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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MICHAEL HENNESSY,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	No. 13-MR-715
)	
WAUCONDA TOWNSHIP BOARD OF)	
TRUSTEES, GLENN SWANSON, as)	
Wauconda Township Supervisor, JAMES)	
AMRICH, as Wauconda Township Trustee,)	
MARY SCHORR, as Wauconda Township)	
Trustee, and SHERYL RINGEL, as Wauconda)	
Township Trustee,)	Honorable
)	Jorge L. Ortiz,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly dismissed plaintiff's amended *mandamus* complaint, which did not include facts sufficient to allege that plaintiff had complied with the statutory requirements so as to be entitled to a special township meeting on his proposed advisory referendum.
- ¶ 2 Plaintiff, Michael Hennessy, appeals from an order of the trial court dismissing his amended *mandamus* complaint against defendants, Wauconda Township Board of Trustees (the

board), Glenn Swanson, as Wauconda Township supervisor, James Amrich, as Wauconda Township trustee, Mary Schorr, as Wauconda Township trustee, and Sheryl Ringel, as Wauconda Township trustee. Plaintiff also appeals from the trial court's order denying his motion to reconsider the dismissal. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On April 1, 2013, plaintiff filed a *pro se* complaint against defendants seeking a writ of *mandamus* to “compel Defendants to comply with their obligations under the Illinois Township Code” (60 ILCS 1/1-1 *et seq.* (West 2012)). He alleged that he was a registered voter (an elector) of Wauconda Township, and that on or about February 28, 2013, he “submitted a petition with at least 15 Wauconda Township registered voters [*sic*] signatures for inclusion of an agenda item relevant to the powers of township electors for the April 16, 2013 Annual Meeting Agenda for Wauconda Township.” Among the exhibits attached to the complaint, plaintiff provided a copy of his February 28, 2013, petition, which stated:

“As a registered voter in Wauconda Township, I petition to include on the agenda of the 2013 Wauconda Township Annual Meeting the following public policy referendum question to be considered for adoption on the next regularly scheduled election ballot held in Wauconda Township:

Taxpayers currently fund approximately \$94,300 per year in benefit costs for 3 elected officials in Wauconda Township. Shall all Elected Officials in Wauconda Township, contribute 50% of the cost per year for their benefits? YES or NO.”

(Emphasis in original.)

The petition included a spreadsheet on which individuals who supported the petition were prompted to provide the date, their signatures, their printed names, and their addresses/e-mails.

¶ 5 According to the complaint, on or about March 20, 2013, the board held a meeting, one of the purposes of which was to decide the agenda for the April 16, 2013, annual meeting. The agenda for the annual meeting was published the next day, but did not include the item that plaintiff had submitted. In the complaint, plaintiff identified various provisions of the Township Code which he alleged established his right to have his item included on the agenda for the April 16, 2013, annual meeting. He alleged that defendants “failed to execute their affirmative duties and obligations” by: (1) “failing to conduct a vote to include the agenda item in the Annual meeting agenda”; (2) “conducting a vote to exclude the agenda item in the Annual meeting agenda”; and (3) “publishing the Wauconda Township Annual Meeting Agenda without the petitioned agenda item.”

¶ 6 The primary relief plaintiff sought was a peremptory writ of *mandamus* directing defendants to “immediately publish an annual meeting agenda that includes the Plaintiff’s properly submitted agenda item.” Alternatively, he requested a writ requiring defendants to show cause why such peremptory writ should not be issued. Plaintiff additionally sought litigation costs and “a peremptory writ sanctioning the presumed unlawful acts of the Defendants.”

¶ 7 On April 3, 2013, the court heard plaintiff’s motion for an emergency writ of *mandamus*. The record does not contain a transcript of the proceedings, but the written order indicates that defendants appeared through counsel and plaintiff represented himself. The court denied plaintiff’s motion and granted defendants leave to answer the complaint or otherwise plead.

¶ 8 On April 23, 2013, without leave of court, plaintiff filed a *pro se* amended *mandamus* complaint. The first 35 paragraphs of the amended complaint were identical to the original

complaint. Plaintiff then added 26 paragraphs of background information to “outline the continuing and flagrant bad faith efforts of the Board.”

¶ 9 Plaintiff’s new allegations, along with the 16 new exhibits attached to the amended complaint, reveal that plaintiff had battled with the board over a very similar issue in 2012. Specifically, plaintiff alleged that on or about February 28, 2012, he submitted a petition for an “advisory question of public policy” to be included on the agenda for the April 10, 2012, annual meeting: **“Shall Wauconda Township provide funding [to exceed 15% of cost] for retirement benefits, health, dental and life insurance for the elected officials? Yes or No.”**

(Emphasis in original.) According to the amended complaint, defendants improperly failed to include this item on the agenda for the 2012 annual meeting. Therefore, on July 10, 2012, plaintiff submitted a petition for a special township meeting to address whether this question should appear on the ballot at the next regularly scheduled election. The special township meeting proceeded on August 23, 2012, and the electors voted 72-24 against certifying the question.

¶ 10 In his prayer for relief in the amended complaint, plaintiff requested a writ of *mandamus* “directing the Defendants to immediately publish a Township Special Meeting agenda that includes that Plaintiff’s properly submitted 2013 Annual Meeting agenda item as a Special Meeting item.” Plaintiff also requested a writ of *mandamus* “directing the Defendants to publish a Special Meeting Notice, according to township [*sic*] code, that includes the 2013 Annual Meeting agenda item petitioned by Plaintiffs [*sic*].” Furthermore, plaintiff sought litigation costs and “a writ sanctioning the Wauconda Township Boards’ (Defendants) presumed repeated unlawful acts and that [*sic*] the Board in whole or in part failed to execute their affirmative duties

and obligations.”¹ For each of these requests, plaintiff alternatively asked for a writ requiring defendants to immediately show cause why the particular writ requested should not be issued. Finally, plaintiff prayed that, “[i]f the defendants alone, in part, or in whole, are found in flagrant violation” of Illinois law, then the court should “forward its opinion to the proper authorities for investigation and criminal prosecution.”

¶ 11 On June 5, 2013, defendants filed a motion to strike the amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)). They argued that plaintiff had failed to establish a clear right to the requested relief. Specifically, they contended, the Township Code charges the board, not the electors, with determining officers’ compensation, and such decisions must be made 180 days before the beginning of the officers’ terms. See 60 ILCS 1/65-20(a) (West 2012). Accordingly, defendants insisted, plaintiff’s petition was not “relevant to powers granted to electors under the Township Code” within the meaning of section 30-10(b) of the Township Code, the provision which authorizes electors to add items to the annual meeting agenda. 60 ILCS 1/30-10(b) (West 2012).

¶ 12 In his *pro se* response to the motion to strike, plaintiff claimed that he was not seeking to directly affect compensation, but that he merely wanted to propose a non-binding, advisory question to the voters. He relied primarily on section 30-205 of the Township Code, which empowers electors by majority vote at a township meeting to “authorize that an advisory

¹ Plaintiff purported to seek this relief based on “the (future) opinion of the Illinois Attorney General Public Access Counsel * * * and its (future) sanction board hearing.” Apparently, plaintiff had complained about the board to the Attorney General, and he anticipated sanctions against the board.

question of public policy be placed on the ballot at the next regularly scheduled election in the township.” 60 ILCS 1/30-205 (West 2012).²

¶ 13 In his response brief, plaintiff identified the statutory requirements for electors to initiate a special township meeting. Specifically, at least 15 voters must “file in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township” and “set forth the objects of the meeting, which must be relevant to powers granted to electors” under the Township Code. 60 ILCS 1/35-5 (West 2012). While plaintiff asserted that he submitted a petition to get his item on the agenda at the 2013 annual meeting, he appeared to admit that he had not submitted a petition to convene a special township meeting (“Hennessy and the petitioners *will form* a special meeting petition and gather support of at least 15 electors, although his and the electors [*sic*] privileges under the Township Code to have the lawfully submitted petition for Annual Meeting agenda item has been despoiled by the unlawful and willful action of the Wauconda Township Board of trustees.”). (Emphasis added.) Nevertheless, plaintiff suggested that, “[b]ecause the defendants failed to vote for a lawfully submitted petition for inclusion on Annual [*sic*] meeting agenda item, a special meeting to hear the same is a reasonable cure.”

¶ 14 On August 14, 2013, the trial court granted defendants’ motion to strike the amended complaint with prejudice. In its written order, the court found that, under the Township Code, township officers have the power to determine their own compensation. The court noted that the amended complaint “fail[ed] to cite any authority that clearly shows that electors have any power relating to the compensation of the township officers.” The court concluded that, “[b]ecause the

² This statute was amended by P.A. 98-653, effective June 18, 2014. The parties disagree as to how this amendment affects the right of the electors to propose advisory referenda.

request for a special township meeting is not relevant to the powers granted to the electors under the [Township] Code, the Township Board has no duty to call the special meeting.”

¶ 15 On September 13, 2013, defendants filed a motion for sanctions against plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 16 On November 21, 2013, while the motion for sanctions was pending, plaintiff, through counsel, filed a motion to reconsider the August 14, 2013, order. Plaintiff argued that his February 28, 2013, petition “was proper under the Illinois Township Code, 60 ILCS 1/30-10 as it was ‘relevant’ to a specific grant of power to the electors of Wauconda, namely, the power to authorize that an advisory question of public policy be placed on an election ballot under 60 ILCS 1/30-205.” Plaintiff also asserted, without developing the argument, that defendants’ failure to include the proposed item on the annual meeting agenda was a violation of his First Amendment right to free speech and right to petition the government. Accordingly, he requested leave to amend his complaint, with the assistance of counsel, to include his First Amendment claims.

¶ 17 On February 26, 2014, the court denied plaintiff’s motion to reconsider “consistent with the court’s ruling on August 14, 2013” and because “the court found that plaintiff sought to alter compensation of elected officials and not seek an advisory question of public policy.” The court also denied defendants’ motion for sanctions.

¶ 18 Plaintiff timely appeals from the August 14, 2013, and February 26, 2014, orders.

¶ 19 **II. ANALYSIS**

¶ 20 On appeal, the parties dispute whether plaintiff and the other electors who signed the February 28, 2013, petition had the statutory right to include their item on the April 16, 2013, annual township meeting agenda. We need not address this issue, however, because we hold that

the amended complaint does not contain facts sufficient to allege that plaintiff is entitled to the relief he requests—specifically, a special township meeting devoted to his proposed question.

¶ 21 “Typically, we will not disturb a trial court’s decision regarding the propriety of a writ of *mandamus* unless the trial court abuses the discretion with which it is vested in these matters or its factual findings are contrary to the manifest weight of the evidence.” *Lombard Historical Comm’n v. Village of Lombard*, 366 Ill. App. 3d 715, 719 (2006). However, our review is *de novo* when the trial court dismisses a *mandamus* petition pursuant to section 2-615 of the Code. *Lombard Historical Comm’n*, 366 Ill. App. 3d at 719. We must construe the complaint’s allegations in the light most favorable to plaintiff and determine whether he has alleged sufficient facts to establish a cause of action upon which relief may be granted. *Jamison v. City of Zion*, 359 Ill. App. 3d 268, 270 (2005). “Where the dismissal was proper as a matter of law, we may affirm the circuit court’s decision on any basis appearing in the record.” *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007).

¶ 22 A party does not affect the *de novo* standard of review applicable to an underlying decision of the trial court by filing a motion to reconsider that previous ruling. *O’Shield v. Lakeside Bank*, 335 Ill. App. 3d 834, 838 (2002). Where, as in this case, the issue that the appealing party asked the trial court to reconsider was a matter of law, we proceed *de novo*. *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 24.

¶ 23 “*Mandamus* is an extraordinary remedy traditionally used to compel a public official to perform a purely ministerial duty.” *Bremen Community High School District No. 228 v. Cook County Comm’n on Human Rights*, 2012 IL App (1st) 112177, ¶ 14. Such relief is appropriate only where the plaintiff establishes “(1) a clear, affirmative right to relief; (2) a clear duty of the

public officer to act; and (3) clear authority in the public officer to comply.” *Bremen Community High School District No. 228*, 2012 IL App (1st) 112177, ¶ 14.

¶ 24 In this case, regardless of whether plaintiff’s interpretation of the Township Code is correct, the trial court properly dismissed the amended complaint because plaintiff has not alleged a clear right to the relief he requests. Plaintiff’s amended complaint requests a writ of *mandamus* directing defendants to immediately publish a special township meeting agenda that includes plaintiff’s allegedly properly submitted 2013 annual meeting agenda item as a special meeting item. We acknowledge that plaintiff’s amended complaint was filed after the 2013 annual meeting had taken place. Apparently, plaintiff’s request for a special meeting was his attempt to bring his agenda item to the electors as soon as possible by requesting a special meeting as a substitute for his original *mandamus* request concerning the annual meeting. On appeal, plaintiff does not address the critical issue of what the proper remedy would be if his interpretation of the Township Code is correct. Instead, he takes for granted that if the defendants improperly excluded his petition from the April 16, 2013, annual meeting agenda, then the appropriate relief is for the court to order a special township meeting to consider the matter. However, he has not cited any authority to support this assumption. Plaintiff must allege a “clear right to the relief requested” (*1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 614 (2006)), and he has failed to allege a clear right to convene a special meeting.

¶ 25 Instead, according to the amended complaint, on February 28, 2013, plaintiff submitted a petition proposing that a matter be included on the agenda at the board’s April 16, 2013, *annual meeting*. The procedure for electors to set a matter on the agenda for an annual meeting is outlined in section 30-10(b) of the Township Code:

“Not less than 10 days³ before the annual meeting, the township board shall adopt an agenda for the annual meeting. Any 15 or more registered voters in the township may request an agenda item for consideration by the electors at the annual meeting by giving written notice of a specific request to the township clerk no later than March 1 prior to the annual meeting. The agenda published by the township board shall include any such request made by voters if the request is relevant to powers granted to electors under the Township Code.” 60 ILCS 1/30-10(b) (West 2012).

The requirements for electors to initiate a *special township meeting* are contained in section 35-5 of the Township Code:

“Special township meetings shall be held when the township board (or at least 15 voters of the township) file in the office of the township clerk a written statement that a special meeting is necessary for the interests of the township. The statement also shall set forth the objects of the meeting, which must be relevant to powers granted to electors under this Code. The special township meeting shall be held no less than 14 nor more than 45 days after the written request is filed in the office of the township clerk. Special township meetings may not begin before 6 p.m.” 60 ILCS 1/35-5 (West 2012).

Unlike the procedure to add an item to the agenda of a regularly scheduled annual meeting, one of the requirements to convene a special township meeting is for the electors to submit “a written statement that a special meeting is necessary for the interests of the township.” 60 ILCS 1/35-5 (West 2012).

³ The statute has since been amended to provide that the board must adopt an agenda 15 days prior to the annual meeting. This change does not impact the present case.

¶ 26 The amended complaint does not allege that plaintiff submitted a petition complying with the special meeting requirements of section 35-5 with respect to the advisory referendum he proposed in 2013. Additionally, plaintiff appears to have admitted in his brief in response to defendants' motion to strike that he did not submit a petition in compliance with section 35-5 (“Hennessy and the petitioners *will form* a special meeting petition and gather support of at least 15 electors * * *.”) (Emphasis added.)

¶ 27 Moreover, the amended complaint demonstrates that plaintiff appreciated the difference between a petition under section 30-10(b) to put an item on the agenda at an annual meeting and a petition pursuant to section 35-5 to conduct a special township meeting. According to exhibits attached to the amended complaint, in 2012, plaintiff filed a petition under section 35-5 after he unsuccessfully attempted to get a matter on the annual meeting agenda. Plaintiff indeed had the opportunity to present his 2012 proposal at a special township meeting, and the electors voted against putting that question on the next election ballot.

¶ 28 Nor is the other relief requested in the amended complaint a proper basis for issuing a writ of *mandamus* (requests for costs of litigation, issuance of a writ sanctioning the board, and for the court to forward its opinion “to the proper authorities for investigation and criminal prosecution”). The purpose of a *mandamus* action is to compel a public official to act in a certain way, not to punish the official. See *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109 (1997) (“Mandamus is proper when one seeks to compel a public officer to perform duties which are purely ministerial in nature and which require no exercise of judgment on the part of the public officer.”). As explained above, we cannot compel defendants to hold a special township meeting where plaintiff has not complied with the statutory prerequisites entitling him to such meeting.

¶ 29 Finally, we note that in his motion for reconsideration, plaintiff requested leave to amend his complaint to include certain First Amendment claims. In his appellant’s brief, he does not provide any argument on the issue, yet he urges this court to “reverse the Circuit Court’s ruling, and remand this matter to the Circuit Court to grant [his] Motion to Reconsider, and allow [him] to re-plead with the assistance of counsel.” Plaintiff has not outlined, even in a general sense, exactly how he wishes to amend his complaint or why such amendment would cure the defects at hand, so we will not review this issue. See Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (points not argued in the appellant’s brief are waived).

¶ 30 Plaintiff’s amended *mandamus* complaint does not state a cause of action upon which relief may be granted. Accordingly, the trial court properly dismissed the amended complaint and denied plaintiff’s motion for reconsideration.

¶ 31

III. CONCLUSION

¶ 32 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 33 Affirmed.