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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

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**Jay Campbell, on behalf of himself and a certified class of
other persons similarly situated**

v.

**City of Gardendale, Alabama; Jefferson County, Alabama; and
J.T. Smallwood, in his official capacity as Tax Collector of
Jefferson County, Alabama**

**Appeal from Jefferson Circuit Court
(CV-18-900762)**

SHAW, Justice.

The plaintiff below, Jay Campbell, on behalf of himself and a certified class of "other persons similarly situated," appeals from a summary judgment on claims challenging the

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constitutionality of two municipal taxes adopted in 2013 by the City of Gardendale ("Gardendale") in connection with Gardendale's planned creation of a municipal school system. We affirm.

Facts and Procedural History

Because Gardendale, which is located in Jefferson County ("the County"), lacks a municipal school system, public-school students residing in Gardendale have attended schools operated by the Jefferson County Board of Education ("the County Board of Education"). "A racial desegregation order issued in 1971 still governs the Jefferson County Board of Education in Alabama." Stout v. Jefferson Cty. Bd. of Educ., 882 F.3d 988, 991 (11th Cir. 2018). Residents of the County pay an ad valorem tax ("the county school tax"), imposed pursuant to Amendment No. 82, Ala. Const. 1901 (codified as Local Amendments, Jefferson County, § 14, Ala. Const. 1901 (Off. Recomp.)) ("Local Amendment 14"),¹ which is discussed in depth below. All proceeds of the county school tax are remitted

¹According to Gardendale, "Local Amendment 14 authorized only 5 mills but later amendments ... increased the millage [to the current] rate [of] 8.8."

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directly to the County Board of Education for education-related purposes.

In or around 2012, Gardendale undertook steps toward establishing a municipal school system. Stout, 882 F.3d at 991, 997. In connection with this, plans were made for the creation of a separate school board and for the levying of municipal taxes to support the proposed municipal school system. Id. at 998. In 2013, Gardendale's City Council adopted Ordinance No. 2013-11, approving, for the tax year beginning October 1, 2013, the collection of a five-mill ad valorem tax.² Ordinance No. 2013-11 was titled "[An] Ordinance Establishing the Levy of a 5-Mill Ad Valorem Tax on All Property in the City of Gardendale for Public School Purposes" and stated that the resulting proceeds "shall be used for public school purposes." Also in 2013, the citizens of Gardendale later ratified by referendum vote "an additional 5-mill ad valorem tax ... for public school purposes" (the

²As demonstrated by their filings below, the parties appear to agree that, under Ala. Const. 1901, Art. XI, §§ 216 and 216.04, a municipality may levy up to a 5-mill general ad valorem tax for any lawful municipal purpose by city-council action alone; the levy amount may be increased to up to 12.5 mills by a vote of all qualified electors in the municipality.

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foregoing taxes are hereinafter collectively referred to as "the Gardendale school taxes"). The Gardendale City Council next appointed the members of an inaugural board of education ("the Gardendale Board of Education"), which then selected a superintendent.

After protracted litigation in federal court challenging Gardendale's ongoing plans as being in violation of a prior federal desegregation order, the United States Court of Appeals for the Eleventh Circuit released its opinion in Stout, supra. The court held that Gardendale failed to comply with precedent requiring the proposal and defense of "a secession plan that will not impede the desegregation efforts of the school district subject to an ongoing desegregation order." 882 F.3d at 1013. While acknowledging the possibility that Gardendale might, "for permissible purposes in the future, satisf[y] its burden to develop a secession plan that will not impede the desegregation efforts of the Jefferson County Board [of Education]," the Eleventh Circuit concluded that Gardendale's present plan did not clear the requisite legal hurdles. Id. at 1016. Therefore, the court remanded the matter with instructions that the federal

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district court deny Gardendale's attempt to withdraw from the County Board of Education school system to form a municipal school system. Id. at 1017.

Subsequently, Campbell, a Gardendale resident, filed a complaint against Gardendale; the County; and J.T. Smallwood, the County's tax collector, seeking class-based relief on behalf of himself and all other similarly situated Gardendale taxpayers. Campbell alleged that, despite representations that the proceeds generated by the Gardendale school taxes had been set aside for application to school-formation efforts, those proceeds had, instead, been applied toward "(1) paying school administrators to supervise a non-existent school system, and (2) funding lawyers to prosecute" the unsuccessful effort to form the new municipal school system. He further alleged that the Gardendale school taxes themselves were, for various reasons, illegal. Relevant to the present appeal, Campbell argued that Local Amendment 14 forbade the simultaneous collection of both the county school tax and any "special additional tax" like the Gardendale school taxes. Campbell sought various forms of relief, including, but not limited to, a judgment declaring the Gardendale school taxes

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illegal, injunctive relief, and an order distributing the proceeds collected from the Gardendale school taxes to class members.

In lieu of an answer, Gardendale filed, pursuant to Rules 12(b)(6) and 56, Ala. R. Civ. P., a motion seeking, on various grounds, to dismiss Campbell's complaint. Specifically, Gardendale argued that Campbell failed to state a claim upon which relief could be granted and that his action reflected a third identical attempt at class-based relief filed by Campbell's counsel of record. It explained that those prior actions had allegedly been dismissed on the ground that, because Gardendale then did not have a legally recognized school system, "the case was not ripe for adjudication." Relying on those prior dismissals, Gardendale's motion invoked principles of "issue preclusion."

Gardendale also argued that, because it had no school system, the Gardendale school taxes were not implicated by Local Amendment 14 and that Campbell cited no precedent for the proposition that the Gardendale school taxes and the county school tax were mutually exclusive. Gardendale further maintained that it levied and is collecting standard municipal

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ad valorem taxes, the proceeds of which could be used in Gardendale's discretion to fund the County Board of Education schools located within Gardendale's municipal limits regardless of whether Gardendale operated its own municipal school system. Based on the foregoing and its accompanying exhibits,³ Gardendale sought dismissal of Campbell's complaint in its entirety or a summary judgment in its favor on the claims included in the complaint.

Thereafter, the County filed its own motion to dismiss incorporating Gardendale's motion as to the purported preclusive effect of the prior litigation and the absence of any change in circumstances since those dismissals. The County further argued that Campbell had failed to name in his complaint the County Board of Education, which, it alleged, was the recipient of all proceeds of the county school tax and, given Campbell's claims for monetary relief, was a necessary party as defined by Rule 19, Ala. R. Civ. P.

³Gardendale's exhibits included, among other items, a prior class-action complaint filed against Gardendale in the Jefferson Circuit Court, case no. CV-2017-900254, alleging similar claims to those included in Campbell's complaint and the order issued by the Jefferson Circuit Court dismissing that case.

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Smallwood also filed a separate motion noting that Campbell's complaint failed to allege that Smallwood did not properly perform his official duties and did not request any particular form of relief against him. Smallwood therefore maintained that Campbell's complaint failed to state a claim against him.

In his response in opposition to the motions to dismiss, Campbell argued, among other things, that the decision in Stout and Gardendale's failure to appeal that ruling "legally precluded [Gardendale] from having a school district and operating schools" -- a preclusion that, according to Campbell, rendered the Gardendale school taxes illegal and led to the underlying litigation.⁴ Campbell also maintained that Gardendale could not continue to collect the Gardendale school taxes for the purpose of funding a school system that, he argued, it could not legally operate. Alternatively, Campbell contended that, even if the Gardendale school taxes were lawful, the county school tax had been illegal since the imposition of the Gardendale school taxes under a theory that

⁴Campbell's pleadings below further suggest that Gardendale "announced publicly that [it] was not going to seek to operate schools."

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the illegality of "double taxation" prevents collection of either one or the other.

After a hearing, the trial court initially denied the motions to dismiss and ordered the defendants to answer Campbell's complaint. Thereafter, proceedings ensued regarding the class-certification process and Campbell's request for injunctive relief. In addition, Campbell filed his own "Motion for Judgment on the Pleadings or for Summary Judgment" on essentially the same grounds he had cited in opposition to the defendants' earlier motions.

Following further filings and related proceedings in this Court,⁵ the trial court entered an order holding that the prior litigation cited by Gardendale and the County had no preclusive effect on the instant action. Thereafter, the parties stipulated to the propriety of class certification.

After the trial court's entry of a class-certification order, it entered a "Final Order" denying Campbell's pending

⁵Gardendale filed a petition for a writ of mandamus in this Court, which this Court denied. Ex parte City of Gardendale (No. 1171214, Dec. 14, 2018), 291 So. 3d 1161 (Ala. 2018) (table).

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motion for a judgment on the pleadings or for a summary judgment, which stated, in part:

"Nothing in Local Amendment 14 prevents the City of Gardendale from levying a municipal ad valorem tax. Plaintiffs really do not make this contention, instead arguing that Gardendale's decision to levy the 10-mill ad valorem taxes earmarked for public educational purposes may not operate alongside [the] County's levy of the 8.8 mill [county school] tax.

"The court agrees with the defendants that the restriction on special or additional municipal school tax, as found in Local Amendment 14, pertains to any such taxes levied by [the] County for the benefit of a school district found therein. Local Amendment 14 does not address municipal ad valorem taxes levied pursuant to Ala. Const., Art. XI, Sections 216, et seq. Rather, Local Amendment 14 serves to limit a municipal public school district from benefiting from [the] County levy within the district of more than 8.8 mills (absent some other grant of authority within the Alabama Constitution).

"Because Gardendale's municipal ad valorem levy is not a 'special or additional tax' for municipal public school purposes within the meaning of Local Amendment 14, such taxes are here declared to be lawfully levied and collected. Further, the court declares that [the] County's school district tax of 8.8 mills is also being lawfully levied and collected in the Gardendale municipal limits.

"Plaintiffs' Motion for Judgment on the Pleadings or for Summary Judgment ... is accordingly denied. Further, the court sua sponte reconsiders its prior order that had denied the defendants' motions to dismiss or in the alternative for summary judgment.... That order is vacated, and the court now grants summary judgment in favor of the

defendants on all claims of the plaintiffs, for the reasons discussed above."

Campbell appeals.

Standard of Review⁶

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538

⁶Because the trial court's order specifically provided that it considered filings of the parties other than and/or in addition to Campbell's complaint, we treat the order as a summary judgment in the defendants' favor. See Rule 12(b), Ala. R. Civ. P. ("If, on a motion ... to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, [Ala. R. Civ. P.]").

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So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

"Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004))."

Brown v. W.P. Media, Inc., 17 So. 3d 1167, 1169 (Ala. 2009).

Discussion

Local Amendment 14 provides, in pertinent part:

"Jefferson county shall have power to levy and collect an additional tax ... for public school purposes ...; provided that in any incorporated municipality where special or additional taxes are being levied and collected for public school purposes, including the servicing of debts incurred for public schools, the additional tax herein provided for shall be reduced by the amount of such special or additional municipal public school taxes in the corporate limits where such special or additional municipal public school taxes are being levied and collected"

(Emphasis added.) Local Amendment 14 thus provides for the county school tax, but when a municipality has "special or additional taxes ... for public school purposes," the county school tax is reduced by the extent of those taxes.

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Campbell identifies the "core legal issue" in this case as "whether [the] Gardendale [s]chool [t]axes are 'special or additional municipal taxes which are being levied and collected for public school purposes' in Local Amendment 14's parlance." Campbell's brief at p. 13. Because, according to him, Local Amendment 14 prohibits "double taxation," either the county school tax or the Gardendale school taxes must "yield" to the other. Campbell argues that because Gardendale was not actually operating a school system and its students were instead attending schools operated by the County Board of Education, it would be "absurd" to suggest that the county school tax would be reduced by operation of Local Amendment 14. Thus, in order to invalidate the "double taxation," which Campbell maintains is the goal of Local Amendment 14, he asserts that the Gardendale school taxes must be invalidated.

Gardendale, however, maintains that the Gardendale school taxes were imposed pursuant to the authority of § 11-51-1, Ala. Code 1975,⁷ which, it says, provides for the levy of

⁷Section 11-51-1 provides, in pertinent part:

"After October 1 of each year, cities and towns may levy taxes upon property and all subjects of taxation liable therefor at a rate not in excess of

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property taxes by a municipality "for any lawful municipal purposes." Gardendale's brief at p. 6. More specifically, it contends that the mere earmarking of the resulting proceeds for public-school purposes does not convert such taxes into a "municipal public school tax" as described in Local Amendment 14, which, it continues, "refers to municipal school district taxes ... for existing municipal school districts." Gardendale's brief at p. 7. Gardendale also counters that "special" or "additional municipal public school taxes" may be levied only in a municipal school-tax district that has a public-school system, which Gardendale does not.

"'The Constitution is a document of the people. Words or terms used in that document must be given their ordinary meaning common to understanding at the time of its adoption by the people.'" Opinion of the Justices No. 376, 825 So. 2d 109, 114 (Ala. 2002) (quoting McGee v. Borom, 341 So. 2d 141, 143 (Ala. 1976)). In applying our constitution, this Court

the constitutional limit upon assessments to be made by the city or town clerk or other person designated by the council or other governing body, such assessment to be made on the state assessment in the manner provided by the Constitution of the state or in the manner hereinafter authorized by law."

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"adhere[s] to the plain meaning of the text." Jefferson Cty. v. Weissman, 69 So. 3d 827, 834 (Ala. 2011). If we must construe a provision of the Constitution, "we are, if possible, to give the instrument such construction as will carry out the intention of the framers, and make it reasonable rather than absurd." State ex rel. Covington v. Thompson, 142 Ala. 98, 107, 38 So. 679, 682 (1905).

According to Local Amendment 14, the type of municipal taxes that reduce the county school tax are "special or additional taxes ... levied and collected for public school purposes." Campbell focuses his legal argument on whether the Gardendale school taxes are "special or additional taxes" but appears to presume that they are "collected for public school purposes." This latter phrase, however, is key. Broadly viewed, this phrase could refer to the collection of taxes to fund a future school system, i.e., "public school purposes" refers to any purpose connected to public education in any way, including taxes to create a school system. Under this reading, the county school tax and funding to the County Board of Education is reduced even though no municipal schools are built or operating, no separation of the municipal system from

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the County Board of Education has occurred,⁸ and municipal public-school students are still attending the county schools.⁹

A more narrow reading of the phrase "collected for public school purposes" is that it refers to the actual operation of a municipal school system. In that scenario, under Local Amendment 14, the municipal taxes would be paying for the actual operation of municipal schools by a municipal school board instead of the County Board of Education, and the county school tax is accordingly reduced. Applying that reading in the instant case, the county school tax would continue to be collected in full while the County Board of Education still operated the schools in Gardendale. Only when the Gardendale

⁸See, e.g., § 16-8-20, Ala. Code 1975 (providing a process for a city board of education to take control of annexed portions of territory controlled by a county board of education, including the requirement that the county board of education retain supervision and control of the affected schools until a separation agreement is reached). According to Gardendale, prior municipal school districts separating from the County Board of Education entered into such separation agreements. It further asserts that it has never entered into a separation agreement with the County Board of Education.

⁹If such a reading is, as Campbell suggests, absurd, then the rules of constitutional interpretation counsel that the reading should not be applied. State v. Thompson, supra.

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Board of Education actually started operating schools and the County Board no longer needed to expend funds on schools it operated in Gardendale would the county school tax be reduced in accord with the amount collected through the Gardendale school taxes.¹⁰

In any event, under either reading of Local Amendment 14 -- and we do not select one reading today because, as explained below, it is unnecessary -- when a municipal tax is one as described in Local Amendment 14, the effect is clearly provided by Local Amendment 14: the county school tax is reduced by the amount of the municipal tax.

¹⁰This second reading -- that "public school purposes" refers to the operation of schools -- is supported by the text of Local Amendment 14. Specifically, it gives as an example of the municipal taxes that reduce the county school tax as those that are "servicing of debts incurred for public schools," and, in another portion of the amendment not quoted above, provides that tax funds arising from within a municipality actually operating schools shall be expended by the municipal authority over those schools:

"So long as the public schools in any incorporated municipality are operated separately from those of Jefferson county, the funds arising from such additional tax on taxable property in such municipality shall be expended only by the board of education or other authority charged with the operation of the public schools in such municipality and only for the benefit of the public schools therein."

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Under Campbell's theory of the case, the purpose of Local Amendment 14 is to prevent "double taxation," it must operate to invalidate any taxes that violate that principle, the only taxes that may be invalidated in this case without an absurd result are the Gardendale school taxes, and, thus, those taxes must be rendered invalid. We disagree. Local Amendment 14 by its terms is not a scheme to regulate, restrict, or prohibit any or all taxation -- county-wide or municipal -- related to school purposes. Its language simply provides for the levy of one tax -- the county school tax -- to support schools in Jefferson County with an exception and corresponding reduction of the tax in municipalities within the county if certain municipal school taxes exist. If such municipal taxes are not actually being used for school purposes, and instead the county school tax is still levied in full and the County Board of Education still continues to operate the schools in that municipality, nothing in the language in Local Amendment 14 and no authority provided by the parties indicate that the municipal taxes are rendered invalid by operation of Local Amendment 14. Instead, the result that is actually prescribed by the amendment, if applicable, would be that the county

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school tax is reduced.¹¹ Nothing in Local Amendment 14 requires that municipal taxes be rendered invalid because the amendment itself calls for a different result. Further, Campbell has not demonstrated that Local Amendment 14 expresses a policy preference against "double taxation" that must be enforced in this case by invalidating municipal taxes that Local Amendment 14 does not regulate; instead, the amendment is limited to governing only the county school tax.

Thus, we need not determine whether the Gardendale school taxes are "special or additional taxes" being levied and collected for public-school purposes, which is extensively briefed by the parties, because, even if they are, they are not, as Campbell argues, rendered invalid solely by operation of Local Amendment 14. Whether the Gardendale school taxes are invalid under other theories -- for example, they were ostensibly enacted or earmarked to fund a school system but are not being used for that purpose -- was heavily litigated in the trial court, but such theories are not raised and advanced on appeal and are not before this Court. Thus, they

¹¹According to Campbell, in the 2017 election to reauthorize the county school tax, Gardendale was excluded, suggesting that the county school tax is no longer being collected in Gardendale.

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are waived for purposes of this appeal. Tucker v. Cullman-Jefferson Ctys. Gas Dist., 864 So. 2d 317, 319 (Ala. 2003).

Conclusion

Campbell has not demonstrated that the Gardendale school taxes are rendered invalid by operation of Local Amendment 14. We therefore pretermit discussion of the alternate arguments for affirmance presented by Jefferson County and Smallwood. The judgment of the trial court is affirmed.

AFFIRMED.

Parker, C.J., and Bolin, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., concurs in the result.