2015 IL App (3d) 140663-U

Order filed October 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

LARRY SHEDWILL, JR.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois.
	)	
v.	)	Appeal No. 3-14-0663
	)	Circuit No. 13-MR-126
VILLAGE OF MANTENO,	)	
	)	The Honorable
Defendant-Appellant.	)	Adrienne W. Albrecht,
	)	Judge, presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court denied the plaintiff's motion for leave to file a third amended complaint, finding that the proposed amended complaint failed to plead facts sufficient to issue a decision on the plaintiff's declaratory judgment request. The appellate court reversed, holding that the circuit court erred when it denied the plaintiff's motion for leave to file a third amended complaint.

¶ 2 The plaintiff, Larry Shedwill, Jr., filed a civil complaint for declaratory judgment against the defendant, the Village of Manteno. After two failed attempts at amending the complaint, Shedwill filed a motion for leave to file a third amended complaint. The circuit court denied that

motion, ruling that the proposed complaint failed to plead facts sufficient to issue a decision on Shedwill's declaratory judgment request. On appeal, Shedwill argues that the circuit court erred when it denied his motion for leave to file a third amended complaint. We reverse and remand for further proceedings.

¶ 3 FACTS

¶ 4 On March 1, 2013, Shedwill filed a complaint for declaratory judgment against the Village. Shedwill alleged that he had been constructing a play fort on his property when he received a notice from the Village that the partially constructed fort violated a municipal ordinance on the wall height of structures built on one's property, so he cut the posts for the fort from 15 feet to 12 feet. The ordinance provided, in relevant part, that the walls of accessory buildings could be no greater than eight feet in height, and the overall height could not exceed 12 feet from ground level. Manteno Municipal Code § 8-1-15 (added Nov. 2, 2009). The complaint questioned whether the fort constituted an accessory building and alleged that even if it did, the fort's walls did not exceed eight feet in height and its overall height did not exceed 12 feet. The complaint also stated that the ordinance did not include language that walls could not exceed eight feet "from ground level," like it did with regard to the overall height of the structure.

¶ 5 The Village filed a motion to dismiss, alleging that: (1) Shedwill did not exhaust administrative remedies; (2) Shedwill did not allege facts sufficient to disqualify the fort from the definition of an accessory building; and (3) the height of the walls should be measured from the ground level as a matter of law. Attached to the motion to dismiss were, *inter alia*, (1) copies of four municipal ordinance violation citations that the Village issued to Shedwill in February 2013 for violating section 8-1-15 of the Village's municipal code regarding accessory building height; (2) a document showing that the Village amended section 8-1-15 of its municipal code to

include the language "as measured from ground level to the roof" in the subsection on wall height, as well as an affidavit from the Village's director of building and zoning, who stated that the interior floor of Shedwill's fort was raised four feet above the ground; and (3) a picture of the partially constructed fort, dated January 28, 2013, which showed an elevated floor and several posts extending upward from the floor and the ground.

¶ 6 In his response to the Village's motion, Shedwill stated that after he was notified by the Village of the accessory building ordinance, he modified the plans for his fort to comply with that ordinance. In September 2012, he applied for a building permit, in which he listed the fort as being 204 square feet and 12 feet in height. His application was approved in October 2012, and he was issued a building permit.

¶ 7 Shedwill filed an amended complaint on July 3, 2013, which listed two counts, one for declaratory judgment and one for equitable estoppel. With regard to the declaratory judgment count, Shedwill alleged that the dispute was over the ordinance's provision on wall height and whether the height was measured from the ground level. Shedwill alleged that his walls would not exceed eight feet in height and the overall height would not exceed 12 feet. With regard to equitable estoppel, Shedwill alleged that because the Village had issued him a building permit for the fort, it should be estopped from halting the completion of the fort by claiming a violation of section 8-1-15.

¶ 8 The Village filed a motion to dismiss the amended complaint, which alleged that: (1) the amended complaint did not contain details about the fort, and only contained a "conclusory tautological promise" that the walls would not violate the ordinance; (2) the amended complaint offered no alternative interpretation of the ordinance's subsection on wall height; (3) the issuance of the building permit cannot be construed to induce Shedwill to construct the fort in a certain

manner, as the application and permit lacked details regarding the fort other than its square footage and overall height; and (4) under the ordinance, as a matter of law, wall height is measured from the ground level to the roof.

¶ 9 On November 27, 2013, Shedwill filed a second amended complaint. The changes to the complaint were relatively minor and did not include any details regarding the fort and its walls or any alternative construction of the ordinance's subsection on wall height. Shedwill attached his affidavit to the complaint, which stated, *inter alia*, that the interior floor of the fort was raised four feet from the ground and that the walls extended from that raised floor eight feet to the top of the fort. This exhibit, labeled "Exhibit 1," was not referenced in the body of the complaint.

¶ 10 The Village filed a motion to dismiss the second amended complaint, which alleged essentially the same arguments as its previous motion to dismiss. The circuit court held a hearing on that motion on March 28, 2014. After hearing arguments from the parties, the court ruled that count I was insufficient to grant the declaratory relief requested that the fort was in compliance with the ordinance. The court also found that count II was insufficient to plead equitable estoppel, as it did not contain an allegation of detrimental reliance. Accordingly, the court dismissed count II with prejudice. With regard to count I the court stated, "I'm not gonna declare what [*sic*] I'm dismissing Count 1 with or without prejudice. If you, [defense counsel], within 30 days have a motion to file, I will consider it but you better have your proposed amended complaint attached." Thus, the court required that if Shedwill wished to file a third amended complaint, he had to seek leave to file first.

¶ 11 On March 28, 2014, Shedwill filed a motion for leave to file a third amended complaint. The proposed third amended complaint was attached to the motion and contained some additional facts about the fort. The complaint referred to a drawing of the fort that he submitted

with his permit application and stated that the fort did "not have solid walls but rather three railings or slats on each side, running from post to post at different heights between the floor and the top of the corner posts." Further, the complaint stated that "[s]aid wooden railings or slats are partially for structural purposes to provide further support between the corner posts. At least some of the railings or slats are higher than 8 feet but less than 12 feet from the ground." The complaint questioned whether these sides even constituted walls, and if they did, then they did not violate the ordinance, which did not specify whether the walls had to be "measured from the ground or can be any 8 feet so long as the structure does not exceed 12 feet in total height." In the prayer for relief, the complaint also requested that the Village be estopped from interfering with Shedwill's completion of the fort.

¶ 12 The drawing referred to in the proposed third amended complaint, which had allegedly been submitted with the permit application, does not appear in the record on appeal.

¶ 13 On August 1, 2014, the circuit court held a hearing on Shedwill's motion for leave to file a third amended complaint. After hearing argument from the parties, the court found that any reference to estoppel was futile. With regard to declaratory judgment, the court found that while the proposed third amended complaint contained different allegations, the allegations were insufficient to overcome the reasons the court gave for the dismissal of the second amended complaint. Accordingly, the court denied Shedwill's motion for leave to amend.

¶ 14 Shedwill appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, Shedwill argues that the circuit court erred when it denied his motion for leave to file a third amended complaint. Shedwill contends that he met all of the elements for a

declaratory judgment action and focuses on the "actual controversy" element, emphasizing that the parties' interpretations of the ordinance were conflicting.

¶ 17 Section 2-616(a) of the Code of Civil Procedure provides:

> "At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." 735 ILCS 5/2-616(a) (West 2012).

Section 2-616 "is to be construed broadly to carry out its purpose of permitting liberal amendments to the pleadings so that cases might be decided on the merits and not by procedural technicalities." *In re Marriage of Wade*, 158 Ill. App. 3d 255, 263 (1987). We review a circuit court's decision to deny a motion for leave to amend a pleading for an abuse of discretion. *CIMCO Communications, Inc. v. National Fire Insurance Co. of Hartford*, 407 Ill. 2d 32, 38 (2011).

¶ 18 In this case, while we are reviewing the circuit court's order that denied Shedwill's motion for leave to amend, we note that the court's denial of that motion was tantamount to a dismissal of Shedwill's action. In that regard, it must be acknowledged that "a cause of action should not be dismissed on the pleadings unless it appears that no set of facts can be proved which will

entitle the pleader to relief, and then only if it is apparent that even after amendment, if leave to amend is sought, no cause of action can be stated." *Dinn Oil Co. v. Hanover Insurance Co.*, 87 Ill. App. 2d 206, 211-12 (1967).

¶ 19 An action for declaratory judgment requires that: (1) the plaintiff has a legal tangible interest; (2) the defendant has an opposing interest; and (3) an actual controversy exists between the parties regarding those interests. *Kovilic v. City of Chicago*, 351 Ill. App. 3d 139, 143 (2004). Our review of the record in this case reveals that while Shedwill's proposed third amended complaint was not in proper form and lacked the referenced schematic drawing, it did contain the basics for a declaratory judgment action.

¶ 20 We appreciate the circuit court's frustration with plaintiff's counsel's apparent inability or unwillingness to craft a proper complaint. We admonish plaintiff's counsel that the complaint establishes the foundation and parameters of the claim and should be prepared with care and in compliance with the rules. We also caution counsel that courts are not required to draw repeatedly from a well of limitless patience. The circuit court does have discretion to draw the line when counsel demonstrates he/she cannot or will not file a properly compliant complaint.

¶ 21 That said, among the proposed third amended complaint's allegations were: (1) the ordinance regulating the construction of "accessory buildings" did not apply to the fort—which we understand to be a play structure—he was building because it lacked anything that could appropriately be characterized as walls; (2) even if the ordinance did apply to the fort, it was in compliance with the ordinance at the time he was issued a permit; and (3) the amended ordinance did not apply to him because it was enacted after he was issued a permit.

¶ 22 It is clear from the record that the parties had different interpretations of the applicability of the ordinance to the fort and whether, if it did apply, the fort had "walls" as defined by the

ordinance and, if so, whether those walls conformed. In this regard, we note that the village amended the ordinance during the pendency of this case to clarify the manner in which walls must be measured, thereby suggesting that the village itself was concerned with possible ambiguity in the ordinance.

¶ 23 Under these circumstances, we hold that, however inartfully presented, the allegations in the proposed third amended complaint sufficiently pled a cause of action such that the circuit court erred when it denied the plaintiff leave to amend and effectively dismissed the action on the pleadings. See *Dinn Oil*, 87 Ill. App. 2d at 211-12.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Kankakee County is reversed, and the cause is remanded for further proceedings.

¶ 26 Reversed and remanded.