STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2003

Leroy Smithrud,
Appellant,

vs.

City of St. Paul,
Respondent.

Filed September 15, 2009
Affirmed
Stoneburner, Judge

Ramsey County District Court
File No. 62CV089147

Leroy Smithrud, 7356 Rosewood Lane, Maple Grove, MN 55369 (pro se appellant)

John J. Choi, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, 400 City Hall and Courthouse, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges the dismissal of his complaint, asserting numerous claims relating to respondent city's decision to demolish two of appellant's rental properties to abate nuisances. Because appellant's claims all challenge the city's quasi-judicial

decision, the district court did not err by dismissing the complaint for lack of jurisdiction. Therefore, we affirm.

FACTS

Appellant Leroy Smithrud filed a 20-page pro se complaint in Ramsey County district court asserting numerous claims that all arise out of the decision of respondent City of St. Paul (the city) to demolish two of Smithrud's rental properties to abate nuisances.

Smithrud's complaint contains eight counts. Count one asserts that the city violated its own legislative code and failed to follow its own procedural requirements for notice, hearing, due process, and identification of code provisions enforced. Count one also asserts that the city "heighten[ed]" minimal standards for inspection and code enforcement for "older housing stock." No specific acts or violations of code or statutory provisions are identified.

Count two is titled "Declaratory Judgment as to the City's Violations of its Own Legislative Code" and asserts that, under the Uniform Declaratory Judgments Act, the district court has jurisdiction to determine that the city "cannot heighten" its code "beyond that of the State Building Code" and that "the City is in violation of its own Legislative code as to Notice and Hearing."

Count three is titled "Declaratory Judgment as the State Building Code Cannot be Heightened by the City." This count again asserts that the district court has jurisdiction to determine that city "has heightened its Legislative Code above that determined by and

adopted in the State Building Code, and that such heightened Code is illegal as enforced against Smithrud."

Count four asks for a determination that, at all times material, Smithrud is disabled.

Count five is titled "Violations of Federal Fair Housing Law." This count asserts that the city has violated the "Federal Fair Housing Laws" as to both of Smithrud's properties and as to Smithrud. Smithrud seeks attorney fees, costs, and other damages as may be just and equitable, to be determined by a jury trial. The complaint does not identify specific provisions alleged to have been violated or describe how the federal law was allegedly violated.

Count six, titled "False or Failed Certifications Under HUD and the Code of Federal Regulations," asserts that the city has not provided any evidence that it has complied with HUD rules and regulations "especially as to certifications that are mandatory as [to] analysis of impediments and affirmative duties to further the goals of federal fair housing as related to grandfathering older housing stock and as to protected class members." Smithrud asserts that failure to perform analysis of impediments or to protect older, grandfathered-in housing stock is actionable by him under "42 U.S.C. § 3604 et seq." because Smithrud is trying "to protect that type of housing on behalf of protected class members." Smithrud asserts that he and his protected-class tenants have been damaged by the city's violations of the Federal Fair Housing Act and the Code of Federal Regulations, 24 C.F.R. §§ 91.210, 570.904, 982.401. Smithrud seeks damages for "such misconduct."

Count seven asserts that the city is retaliating against Smithrud for his attempts to sell or rehabilitate his properties, and has caused him to lose rental properties, rents, and will reduce the supply of older, affordable federal fair housing stock that should be grandfathered in. Smithrud seeks damages for this claim.

Count eight seeks a temporary restraining order to preserve the status quo, asserting irreparable harm and that Smithrud meets all five *Dahlberg* factors. *See Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965) (setting forth factors to be considered in determining whether the issuance of a temporary injunction can be sustained on appeal).

The district court dismissed the complaint for lack of subject-matter jurisdiction, concluding that all of the claims challenge the city's quasi-judicial decision and could only be pursued by writ of certiorari to this court. This appeal followed.

D E C I S I O N

"The existence of subject matter jurisdiction is a question of law, which this court reviews de novo." *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). A city's decision to abate a nuisance property is a quasi-judicial decision, and when city or state legislation does not otherwise provide, jurisdiction for review of such a decision rests exclusively in the court of appeals by writ of certiorari. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). In this case, the city's ordinance does not provide for district court review of its quasi-judicial nuisance abatement decisions. *See* St. Paul, Minn., Legislative Code ch. 45 (2008) (containing no provision for district court review).

Smithrud argues that the district court has jurisdiction over his claims for declaratory judgment. *See* Minn. Stat. § 555.01 (2008) (providing that courts of record have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed). "Declaratory judgments permit determination of a controversy 'before obligations are repudiated or rights are violated,' essentially allowing one who walks in the dark to turn on the light before—rather than after—one steps in a hole." *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 273–74 (Minn. App. 2001) (quoting *A.L. Loyd v. City of Irwinton*, 236 S.E.2d 889, 890 (Ga. Ct. App. 1977)).

In *Connor v. Chanhassen Twp.*, the supreme court treated a constitutional challenge to a township ordinance in a declaratory judgment action as a challenge to a legislative act and rejected the township's assertion that complainant had not exhausted administrative remedies by seeking review by writ of certiorari from a prior zoning decision that triggered application of the challenged ordinance. 249 Minn. 205, 208–10, 81 N.W.2d 789, 793–94 (1957).[1] Smithrud relies on *Connor* to assert that he can proceed with a declaratory judgment action without having pursued review of the demolition decision by writ of certiorari. But *Connor* is distinguishable because Smithrud is asserting that his rights have been violated by the city's quasi-judicial action and is not making an independent challenge to any legislative action by city.

[1] The only constitutional issue raised by Smithrud is an allegation that his due process rights were violated by city's failure to follow its own procedures. Such a challenge could have been addressed by writ of certiorari. *See* Minn. Stat. § 14.69 (2008) (permitting reversal or modification of an agency decision "made upon unlawful procedure").

Smithrud argues that despite the city's adoption of the state building code, the city unlawfully applied more stringent requirements to his properties than those called for under the state building code.[2] Smithrud correctly argues that the state building code supersedes municipal building codes, and "[a] municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code." *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 7 (Minn. 2008) (quoting Minn. Stat. § 16B.62, subd. 1 (2006)). But Smithrud is asserting that the city made its quasi-judicial decision in excess of its statutory authority, an argument properly addressed on certiorari review. *See* Minn. Stat. § 14.69 (2008) (codifying the standard of review of agency decisions in contested case proceedings and providing that this court may reverse or modify a decision that, among other reasons, is made in excess of the agency's statutory authority).

Courts should construe pleadings liberally and judge them by their substance to determine if they give fair notice of the facts and legal theories to the adverse party. *Basich v. Bd. of Pensions*, 493 N.W.2d 293, 295 (Minn. App. 1992). But we are unable to conclude from Smithrud's pleadings that he has cited any valid claim under the Uniform Declaratory Judgments Act over which the district court could have exercised jurisdiction.

[2] Despite Smithrud's repeated assertion that the city is applying more stringent requirements, Smithrud has not identified in his complaint or in his brief on appeal a citation to any section of the building code and has not explained in what manner more stringent requirements were applied to him.

Smithrud also asserts that the district court had jurisdiction over claims raised under various federal statutes that he cited, including the Judiciary Act of 1789, the Fair Housing Act (FHA), the Civil Rights Act (CRA), and the Americans with Disabilities Act (ADA).[3] But we have held that merely cloaking a challenge to a quasi-judicial decision in the mantle of a different claim does not change the jurisdictional analysis. *Meldahl*, 607 N.W.2d at 172. In *Meldahl*, we rejected the assertion that the district court had jurisdiction over an inverse-condemnation claim contained in a complaint challenging demolition of a building for nuisance because the takings claim was "not separate and distinct from the city's quasi-judicial decision to demolish the structure." *Id*. We stated that, where an inquiry into the facts surrounding a taking's claim would involve an inquiry into the city's decision, jurisdiction is by writ of certiorari alone. *Id*.

Smithrud's references to federal statutes do not assert violations of those statutes separate from the city's demolition orders and involve inquiry into the demolition decisions, making certiorari alone his avenue of review. Likewise, Smithrud's assertion that his claims involve matters of public interest and implicate public corruption and fraud with regard to fair, affordable housing, do not avoid the jurisdictional issue.

Affirmed.

[3] Smithrud also argues that a conclusion by this court that the district court did not have jurisdiction would be an unconstitutional violation of federal law by preventing the exercise of concurrent subject-matter jurisdiction and by preventing the district court's exercise of original jurisdiction over state claims. Because Smithrud had not asserted any state or federal claims that are independent of his challenge to the city's quasi-judicial decisions, we find no merit in this unsupported assertion.