

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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WILLIAM GAY,

Appellant,

v.

CITY OF DUNEDIN, a municipal government;  
JULIE WARD BUJALSKI; HEATHER GRACY;  
DEBORAH KYNES; MAUREEN FREANEY;  
and JEFF GOW, in their official capacities  
as elected officials of the City of Dunedin,

Appellees.

No. 2D20-3433

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November 10, 2021

Appeal from the Circuit Court for Pinellas County; Amy M. Williams,  
Judge.

Timothy W. Weber of Weber, Crabb & Wein, P.A., St. Petersburg, for  
Appellant.

Erin J. O'Leary, Anthony Garganese, and Debra Babb-Nutcher of  
Garganese, Weiss, D'Agresta & Salzman, P.A., Orlando, for  
Appellees.

BLACK, Judge.

William Gay appeals from the order dismissing Julie Ward Bujalski (mayor of the City of Dunedin), Heather Gracy (vice mayor of the City of Dunedin), Deborah Kynes (commissioner of the City of Dunedin), Maureen Freaney (commissioner of the City of Dunedin), and Jeff Gow (commissioner of the City of Dunedin) from his action for declaratory and injunctive relief. Because the trial court erred in dismissing these individuals—who will hereafter be referred to collectively as the City Commissioners—from the action without affording Mr. Gay an opportunity to amend his complaint to state causes of action against them, we reverse.

On May 20, 2020, Mr. Gay filed a two-count complaint naming the City of Dunedin and the City Commissioners as defendants and alleging violations of article 1, section 24(b) of the Florida Constitution and sections 286.011 and 286.0114, Florida Statutes (2019), resulting from the settlement of a lawsuit with a resident. The City and the City Commissioners moved to dismiss the complaint, and on November 3, 2020, the trial court entered an order dismissing the City Commissioners from Mr. Gay's action

with prejudice.<sup>1</sup> Mr. Gay argues on appeal that counts I and II of his complaint sufficiently allege causes of action against the City Commissioners and that to the extent there are any deficiencies in his claims, the trial court abused its discretion by failing to grant him leave to amend the claims.

We review de novo the trial court's decision to grant the motion to dismiss. *See Becklund v. Fleming*, 869 So. 2d 1, 4 (Fla. 2d DCA 2003). Despite naming the City Commissioners as defendants in the action, counts I and II of the complaint sought declaratory relief based only on the City's alleged violations of the Florida Constitution and sections 286.011 and 286.0114 and sought to enjoin only the City from further allegedly improper conduct. As such, the trial court did not err in dismissing the City Commissioners from the action. However, "[a] dismissal with prejudice should not be ordered without giving the party offering

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<sup>1</sup> In that same order, the trial court dismissed Mr. Gay's action against the City without prejudice and granted him twenty days to amend his claims against the City. Mr. Gay does not challenge the trial court's ruling in that regard on appeal, nor could he since such an order is a nonfinal, nonappealable order. *See Reynolds Ventures, Inc. v. Sargent*, 310 So. 3d 458, 458-59 (Fla. 2d DCA 2020).

the pleading an opportunity to amend unless it appears that the privilege to amend has been abused or it is clear that the pleading cannot be amended to state a cause of action." *Becklund*, 869 So. 2d at 4 (quoting *Kapley v. Borchers*, 714 So. 2d 1217, 1218 (Fla. 2d DCA 1998)). Mr. Gay has not abused the privilege to amend, and because it is not apparent that he cannot state a cause of action against the City Commissioners, the trial court abused its discretion by dismissing the City Commissioners from the action without granting Mr. Gay leave to amend. *See Kapley*, 714 So. 2d at 1218 ("While it may have been proper to dismiss the complaint against appellee individually for failure to state a cause of action, we conclude it was an abuse of discretion to do so with prejudice since it was not clear from the record that a cause of action could never be alleged against appellee individually. Appellant should have therefore been given an opportunity to amend."); *cf. Paylan v. Dirks*, 228 So. 3d 679, 680 (Fla. 2d DCA 2017) ("[T]he trial court erred in dismissing with prejudice Counts I and IV as to [Assistant State Attorneys] Dirks and Brown. On remand, Paylan must be given the opportunity to amend Counts I and IV to clearly identify

the particular defendant to which she attributes a particular improper act.").

We therefore reverse the trial court's order to the extent it dismissed the City Commissioners from Mr. Gay's action and remand for further proceedings.

Reversed and remanded.

KHOUZAM and SLEET, JJ., Concur.

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Opinion subject to revision prior to official publication.