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City of Centerville v. City of Warner Robins, 508 S.E.2d 161 (Ga. 1998)

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court agreed that the Association had exceeded its authority and found the Association had committed theft and conversion of Watson's shares.

The appellate court reviewed de novo the trial court's interpretation of the statute. Rather than interpreting only the word "repair," it examined the phrase of the statute which allowed a reservoir company "to keep its reservoir in good repair." The court held that the meaning of the phrase was apparent on its face. The Association existed solely to supply water for irrigation to its shareholder's land. To fulfill its sole purpose the statute must allow the assessment to keep the reservoir in good condition. The court held the statute authorized the assessment, including the forfeiture of Watson's shares.

Darrell Brown

GEORGIA

City of Centerville v. City of Warner Robins, 508 S.E.2d 161 (Ga. 1998) (upholding a consent judgment which designated to one municipality all the service area outside another municipality's exclusive service area).

In 1995, the Superior Court of Houston County entered a consent order ("1995 Order") submitted by the City of Centerville ("Centerville") and consented to by the City of Warner Robins ("Warner Robins"). The 1995 Order resolved a dispute between Centerville and Warner Robins concerning the provision of water and sewer services. The 1995 Order designated a specific tract of land as the exclusive water and sewer area of Centerville. All other areas serviced by either city would continue to be served by the respective municipality. The 1995 Order prohibited each municipality from providing water and sewer services to areas within the exclusive service area of the other municipality. Additionally, the 1995 Order estopped each municipality from annexing any area within the exclusive service area of the other municipality. In 1997, Warner Robins filed a complaint seeking an injunction against Centerville from carrying out plans to provide water and sewer service outside Centerville's exclusive service area. A second order was entered in 1998 ("1998 Order") by the superior court concluding that the original 1995 Order was a consent agreement and that all the area outside the Centerville exclusive service area comprised Warner Robin's exclusive service area. Thus, the 1998 Order enjoined Centerville's plans for providing water and sewer service. Centerville raised three issues on appeal: (1) whether the 1995 Order was properly deemed a "consent judgment;" (2) whether the superior court usurped control over the legislative

function of annexation; and (3) whether the 1998 Order properly interpreted the 1995 Order to grant all the area outside the exclusive service of Centerville to Warner Robins.

The Supreme Court of Georgia held: (1) the 1995 Order was properly treated as a consent judgment; (2) the superior court did not usurp control over a legislative function; and (3) the superior court properly interpreted the 1995 Order to designate to Warner Robins all the area outside the exclusive service area of Centerville.

First, the court recognized that the original 1995 consent order resulted from an affirmative act of the parties, rather than the judgment of the court following litigation of the issues. The court noted that a consent judgment is a voluntary stipulation by the parties entered into in order to resolve a dispute. The 1995 Order was the culmination of settlement efforts of Centerville and Warner Robins in determining service areas. Thus, the superior court properly characterized the 1995 Order as a consent judgment.

In deciding the second issue, the court recognized that the power of annexation is a legislative function, not subject to control by the judiciary. However, the superior court did not attempt to usurp control over this function, it merely enforced the 1995 Order. In the 1995 Order, Centerville agreed not to seek annexation of property within the Warner Robins service area. Thus, the superior court merely sought to enforce that agreement.

Finally, the court noted that the 1995 Order failed to clearly describe the Warner Robins service area in the same detail as it described the Centerville service area. However, the superior court properly used the general rules of contract construction in referring to the record in order to construe the ambiguity. The record clearly indicated the intent of the parties to designate to Warner Robins all the area outside of Centerville's exclusive service area. Thus, the superior court properly interpreted the 1995 Order.

Candace Deen

KANSAS

Water District No. 1 v. Mission Hills Country Club, 960 P.2d 239 (Kan. 1998) (holding water district had an exclusive right under the Water District Act to provide pressurized treated water by pipeline within the district's boundaries and that this exclusive right did not violate the Commerce Clause).

A privately owned Kansas Water Company ("KWC") obtained its water supply from Kansas City, Missouri. In 1990, Water District No. 1 ("District"), pursuant to the Kansas Water District Act ("Act"), voluntarily annexed the area served by KWC. Therefore, Mission Hills