IN THE COURT OF APPEALS OF IOWA

No. 3-350 / 12-0930
Filed May 15, 2013

MARY ELLEN MOLINARO, as Executor OF THE Estate OF Robert J. Molinaro, Deceased,
Plaintiff-Appellant,

vs.

CITY OF WATERLOO, IOWA, and JAMES E. WALSH JR., CITY ATTORNEY, CITY OF WATERLOO, IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, David F. Staudt, Judge.

The Estate of Robert Molinaro appeals from the district court's ruling granting the defendants' motion for summary judgment and dismissing Molinaro's petition for a writ of mandamus. **AFFIRMED.**

Dave Nagle, Waterloo, for appellant.

Thomas C. Verhulst and Timothy C. Boller of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee Walsh.

Ivan T. Webber and James R. Wainwright of Ahlers & Cooney, P.C., Des Moines, for appellees City of Waterloo and Walsh.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

The Estate of Robert Molinaro appeals from the district court's ruling granting the defendants' motion for summary judgment and dismissing Molinaro's petition for a writ of mandamus. We affirm.

***I. Background Facts and Proceedings*.**

This matter arises out of a proposed development agreement between the City of Waterloo ("City") and Sunnyside South Addition, LLC ("Sunnyside"). Sunnyside proposed that the City vacate and convey a portion of the existing right-of-way of West Marnan Drive to Sunnyside. Robert Molinaro, an owner of property near, but not adjacent to, the right-of-way in question, filed a petition seeking a writ of mandamus and temporary injunction concerning the sale and conveyance of the unused right-of-way.[1] Among other things, Molinaro asserted the City had failed to "give certain notices to specific parties prior to selling the unused [right-of-way]" as required under Iowa Code section 306.23 (2011), and he requested a writ be entered requiring the City to comply with the requirements of Iowa Code chapter 306.[2] The City answered, denying it failed to comply with the requirements of section 306.23.

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[1] Robert died during the course of the litigation. His estate was substituted as party plaintiff during the pendency of the appeal.

[2] Iowa Code section 306.23 imposes certain duties upon governmental bodies that propose to sell any tract of land that is an unused right-of-way. One of these duties is to give "notice of the agency's intent to sell the land" to present adjacent landowners "and to the person who owned the land at the time it was purchased or condemned for highway purposes." Iowa Code § 306.23(1). The notice must also include "the name and address of any other person to whom notice was sent, and the fair market value of the real property based upon an appraisal by an independent appraiser." *Id.* Further, these persons are given an opportunity to make an offer to purchase the property within sixty days of the date of the notice. *Id.* § 306.23(2). Such an offer "which equals or exceeds in amount any other offer received and which equals or exceeds the fair market value of the property shall be given preference by the agency in control of the land." *Id.*

The City later filed a motion for summary judgment asserting, among other things, that Molinaro lacked standing to seek a writ of mandamus. Hearing on the matter was set, and Molinaro asked that it be continued so he could conduct discovery.[3] The City resisted, alleging that none of the facts Molinaro sought to obtain would establish a genuine issue of material fact as to whether he had standing to raise a claim under section 306.23. Molinaro's motion to continue was ultimately set and heard with the City's motion for summary judgment at an unreported hearing, and both motions were comprehensively briefed and argued by the parties.

Thereafter, the court entered its order denying Molinaro's motion to continue, and granting the City's motion for summary judgment on all counts. As to the section 306.23 issue, the court concluded:

> [Molinaro] alleges that owning property on the west side and the north side of Sunnyside Golf Course constitutes him owning property adjacent to the real property in question that will be sold to [Sunnyside]. The court has reviewed Iowa Code § 306.23 which provides description of the owners of tracts, parcels, or pieces of land or parts thereof which would be entitled to notice concerning the sale of the property by a government agency as the aforementioned have a right to the preference of sale. The court concludes that under Iowa Code § 306.23(2) [Molinaro] is not an adjacent property owner nor was he a person who owned the land at the time it was purchased or condemned for highway purposes and as such is not entitled to notice or the preference of sale.

Molinaro filed a motion to reconsider, stating he "never asserted in [his] pleading, brief or argument to the court that he was entitled to notice from [the City] because of his status as an adjacent or previous land owner." He asked the

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If no offers are received within sixty days, or if no offer equals or exceeds the fair market value of the land, the agency may proceed with sale of the property. *Id.*

[3] Under Iowa Rule of Civil Procedure 1.981(6), a "court may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had."

court to rule on the specific allegations of standing that he asserted to the court, i.e., that he was an "interested party" within the standards of *Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008). The court denied the motion, and found:

> To the extent the court may have misinterpreted [Molinaro's] arguments concerning his ownership of property that could be construed as being adjoining the property in question, then the court is in error. In any event, no evidence was presented to the court establishing that [Molinaro] had rights under Iowa Code § 306.23 and as such is not entitled to the relief sought . . . .

Molinaro now appeals.[4]

II. Scope and Standards of Review.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907; *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. The court reviews the record in a light most favorable to the opposing party, and we afford the opposing party every legitimate inference the record will bear. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). "'No fact

[4] Because the hearing in question was unreported, Molinaro generated a statement of evidence or proceedings pursuant to Iowa Rule of Appellate Procedure Rule 6.806. The supreme court instructed the district court to enter an order settling the statement of proceedings, and the district court subsequently ordered that the statement of proceedings, as settled and approved, consisted of the statement of proceedings created and filed by Molinaro on June 6, 2012, and the City's statement of undisputed material facts in support of motion for summary judgment filed on August 11, 2011.

question exists if the only dispute concerns the legal consequences flowing from undisputed facts.'" *McNertney v*. *Kahler*, 710 N.W.2d 209, 210 (Iowa 2006) (citation omitted).

***III*. *Discussion*.**

Molinaro's arguments before us can be distilled down to two contentions: (1) the district court erred in granting summary judgment because Molinaro had standing to make a claim for relief under Iowa Code section 306.23, and (2) the court abused its discretion when it refused to grant Molinaro a continuance in order to conduct discovery prior to the summary judgment hearing. We address his arguments in turn.

***A*. *Standing*.**

"'Standing to sue' has been defined to mean that a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Citizens for Responsible Choices v*. *City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) (citations omitted). Courts employ the doctrine of standing to

> refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.

Alons v. *Iowa Dist*. *Ct*., 698 N.W.2d 858, 864 (Iowa 2005) (citation omitted). The focus is on the party, not the claim, and the court will not hear the claim if the party bringing it lacks standing, even if the claim could be meritorious. *Id.* "There

are two elements to the test we use to determine whether a private party has standing to challenge government action: A plaintiff must (1) have a specific personal or legal interest in the litigation, and (2) be injuriously affected." *Hawkeye Foodservice Distribution*, *Inc*. *v*. *Iowa Educators Corp*., 812 N.W.2d 600, 606 (Iowa 2012) (internal quotation marks and citations omitted). "[H]aving a legal interest in the litigation and being injuriously affected are separate requirements for standing, both of which must be satisfied." *Citizens*, 686 N.W.2d at 475.

The doctrine of standing was last thoroughly discussed by our supreme court in *Godfrey*, 752 N.W.2d at 418-22. In *Godfrey*, the court concluded that "cases involving actions by private persons to enforce public rights may be brought under the personal-interest alternative to the first element" requiring the party to have a specific personal interest or legal interest in the litigation. 752 N.W.2d at 420. This allows a court "to focus on the factual-injury element of standing by considering the types of injuries a litigant must show to satisfy the test." *Id.*

We therefore focus on the injury element of Molinaro's claim. Molinaro seeks to vindicate the public interest through his challenge to the alleged illegal governmental action. Although Molinaro is not required to have suffered traditional damages, he must "allege some type of injury different from the population in general." *Id.* In that regard, Molinaro must establish the following three elements:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or

> 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

See Alons, 698 N.W.2d at 867-68 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (alterations in original). Furthermore:

> [W]hen the asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. Thus,
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> > a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not [provide a basis for standing].
>
> The claimed nonobservance of the law, "standing alone," affects only the generalized interest of all citizens, and such an injury is abstract in nature, which is not sufficient for standing.

Id. at 868-69 (quoting *Lujan*, 504 U.S. at 573-74) (internal citations omitted).

One of Molinaro's complaints is that the City's alleged failure to follow the provisions of Iowa Code section 306.23 will result in the City not receiving as much money as possible for the land. This is a generalized grievance which is not sufficient for standing. *See id.* Molinaro's complaint that he suffers a loss of opportunity to buy the property because of the City's alleged failure to follow section 306.23 is also insufficient for standing, for the statute does not provide Molinaro with such an opportunity. Molinaro's other complaints arising from the City's alleged failure to follow the provisions of section 306.23, whether preserved for our review or not, also do not give Molinaro standing. The

statutory provisions impose certain duties upon the City toward adjacent and former landowners. *See* Iowa Code § 306.23. It is not disputed that Molinaro does not fall within these classes of persons. Furthermore, the City's failure to comply with the provisions of the statute, as challenged by Molinaro here, would produce no adverse effect on Molinaro. Rather, his injury, if any, would come as a result of the proposed development itself, not from the City's method of selling the right-of-way. That nexus does not give Molinaro standing to sue on this issue. *See Citizens*, 686 N.W.2d at 475.

B. Motion to Continue to Conduct Discovery.

"When a party opposing a motion for summary judgment files a motion requesting continuance to permit discovery, our review is for abuse of discretion." *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 302 (Iowa 1996). "[A] party faced with a summary judgment motion . . . should first be allowed to discover the facts if he desires." *Carter v. Jernigan*, 227 N.W.2d 131, 135 (Iowa 1975). However, there is no requirement that all discovery be completed before entry of summary judgment. *Bitner*, 549 N.W.2d at 302. Since summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, it naturally follows that a dispute of immaterial facts will not defeat a motion for summary judgment. *See* Iowa R. Civ. P. 1.981(3). We conclude the facts Molinaro sought were immaterial to the standing issue concerning his chapter 306 claim.

On appeal, Molinaro suggests "[f]acts in dispute in the instant case abound." That may be true, but we limit our examination to his request for those facts he sought to discover to establish the City failed to comply with section

306.23, for it is those facts that are relevant to the issue now on appeal, i.e., whether he has standing to make a claim for relief under chapter 306. Molinaro alleged in his motion to continue that he had

> reason to believe and can document if discovery is permitted that the following mandatory requirements for the sale of right of way were not complied with, to wit:
>
> a. The fair market value of the property has not been determined.
>
> b. Proper notices as required were not completed.
>
> c. The sixty-day waiting period after proper notices have been sent has not commenced let alone expired.
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> d. The City has not permitted alternative offers to the preference given to adjacent property owners and to the persons who owned the land at the time the governmental agency acquired the property in question.
>
> e. The City has not determined whether the offer to be made by [Molinaro] would exceed any offer made by a prior or adjacent owner.

As discussed above, even if Molinaro was able to establish all of these facts through discovery, none of these facts could have established a genuine issue of material fact as to whether he had standing to raise a claim under chapter 306. The facts Molinaro sought were immaterial to the issue of standing, and we therefore conclude the district court did not abuse its discretion in denying the motion to continue.

IV. Conclusion.

We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

AFFIRMED.