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ELISE PIQUET *v.* TOWN OF CHESTER ET AL.
(AC 30440)

Flynn, C. J., and Robinson and Borden, Js.*

Argued January 7—officially released October 19, 2010

(Appeal from Superior Court, judicial district of
Middlesex, Jones, J.)

William F. Gallagher, with whom, on the brief, were
Hugh D. Hughes and *Mark A. Balaban*, for the appel-
lant (plaintiff).

John S. Bennet, for the appellees (defendants).

Opinion

ROBINSON, J. The plaintiff, Elise Piquet, appeals from the judgment of the trial court rendered in favor of the defendants, the town of Chester and its planning and zoning commission, granting their motion for summary judgment. Specifically, the plaintiff claims that the court improperly (1) required her to bear the burden of proof in providing evidence that there was a genuine issue of material fact in opposition to the defendants' motion for summary judgment and (2) found that the Chester zoning regulations prohibit private burials on residential property. We conclude that the trial court lacked subject matter jurisdiction and, accordingly, reverse the judgment.

The record reveals the following facts and procedural history. The plaintiff is the owner of property at 28 South Wig Hill Road in Chester. The plaintiff resided with her husband, Christopher J. Shaboe Doll, at their residence on the property for fourteen years prior to his death on October 13, 2004. The plaintiff alleges that she and her husband wanted to be buried side by side in Chester, and, accordingly, on October 24, 2004, the plaintiff interred her husband's remains in the backyard of her property under the supervision of a licensed funeral director. On June 8, 2005, Chester's zoning compliance officer,¹ issued a cease and desist order with regard to the burial for violation of the Chester zoning regulations. On August 12, 2005, the plaintiff filed an appeal from the cease and desist order with the Chester zoning board of appeals, seeking a variance. On or about September 16, 2005, the zoning compliance officer specifically informed the plaintiff that the burial was not permitted as a principal use or a special principal use in the residential district where the plaintiff's property was located, pursuant to § 40A of the Chester zoning regulations. The zoning compliance officer, however, withdrew the cease and desist order for the purpose of allowing the plaintiff time to remedy the violation. On October 15, 2005, the plaintiff notified the zoning board of appeals that she was withdrawing her objection to the cease and desist order, without prejudice.

On October 26, 2007, the plaintiff commenced an action in the trial court, requesting a judgment declaring that she has the right to use her property for the interment of her husband and, upon her death, for her interment as well. On April 28, 2008, the defendants filed a motion for summary judgment. On September 30, 2008, the court granted the motion in a memorandum of decision and rendered judgment in favor of the defendants. This appeal followed.

Before reaching the merits of the plaintiff's appeal, we must first determine whether the court had subject matter jurisdiction over her action for a declaratory judgment.² This issue is resolved by an analysis of

whether the plaintiff properly exhausted her administrative remedies.³ The plaintiff, in her supplemental brief, argues that she is contesting the validity, rather than the interpretation, of Chester's zoning regulations and that such a determination is excluded from the doctrine of administrative remedy exhaustion. Although the plaintiff asserts in her supplemental brief that a declaratory action is the proper forum in which to challenge the validity of an ordinance or regulation, as was stated in her appellate brief, "[t]he only issue before the [trial] court was the clarity of the Chester zoning regulations on the issue of accessory use." The issue clearly before the court was the zoning compliance officer's interpretation of the regulations concerning accessory use, not the validity of the regulations concerning accessory use. This court is concerned with substance, not labels, and for that reason relabeling an argument does not change the legal issue any more than baking shoes in an oven changes them into bread. See *State v. Gooch*, 186 Conn. 17, 18, 438 A.2d 867 (1982). Further, the plaintiff argues that the defendants already have expressed that her private burial was prohibited by the town's zoning regulations, making any further action to the zoning enforcement officer or the zoning board of appeals futile. Finally, she argues that only the trial court can grant her the necessary relief of an injunction against Chester and all of its agencies. We disagree with the plaintiff's arguments and conclude that she has failed to exhaust her administrative remedies.

"It is a settled principle of administrative law that, if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter. . . . This requirement reflects the legislative intent that such issues be handled in the first instance by local administrative officials in order to provide aggrieved persons with full and adequate administrative relief, and to give the reviewing court the benefit of the local board's judgment. . . . We have recognized, however, certain limited exceptions to the exhaustion requirement. Such exceptions include . . . where local procedures cannot effectively, conveniently or directly determine whether the plaintiff is entitled to the relief claimed." (Citations omitted; internal quotation marks omitted.) *O & G Industries, Inc. v. Planning & Zoning Commission*, 232 Conn. 419, 425, 655 A.2d 1121 (1995). "[W]e have recognized such exceptions only infrequently and only for narrowly defined purposes . . . such as when recourse to the administrative remedy would be futile or inadequate." (Citations omitted; internal quotation marks omitted.) *Stepney, LLC v. Fairfield*, 263 Conn. 558, 565, 821 A.2d 725 (2003).

In the present case, in June, 2005, the plaintiff was issued a cease and desist order by the zoning compliance officer, in response to a complaint from the depart-

ment of public health. In response, the plaintiff filed an appeal to the zoning board of appeals for a variance from the cease and desist order. On September 16, 2005, the zoning compliance officer wrote a letter to the plaintiff, affirming her belief that the plaintiff was in violation of the zoning regulations, but notifying the plaintiff that she was “withdrawing the June 8, 2005 cease [and] desist order” to allow the plaintiff time to remedy the situation, “whether by [the plaintiff’s] pending application for a [v]ariance or otherwise” Subsequently, in October, 2005, the plaintiff withdrew her appeal of the cease and desist order and her variance request without prejudice. Thereafter, the zoning compliance officer did not resume any action against the plaintiff.

Section 140G of the Chester zoning regulations concerns the powers and duties of the zoning board of appeals. Section 140G.1 provides that the zoning board of appeals shall have the power “[t]o hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the [z]oning [c]ompliance [o]fficer.” The regulations do not set forth a specific definition for what constitutes a decision from the zoning compliance officer. In the letter dated September 16, 2005, the compliance officer reiterated the basis for her finding that the zoning regulations do not permit private burials in the residential district in which the plaintiff’s property is located. The zoning compliance officer then declared that she was not pursuing legal action based on her interpretation of the zoning regulations. She did not, however, abandon her interpretation but, rather, declared her intention, at least temporarily, to suspend taking action based on that interpretation. The September 16, 2005 letter was a decision by the zoning compliance officer from which the plaintiff could have appealed to the zoning board of appeals, or she could have amended her then pending appeal to include the September 16, 2005 letter.⁴ Accordingly, we conclude that the trial court did not have subject matter jurisdiction over the plaintiff’s action for a declaratory judgment.

The judgment is reversed and the case is remanded with direction to dismiss the action.

In this opinion FLYNN, C. J., concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

¹ “The enforcement officer acts as the agent of the [planning and zoning] commission. . . . [T]he commission is authorized by statute to provide how its regulations are to be enforced The Supreme Court has referred to the statutory scheme as one that delegates authority from the commission to the enforcement officer.” T. Tondro, *Connecticut Land Use Regulation* (2d Ed. 1992) p. 513. In the present case, the zoning compliance officer was acting on behalf of the defendant planning and zoning commission of the town of Chester.

² “[C]oncerns regarding subject matter jurisdiction implicate the court’s fundamental authority and may properly be raised and decided by the court sua sponte.” *Soracco v. Williams Scotsman, Inc.*, 292 Conn. 86, 91, 971 A.2d 1 (2009). In the present case, this court, sua sponte, ordered the parties to

submit supplemental briefs on the issue of whether the plaintiff properly exhausted her administrative remedies, thus giving the trial court subject matter jurisdiction over her action for a declaratory judgment.

³ On May 25, 2010, this court ordered the parties to file supplemental briefs on the issues of whether the plaintiff exhausted her administrative remedies and whether the trial court properly had subject matter jurisdiction to issue a declaratory judgment. In their brief, the defendants argued that the plaintiff did not exhaust her administrative remedies by appealing to the zoning board of appeals and, therefore, the trial court lacked subject matter jurisdiction.

⁴ We note that although the plaintiff argues the doctrine of futility in her supplemental brief, reasoning that “[t]he defendants have stated quite clearly that private burial grounds are not allowed anywhere [within] Chester . . . as a matter of law.” The zoning board of appeals was not a named defendant in the action. There is nothing in the record that indicates what the board’s interpretation of the subject zoning issue would be or that an appeal to the board of appeals would be futile.