

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 25-20168

DOBBIN PLANTERSVILLE WATER SUPPLY CORPORATION, *a Texas*
water supply corporation,

Plaintiff—Appellant,

versus

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT
NUMBER 180,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-1583

Before JONES, CLEMENT, and RICHMAN, *Circuit Judges.*

PER CURIAM:*

Dobbin Plantersville Water Supply Corporation (Dobbin), a rural water provider, sued Municipal Utility District No. 180 (MUD 180) for providing water services to an area where it claims an exclusive federal right

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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to perform that service. MUD 180 began servicing the disputed area after the Public Utility Commission of Texas (PUC) decertified the land from Dobbin's service area under state law. The district court dismissed this case for lack of standing. We affirm, modifying the dismissal to be without prejudice.

I

In 1997, Dobbin received two forty-year loans from the federal government to provide water services to rural areas.¹ These loans remain outstanding. The loans were issued under 7 U.S.C. § 1926(a), a provision of the Consolidated Farm and Rural Development Act.² That Act guards the government's investments by providing certain protections to borrowers, including the following provision in § 1926(b):

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.³

In Texas, for a water supply corporation like Dobbin to provide service, it must first obtain a Certificate of Convenience and Necessity

¹ *Dobbin Plantersville Water Supply Corp. v. Lake (Dobbin I)*, 108 F.4th 320, 323 (5th Cir. 2024).

² *Id.*; see 7 U.S.C. § 1926(a).

³ 7 U.S.C. § 1926(b).

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(CCN).⁴ The Texas Commission on Environmental Quality granted a CCN to Dobbin for an area in Grimes County and Montgomery County. PUC now regulates CCNs.⁵

Under Texas law, the CCN grants “the exclusive right to provide water service in a designated geographic area.”⁶ Utilities with a CCN must “serve every consumer within its certified area” and “render continuous and adequate service within the area.”⁷ If land within that area is not receiving water service, the landowner may petition PUC for an expedited release of their land from the CCN.⁸ Following this procedure, in 2021, a real estate developer that owned land in Montgomery County successfully petitioned PUC for the release of its land from Dobbin’s CCN. Once the land was released, MUD 180, as a municipal utility district, could provide water

⁴ See TEX. WATER CODE § 13.242(a) (requiring “a water supply or sewer service corporation” to obtain a CCN before providing water service); *id.* § 13.002(24) (defining “water supply or sewer service corporation”).

⁵ See TEX. WATER CODE § 13.244(a) (requiring utilities to submit applications for CCNs to the utility commission); *id.* § 13.002(22-a) (defining “utility commission” as the “Public Utility Commission of Texas”).

⁶ *Dobbin I*, 108 F.4th at 323; see TEX. WATER CODE § 13.242; see also *Tex. Gen. Land Off. v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 133 (Tex. App.—Austin 2014, pet. denied) (“Crystal Clear holds a certificate of convenience and necessity (CCN) that authorizes it to be the exclusive water-service provider within a specifically defined territory, which is referred to as its ‘certificated area.’”).

⁷ TEX. WATER CODE § 13.250(a).

⁸ *Id.* § 13.2541(b) (“[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity in the manner provided by this section . . .”).

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service without needing any further authorization from PUC (i.e., MUD 180 did not need a CCN to provide service).⁹ MUD 180 proceeded to do so.

When PUC releases land from a CCN in this manner, it “may require an award of compensation by the petitioner to the certificate holder.”¹⁰ In this case, “PUC scheduled proceedings to determine the compensation owed by the developer[] to Dobbin,” but Dobbin “waived its right to receive compensation by failing to file an appraisal report.”¹¹

In *Dobbin I*, Dobbin first sued PUC and the developer who sought the decertification, as well as another developer who petitioned for decertification of a different property.¹² We held that Dobbin lacked a cause of action against the developers as private entities, and Dobbin lacked standing against PUC because “enjoining the PUC officials from further enforcement of the two decertification orders would not redress Dobbin’s injury.”¹³

Dobbin also appealed the decertification decision in state court in 2022, and, according to the parties, that litigation was reinstated in June 2025

⁹ See TEX. WATER CODE § 13.242(a) (requiring a “utility, a utility operated by an affected county, [and] a water supply or sewer service corporation” to obtain a CCN before providing water service); *id.* § 13.002(23)-(24), (26) (defining those terms); *id.* § 13.002(13-a) (defining “municipal utility district”); *see also Dobbin I*, 108 F.4th at 326 (“[N]o additional PUC authorization is required for a municipal utility district or municipality to service SIG’s and Redbird’s developments, now that they have been released from Dobbin’s CCN.”).

¹⁰ TEX. WATER CODE § 13.2541(f).

¹¹ *Dobbin I*, 108 F.4th at 324.

¹² *Id.* at 322.

¹³ *Id.* at 326, 328-29.

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after a period of abatement. Dobbin has now sued MUD 180 in federal court, claiming that MUD 180 is violating its federal rights under § 1926(b).

MUD 180 moved to dismiss this suit under Federal Rules of Civil Procedure 12(b)(1) and 12(c). The district court dismissed this suit for lack of standing, noting that Dobbin “failed to allege a redressable injury” since even if the court prohibited MUD 180 from providing water service, “that would not enable Dobbin to do so, because the area has been decertified and Dobbin requires a Certificate to serve it.”

II

We “review[] a district court’s grant of a 12(b)(1) motion to dismiss for lack of subject matter jurisdiction *de novo*, just as we would a dismissal under Rule 12(b)(6).”¹⁴ “We review dismissal under Rule 12(c) *de novo*.”¹⁵

“To have standing, Dobbin ‘must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’”¹⁶ MUD 180 argues that Dobbin cannot prove any of these elements.

We agree that Dobbin fails to establish traceability. “[T]here must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly . . . trace[able] to the challenged action of the

¹⁴ *T. B. ex rel Bell v. Nw. Indep. Sch. Dist.*, 980 F.3d 1047, 1050 (5th Cir. 2020).

¹⁵ *Garza v. Escobar*, 972 F.3d 721, 727 (5th Cir. 2020).

¹⁶ *Dobbin I*, 108 F.4th at 325 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)).

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defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’”¹⁷

Texas law requires Dobbin, as a water supply corporation, to obtain a CCN before providing water service to an area.¹⁸ PUC decertified the land at issue in this case, so Dobbin does not currently have a CCN for that area. While MUD 180 could not service the area while the CCN was in place,¹⁹ it does not need its own CCN to service the area.²⁰ Dobbin recognizes “MUD 180’s encroachment . . . was made possible only by the Decertification Order.”

Dobbin’s claimed injury is that it cannot service the area at issue. That injury is traceable to PUC. It is the result of an independent action of a third party not before this court. State law requires Dobbin to have a CCN to service an area, and PUC decertified the area. As we observed in *Dobbin I*, “[a]fter the properties’ release, the only way Dobbin could obtain real relief

¹⁷ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (alterations in original) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976)).

¹⁸ See TEX. WATER CODE § 13.242(a) (requiring “a water supply or sewer service corporation” to obtain a CCN before providing water service); *id.* § 13.002(24) (defining “water supply or sewer service corporation”).

¹⁹ See *Dobbin I*, 108 F.4th at 323; TEX. WATER CODE § 13.242; see also *Tex. Gen. Land Off. v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 133 (Tex. App.—Austin 2014, pet. denied) (“Crystal Clear holds a certificate of convenience and necessity (CCN) that authorizes it to be the exclusive water-service provider within a specifically defined territory, which is referred to as its ‘certificated area.’”).

²⁰ See TEX. WATER CODE § 13.242(a) (requiring a “utility, a utility operated by an affected county, [and] a water supply or sewer service corporation” to obtain a CCN before providing water service); *id.* § 13.002(23)-(24), (26) (defining those terms); *id.* § 13.002(13-a) (defining “municipal utility district”); see also *Dobbin I*, 108 F.4th at 326 (“[N]o additional PUC authorization is required for a municipal utility district or municipality to service SIG’s and Redbird’s developments, now that they have been released from Dobbin’s CCN.”).

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against the PUC (*and prevent its competitors, MUD 180 and the City of Montgomery, from providing service within its former CCN*) is through a ruling that invalidates the PUC's two decertification orders.”²¹

Dobbin argues that this puts it in a bind because once the decertification orders are issued, it cannot sue PUC to invalidate the orders due to *Ex parte Young*'s prohibition on retrospective relief.²² But Dobbin can continue to pursue its appeal of the decertification order in state court, and in the future, it can sue PUC for injunctive relief before PUC issues a decertification order.²³

Dobbin cites our en banc decision in *Green Valley Special Utility District v. City of Schertz*²⁴ to argue that a “federally-indebted borrower may seek prospective and declaratory relief against a competing provider post-decertification.” In *Green Valley*, PUC decertified two tracts of land from Green Valley's CCN.²⁵ For the first tract, a landowner petitioned for decertification; when the case came before us, Green Valley's claims against the landowner were moot due to settlement.²⁶ For the second tract, the City of Schertz petitioned PUC to decertify a section of its land within Green Valley's CCN “after notifying Green Valley of its intent to provide sewer

²¹ *Dobbin I*, 108 F.4th at 327 (emphasis added).

²² *See id.*

²³ *See Crystal Clear Special Util. Dist. v. Jackson*, 142 F.4th 351, 366 n.9 (5th Cir. 2025) (“*Dobbin I*” offers a lesson in timing, indicating that a federally indebted provider's § 1926 suit against the PUC must precede a decertification ruling, lest redressability is lost due to an impermissibly retroactive remedy.”).

²⁴ 969 F.3d 460 (5th Cir. 2020) (en banc).

²⁵ *Id.* at 466-67.

²⁶ *Id.* at 466, 469.

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service.”²⁷ Green Valley sued PUC, the landowner, and Schertz under § 1983.²⁸ Green Valley sought “declaratory and injunctive relief to prevent (1) the PUC from enforcing §§ 13.254(a-1) and 13.2541(d), (2) the PUC from decertifying any portion of its service territory, and (3) any other utility from making service available within its service territory.”²⁹ When addressing whether *Ex parte Young* barred the suit against PUC, we stated that “the ongoing harms that Green Valley alleges it suffers can be traced to the PUC’s order decertifying the Schertz territory.”³⁰ We did not explicitly address the issue of traceability as to Schertz, the “competing provider” Dobbin references.

However, Schertz and MUD 180 are positioned differently with regard to traceability. As we noted in *Green Valley*, PUC’s decertification order decertifying the Schertz tract relied only on Texas Water Code § 13.255, not § 13.254, and “those sections apply to distinctly different situations.”³¹ Because of that, Green Valley did not have standing to challenge § 13.254(a-1).³² Under § 13.255, when a utility has a CCN that covers an incorporated area, a municipality can notify the utility that it intends to provide service to the area, and the municipality can request that PUC “grant single certification to the municipally owned water or sewer utility.”³³ Pursuant to this provision, Schertz petitioned PUC to decertify

²⁷ *Id.* at 466.

²⁸ *Id.* at 467.

²⁹ *Id.*

³⁰ *Id.* at 472.

³¹ *Id.* at 468.

³² *Id.*

³³ TEX. WATER CODE § 13.255(a)-(b), (c).

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the land and to grant its utility single certification.³⁴ Section 13.254, on the other hand, “applies only to *property-owner* decertification, not single-service municipal decertification.”³⁵

In the case at hand, the property owner, not MUD 180, petitioned PUC for decertification of its land under § 13.2541, which is an “alternative to decertification . . . under Section 13.254.”³⁶ As Dobbin points out, the landowner did “assist[] in the formation of [MUD 180],” but MUD 180 itself is a political subdivision of the state.³⁷ And MUD 180 did not need a certificate to provide service. Schertz’s actions could be traced to Green Valley’s injury in a way that MUD 180’s actions cannot be traced to Dobbin’s injury. Schertz petitioned for decertification and for PUC to grant its utility single certification whereas MUD 180 did not petition or need a certification from PUC. Here, Dobbin cannot establish traceability.³⁸

Dobbin also claims that in *North Alamo Water Supply Corp. v. City of San Juan*³⁹ we “approved the same relief against municipal, competing providers under § 1926(b).” In *North Alamo*, the utility company had a CCN

³⁴ *Green Valley*, 969 F.3d at 466-67.

³⁵ *Id.* at 468.

³⁶ TEX. WATER CODE § 13.2541(b).

³⁷ TEX. WATER CODE § 13.002(13-a) (defining “municipal utility district” as “a political subdivision of this state”).

³⁸ *Cf. Dobbin Plantersville Water Supply Corp. v. Lake (Dobbin I)*, 108 F.4th 320, 327 (5th Cir. 2024) (recognizing that the *Green Valley* court held that certain “prospective relief was ‘possibly available’ under the *Ex parte Young* exception” but “did not address the primary issue raised in this case, *viz.*, whether the prospective relief identified for purposes of the *Young* exception would redress the plaintiff’s injuries” and then holding that *Green Valley* did not “resolve the standing issue in [Dobbin’s] favor” (quoting *Green Valley*, 969 F.3d at 473)).

³⁹ 90 F.3d 910 (5th Cir. 1996), *overruled in part by Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460 (5th Cir. 2020) (en banc).

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and qualifying federal loans.⁴⁰ The competing water provider, the City of San Juan, provided service to areas “within the Certificated Area” without “obtain[ing] a release from the Utility.”⁴¹ The utility sued “under 7 U.S.C. § 1926(b) to enjoin the City from providing water service within the Certificated Area.”⁴² The state agency in charge of utilities at the time issued a cease and desist order to the city, finding that the “Utility had the exclusive right to provide water in the disputed areas.”⁴³ We noted that the city “encroached on the Utility’s service area” and “as a result, the Utility would lose revenue . . . if the City’s encroachment went unabated.”⁴⁴ We affirmed the district court’s order enjoining the city from providing service to the disputed areas or other areas in the utility’s CCN.⁴⁵

In *North Alamo*, the city directly caused the utility’s injury—the city itself prevented the utility from serving the disputed area. The city was not authorized by the relevant state agency to serve the area, for which the utility still had a CCN. Indeed, the state agency ordered the city to stop serving the area. Here, Dobbin is no longer otherwise entitled to serve the disputed area, for which it does not have a CCN. PUC, not MUD 180, caused this injury by decertifying the area at issue.

Dobbin cannot establish the traceability element of standing as to MUD 180. We do not reach the redressability prong.

III

⁴⁰ *North Alamo*, 90 F.3d at 913.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 913-14.

⁴⁴ *Id.* at 917.

⁴⁵ *Id.* at 914, 920.

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The district court dismissed Dobbin’s claims with prejudice because it had “already amended its complaint, and because further amendment would be futile.” Dobbin requests that it be given the opportunity to replead or that its claims be dismissed without prejudice.

“[A] district court’s decision to dismiss with prejudice is reviewed for abuse of discretion.”⁴⁶ “Ordinarily, when a complaint is dismissed for lack of jurisdiction, including lack of standing, it should be without prejudice.”⁴⁷ “[I]f the district court [held] that it lacked subject matter jurisdiction, it should have entered dismissal without prejudice to allow the Claimants to retry their claims in a court with jurisdiction to hear them.”⁴⁸ Accordingly, we modify the judgment to be without prejudice.

* * *

We MODIFY the district court’s judgment to be without prejudice and AFFIRM AS MODIFIED.

⁴⁶ *Dobbin Plantersville Water Supply Corp. v. Lake (Dobbin I)*, 108 F.4th 320, 325 (5th Cir. 2024).

⁴⁷ *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 468 (5th Cir. 2020) (en banc) (quoting *Williams v. Morris*, 614 F. App’x 773, 774 (5th Cir. 2015)).

⁴⁸ *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 209 (5th Cir. 2010).