Rel: March 18, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200629

City of Trussville

v.

Personnel Board of Jefferson County

Appeal from Jefferson Circuit Court
(CV-19-904034)

PER CURIAM.

The City of Trussville ("the City") appeals from the Jefferson Circuit Court's summary judgment in favor of the Personnel Board of Jefferson

County ("the Board") in the City's action seeking a judgment declaring that it has the authority to create and operate its own civil-service system.

Facts and Procedural History

The Board was created pursuant to a local act of the Alabama Legislature in 1935. See Act No. 284, Ala. Acts 1935. That legislation was subsequently reenacted in 1945. See Act No. 248, Ala. Acts 1945. The 1935 and 1945 acts together are referred to in the record as the "enabling act." The enabling act was last amended in 1977 by Act No. 782, Ala. Acts 1977. The Board was created to administer the civil-service system in Jefferson County, and to ensure that hiring and advancement in public-sector jobs in Jefferson County is conducted in an impartial, professional manner without political or personal bias and favoritism.

Regarding the authority of the Board, § 2 of the enabling act, as amended, provides in pertinent part:

> "Personnel Board; extent of its authority defined. In and for each separate county of the State of Alabama which has a population of four hundred thousand or more inhabitants according to the last or any future federal census, there shall be a personnel board for the government and control, by rules and regulations and practices hereinafter set out or authorize[d], of all employees and appointees holding positions

> in the classified service of such counties, the municipalities therein having a population of five thousand or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county, the police officers who are employed by any municipality therein having a population of 2500 or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county, and the County Board of Health, and such personnel board is vested with such powers, authority and jurisdiction."

Act No. 782, § 1. Section 2 of the enabling act, as amended, further provides:

> "In the event the governing body of any municipality whose corporate limits lie partly within said county and partly within any other county and having a population of five thousand or more inhabitants, according to the last federal census, or any succeeding federal census, shall adopt a resolution in favor of such municipality coming under the provisions of this Act, and transmit or cause to be transmitted a certified copy of such resolution to the Personnel Board of such civil service system, then sixty days after the effective date of such resolution, the provisions of this Act shall apply to any such municipality having the required number of inhabitants and whose corporate boundaries lie partly within said county and partly without said county. Any municipality which adopts a resolution and comes under the provisions of this Act, as herein provided, shall thereafter remain under this Act, and may not repeal or rescind such action either by adoption of a resolution or otherwise."

Id. Thus, § 2 of the enabling act, as amended, grants the Board (1) authority to the Board over "all employees and appointees holding

positions in the classified service of ... the municipalities therein [i.e., within Jefferson County] having a population of five thousand or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county" and (2) authority over "police officers who are employed by any municipality therein [i.e., within Jefferson County] having a population of 2500 or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county." Id. In 1977, the City's police department came under the authority of the Board because the City had reached a population of 2,500 inhabitants and its corporate limits at the time were wholly within Jefferson County.

In May 1986, the City began to consider the annexation of property located in St. Clair County, which adjoined the City and Jefferson County, and the effect that such an annexation would have on the authority of the Board over the City's police department. Charles Grover, the City's mayor at the time, wrote to the Board's director of personnel, raising the question regarding whether the proposed annexation would affect the Board's authority over the City's police department and the director informed Mayor Grover that it was his "opinion that [the proposed

annexation] would have no bearing on the matter and the police department would continue to come under the rules and regulations of the [Board]." In June 1986, the City annexed the property located in St. Clair County, thereby extending the City's boundaries beyond Jefferson County.

According to the 1990 federal census, the population of the City exceeded 5,000 inhabitants, thus making the City's nonpolice civil servants eligible for inclusion in the Board's civil-service system. In July 1991, the City passed an ordinance purporting to establish its own personnel board. The City determined that, while its police department had been under the jurisdiction of the Board, the City's police department had experienced "substantial delay in attempting to employ and assign qualified law enforcement personnel, which delays ha[d] impaired employee morale and implementation of legitimate municipal goals and objectives," and that the "City's best interests would be served by the creation of a personnel board for the City." In September 1991, the Board passed its own ordinance, purporting to extend its jurisdiction to include

all classified and regular employees of the City, pursuant to § 2 of the enabling act, as amended.

On October 9, 1991, the City sued the Board in the Jefferson Circuit Court, seeking a judgment declaring that, despite the fact that the 1990 federal census reflected that the population of the City exceeded 5,000 inhabitants, the Board lacked the authority to assert its jurisdiction over its employees based solely on the 1990 federal census ("the 1991 action"). The City also sought a judgment declaring that it had the statutory authority to adopt a resolution establishing its own personal board and civil-service system. It appears from the record that, before initiating the 1991 action, the City's leaders had contemplated the effect the City's annexation of property in St. Clair County would have on the Board's jurisdiction over its employees and that the issue had been discussed at several city-council meetings. However, the issue of what effect the City's annexation of property in St. Clair County would have on the Board's jurisdiction over the City's employees was not specifically raised in the 1991 action. In June 1992, while the 1991 action was still pending, the City annexed additional property located in St. Clair County.

In October 1992, the City and the Board negotiated a settlement agreement regarding the 1991 action. The settlement agreement provided that the "parties hereby agree that, as of the Effective Date specified in paragraph 8 [October 3, 1992], all classified and regular employees of Trussville shall be deemed to be under the jurisdiction and control of the Board ...." The settlement agreement also provided that "[t]he City shall comply with all of the rules and regulations of the Board, as the same exists as of the Effective Date and as hereafter amended from time to time." The settlement agreement further provided that "[t]he City shall take such acts as are necessary or desirable to adopt this Settlement Agreement and its Exhibits."

Mayor Grover announced at a city-council meeting on October 2, 1992, that a settlement agreement had been negotiated with the Board regarding the 1991 action. Also at that city-council meeting, council members unanimously passed an ordinance that rescinded the prior ordinance purporting to establish the City's personnel board. During a city-council meeting on October 13, 1992, the council members considered approving the settlement agreement. The City's attorney stated that, in

his opinion, the settlement agreement was in the best interest of the City. The council members voted to authorize Mayor Grover to sign the settlement agreement. On October 16, 1992, Mayor Grover and the City's attorney signed the settlement agreement on behalf of the City. On October 29, 1992, the circuit court entered a final consent judgment in the 1991 action, approving and ratifying the settlement agreement and directing that the parties comply with the terms and conditions of the settlement agreement. Thereafter, the City operated under the jurisdiction of the Board. After the entry of the consent judgment, the City has on several occasions annexed additional property in St. Clair County.

Buddy Choat was elected mayor of the City in 2016. Mayor Choat testified that, after he ran into difficulty trying to fill several vacant employment positions with the City, he determined it would be in the City's best interest to separate from the Board. In particular, Choat testified that the City's police chief had decided to retire and had recommended an individual that had been serving as a captain on the police force as the new chief of police. Mayor Choat was unable to hire the individual recommended by the outgoing chief because that individual did

not qualify for inclusion on the list of eligible candidates provided to Mayor Choat by the Board. Mayor Choat testified that he had not been familiar with the Board and how it operated because he came from the private sector. Mayor Choat stated that, because of the City's growth, he felt that the City would be better served by forming its own civil-service system. Mayor Choat further explained that his decision to pursue forming the City's own civil-service system was based upon his belief that "one size doesn't fit all" and that, with its own civil-service system, the City would have more flexibility in filling job openings, which, he said, would better benefit the City.

In 2018, the City requested that the attorney general issue an opinion regarding whether, once it had annexed land in St. Clair County, it was subject to being governed by the Board or could form its own civil-service system. The attorney general issued the following opinion:

> "Your request states as follows:
>
> > "1. The City of Trussville is a municipality incorporated under the laws of the State of Alabama and has historically filled vacancies in its work force through the Personnel Board of

> Jefferson County and has participated in the Personnel Board's civil service merit system.
>
> "2. According to the most recent federal decennial census, the city has a population of approximately 20,000 inhabitants within its corporate limits.
>
> "3. The corporate limits do not lie wholly within Jefferson County because of prior annexations. In 1992 the limits extended into St. Clair County due to annexation. Subsequently, two additional annexations into St. Clair County occurred in 2004 and more recently.
>
> "4. Following these annexations, the city did not adopt a resolution electing to come under the provisions of the Personnel Board of Jefferson County; therefore, the city could not have transmitted a copy of the resolution to the Jefferson County Personnel Board.

"Act 248 of the Regular Session of the Legislature of Alabama of 1945 established the Civil Service System of Jefferson County. 1945 Ala. Acts No. 248, 377. It was last amended in 1977 by Act 782. Section [1] of Act 782 states, in pertinent part regarding the authority of the Personnel Board of Jefferson County, as follows:

> " 'Personnel Board; extent of its authority defined. In and for each separate county of the State of Alabama which has a population of four hundred thousand or more inhabitants according to the last or any future federal census, there shall be a personnel board for the government and control,

> by rules and regulations and practices hereinafter set out or authorize[d], of all employees and appointees holding positions in the classified service of such counties, the municipalities therein having a population of five thousand or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county, the police officers who are employed by any municipality therein having a population of 2500 or more inhabitants, according to the last federal census, whose corporate limits lie wholly within the county, and the County Board of Health, and such personnel board is vested with such powers, authority and jurisdiction .'

"1977 Ala. Acts No. 782, 1347-48 (1977) ....

> "The act further provides as follows:
>
> > " 'In the event the governing body of any municipality whose corporate limits lie partly within said county and partly within any other county and having a population of 5,000 or more inhabitants, according to the last federal census, or any succeeding federal census, shall adopt a resolution in favor of such municipality coming under the provisions of the Act, and transmit or cause to be transmitted a certified copy of such resolution to the Personnel Board of such civil service system, then sixty days after the effective date of such resolution, the provisions of the Act shall apply to any such municipality having the required number of inhabitants and whose corporate boundaries lie partly within said county and partly without said county. Any municipality

> which adopts a resolution and comes under the provisions of this Act, as herein provided, shall thereafter remain under this Act, and may not repeal or rescind such action either by adoption of a resolution or otherwise.'

"Id. at 1350-51 ....

> "This Office has previously determined that '[t]he Civil Service System o f Jefferson County does not govern employees of a municipality whose corporate limits extend beyond Jefferson County.' ... Because the corporate limits of the City of Trussville do not lie wholly within Jefferson County and the city did not adopt a resolution in favor of coming under the provisions of the act after the city annexed into St. Clair County, the city is not subject to the Civil Service System of Jefferson County."

Ala. Att'y. Gen. Op. No. 2018-036 (emphasis omitted). Accordingly, the attorney general concluded that the City was not subject to the Board's civil-service system and, therefore, had the authority to establish its own civil-service system. It is clear from the text of the attorney general's opinion quoted above that the attorney general did not consider what effect the settlement agreement, and the consent judgment ratifying that

settlement agreement, entered in the 1991 action had on the question presented by the City for consideration.[1]

On April 23, 2019, the City passed Ordinance No. 2019-020-ADM, creating a civil-service system for City employees. On April 25, 2019, the City notified the Board that it had passed an ordinance creating its own civil-service system and that, once rules and regulations for the City's civil service system were formally adopted, the City's employees would cease being under the authority of the Board and would come under the authority of the City's civil-service system. The Board took the position that the City lacks the authority to form its own civil-service system and that the City is bound to continue under the jurisdiction of the Board.

On September 9, 2019, the City sued the Board in the Jefferson Circuit Court, seeking a judgment declaring that the City had the authority to separate from the jurisdiction of the Board and create its own

[1]Mayor Choat testified in his deposition that the City's request for an opinion from the attorney general regarding its authority to form its own civil-service system did not contain information regarding the 1991 action and the settlement agreement reached between the parties in that action, in which it was agreed that City employees would come under the authority of the Board.

civil-service system. The City alleged, in part, that in June 1992[2] it had annexed property in St. Clair County, and, thus, that its corporate limits no longer lie wholly within Jefferson County, and that it never adopted a resolution pursuant to § 2 of the enabling act, as amended, in favor of the City's coming under the the authority of the Board. Therefore, the City alleged, its employees did not fall under the jurisdiction of the Board.

On October 8, 2019, the Board moved the circuit court to dismiss the City's declaratory-judgment complaint. On that same date, the Board also sought a temporary restraining order and a preliminary injunction preventing the City from acting outside the Board's hiring processes. Following a hearing on the Board's motion, the circuit court, on October 10, 2019, entered an order enjoining the City from separating from the Board and forming its own civil-service system.

On October 31, 2019, the City appealed the circuit court's order. This Court transferred the appeal to the Court of Civil Appeals, pursuant

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[2]It is undisputed that the City first annexed property in St. Clair County in 1986, well before the commencement of the 1991 action and the parties' execution of the settlement agreement.

to § 12-2-7(6), Ala. Code 1975. On June 12, 2020, the Court of Civil Appeals issued an opinion reversing the circuit court's order and remanding the case to the circuit court, finding that the circuit court's order did not comply with the requirements of Rule 65(d)(2), Ala. R. Civ. P. See City of Trussville v. Personnel Bd. of Jefferson Cnty., 313 So. 3d 566, 571 (Ala. Civ. App. 2020).

On remand, the City, on July 1, 2020, moved the circuit court to strike the Board's motion for a preliminary injunction, arguing that the motion was improper because the Board had not asserted an underlying cause of action. On July 2, 2020, the Board filed an answer to the City's complaint, asserting, among other defenses, the doctrines of collateral estoppel and res judicata; asserted a counterclaim for a judgment declaring that it retained jurisdiction over the City's employees; and requested a preliminary injunction and a permanent injunction enjoining the City from separating from the Board to form its own civil-service system.

On July 6, 2020, the City and the Board jointly moved the circuit court to consider the Board's requests for injunctive relief with a decision

or trial on the merits. The circuit court granted that motion on July 7, 2020. Thereafter, the parties conducted discovery.

On March 29, 2021, the City moved the circuit court for a summary judgment, arguing that it did not fall under the jurisdiction of the Board because (1) its corporate limits were not located wholly within Jefferson County and (2) it had not adopted a resolution in favor of coming under the authority of the Board or forwarded such a resolution to the Board, as required by § 2 of the enabling act, as amended, so as to be bound by the authority of the Board. The City further argued that its current action was not barred by the doctrines of collateral estoppel or res judicata because, it asserted, the 1991 action was based on the City's claim that it was not subject to the Board's authority solely because of its population under the 1990 federal census, whereas the current action is based on the City's claim that its corporate limits do not lie wholly within Jefferson County and it has not adopted a resolution in favor of coming under the jurisdiction of the Board or forwarded such a resolution to the Board.

Also on March 29, 2021, the Board moved the circuit court for a summary judgment, arguing that the plain language of the enabling act,

as amended, does not provide any means by which a municipality may terminate the Board's authority over it -- whether the municipality became subject to the authority of the Board automatically or by resolution -- and expressly disallows a municipality that has come under the authority of the Board by resolution from repealing or rescinding such a resolution. See Act No. 782, § 1 ("Any municipality which adopts a resolution and comes under the provisions of this Act ... shall thereafter remain under this Act, and may not repeal or rescind such action either by the adoption of a resolution or otherwise."). The Board additionally argued that a resolution by the City submitting to the authority of the Board was not necessary to bring it within the jurisdiction of the Board because the City had voluntarily submitted to the authority of the Board by entering into the settlement agreement that was incorporated into the consent judgment entered in the1991 action. The Board further argued that the City's action is barred by the doctrines of collateral estoppel and res judicata because, it said, the City could have asserted in the 1991 action that its corporate limits did not lie wholly within Jefferson County and that it had not adopted a resolution indicating its intent to come

under the authority of the Board -- issues, the Board said, the City could have raised and litigated in the 1991 action but did not. Instead, the Board argued, the City, by entering into the 1991 settlement agreement, agreed to continue to be bound by the authority of the Board.

On April 27, 2021, the circuit court ruled on the parties' motions for a summary judgment, entering a summary judgment in favor of the Board and finding that the City is permanently subject to the jurisdiction of the Board and that the City does not have the authority to withdraw from that jurisdiction and create its own civil-service system. The City appeals.

Standard of Review

Our standard of review of a summary judgment is as follows:

> "We review the trial court's grant or denial of a summary-judgment motion de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Bockman v. WCH, L.L.C., 943 So. 2d 789 (Ala. 2006). Once the summary-judgment movant shows there is no genuine issue of material fact, the nonmovant must then present substantial evidence creating a genuine issue of material fact. Id. 'We review the evidence in a light most favorable to the nonmovant.' 943 So. 2d at 795. We review questions of law de novo. Davis v. Hanson Aggregates Southeast, Inc., 952 So. 2d 330 (Ala. 2006)."

Smith v. State Farm Mut. Auto. Ins. Co., 952 So. 2d 342, 346 (Ala. 2006).

Discussion

As discussed above, the parties submitted the issue whether the City's action is barred by the doctrine of res judicata, among others, to the circuit court in their motions for a summary judgment. We find the resolution of that issue to be dispositive of this appeal.

In Lee L. Saad Construction Co. v. DPF Architects, P.C., 851 So. 2d 507, 516-17 (Ala. 2002), this Court explained:

> "Res judicata and collateral estoppel are two closely related, judicially created doctrines that preclude the relitigation of matters that have been previously adjudicated or, in the case of res judicata, that could have been adjudicated in a prior action.
>
> > " 'The doctrine of res judicata, while actually embodying two basic concepts, usually refers to what commentators label "claim preclusion," while collateral estoppel ... refers to "issue preclusion," which is a subset of the broader res judicata doctrine.'
>
> "Little v. Pizza Wagon, Inc., 432 So. 2d 1269, 1272 (Ala. 1983)(Jones, J., concurring specially). See also McNeely v. Spry Funeral Home of Athens, Inc., 724 So. 2d 534, 537 n.1 (Ala. Civ. App. 1998). In Hughes v. Martin, 533 So. 2d 188 (Ala. 1988), this Court explained the rationale behind the doctrine of res judicata:

> " 'Res judicata is a broad, judicially developed doctrine, which rests upon the ground that public policy, and the interest of the litigants alike, mandate that there be an end to litigation; that those who have contested an issue shall be bound by the ruling of the court; and that issues once tried shall be considered forever settled between those same parties and their privies.'

"533 So. 2d at 190. The elements of res judicata are

> " '(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions.'

"Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998). 'If those four elements are present, then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation.' 723 So. 2d at 636. Res judicata, therefore, bars a party from asserting in a subsequent action a claim that it has already had an opportunity to litigate in a previous action.'

"The corollary to the above-stated rationale is that the doctrine of res judicata will not be applied to bar a claim that could not have been brought in a prior action. Old Republic [Ins. Co. v. Lanier] ... 790 So. 2d [922,] 928 [(Ala. 2000)]. See also United States v. Maxwell, 189 F. Supp. 2d 395, 406 (E.D. Va. 2002); Restatement (Second) of Judgments, § 26(1)(c) (1982), Restatement (Second) of Judgments, § 51(1)(a). 'In order for a judgment between the same parties to be res judicata, it must, among other things, ... involve a question that could have been litigated in the former cause or

> proceeding.' Stephenson v. Bird, 168 Ala. 363, 366, 53 So. 92, 93 (1910). "

(Footnotes omitted.)

It is undisputed that the first three elements of the doctrine of res judicata are satisfied in this case. The 1991 action ended with the entry of a consent judgment ratifying the settlement agreement reached between the City and the Board.[3] The City argues that the present action is not barred by the doctrine of res judicata because the fourth element requiring that the same cause of action be present in both actions is not satisfied in this case. In discussing the same-cause-of-action element of the doctrine of res judicata, this Court has stated:

> " ' " '[T]he principal test for comparing causes of action [for the application of res judicata] is whether the primary right and duty or wrong are the same in each action.' " ' Old Republic Ins. Co. v. Lanier, 790 So. 2d 922, 928 (Ala. 2000) (quoting Wesch v. Folsom, 6 F.3d 1465, 1471 (11th Cir. 1993)). This Court further stated: ' "Res judicata applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of

[3]"[A] consent judgment is generally entitled to the same conclusive effect as a judgment on the merits." Sanders v. First Bank of Grove Hill, 564 So. 2d 869, 872 (Ala. 1990). See also Austin v. Alabama Check Cashers Ass'n, 936 So. 2d 1014, 1038-39 (Ala. 2005).

> operative facts." ' 790 So. 2d at 928 (quoting Wesch, 6 F.3d at 1471). As a result, two causes of action are the same for res judicata purposes ' "when the same evidence is applicable in both actions." ' Old Republic Ins. Co., 790 So. 2d at 928 (quoting Hughes v. Martin, 533 So. 2d 188, 191 (Ala. 1988))."

Chapman Nursing Home, Inc. v. McDonald, 985 So. 2d 914, 921 (Ala. 2007).

Specifically, the City relies upon the "same evidence" test to argue that the 1991 action and the present action do not involve the same cause of action. The "same evidence" test has been stated as follows:

> "The determination of whether the cause of action is the same in two separate suits depends on whether the issues in the two actions are the same and whether the same evidence would support a recovery for the plaintiff in both suits. Dominex, Inc. v. Key, 456 So. 2d 1047, 1054 (Ala.1984). Stated differently, the fourth element is met when the issues involved in the earlier suit comprehended all that is involved in the issues of the later suit. Adams v. Powell, 225 Ala. 300, 142 So. 537 (1932). "

Dairyland Ins. Co. v. Jackson, 566 So. 2d 723, 726 (Ala. 1990).

The City has presented this Court with several cases in which the "same evidence" test was applied to determine that the doctrine of res judicata did not bar a subsequent action. In Vaughan v. Barr, 600 So. 2d 994 (Ala. 1994), a plaintiff landowner commenced an action against a

neighboring landowner, seeking a determination as to the boundary lines of their properties, and the trial court concluded that the land in dispute belonged to the neighboring landowner. The plaintiff landowner did not appeal. Subsequently, the plaintiff landowner commenced an action seeking an easement by necessity over the neighboring landowners' property to obtain a means of ingress and egress from his landlocked property. The neighboring landowner raised the doctrine of res judicata as a defense, and the trial court entered a judgment in favor of the neighboring landowner on that ground. This Court reversed that judgment, holding that

> "[a]n action to establish an easement and an action to determine a disputed boundary are based on different theories, involve different areas of law, require different evidence, and carry different elements that must be proven. A common law easement by necessity for private use involves more elements than just unity of title, and these elements were not material in the boundary line litigation. The boundary dispute and the claim of an easement by necessity are separate causes of action; therefore the doctrine of res judicata is not a bar to [the plaintiff landowner's] present easement action."

Vaughan, 600 So. 2d at 996.

In Croft v. Pate, 585 So. 2d 799 (Ala. 1991), the plaintiffs commenced an action against the defendant, claiming to have an equitable ownership in a particular piece of property and that their equitable ownership gave them the right to redeem the property. The trial court entered a summary judgment in favor of the defendant, and the plaintiffs did not appeal. Subsequently, the plaintiffs commenced an action against the defendant, asserting a claim of intentional interference with a business or contractual relationship by specifically alleging that the defendant's actions had interfered with a preforeclosure settlement agreement that they had entered into with a third party, to whom they had transferred title to the property. The defendant raised the doctrine of res judicata in a motion for a summary judgment, and the trial court granted the motion on that basis. In reversing the summary judgment entered by the trial court, this Court stated:

> "In the first action, the evidence concerned the right of the [plaintiffs] to redeem the property once [the defendant] had purchased it at the foreclosure sale. In determining the right of the [plaintiffs] to redeem the property, the court would have considered the deed by which the [plaintiffs] conveyed the property to [the third party], in light of Ala. Code 1975, § 6-

> 5230.[4] Section 6-5-230 contains a list of those entitled to redeem property sold under a power of sale in a mortgage. A copy of that deed was included as an exhibit in the first action, and [the defendant] based his motion for summary judgment on that exhibit. The court granted [the defendant's] motion for summary judgment.
>
> "The [plaintiffs] argue, and the depositions of [the defendant, and the third party, and the plaintiffs' former attorney] corroborate, that in this action the evidence concerns the existence vel non of a contractual relationship between the [plaintiffs] and [the third party] and whether [the defendant] intentionally interfered with that relationship. That proposition has not been fully and fairly tried. The parties to this action have not had an opportunity to say and prove all that they can in relation to it, and the mind of the court has not been brought to bear on this claim raised by the [plaintiffs]."

Croft, 585 So. 2d at 801.

In Dairyland, supra, a driver was operating his brother's vehicle when he crossed the median and struck another vehicle. The passenger in the vehicle the driver struck commenced a negligence action against the driver, and the trial court entered a judgment on a jury verdict in favor of the passenger for $50,000. Following that trial, the driver commenced an

[4]Section 6-5-230, Ala. Code 1975, has since been repealed.

action against Dairyland Insurance Company, his brother's uninsured-motorist provider, asserting that an uninsured motorist had caused the accident by forcing him to cross the median. Dairyland argued at trial that the driver was barred from asserting the uninsured-motorist action against it based on the doctrine of res judicata. The jury returned a verdict in favor of the driver for $20,000, and the trial court entered a judgment on that verdict. Dairyland appealed, again asserting that the doctrine of res judicata barred the driver from bringing the uninsured-motorist action against it. This Court affirmed the judgment in favor of the driver, holding, in pertinent part, that the applicability of the doctrine of res judicata had not been established because

> "[the passenger's] action against [the driver],which sounded in tort, involved only questions of negligence, and [the driver's] claim for damages was not at issue. In contrast, [the driver's] suit against Dairyland was a contract action on an insurance policy. To recover, [the driver] had to produce evidence that he was covered under his brother's policy, that the accident was caused by an uninsured motorist, and that he was not contributorily negligent. Because the two actions were based on different theories, involved different plaintiffs, and required different evidence to entitle those plaintiffs to recover, they were not the same cause of action. Therefore, the doctrine of res judicata was not a bar to [the driver's] action against Dairyland."

566 So. 2d at 726.

Relying on those cases, the City argues that the 1991 action challenged the authority of the Board to assert jurisdiction over its employees solely based on the City's population under the 1990 federal census. The City states that the only evidence that was necessary to determine the 1991 action was the results of the 1990 federal census. The City further argues that the present action was brought to determine whether the City had the authority to form its own civil-service system or was obligated to continue under the jurisdiction of the Board's civil-service system based on the fact that the City's corporate limits no longer lie wholly within Jefferson County. The City contends that the evidence necessary for a determination of the present action involves its annexation of property in St. Clair County and is entirely different from the evidence necessary for a determination of the 1991 action involving the results of the 1990 federal census. Therefore, the City argues, because the evidence necessary to support a recovery in the two actions is different, the same cause of action is not present in both actions and the doctrine of res judicata is not a bar to the present action. We are not persuaded by the

cases relied upon by the City, and we find them largely distinguishable from the present case.

In Vaughan, Croft, and Dairyland, the "primary right and duty or wrong" differed in the first and second actions at issue in each of those cases. MacDonald, 985 So. 2d at 921. In Vaughan, the initial action sought to settle the rights of the parties to particular boundary lines between adjoining parcels of property. In the subsequent action, the loser of the boundary-line dispute sought the right to an easement by necessity for ingress and egress to his property over the property of the winner of the boundary-line dispute. Although both actions involved the same parcels of property, they involved separate rights to the property, i.e., the right to title to certain land based on the location of the boundary lines and the right to an easement by necessity. The primary rights to be determined were not the same in each action, and the actions involved different elements of proof and evidence. Thus, this Court determined that the actions did not involve the same cause of action for res judicata purposes.

In Croft, the plaintiffs sought in the initial action the right to redeem certain property based on their claim to an equitable ownership interest in the property. The plaintiffs alleged in their subsequent action that the defendant had wrongfully interfered in a contractual or business relationship that they had entered into with a third party before the foreclosure. The primary right asserted in the first action, i.e., the right to redeem the property based on an alleged equitable ownership interest in the property, was not the same as the primary wrong asserted in the subsequent action, i.e., the wrongful interference with a contractual or business relationship. Therefore, this Court determined that the actions did not involve the same cause of action for res judicata purposes.

In Dairyland, the passenger in one vehicle initially brought a negligence action against the driver of another vehicle. In the second action, the driver brought a contract action against an uninsured-motorist insurance provider, seeking uninsured-motorist benefits. The primary wrong in the first action, i.e., the alleged negligence of the driver, was not the same as the primary right or duty in the second action, i.e., the driver's right to, and the insurer's duty to pay, uninsured-motorist

benefits. One action sounded in tort, the other in contract, and they involved different elements of proof and required different evidence. Therefore, this Court determined that the actions did not involve the same cause of action for res judicata purposes.

Here, the City has asserted identical claims for a declaratory judgment in both the 1991 action and this, the subsequent action -- specifically, a determination as to whether the City is bound by the jurisdiction of the Board under the enabling act, as amended, or whether the City can form its own civil-service system. Although the theories of relief in the two declaratory-judgment actions may differ -- in the 1991 action, the City challenged whether the Board could assert jurisdiction over the City based solely on the 1990 federal census but, in the current action, the City challenged the jurisdiction of the Board based on the fact that part of the City's corporate limits lie outside Jefferson County -- the two declaratory-judgment actions arose out of the same dispute and presented the same rights to be determined -- whether the City fell under the jurisdiction of the Board or whether the City could form its own civil-service system. The fact that both the 1991 action and the present action

were based on different theories is of no consequence. See McDonald, 985 So. 2d at 921 (stating that " ' "[r]es judicata applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts" ' ").

We further note that all the facts relevant to the theory that the City is not subject to the jurisdiction of the Board because a portion of the City's corporate limits lies outside Jefferson County, which is the City's theory of relief in the current action, were present and known to the City before the commencement of the 1991 action. The City first annexed property in St. Clair County in June 1986, thereby extending the City's boundaries beyond Jefferson County. It appears from the record that, before initiating the 1991 action, the City's leaders had contemplated the effect the City's annexation of property in St. Clair County would have on the Board's jurisdiction over its employees and that the issue had been discussed at several city-council meetings. However, this theory for challenging the Board's jurisdiction over the City under the enabling act, as amended, was not specifically asserted in the City's 1991 action. In June 1992, while the 1991 action was still pending, the City annexed additional property

located in St. Clair County, but it failed to amend its claim seeking a declaratory judgment to assert the theory that a portion of the City's corporate limits lied outside Jefferson County. In October 1992, the City reached a settlement agreement with the Board, in which the parties agreed that all classified and regular employees of the City would be deemed to be under the jurisdiction and control of the Board. The City's mayor signed the settlement agreement on behalf of the City after being authorized to do so by the City's council members. The City entered into the settlement agreement with the Board having full knowledge of the fact that a portion of the City's corporate limits lied outside Jefferson County and having failed to amend its complaint seeking a declaratory judgment at any time before entering into the settlement agreement with the Board.

Based on the foregoing, we conclude that the same cause of action was presented in both the 1991 action and the present action and that the theory upon which the City sought to litigate the present action could have been litigated in the 1991 action, but was not. Accordingly, the City's present action is barred by the doctrine of res judicata.

Conclusion

We affirm the summary judgment entered in favor of the Board on the ground that the City's declaratory-judgment action is barred by the doctrine of res judicata. We pretermit discussion of the remaining issues presented.

AFFIRMED.

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

Sellers and Mendheim, JJ., concur in the result.

Bryan, J., dissents.