STATE OF MICHIGAN

COURT OF APPEALS

JIMMY LEE GRAY, JR. and JIMMYLEE GRAY, SR.,	UNPUBLISHED February 26, 2009
Plaintiffs-Appellants,	
v	No. 274356 Wayne Circuit Court
DETROIT MUNICIPAL PARKING DEPARTMENT and ADMINISTRATIVE HEARING OFFICERS,	LC No. 06-608032-AW
Defendants-Appellees.	AFTER REMAND

Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

This case returns to us following remand to the trial court for reconsideration of the dismissal of plaintiff's complaint that he filed after his vehicle had been "booted, immobilized, seized and impounded due to outstanding parking violations."[1] We now affirm its dismissal.

In Count I of his second amended complaint, plaintiff sought a declaratory judgment pursuant to MCR 2.605 "that the City of Detroit ordinances [sections 55-2-41(c) and 55-2-51] that allow the PVB to adjudicate parking violations are in conflict with state law [MCLA 600.8395 and 257.742(7)] and the Michigan Court Rules [MCR 4.101(1)(a)] which require adjudication of parking violations obtained in Detroit in the 36th Judicial District Court . . . ." The trial court had dismissed this request on the ground that plaintiff failed to properly appeal the adverse "boot hearing" decision of the administrative hearings tribunal, as provided by Section 55-2-44(h) of the 1984 Detroit City Code, MCR 7.105(B)(1), and Article 6, Section 28 of the Michigan Constitution of 1963. Thus, the trial court held that it lacked jurisdiction to enter a declaratory judgment with respect to plaintiff's rights.

[1] This Court affirmed the trial court's holding that Jimmylee Gray, Sr. lacked standing to pursue his similar claims against defendants. Leave to appeal our decision was sought from our Supreme Court, but was denied. *Gray v Detroit Muni Parking Dep't*, 482 Mich 897; 753 NW2d 149 (2008). Accordingly, we refer to Jimmy Lee Gray, Jr. as "plaintiff" in this opinion.

In Count II of his second amended complaint, plaintiff sought injunctive relief pursuant to MCR 3.310, requesting that the trial court (1) order defendants to cease and desist the illegal practice of adjudicating parking violations in contested cases before the PVB administrative hearings tribunal, (2) order defendants to file parking violation notices and/or citations in contested cases in the 36th District Court for adjudication, and (3) order defendant PVB to cease and desist the practice of assessing fines, costs, and/or penalties against parties who do not appear and plead responsible at the PVB. The trial court dismissed this request on the ground that plaintiff failed to show that he would suffer irreparable harm absent the issuance of an injunction.

In Count III, plaintiff sought an order of superintending control pursuant to MCR 3.302 and/or mandamus pursuant to MCR 3.305, requesting that the administrative hearings tribunal be directed to (1) promulgate rules of practice, (2) comply with the Michigan Rules of Court and Rules of Evidence, and (3) stop the practice of defaulting individuals who have not appeared at the PVB to admit responsibility for the parking violation notices and/or citations they have received. The trial court dismissed this request on the ground that an appeal to the circuit court was available to plaintiff.

In Count IV of his second amended complaint, plaintiff sought compensatory and/or exemplary damages for the wrongful booting, immobilization, seizure, impoundment, and/or sale of his vehicles. Plaintiff appeared to claim that the actions were wrongful because he had not admitted responsibility at the PVB, and defendants had "not filed the parking violation notices and/or citations with the 36th Judicial District Court for adjudication of contested cases and/or for the entry of defaults in cases where the individuals do not appear at the District Court." Similarly, in Count V, a due process claim, plaintiff alleged that the booting, immobilization, seizure, impoundment, and/or sale of his vehicle "without an opportunity of a prior judicial determination" deprived him of the use of his vehicle without just compensation in violation of the Due Process Clauses of the United States and Michigan Constitutions. These claims were also dismissed by the trial court.

Plaintiff appealed as of right the dismissal of his complaint. Because many issues raised by plaintiff were not addressed by the court and the lower court record was significantly undeveloped, we reversed the trial court's decisions with regard to all of plaintiff's claims and remanded the matter to the trial court for further consideration and proceedings.

On remand, the trial court held an evidentiary hearing. Plaintiff was called by defendants as a witness, but he was not in attendance and did not testify. Plaintiff presented no evidence at the evidentiary hearing indicating that the remand issues were issues of law and that an evidentiary hearing was unnecessary.

Defendants presented the witness testimony of Monica Lyght, the manager in charge of the parking violations bureau (PVB). Lyght's testimony included that (1) plaintiff never requested a hearing to contest any of the 12 parking violation notices issued to him, (2) the practice of the PVB was to send an overdue notice with regard to violations that were issued

when no response from the owner of the vehicle was received,[2] (3) the overdue notice indicated that, in the absence of any response regarding the violation and overdue notice, a citation would be filed in the 36th District Court, (4) all 12 of plaintiff's violations were filed as citations with the 36th District Court,[3] (5) the routine practice is that a copy of the citation is then sent to the individual who received the parking violation notice, (6) if the individual still does not respond, default judgments are entered,[4] (7) plaintiff only requested a hearing after his second vehicle was booted, i.e., he requested a "boot hearing," (8) the hearing was conducted on February 24, 2006, and (9) before that hearing was conducted, however, plaintiff had paid $500 and his Jeep was released on February 2, 2006.

Following the evidentiary hearing, the trial court rendered its opinion. We address each of plaintiff's claims in turn. With regard to plaintiff's request for declaratory judgment, the trial court held that there was no actual controversy in this case regarding defendants' authority to adjudicate parking violation notices. We agree.

The grant of a declaratory judgment is within the trial court's discretion. *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); *PT Today, Inc v Comm'r of Office of Financial & Ins Services*, 270 Mich App 110, 140-141; 715 NW2d 398 (2006). The availability of a declaratory judgment is governed by MCR 2.605(A) which provides:

> (1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

As our Supreme Court explained in *Associated Builders & Contractors v Director of Consumer & Industry Services Director*, 472 Mich 117, 125; 693 NW2d 374 (2005), "the rule requires that there be 'a case of actual controversy' and that a party seeking a declaratory judgment be an 'interested party,' thereby incorporating traditional restrictions on justiciability such as standing, ripeness, and mootness."

An actual controversy generally exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Shavers*, *supra* at 588-589. The plaintiff must "plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised." *Id*. at 589. An actual controversy does not exist where an injury sought to be prevented is merely hypothetical. *Id*. The plaintiff must demonstrate that his substantial interest will be detrimentally impacted in a manner different from the citizenry at large. *MOSES, Inc v SEMCOG*, 270 Mich App 401, 414; 716 NW2d 278 (2006). As our Supreme Court further explained in *Associated Builders & Contractors*, *supra* at 126-127:

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[2] An overdue notice issued to plaintiff was admitted into evidence.

[3] A citation issued to plaintiff was admitted into evidence.

[4] A default judgment against plaintiff was admitted into evidence.

The 'actual controversy' and the 'interested party' requirements of MCR 2.605(A)(1) subsume the limitations on litigants' access to the courts imposed by this Court's standing doctrine. To have standing:

> "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.'" [*Id*., quoting *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 199 L Ed 2d 351 (1992).]

In this case, plaintiff's request for a declaratory judgment was premised on his claim that the parking violation notices he received were not filed, and/or would not be adjudicated, in the 36th District Court; rather, these parking violation notices would have been adjudicated by the PVB which purportedly violated the law. First, following remand, it is undisputed that plaintiff neither admitted nor denied responsibility for any of the 12 parking violation notices; he simply ignored them. Second, it is undisputed that the normal practice of the PVB was to send overdue notices to individuals who did not respond to the parking violation notices before citations were filed with the 36th District Court. Third, it is undisputed that the 12 parking violation notices issued to plaintiff were filed as citations in the 36th District Court, contrary to plaintiff's claims. Fourth, it is undisputed that the PVB's normal practice is to send a copy of each citation to the person who received the parking violation. Fifth, plaintiff did nothing in response to the issuance of the citations by the 36th District Court; he simply ignored them. And, sixth, at least one default judgment was entered against plaintiff following the issuance of a citation.

In light of the foregoing, and after de novo review, we agree with the trial court's conclusion that declaratory relief was unavailable. See *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). Plaintiff failed to establish the existence of an actual controversy and failed to establish that he was an "interested party" under MCR 2.605(A); thus, he did not have standing to bring this claim. The issue of standing is a question of law. *Lee*, *supra* at 734. Plaintiff did not suffer an injury in fact that (a) was causally connected to defendants' purportedly unlawful adjudication of parking violations, and (b) would be redressed by a favorable decision. See *Associated Builders & Contractors*, *supra* at 126-127. Accordingly, because plaintiff was not the proper party to request adjudication of the issue whether defendants had the lawful authority to adjudicate parking violation notices, the trial court's opinion following remand in that regard was by nature advisory and is not binding on the issue. See, e.g., *Koebke v La Buda*, 339 Mich 569, 573; 64 NW2d 914 (1954); *Johnson v Muskegon Heights*, 330 Mich 631, 633; 48 NW2d 194 (1951).

Next, we turn to plaintiff's request for injunctive relief. Consistent with our remand directive, the trial court rendered an opinion on the issue with the caveat that plaintiff had not established the right to challenge defendants' authority to adjudicate parking violation notices. Because we agree with the trial court that plaintiff had not established such right, the trial court's opinion following remand in that regard is deemed advisory and is not binding on the issue. See *Koebke*, *supra*; *Johnson*, *supra*.

Here, again, plaintiff lacked standing to invoke the jurisdiction of the court. Plaintiff requested that defendants be ordered to stop adjudicating parking violations "in contested cases" but, as discussed above, plaintiff did not contest any one of the parking violation notices. Plaintiff requested that defendants be ordered to file parking violation notices and/or citations "in contested cases" with the 36th District Court for adjudication, but plaintiff's 12 uncontested parking violation notices were filed with the 36th District Court, citations were issued, and plaintiff still did not contest any of the violations or citations. Plaintiff's third request, that defendant PVB be ordered to stop assessing fines, costs, and/or penalties against parties who do not appear and plead responsible at the PVB, is likewise without merit. Again, plaintiff did not suffer an injury in fact that (a) was causally connected to defendants' purportedly unlawful adjudication of parking violations, and (b) would be redressed by a favorable decision. See *Associated Builders & Contractors*, *supra* at 126-127. Thus, plaintiff's request for injunctive relief was properly dismissed.

Next, we turn to plaintiff's request for superintending control and/or mandamus. On remand, the trial court held that plaintiff failed to meet the requirements for an order of superintending control and failed to establish that hearings before the administrative hearings tribunal must be conducted in accordance with the Michigan Court Rules and Michigan Rules of Evidence. Again, however, for the reasons discussed above, plaintiff did not have standing to bring this claim. See *id*. Thus, his request was properly dismissed.

Plaintiff's claim for compensatory and/or exemplary damages for the purported wrongful booting, immobilization, seizure, impoundment, and/or sale of his vehicles was also properly dismissed. Plaintiff appeared to claim that defendants' actions were wrongful because he had not admitted responsibility at the PVB, and defendants had "not filed the parking violation notices and/or citations with the 36th Judicial District Court for adjudication of contested cases and/or for the entry of defaults in cases where the individuals do not appear at the District Court." But, contrary to plaintiff's claim, the evidence established that plaintiff's 12 parking violation notices were filed with the 36th District Court after plaintiff neither responded to the violation notices nor the overdue notices. Citations were then issued by the 36th District Court, which were mailed to plaintiff. And, because plaintiff failed to respond to the citations, at least one default judgment was entered against him. Thus, plaintiff's claim is without merit.

Finally, plaintiff's due process claim is considered. On remand, the trial court rejected plaintiff's claim that the enforcement of the scofflaw ordinances violated his due process rights because he did not have an opportunity for a prior judicial determination of the validity of the immobilization/impoundment. We agree with that decision. Plaintiff claimed that "[t]he booting, immobilization, seizure, impoundment and/or sale of the plaintiff[']s vehicles without an opportunity for prior judicial determination deprived the plaintiff[] of the use of [his] vehicles

without just compensation in violation of the Due Process" Clauses of the United States and Michigan Constitutions. Due process does generally require notice and an opportunity to be heard in a meaningful time and manner. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). But, contrary to his claim, plaintiff was repeatedly given notice and offered "an opportunity for prior judicial determination," as detailed above, and ignored such opportunities. Thus, the dismissal of this claim was proper. In summary, the trial court's dismissal of plaintiff's complaint in its entirety was proper.

Affirmed. Defendants are entitled to costs pursuant to MCR 7.219(A).

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood