

IN THE CIRCUIT COURT FOR THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
EQUITY DIVISION

FILED IN CIRCUIT COURT
The 1st day of July 1987
REGISTERED
P. J. G. Gentry
E. C. D. D. R.

STEWART R. DUDLEY, RODERICK P.
DONNALLY, JANE FAULKNER, and
MILDRED M. JOHNSON,

Plaintiffs,

vs.

CITY OF HOOVER, ALABAMA, a
municipal corporation; CLAUDE
M. MONCUS, JR., d/b/a MONCUS
PROPERTIES; CAMPBELL DEVELOPMENT
COMPANY, a corporation; LEONARD
DUFFEY; LEDCO INDUSTRIES; RUBY
and THOMAS McCLELLAND,

Defendants.

CIVIL ACTION NO.

CV 87 501 962 MC

FINAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This case has now been submitted for decision on the Motion for Summary Judgment filed by the plaintiffs, Dudley, Donnally, Faulkner and Johnson.

BOOK 148 PAGE 555
In their Complaint filed in this case, the plaintiffs seek to have this Court declared invalid and of no legal effect, the annexations made by the City of Hoover of certain property situated in Shelby County, Alabama referred to in the Complaint as the Moncus property, the Mills property and the Duffey property. The property is more specifically described by meets and bounds in the exhibits attached to the Complaint.

The Moncus property was annexed into Hoover pursuant to Hoover Ordinance No. 86-492 adopted by the Hoover City Counsel on June 23, 1986. The Duffey property was annexed into Hoover pursuant to Hoover Ordinance No. 86-535 adopted by the Hoover City Counsel on September 15, 1986, and recorded in the Probate Office of Shelby County, Alabama, Book 93, Page 13. The Mills property was annexed into Hoover pursuant to Ordinance No. 86-538 adopted by the City of Hoover on September 15, 1986, recorded in the Probate Office of Shelby County, Alabama in Book 93, Page 608. All such Ordinances were approved by the mayor and had been recorded in the Probate Office of Shelby County, Alabama.

The annexations in each instance was attempted under the

provisions of Article 2, §11-42-20

Alabama Code

1975. Under §11-42-21, the property sought to be annexed to the city must be contiguous to the corporate limits of the municipality seeking to annex such property.

It is undisputed that the City of Hoover sought to achieve contiguity in the present case by annexing the right-of-way of state highway number 119 either prior to or at the time of the attempted annexations which are involved in this lawsuit. In annexing the right-of-way of state highway number 119, the City of Hoover relied on the decision of the Supreme Court of Alabama in City of Tuskegee v. Lacey, 486 So. 2d 393 (Ala. 1985). In that case, decided December 20, 1985, the Supreme Court of Alabama approved what has come to be known as the "long lasso" doctrine under which the City of Tuskegee was allowed to annex the rights-of-way of public roads to annex the Macon County dog track property situated at a distance of approximately fourteen (14) miles from the nearest property within Tuskegee's city limits. In that case, four of the justices of the Supreme Court filed a dissent. The majority opinion stated in part:

"We agree that the wholesale allowance of what the Circuit Court terms 'the long lasso doctrine' could invite abuse and substantial problem; however, it is also a general rule in this state that the courts can act to correct an abuse of a municipality's discretion in enacting an annexation ordinance....."

In a subsequent decision rendered by the Supreme Court of Alabama on April 24, 1987, City of Fultondale v. City of Birmingham, So. 2d (Ala. 1987), the Supreme Court's earlier decision in City of Tuskegee, supra, was overruled. The Supreme Court stated in its opinion in this last cited case the following:

"Upon reexamining the holding in City of Tuskegee v. Lacey, supra, we feel it should be overruled for two major reasons.

"First, the facts in City of Dothan and City of Tuskegee are materially different. In City of Dothan, a private property owner petitioned to have his property annexed into the City of Dothan. This property created the necessary contiguity with the airport property. City of Tuskegee involved fourteen (14) miles of public roads right-of-way, and not one property owner along that route petitioned to be

brought into the City of Tuskegee. Alabama's statutory methods of annexation require that property owners consent to the annexation before an annexation of their property can occur. See Ala. Code 1975, §11-42-1 through 11-42-88. The public road rights-of-way annexed in City of Tuskegee were used merely to create contiguity and, in effect, to avoid the requirement of a touching at some point. We do not believe the legislature intended to allow annexation in this manner.

"Second, in City of Tuskegee the main opinion recognized that the wholesale allowance of 'the long lasso method' of annexation could invite abuse and substantial problems. We feel the instant cases represent such abuse and problems.

* * *

"...we hold that the use of public road rights-of-way to create contiguity is unreasonable and invalid as a matter of law."

* * *

"Based upon the foregoing, the holding in City of Tuskegee is overruled. Accordingly, we reverse the judgment that holds the Trussville annexation to be proper and remand the cause for the entry of a judgment consistent with this opinion; and we affirm the summary judgment granted in favor of Birmingham and the Fultondale case, not for the reasons given by the trial court, but due to our holding that annexation by use of public road rights-of-way is invalid."

BOOK 148 PAGE 557

Counsel for the defendants acknowledge that the decision in City of Tuskegee has now been overruled. However, they still advance three arguments why this Court should not declare the annexations involved in this case to be invalid. The defendants say: (1) that the plaintiffs have no standing to bring this action; (2) that the challenge of the annexations could only be accomplished by an action in quo warranto and not by an action for declaratory judgment; (3) that the decision overruling City of Tuskegee should be applied prospectively and not retrospectively.

The affidavit of Stewart R. Dudley states that he is a property owner abutting the public rights-of-way along highway 119, the corridor that formed the basis of the annexation of the properties involved in this lawsuit.

In City of Tuskegee v. Lacey, supra, Tuskegee challenged the standing of the plaintiffs' right to seek relief from the annexation ordinance adopted by Tuskegee in that case. The Supreme Court affirmed the action of the trial court in rejecting

the city's argument. The Supreme Court noted that all of the plaintiffs were property owners within Tuskegee's police jurisdiction as the same was determined by the newly-annexed public rights-of-way. The Supreme Court stated:

"...this proximity to the 'annexed' corridor, which authorizes the City to exercise certain power and control over the property and its owners, supply sufficient interest in these plaintiffs, affected by their inclusion, to give them standing to prosecute this action."

This Court likewise concludes that the plaintiffs in the present action have standing to prosecute this action since it has been shown that at least one of the plaintiffs owns property abutting highway 119 at a point where the same was sought to be annexed to the City of Hoover.

BOOK 148 PAGE 558
The contention that the action to challenge the annexation is limited to one sounding in quo warranto is also rejected. The Supreme Court has recognized the actions seeking declaratory and injunctive relief for the purpose of challenging the validity of annexations. See, e.g., City of Tuskegee, supra; City of Fulton-dale v. City of Birmingham, supra.

The defendants have referred to the decision of the Supreme Court of Alabama in City of Dothan v. Dale County Commission, 295 Ala. 131, 324 So. 2d 772 (1975) in support of their contention that the present action constitutes an impermissible collateral attack on the validity of the annexation ordinances adopted by the City of Hoover.

In that case, the corridor through which contiguity was achieved was not a public roadway but private land, the owners of which had filed the necessary petition for its annexation. The Supreme Court has already made clear in the cases cited in this order, the obvious distinction between the facts in City of Dothan and those in the present case involving the attempted annexation of a public road.

In short, the annexation in the present case is wholly void and therefore subject to collateral attack if such requirements still exist.

The last contention, namely, that the overruling of the City

BOOK 148 PAGE 559
of Tuskegee should only be applied prospectively must also be rejected. Since the Supreme Court's decision in City of Tuskegee, there have been approximately eighty-one (81) annexations carried out in Jefferson County alone by means of the "long lasso doctrine." The Supreme Court held in City of Fultondale v. City of Birmingham, supra, that the proposed annexations by Fultondale and Trussville consisted of strips of roadways running in all directions from each city creating a spider-web affect and leaving areas of unincorporated territory surrounded by the roadways. The other annexations attempted to be accomplished by Birmingham, Hoover and other municipalities within this county have created similar effects. In overruling City of Tuskegee, supra, the Supreme Court of Alabama would not leave this county with the problems resulting from such annexations. Unlike the ills released from Pandora's box, the ills resulting from City of Tuskegee can now be contained.

This Court concludes that the attempted annexations which are the subject of challenge in this case are invalid. The Motions to Dismiss filed by the defendants are due to be overruled and the relief prayed for by the plaintiffs granted.

Accordingly, the Motions to Dismiss filed by the defendants are hereby overruled. The Motion for Summary Judgment filed by the plaintiffs is hereby granted. This Court hereby declares that the annexations of the Moncus property, the Mills property and Duffey property as shown by the exhibits attached to the Complaint which are also made a part of and attached to this Order are null and void and of no legal effect. Each of said properties shall remain a part of the unincorporated area of Shelby County, Alabama. All costs of court are taxed against the defendants.

Done this 15th day of July, 1987.


CIRCUIT JUDGE

BOOK 148 PAGE 560

BOOK 093 PAGE 608

EXHIBIT "A"

PARCEL I

Description:

Commence at the Northeast corner of the NW 1/4 of the NW 1/4 of Section 28, Township 17 South, Range 2 West, run West along the north boundary of Section 28, for 483.67 feet; thence turn an angle of 92 degrees 17 minutes 30 seconds to the left and run southerly 88.10 feet to the point of beginning of the land herein described; thence continue southerly along the same line for 505.91 feet; thence turn an angle of 25 degrees 20 minutes to the left and run southeasterly for 1758.26 feet, more or less; thence turn an angle of 90 degrees 06 minutes 30 seconds to the left and run northeasterly for 218.53 feet; thence turn an angle of 89 degrees 53 minutes 30 seconds to the left and run northwesterly 2215.25 feet, more or less to the point of beginning. This land being a part of the west half of Section 28, Township 19 South, Range 2 West, and being 9.97 acres, more or less.

PARCEL II

Commence at the northeast corner of the NW 1/4 of the NW 1/4 of Section 28, Township 19 South, Range 2 West, run West along the north boundary of Section 28, 483.67 feet to a point; thence turn a left deflection angle of 92 degrees 17 minutes 30 seconds and run southerly 598.80 feet to the point of beginning; thence continue southerly along the previous heading 1,236.66 feet to a point; thence turn a right interior angle of 145 degrees 39 minutes 44 seconds and run 694.70 feet to a point; thence turn a right interior angle of 189 degrees 52 minutes and run 628.30 feet to a point on the northwest right-of-way line of Cahaba Valley Road, otherwise known as Alabama Highway 119; thence turn a right interior angle of 82 degrees 34 minutes 25 seconds and run along said right-of-way line 435.32 feet to a point; thence turn a right interior angle of 96 degrees 30 minutes 06 seconds leaving said right-of-way, and run 2,382.35 feet to the point of beginning and making a closing right interior angle of 25 degrees 23 minutes 45 seconds. Containing 20.226 acres, more or less.

EXHIBIT "A"

Description:

A parcel of land situated in the SW 1/4 of the NW 1/4 and the NW 1/4 of the SW 1/4 of Section 28, Township 19 South, Range 2 West, Shelby County, Alabama more particularly described as follows: Begin at the northwest corner of said section and run in an easterly direction along the north line of said section a distance of 840.21 feet to a point; thence deflect 87 degrees 44 minutes 20 seconds and run to the right and in a southerly direction a distance of 1193.11 feet to the point of beginning of herein described parcel; thence continue along last described course in a southerly direction a distance of 1009.14 feet to a point; thence turn an interior angle of 214 degrees 21 minutes 20 seconds and run to the left and in a southeasterly direction a distance of 386.91 feet to a point; thence turn an interior angle of 169 degrees 46 minutes 00 seconds and run to the right and in a southeasterly direction a distance of 263.37 feet to a point; thence turn an interior angle of 98 degrees 26 minutes 00 seconds and run to the right and in a southwesterly direction a distance of 150.00 feet to a point; thence turn an interior angle of 261 degrees 32 minutes 40 seconds and run to the left and in a southeasterly direction a distance of 359.46 feet to a point on the northwesterly right-of-way of Shelby County Highway #119; thence turn an interior angle of 98 degrees 23 minutes 40 seconds and run to the right along said right-of-way in a southwesterly direction a distance of 353.12 feet to a point; thence turn an interior angle of 83 degrees 12 minutes 00 seconds and run to the right and in a northwesterly direction a distance of 704.51 feet to the P.C. of a curve to the right having a delta of 25 degrees 10 minutes 10 seconds and a radius of 1450.00 feet; thence run along said curve in a northwesterly to northerly direction a distance of 636.97 feet to a point; thence run tangent to said curve and in a northerly direction a distance of 913.50 feet to a point; thence turn an interior angle of 90 degrees 00 minutes 00 seconds and run to the right and in an easterly direction a distance of 408.68 feet to the point of beginning, containing 20.70 acres more or less.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1987 SEP -1 AM 10:33

Thomas A. Shores, Jr.
JUDGE OF PROBATE

RECORDING FEES

Recording Fee \$17.50
Index Fee 8.00

TOTAL

\$25.50

BOOK 093 PAGE 615

BOOK 148 PAGE 561