

The City also argues that, even if the Board is not subject to the City's legislative power, "[f]or 43 years, [the Board] abided by the 1972 [r]esolution calling for the

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the trial court's final judgment(emphasis added)).

For the reasons set forth in the above-quoted portion of Huffstutler, we are not persuaded by the City's argument that the Board is subject to the City's legislative power simply because the Board may be considered to be an agency of the City in some limited respects.

fluoridation of the water supply; any objection to that [r]esolution has been waived and/or is barred by laches." The City's brief, at p. 31. The City argues that the Board fluoridated the water it supplied to the City "pursuant to" the 1972 resolution. The City's argument appears to be that the Board surrendered its operational authority of the waterworks system to the City by its compliance with the 1972 resolution and that the Board cannot now reassert its operational authority over the waterworks system. We disagree with the City's characterization of the Board's decision, following the City's adoption of the 1972 resolution, to fluoridate the water it supplied to the City.

The Board's decision to fluoridate the water it supplied to the City following the City's adoption of the 1972 resolution is not an indication that the Board surrendered its operational authority over the waterworks system to the City at that time. As set forth above, the Board is a public corporation entirely independent and separate from the City. The Board exercised its operational authority in choosing to fluoridate the water it supplied to the City. The fact that the City passed the 1972 resolution before the Board exercised

its operational authority does not change that fact. Even if the Board took into consideration the 1972 resolution in deciding to fluoridate the water it supplied to the City, that does not change the fact that the Board alone, as an independent public corporation, has the authority, as derived from the Legislature, to make all operational decisions concerning the waterworks system. We do not find convincing the City's argument that the doctrine of waiver or of laches applies in this situation.

Our conclusion that the City does not have a reasonable chance of success on the ultimate merits of its case pretermits discussion of the other issues raised by the Board.

Conclusion

The City does not have a reasonable chance of success on the ultimate merits of its case. We conclude, therefore, that the circuit court erred in granting the City's motion for a preliminary injunction. Further, our decision is dispositive of the only issue raised by the City in its declaratory-judgment action against the Board. We also conclude, therefore, that the circuit court erred in denying the Board's

motion to dismiss the City's declaratory-judgment action.[3] Accordingly, the circuit court's March 17, 2016, order is reversed and the case is remanded for the entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.

Stuart, Bolin, Murdock, Main, Wise, and Bryan, JJ., concur.

Shaw, J., concurs in part and concurs in the result.

[3]Our decision today should not be read to alter the general rule that a trial court's decision denying a party's motion to dismiss a complaint filed against it pursuant to Rule 12(b)(6), Ala. R. Civ. P., is not reviewable on appeal. See Conseco Fin. Corp. v. Sharman, 828 So. 2d 890, 894 (Ala. 2001). However, in City of Birmingham v. Link Carnival, Inc., 514 So. 2d 792, 797, this Court considered an appeal from a preliminary injunction and determined, after answering "the pivotal question" involved in that case, that the plaintiff had no legal basis upon which the plaintiff could prevail. Accordingly, this Court vacated the preliminary injunction and ordered that the plaintiff's complaint be dismissed. As in Link Carnival, we have answered the pivotal question involved in the present case, and, on this basis, we are ordering the circuit court to dismiss the City's complaint.

SHAW, Justice (concurring in part and concurring in the result).

I concur in the portion of the main opinion holding that the trial court erred in entering the preliminary injunction sought by the City of Arab. As to the portion of the main opinion reversing the trial court's denial of the Water Works Board of the City of Arab's motion to dismiss and directing the entry of a judgment dismissing the complaint, I concur in the result.

This Court may exercise appellate jurisdiction over an appeal from "any interlocutory order granting ... an injunction." Rule 4(a)(1)(A), Ala. R. App. P. However, generally, an interlocutory denial of a motion to dismiss is not appealable unless this Court has granted permission to appeal under Rule 5, Ala. R. App. P. See, e.g., American Suzuki Motor Corp. v. Burns, 81 So. 3d 320, 321 (Ala. 2011); Conseco Fin. Corp. v. Sharman, 828 So. 2d 890, 894 (Ala. 2001); and Robinson v. Computer Servicenters, Inc., 360 So. 2d 299 (Ala. 1978). So, although it is clear that we have jurisdiction over the interlocutory appeal from the order granting the injunction, it is not clear how we can

"bootstrap" to that jurisdiction an appeal from an interlocutory ruling on a motion to dismiss that, standing alone, we would have no jurisdiction to decide.

Nevertheless, in City of Birmingham v. Link Carnival, Inc., 514 So. 2d 792, 797 (Ala. 1987), it appears that this Court did just that. There is no express holding as to this issue or an analysis in Link Carnival as to how that could be done. It also does not appear that Link Carnival has subsequently been cited for that proposition. Although the authority of Link Carnival appears questionable, it is still, by implication, precedent supporting the main opinion's holding on this issue. Stare decisis, to which I continue to adhere, counsels that the decision should be followed despite my misgivings.