2013 IL App (1st) 120986-U

FIRST DIVISION
March 25, 2011

No. 1-12-0986

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAY F. SHACHTER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 M1 450385
	)	
	)	
THE CITY OF CHICAGO, a Municipal Corporation,	)	
THE DEPARTMENT OF ADMINISTRATIVE	)	
HEARINGS, and THE DEPARTMENT OF STREETS	)	
AND SANITATION,	)	Honorable
	)	Patrick T. Rogers,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

O R D E R

¶ 1 *Held*: Where city nonsuited claim against plaintiff property owner for violating ordinance against overgrown vegetation and subsection that allowed abatement prior to a hearing was no longer in effect, plaintiff's challenge to the ordinance was moot, and the appeal was dismissed.

¶ 2 Plaintiff, Jay Shachter, appeals from certain orders of the circuit court entered in his administrative review and declaratory judgment suit against the City of Chicago (City) and two City departments. Plaintiff initially had been found to have violated a City ordinance governing the maintenance of his property, and the creation of a nuisance, but the finding was later vacated and the ordinance violation charge dismissed. Additionally the municipal code section was amended during the pendency of his suit to delete the provision which plaintiff challenged in his suit. We conclude

this appeal should be dismissed as moot.

¶ 3 BACKGROUND

¶ 4 In a letter to plaintiff dated August 10, 2004, the City's Department of Streets and Sanitation informed him of a "nuisance" on his property located at 6424 North Whipple Street in Chicago, citing section 7-28-450(b) of the City's municipal code (Code) (Chicago Municipal Code § 7-28-450(b) (amended Jan. 12, 2000)). The letter stated that plaintiff, as the registered property owner, had a duty to remove or have removed, as provided in the ordinance, "any dirt, debris, refuse, litter, derelict motor vehicles, tires, miscellaneous waste, high weeds and vegetation" within three days from the receipt of the letter, and if action was not taken by that time, the City could abate the nuisance. At that time, section 7-28-450(d) allowed the City to abate the nuisance itself with three days notice to the owner. Chicago Municipal Code § 7-28-450(d) (amended Jan. 12, 2000). The letter also notified plaintiff that he could be found liable for the costs and expenses of the abatement and fined.

¶ 5 The record on appeal contains photo documentation that City personnel cleared plaintiff's property of overgrown weeds and vegetation on November 17, 2004–more than three months after plaintiff received their letter. On that date, plaintiff was charged with violating section 7-28-450(b) of the Code.

¶ 6 On January 24, 2005, a hearing on plaintiff's liability for the costs of the nuisance abatement was held before the Department of Administrative Hearings (DOAH). In plaintiff's absence, a default order was entered against him. The record contains proof that a notice of the hearing was mailed to plaintiff, however, plaintiff denies he received such notice. On April 23, 2009, because the DOAH's 2005 order did not list the code section that was violated, a corrected order was issued *nunc pro tunc* stating that plaintiff had violated section 7-28-450(b) and was ordered to pay a fine and costs.

¶ 7 On May 14, 2009, plaintiff, having received the corrected order, filed a motion to set aside

the default judgment with the DOAH, stating he did not receive notice of the hearing. On May 22, 2009, an administrative law officer (ALO) of the DOAH, vacated the 2005 default judgment and set the matter for hearing.

¶ 8 On June 11, 2009, a hearing was held and plaintiff was found to have violated section 7-28-450(b) of the Code. Plaintiff was assessed a $500 fine and $60 in administrative costs.

¶ 9 On June 12, 2009, plaintiff *pro se* filed a two-count complaint in the circuit court. In count 1, plaintiff sought administrative review of the DOAH's order as being contrary to the evidence. Further, in count 2 for declaratory relief, plaintiff asked that section 7-28-450 of the Code be held unconstitutional. On September 14, 2009, the circuit court, over plaintiff's objection, allowed defendants 90 days to answer the complaint or, otherwise plead, stating they must do so on or before December 14, 2009. On October 14, 2009, plaintiff filed a motion to reconsider that order and asserted that the court should not have allowed defendants additional time to answer. On December 7, 2009, the court denied plaintiff's motion to reconsider. On that date, defendants filed the record of the administrative proceedings as their answer to plaintiff's complaint.

¶ 10 In July 2010, the City amended section 7-28-450 of the Code. In amending the ordinance, section (d) which authorized the City to abate a nuisance if the property owner failed to do so after three days notice was deleted.

¶ 11 On October 21, 2010, the circuit court affirmed the findings and decision of the DOAH and denied plaintiff's request for a declaratory judgment.[1] On November 22, 2010, plaintiff filed a motion to reconsider this order and filed an amended motion to reconsider on January 5, 2011.

¶ 12 On June 13, 2011, the circuit court granted plaintiff's motion to reconsider its rulings, reversed the decision of the DOAH against plaintiff, and remanded the proceedings to the DOAH for a new hearing on the merits. At the scheduled administrative hearing after remand on July 7,

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[1]Plaintiff's earlier appeal from the portion of the October 21, 2010, order denying him declaratory relief, and the December 7, 2009, order was dismissed for lack of jurisdiction. See *Shachter v. City of Chicago*, No. 1-11-1891 (dispositional order) (2012).

2011, the ordinance violation charge was nonsuited. On March 6, 2012, the circuit court entered an agreed order stating the case had "been fully adjudicated," and that the order was "final and appealable." On April 3, 2012, plaintiff timely filed his notice of appeal.

¶ 13 On appeal, plaintiff challenges the constitutionality of section 7-28-450 of the Code on procedural due process grounds, arguing the City cannot proceed to abate a nuisance without a hearing determining that a "nuisance" exists. Plaintiff also contends there was an "unconstitutional deprivation of property" because a hearing to determine whether he had violated the nuisance ordinance before the DOAH occurred after the City had cleared the plant matter from his property.

¶ 14 Defendants respond that plaintiff's claim presents no justiciable issue because the ordinance violation charge was dismissed in July 2011, and plaintiff, therefore, lacks standing to now raise a challenge to section 7-28-450. Furthermore, defendants point out that section 7-28-450 of the Code has been amended, and subsection (d) of the Code which allowed the City to enter the property and abate the nuisance in the instant case without a hearing, is no longer in effect, and plaintiff's constitutional claims are moot. Furthermore, defendants argue that due process does not require an adjudicatory hearing prior to a local government's abatement of a nuisance on private property.

¶ 15 Because the ordinance violation charge has been dismissed against plaintiff and he is not currently subject to prosecution, defendant's argument that plaintiff no longer has standing to challenge the ordinance under section 7-28-450 of the Code appears to have merit. However, we agree that even if plaintiff continues to have standing, this appeal should be dismissed as moot.

¶ 16 As a general proposition, Illinois appellate courts will not review moot cases. *American Service Insurance Co. v. City of Chicago*, 404 Ill. App. 3d 769, 781 (2010). "Mootness occurs once the plaintiff has secured what he basically sought and a resolution of the issues could not have any practical effect on the existing controversy." *Hanna v. City of Chicago*, 382 Ill. App. 3d 672, 677 (2008); see also *People ex rel Newdelman v. Weaver*, 50 Ill. 2d 237, 241 (1972). In other words, a dismissal based on mootness should occur when "the issues have ceased to exist" and the appellate

court cannot grant any effectual relief. *Hanna*, 382 Ill. App. 3d at 676.

¶ 17 In his administrative review action, plaintiff sought a reversal of the administrative findings. The circuit court vacated the DOAH's decision and remanded for a new hearing on plaintiff's complaint. Upon remand, the City elected not to pursue the ordinance violation. Plaintiff, thus, has received his requested relief as to the municipal ordinance prosecution.[2]

¶ 18 In his declaratory action, plaintiff sought a declaration that section 7-28-450 of the Code was unconstitutional. The challenged ordinance has been amended to omit subsection (d) of the Code which allowed the abatement of a nuisance without a hearing within three days of notice to the property owner. It was this section which gave rise to plaintiff's constitutional arguments. As defendants point out, courts will not consider the validity of an ordinance which is no longer in force and cannot be applied to the complaining party. *Village of Palatine v. LaSalle Nat. Bank*, 112 Ill. App. 3d 885, 891 (1983). Furthermore, this court will not reach constitutional issues presented in a case if the matter can be resolved on other grounds. See, *e.g.*, *Morgan v. Department of Financial and Professional Regulation*, 388 Ill. App. 3d 633, 655 (2009). Plaintiff's constitutional challenge to section 7-28-450 is moot and we find dismissal of his appeal is warranted.

¶ 19 Given our determination of the mootness of this appeal, we need not address plaintiff's assertion that the circuit court abused its discretion when it granted defendants additional time to answer his complaint in September 2009.

¶ 20 Appeal dismissed.

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[2]Notably, plaintiff's complaint did not request monetary damages for defendant's alleged destruction of his plants without a prior hearing. As the City correctly deserves, any such claim would now be time-barred. 745 ILCS 10/8-101 (2010).