

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

DAVID HEISEL, TAMMY COFFIN,  
AND COURTLAND PLAZA OF DELTONA, LLC,

Appellants,

v.

Case No. 5D20-2422

CITY OF DELTONA AND VOLUSIA COUNTY  
SHERIFF'S DEPARTMENT,

Appellees.

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Opinion filed September 24, 2021

Appeal from the Circuit Court  
for Volusia County,  
Kathryn D. Weston, Judge.

Robert E. Turffs, of Robert E. Turffs,  
P.A., Sarasota, for Appellants.

Derek J. Angell, of Bell & Roper,  
P.A., Orlando, for Appellee, City of  
Deltona.

W. Kevin Bledsoe, DeLand, for  
Appellee, Volusia County Sheriff's  
Department.

WALLIS, J.

David Heisel, Tammy Coffin, and Courtland Plaza of Deltona, LLC (collectively "Appellants") appeal the order dismissing with prejudice their Second Amended Complaint. We reverse.

Heisel and Coffin own a game room in the City of Deltona known as Jackpot Saloon, and Courtland Plaza owns the property on which Jackpot Saloon is located. When the City of Deltona and the Volusia County Sheriff's Department (collectively "Appellees") learned of the operation of certain games within the Jackpot Saloon, they served Appellants with a notice to cease and desist the operation of those games because they violate the City of Deltona's prohibition against the use of a "simulated gambling device."

Appellants complied with the cease and desist notice and subsequently filed a complaint against Appellees for declaratory relief, seeking a determination of whether the games are slot machines or amusement machines and whether they violate sections 849.15 and 849.16, Florida Statutes (2020).

In their Second Amended Complaint ("the Complaint"), Appellants alleged that they offer electronic games to the public, including the Blue Sky Games Version 68 ("Version 68"). The Complaint described Version 68, the way in which it operates, and explained that the outcome of the game is predictable to the player, thereby removing any chance involved in the game.

Thus, the Complaint alleged that Version 68 does not violate sections 849.15 and 849.16.

Appellees filed a motion to dismiss the Complaint, arguing that it does not allege an actual controversy necessary to sustain a declaratory judgment action. The trial court agreed with Appellees and dismissed the case with prejudice.

To be legally sufficient, a complaint for declaratory relief must allege that:

- (1) there is a bona fide dispute between the parties;
- (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration.

Ribaya v. Bd. of Trs. of City Pension Fund for Firefighters & Police Officers in the City of Tampa, 162 So. 3d 348, 352 (Fla. 2d DCA 2015). When considering a motion to dismiss, the trial court must treat as true all of the complaint's well-pleaded allegations, and it must only look to the complaint and its attachments. Romo v. Amedex Ins. Co., 930 So. 2d 643, 648 (Fla. 3d DCA 2006). Furthermore, the test for the sufficiency of a complaint for declaratory relief "is not whether the complaint shows that the plaintiff will succeed in getting a declaration of rights in accordance with his theory and

contention, but whether he is entitled to a declaration of rights at all." Kelley v. Kelley, 147 So. 3d 597, 601 (Fla. 4th DCA 2014) (quoting S. Riverwalk Invs., LLC v. City of Ft. Lauderdale, 934 So. 2d 620, 622 (Fla. 4th DCA 2006)).

We conclude that the trial court erred in dismissing with prejudice the Complaint because it sufficiently alleged the four requisite elements for a declaratory action, namely that: there is a bona fide dispute between the parties; Appellants have a justiciable question about the existence of their right to continue using Version 68 in their business; Appellants are in doubt about whether they can continue to allow their patrons to use Version 68; and Appellants have a present need for the court to determine whether Version 68 is legal. See Yacht Club by Luxcom, LLC v. Vill. of Palmetto Bay, 306 So. 3d 268, 272 (Fla. 3d DCA 2020) (holding that appellant's claim fits squarely within the declaratory judgment scheme where appellant has a present right to have the trial court determine the validity of appellee's attempt to rezone appellant's property); Sec. First Ins. Co. v. Phillips, 312 So. 3d 502, 503–04 (Fla. 5th DCA 2020) (concluding that a bona fide controversy existed and appellant presented a justiciable question as to the existence of its right to deny coverage under the insurance policy where the parties disagreed about whether the damage occurred while the insurance

policy was in effect). Therefore, while we offer no opinion on the merits of Appellants' claim, we reverse the order dismissing the Complaint with prejudice and remand for further proceedings. See Palumbo v. Moore, 777 So. 2d 1177, 1179 (Fla. 5th DCA 2001) (holding that trial court erred in dismissing the amended cross-claim and the third-party claim with prejudice where they each stated a cause of action for declaratory relief).

REVERSED and REMANDED.

EISNAUGLE and HARRIS, JJ., concur.