2013 IL App (1st) 120782-U

THIRD DIVISION
November 20, 2013

No. 1-12-0782

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

ROY CORRIE and ROYBOY CORPORATION, an Illinois corporation,	)	Appeal from the Circuit Court, Cook County, Illinois
Plaintiffs-Appellants	)	No. 10 CH 49204
v.	)	Honorable Kathleen M. Pantle, Judge Presiding.
PATRICK QUINN, in his capacity as Governor of the State of Illinois; MARK OSTROWSKI, in his capacity as Administrator of the Illinois Gaming Board; AARON JAFFE, CHARLES, GARDNER, EUGENE WINKLER, JOE MOORE, JR., and JAMES E. SULLIVAN, in their capacities as members of the Illinois Gaming Board; and MICHAEL FRIES, in his capacity as General Counsel of the Illinois Gaming Board,	)	
Defendants-Appellees.	)	

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's dismissal of plaintiff" complaint under section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) is affirmed where subsequent

statutory amendment rendered issue moot.

¶ 2 Plaintiffs, Roy Corrie and Royboy Corporation, filed a two-count complaint against the Governor of Illinois and employees and members of the Illinois Gaming Board, challenging the constitutionality of the Illinois Video Gaming Act (Act) (230 ILCS 40/1 *et seq*. (West 2010)). The trial court granted defendants' motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615 (West 2010). Plaintiffs appeal only from the dismissal of count II of their complaint, which alleged the Act was unconstitutional special legislation in violation of Article IV, section 13 of the Illinois Constitution (Ill. Const. 1970 Art. IV, § 13) by permitting only cash-operated machines. We affirm the circuit court's dismissal of court II because the challenged statutory language was rendered moot while this appeal was pending when the Act was amended to eliminate the cash-operated machines requirement.

¶ 3 BACKGROUND

¶ 4 Royboy Corporation is in the business of video gaming. Roy Corrie is Royboy's sole shareholder. On July 13, 2009, Governor Patrick Quinn signed the Video Gaming Act (Act) allowing for the installation of up to five "video gaming terminals" in licensed fraternal organizations, veterans organizations, truck stops, and establishments that serve liquor. 230 ILCS 40/25(c) (West 2010). When adopted, the Act provided that video gaming terminals were to be operated on a cash-only basis. 230 ILCS 40/5 (West 2010). The terminals do not pay out in cash, however. Instead, at the end of a player's turn, winnings are reflected on a receipt dispensed by the video gaming terminal, which the player can exchange for cash by presenting it to the appropriate person at the licensed establishment. 230 ILCS 40/20 (West 2010).

¶ 5 The Act also requires that video gaming terminals must have certain safeguards, including "nonresettable meters housed in a locked area of the terminal that keep a permanent record of all cash inserted into the machine, all winnings made by the terminal printer, credits played in for video gaming terminals, and credits won by video gaming players." 230 ILCS 40/15(11) (West 2010). The Act also requires that all revenues "be deposited by the terminal operator, who is responsible for tax payments, in a specially created, separate bank account maintained by the video gaming terminal operator to allow for electronic fund transfers of moneys for tax payment." 230 ILCS 40/60(c) (West 2010). The Gaming Board supervises all gaming operations governed by this Act and collects a 30% tax on net terminal income.

¶ 6 On November 16, 2010, plaintiffs, through their attorney, filed a two-count complaint against Patrick Quinn, the Governor of Illinois, members of the Illinois Gaming Board, and two Board employees, seeking declaratory and injunctive relief with respect to the Act. Count I claimed the Act was passed in violation of Article IV, section 8(d) of the Illinois Constitution, (Ill. Const. 1970 art. IV, § 8(d)), which requires that bills be read on three different days in each house of the Illinois General Assembly before enactment. Count II alleged the Act constitutes "special legislation" in violation of Article IV section 13 of the Illinois Constitution, which prohibits the General Assembly from passing a "special or local law when a general law can be made applicable." Ill. Const. 1970 art. IV, § 13. Plaintiffs contended that by permitting only cash-operated machines, the Act discriminates in favor of the Illinois Coin Machine Operators Association (ICMOA) and ICMOA members without a rational basis and grants that group special rights and privileges. Plaintiffs also alleged that cash-only video gaming terminals are

susceptible to tampering and manipulation by terminal operators who, while accessing the interior of the terminal to collect cash, might manipulate the terminal's micro-chips to minimize the reported income. Plaintiffs asserts that use of more current technology, such as terminals that accepts a pre-paid card or a voucher, would eliminate the influence of politics and organized crime in video gaming while still fulfilling the stated purpose of the Act. Plaintiffs sought a finding that the Act is unconstitutional and an order permanently enjoining the Illinois Gaming Board from enacting it.

¶ 7 On January 7, 2011, defendants filed a motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). A hearing on the motion to dismiss was rescheduled several times and in the interim, on October 11, 2011, plaintiffs' attorney withdrew from the case. Neither Corrie nor Royboy obtained new counsel and Corrie proceeded to file with the circuit court a "supplemental brief to defendants' motion to dismiss" on behalf of both plaintiffs.

¶ 8 On February 28, 2012, the circuit court issued an order dismissing plaintiffs' complaint. As to count I, the circuit court stated that Illinois follows the "enrolled-bill doctrine," which provides that once a bill has been certified by the Speaker of the House of Representatives and the President of the Senate, the bill is conclusively presumed to have met all procedural requirements for passage and cannot be challenged on procedural or technical grounds. *Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 328-29 (2003). In dismissing count I, the court found that since the requisite legislators had signed the bill into law certifying that it passed all procedural requirements, it is presumed to be procedurally sound and cannot be challenged on

that basis by the plaintiffs.

¶ 9 As to count II, the circuit court first noted that the Act does not mention the ICMOA nor does it limit its benefits solely to ICMOA members, since anyone who wants to own and operate a video gaming terminal may do so as long as they adhere to the provisions of the Act. Further, the court stated that even if the Act was passed as a favor to the ICMOA, improper motives are not a basis for a constitutional challenge to a law. *United States v. O'Brien,* 391 U.S. 368 (1968); see also *People v. Gallegos*, 293 Ill. App. 3d 873, 878 (1997) ("In considering the constitutionality of a statute, this court is not at liberty to inquire into the motives of the legislature, but may only examine the legislature's powers under the constitution."). The court also found that even if the Act was special legislation enacted in favor to the ICMOA, it is not unconstitutional because it passes the rational basis test since it is rationally related to a legitimate state interest. See *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 332 (2005) ("It is not our place to second-guess the wisdom of a statute that is rationally related to a legitimate state interest, contentious though that statute may be."). First, the court noted that the "fact that other States allow for cash operated [video gaming terminal] systems alone suggest that there is a rational basis for the legislature's decision ****." The court also found that although there may be advantages to plaintiffs' machines, which purportedly automatically deduct taxes from a video gaming terminal user's earnings, the State has a legitimate interest in securing the privacy of people who engage in this lawful activity. Lastly, the court stated that although it might have been beneficial for the legislature and the Illinois Gaming Board to consider plaintiffs' terminals, it was under no obligation to do so, and given the separation of powers, the court may not compel

the legislature to review plaintiffs' proposal. Therefore, the circuit court also dismissed count II.

¶ 10 Plaintiff Corrie filed a *pro se* notice of appeal on behalf of himself and the Royboy Corporation. Corrie also filed briefs with this court on behalf of both plaintiffs. Defendants contend that Royboy Corporation is not properly before this court because it was not represented by counsel. Courts in this country, including our supreme court, unanimously agree that a corporation must be represented by counsel in legal proceedings. See *Downtown Disposal Service, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 22. In *Downtown Disposal*, the supreme court stated that lack of representation by counsel, however, does not automatically make filings on behalf of the corporation a nullity. *Id.* ¶ 31. Instead, a circuit court must consider *inter alia,* whether the nonattorney's conduct is done without knowledge that the action was improper, whether the corporation acted diligently in correcting the mistake by obtaining counsel, whether the nonattorney's participation is minimal, and whether the participation results in prejudice to the opposing party. *Id.* "The circuit court may properly dismiss an action where the nonlawyer's participation on behalf of the corporation is substantial, or the corporation does not take prompt action to correct the defect. [Citations omitted.]" *Id.* Here, Corrie's participation on Royboy's behalf was significant in that he filed a motion, a memorandum, and a notice of appeal with the trial court and appellate briefs with this court for the corporation. Further, Royboy took no steps to cure the defect by hiring new counsel after its attorney withdrew from the case. Therefore, because Royboy Corporation was not represented by counsel it was not properly before this court, and we will only address the issues raised in this appeal as they pertain to plaintiff Corrie, not the corporation.

¶ 11 ANALYSIS

¶ 12 A motion to dismiss under section 2–615 challenges the legal sufficiency of the complaint based on defects on the face of the complaint. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166 ¶ 16. The critical inquiry in deciding a section 2–615 motion to dismiss is whether the allegations in the complaint, considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Id*. A cause of action will be dismissed on the pleadings only if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Id*. In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). We review *de novo* an order granting a section 2–615 motion to dismiss. *Id*. We also note that the ultimate question of whether an ordinance is unconstitutional is a question of law, which this court also reviews *de novo. People v. Madrigal*, 241 Ill. 2d 463, 466 (2011).

¶ 13 As already noted, plaintiff has abandoned his appeal of count I of the complaint. Therefore, the only issue before us is whether the Act is unconstitutional "special legislation" that favors the ICMOA in violation of Article IV, section 13 of the Illinois Constitution. Section 13 of the Illinois Constitution provides that

> "The General Assembly shall pass no special or local law when a general law can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. 1970 Art. IV, § 13.

¶ 14 Section 5 of the Act, which defines a video gaming terminal, is at the heart of plaintiff's claim that the Act violates section 13 of the Constitution. When plaintiff filed his complaint, the Act defined a video gaming terminal as follows:

> "' 'Video gaming terminal' means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the [Illinois Gaming] Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only." 230 ILCS 40/5 (West 2010).

¶ 15 Plaintiff contends that by requiring that all video gaming terminals be cash-only, the Act constituted special legislation that impermissibly favors members of the ICMOA. In 2013, while this appeal was pending, the legislature amended the Act to eliminate the cash-only requirement. Effective June 24, 2013, the definition of a video gaming terminal in section 5 of the Act now provide as follows:

> " 'Video gaming terminal' means any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the [Illinois Gaming] Board utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins,

cash, or tokens or is for amusement purposes only." 230 ILCS 40/5 (West 2013).

¶ 16 An issue is moot if no actual controversy exists or events occur that make it impossible for the court to grant effectual relief. *Dixon v. Chicago and North Western Transp. Co.*, 151 Ill. 2d 108, 116 (1992). "This court will not review cases merely to establish a precedent or guide future litigation." *Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 235 (1982). Even if the case is pending on appeal when the events that render an issue moot occur, as a reviewing court, we will generally not issue an advisory opinion. *Bluthardt v. Breslin*, 74 Ill. 2d 246, 250 (1979). Our supreme court has held that" 'where a challenged statute is amended while the cause is pending, the question of the statute's validity becomes moot, thus rendering unnecessary its review by the court.' " *People v. Johnson*, 225 Ill. 2d 573, 580 (2007) (quoting *People v. B.D. A.*, 102 Ill. 2d 229, 233 (1984).

¶ 17 The legislature's amendment of the definition of a video gaming terminal to include "any electronic video game machine that, upon insertion of cash, electronic cards or vouchers, or any combination thereof" eliminates any actual controversy as to whether or not the Act favors members of the ICMOA in violation of Article IV section 13 of the Illinois Constitution. Therefore, we affirm the trial court's dismissal of count II of plaintiff's complaint.

¶ 18 Lastly, plaintiff contends the trial court failed to address a third claim he raised in a supplemental brief, which was filed on January 23, 2012, in response to defendants' motion to dismiss, namely that the Act violates their rights to equal protection under the Illinois Constitution. Plaintiff asserts that defendants failed to respond to this argument and therefore, the circuit court should have entered a default judgment in his favor on this count. He asks this

court to remand for entry of a default judgment and a hearing on damages as to this claim.

¶ 19 A plaintiff fixes the issues in controversy and the theories on which recovery is sought by the allegations in the complaint. *Pagano v. Occidental Chemical Corp*., 247 Ill. App. 3d 905, 911 (1994). It is a fundamental rule, with no exceptions, that a party must recover on and according to the case made for the party by the party's pleadings. *Newton v. Aitken*, 260 Ill. App. 2d 717, 718 (1994). Although the plaintiff filed a supplemental brief to defendants' motion to dismiss purportedly making an equal protection argument, the plaintiff never advanced that claim and therefore, the circuit court did not err in not considering it. Further, an equal protection argument would not provide a basis for reversing the trial court's dismissal. "A special legislation challenge is generally judged by the same standards as an equal protection claim." *General Motors Corp v. State Motor Vehicle Review Board*, 224 Ill. 2d at 30-31 (2007) Therefore, since plaintiff's special legislation claim was rendered moot by the amendment to the Act, so too is any equal protection claim.

¶ 20 CONCLUSION

¶ 21 We affirm the trial court's dismissal of court II of plaintiff's complaint because the challenge to the statutory language was rendered moot by a subsequent amendment.

¶ 22 Affirmed.