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2011 IL App. (3d) 110143-U

Order filed November 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

STEVEN MARCOTTE,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit
Plaintiff-Appellant,)	Kankakee County, Illinois,
)	
v.)	
)	
THE VILLAGE OF GRANT PARK,)	
KANKAKEE COUNTY, ILLINOIS)	
and ROBERT SCHURMAN in BOTH)	
his Personal and Official capacities and)	
VILLAGE OF GRANT PARK)	
TRUSTEES RICK BIRD, JEANNIE)	Appeal No. 3-11-0143
DUNN, WARREN WESSMAN,)	Circuit No. 09-MR-23
KENNETH ERICKSON, RICHARD)	
DULIN and FRED MEYER, JR., in)	
BOTH their Personal and Official)	
capacities and VILLAGE OF GRANT)	
PARK CHIEF OF POLICE SCOTT)	
FITTS, in BOTH his Personal and)	
Official capacities and CHRISTOPHER)	
BOHLEN in BOTH his Personal and)	
Official capacities,)	Honorable
)	Kendall O. Wenzelman
Defendants-Appellees.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Because plaintiff failed to meet his burden at the pleading stage the trial court's dismissal of his complaint was proper on this basis alone.

¶ 2 Plaintiff, Steven Marcotte, appeals from the trial court's order dismissing count I of his complaint. We affirm.

¶ 3 **FACTS**

¶ 4 Plaintiff is a police officer with the Village of Grant Park (the Village). Three individual disciplinary charges were filed by the Village against plaintiff.¹ A hearing on the charges was conducted before the Village's Police Committee (the Committee). After hearing the evidence, the Committee issued a decision recommending that plaintiff be discharged. The Committee's recommendation was accepted by the Village's Board of Trustees (Board) and plaintiff's employment was terminated.

¶ 5 Following that termination, plaintiff filed a four count complaint against the Village and the Board. Count I is titled "Certiorari" and seeks judicial review of the hearing process and subsequent Board action, which culminated in plaintiff's dismissal. The court entered an agreed order that provided all action on plaintiff's remaining counts would be stayed until final resolution of Count I.

¶ 6 The Village and the Board filed a motion to dismiss Count I of plaintiff's complaint. The motion alleged plaintiff was an "at will" employee and thus unable to state a cause of action for certiorari. Upon hearing argument, the trial court granted defendant's motion to dismiss Count I of plaintiff's complaint. Plaintiff appeals.

¹ The actual disciplinary charges are not relevant to the instant appeal.

¶ 7

ANALYSIS

¶ 8 The sole issue on appeal is whether the trial court erred in dismissing plaintiff's cause of action for certiorari.² An administrative decision is subject to judicial review only if it "affects the legal rights, duties or privileges" of the plaintiffs. *Buccieri v. Wayne Township*, 111 Ill. App. 3d 396, 399 (1982). Thus, a public employee who seeks review of his discharge must allege facts showing a property interest in his employment which is encompassed by due process protection. *Buccieri*, 111 Ill. App. 3d at 400 (1982). Here, plaintiff has not alleged facts showing a property interest. Moreover, section 1-9-7 of the Village Code negates any *possible* claim plaintiff might have regarding a property interest in his continued employment with the Village.

¶ 9 "To have a protectable property interest in public employment, a person clearly must have more than an abstract need or desire for it; he must have a legitimate claim of entitlement to it." *Buccieri*, 111 Ill. App. 3d at 400. Plaintiff has not cited any applicable ordinance, statute, contract or case-law supporting his claim of a property interest in his continued employment with the Village. Likewise, plaintiff has alleged no facts from which we can reasonably infer a mutual understanding between the parties which would create a legitimate claim of entitlement to his continued employment. Thus, we find plaintiff has failed to meet his burden at the pleading stage and dismissal of his complaint was proper on this basis alone.

¶ 10 In coming to this conclusion, we would be remiss if we did not note that section 1-9-7 supports the trial court's finding that plaintiff was an "at-will" employee. Section 1-9-7 provides:

² We review decisions granting motions to dismiss *de novo*. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006).

"The President and Board of Trustees or some other persons designated thereby shall have the power to determine rules as to how employees, as they are herein distinguished from officers, shall be hired or fired. The Village may generally discharge such person without the requirement of providing either a list of reasons for the firing or hearing."

¶ 11 Under section 1-9-7, plaintiff could be fired "without the requirement of providing *** a *** reason[] *** or hearing." The supreme court has defined an "at-will" employee as "a noncontracted employee [who] serves at the employer's will, and the employer may discharge such an employee for any reason or no reason." *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 32 (1994). Clearly, plaintiff was an "at will" employee. Consequently, he lacks any legitimate claim of entitlement to his continued employment.

¶ 12 We reject plaintiff's contention that section 1-9-7 was impliedly amended as a result of the Village affording him a pre-termination hearing. A municipal ordinance may only be repealed, modified or amended through the passage of an ordinance. *Naperville Police Union v. City of Naperville*, 97 Ill. App. 3d 153, 156 (1981). Moreover, the Village's willingness to provide plaintiff with a pre-termination hearing did not create a property interest in his continued employment. See *Ragon v. Daughters*, 239 Ill. App. 3d 533 (1992) (holding procedural protections do not create or enlarge property interests in employment).

¶ 13 For the foregoing reasons, we affirm the trial court's judgment dismissing Count I of plaintiff's complaint.

¶ 14 Affirmed.