STATE OF MICHIGAN

COURT OF APPEALS

DAVID C. SWARTWOUT,

Plaintiff-Appellant,

v

KAREY D. MORROW,

Defendant-Appellee.

UNPUBLISHED
December 22, 2020

No. 351976
Muskegon Circuit Court
LC No. 19-004624-AW

Before: RONAYNE KRAUSE, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Plaintiff, David C. Swartwout, appeals as of right the trial court's order finding that the failure of defendant, Karey D. Morrow, to approve his building permit application within 10 business days constituted a denial of his application. On appeal, plaintiff argues that defendant's failure to approve his application within 10 business days constituted a violation of the Stille-DeRossett-Hale Single State Construction Code Act (CCA), MCL 125.1501 *et seq*. We dismiss this appeal as moot.

I. BACKGROUND

Plaintiff owned a house in Muskegon Heights, Michigan. Defendant, Chief of Inspections in the Department of Inspections for the City of Muskegon Heights, inspected plaintiff's property in 2016 and determined that the front porch was in violation of Muskegon Heights's housing ordinance. Plaintiff applied for and received a permit to repair the porch for the first time in November 2016. However, approximately two years later, in October 2018, plaintiff was issued a citation because the condition of the porch had not improved. Plaintiff applied for and received another permit in December 2018. A magistrate had ordered plaintiff to repair his porch by March 1, 2019. Plaintiff failed to make the repairs by that day, but the citation was ultimately dismissed after defendant failed to appear at a hearing regarding the citation. Plaintiff subsequently applied for his third permit on August 20, 2019. Defendant informed plaintiff that defendant needed a legal opinion before approving the application because he was unaware if their previous court action regarding the citation would have any effect on the issuance of the permit.

On September 16, 2019, plaintiff filed a complaint for a writ of mandamus, declaratory judgment, injunctive relief, and an ex parte motion to show cause in which he argued that defendant's failure to approve his application within 10 business days violated the CCA[1]. On September 18, 2019, plaintiff served defendant with the complaint, and the next day, defendant approved plaintiff's building permit application, approximately 22 days after plaintiff applied. Plaintiff then withdrew his motion to show cause at the respective hearing on October 4, 2019, as a result of the application being approved. The permit was granted that same day.

Defendant subsequently filed a motion for dismissal and a brief in support of his motion, which also resembled a motion for summary disposition pursuant to MCR 2.116(C)(7). Defendant listed several grounds for dismissal, including mootness and governmental immunity. Plaintiff then filed a motion for immediate trial pursuant to MCR 2.116(I)(1) and a motion for summary disposition pursuant to MCR 2.116(C)(9). However, at the motion hearing, both parties requested that the trial court enter an order stating whether defendant violated the CCA. The trial court held that defendant's failure to approve or deny plaintiff's application constituted a denial of the application. Plaintiff now appeals.

II. STANDARD OF REVIEW

Parties appearing in propria persona are not excused from providing support for their claims, but they are entitled to more generosity and lenity in construing their pleadings than would be lawyers. *Estelle v Gamble*, 429 US 97, 106-108; 97 S Ct 285; 50 L Ed 2d 251 (1976). "We review de novo both questions of law arising from a declaratory judgment action and questions of statutory interpretation." *Guardian Environmental Servs, Inc v Bureau of Constr Codes and Fire Safety, Dep't of Labor & Economic Growth*, 279 Mich App 1, 5; 755 NW2d 556 (2008). "The applicability of a legal doctrine, such as mootness, is a question of law which this Court reviews de novo," and "mootness is a threshold issue that a court must address before it reaches the substantive issues of a case." *Can IV Packard Square, LLC v Packard Square, LLC*, 328 Mich App 656, 661; 939 NW2d 454 (2019) (quotations and citations omitted). Mootness may, and in some instances should, be raised sua sponte by an appellate court. *People v Richmond*, 486 Mich 29, 35; 782 NW2d 187 (2010).

It is not clear from the trial court's order whether it specifically ruled on either party's motion for summary disposition, nor is it clear from the hearing transcript whether either party withdrew their respective motions. In any event, a grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id*. at 119. Under MCR 2.116(C)(9), where a defendant has allegedly failed to state a valid defense, the defendant's well-pleaded allegations are accepted as true, and summary disposition is appropriate if "the defendant's pleadings are so clearly untenable that as a matter of

[1] See MCL 125.1511(1).

law no factual development could possibly deny the plaintiff's right to recovery." *Slater v Ann Arbor Public Schools Bd of Ed*, 250 Mich App 419, 425-426; 648 NW2d 205 (2002).

III. ANALYSIS

Plaintiff argues that defendant's failure to approve his permit application within 10 business days violated the CCA. Because the permit has been granted, this issue is moot. An issue is moot if a court cannot grant any practical relief to a party, or if it presents only an abstract question of law independent of existing facts or rights. *Richmond*, 486 Mich at 34-35. Perhaps plaintiff should not have needed to commence suit to receive his permit, but because he did receive his permit, we cannot grant him any practical further relief. Nevertheless, there is an exception to mootness for issues "of public significance" that are "likely to recur, yet may evade judicial review." *Id*. at 37. Plaintiff believes that due to perceived animosity between the two parties and the general attitude of defendant towards plaintiff, plaintiff will continue to experience the same delaying treatment should he need to apply for permits in the future. This is ultimately the reason he wants defendant to be held in violation of the CCA, irrespective of the issuance of this particular permit.

However, there is no evidence in the record reflecting that defendant had a history of taking an extended period of time to review a permit application, nor does the record support that defendant had a history of denying permits requested by the defendant, or requested by any others. In fact, the evidence shows the opposite: plaintiff's previous applications were reviewed and approved in a timely manner. Furthermore, plaintiff has not provided evidence that the delay in granting the instant permit was caused by personal animosity or bias. Consequently, in the absence of a pattern or actual evidence of improper motive, the likelihood of future permits being unreasonably delayed is only speculation and subjective belief. Until such time as a pattern of unreasonable delays or denials is established, or at least that plaintiff is again forced to commence suit to obtain a permit, we cannot conclude on this record that this issue is likely to recur yet evade judicial review.

Plaintiff also contends that he was denied administrative remedies because the City of Muskegon Heights has failed to create a board of appeals. Pursuant to MCL 125.1514(1), each governmental subdivision enforcing the construction code must have a construction board of appeals to hear appeals and render decisions within 30 days. Pursuant to MCL 125.1511(1), failure to timely act on a permit application constitutes a denial and authorizes "an appeal to the appropriate board of appeals." However, the absence of such a board does not deprive parties of administrative appellate rights. Rather, MCL 125.1514(1) provides that a governmental subdivision's dereliction of its duty to create an appropriate board of appeals is automatically deemed a denial of an appeal, and therefore the aggrieved party may immediately appeal to the Michigan Construction Code Commission under MCL 125.1516(1). Consequently, the absence of a board of appeals does not practically deprive plaintiff of any administrative appellate rights. We note that, in any event, the City is not a party to this action, so we would be unable to grant plaintiff any relief even if his rights had been violated.

IV. CONCLUSION

Because we cannot grant plaintiff any practical relief in this matter, the instant appeal is dismissed as moot. The parties shall bear their own costs. MCR 7.219(A).

/s/ Amy Ronayne Krause
/s/ Jane E. Markey
/s/ Stephen L. Borrello