

STATE OF MICHIGAN
COURT OF APPEALS

RAHUL NAIK,

Plaintiff-Appellant,

v

WASHTENAW COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED

June 17, 2021

No. 353908

Washtenaw Circuit Court

LC No. 19-000947-CZ

Before: GADOLA, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s grant of summary disposition under MCR 2.116(C)(8) to defendant. We affirm.

In 2019, plaintiff filed a complaint alleging that defendant violated his substantive due-process rights when it denied three requests for a variance to build a nonconforming driveway on his recently acquired property (the Property) in Ypsilanti. Plaintiff alleged that defendant denied him the variance because the sight distance to the south of the Property was about half the recommended standard. Plaintiff alleged that he modified his request multiple times, each time seeking to reduce or eliminate the sight-distance hazard. He attached to his complaint a memorandum (the Memorandum) from Midwestern Consulting that reflects the history of plaintiff’s application process and his evolving proposals. Eventually, defendant moved for summary disposition under MCR 2.116(C)(8). The trial court granted the motion. Plaintiff moved for reconsideration. In his brief in support of this motion, plaintiff requested leave to amend his complaint. The trial court denied the motion, without addressing plaintiff’s request for leave to amend.

On appeal, plaintiff argues that the trial court erred when it granted summary disposition to defendant because he sufficiently pleaded a substantive due-process claim. He also argues that the trial court abused its discretion when it denied him leave to amend his complaint. We disagree as to the former and decline to address the latter.

Our state’s courts review de novo a trial court’s decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. [*Id.*, citations omitted.]

However, legal conclusions reached only after applying legal standards to a complex set of facts are not factual allegations per se and do not have to be taken as true. *Lansing Sch Ed Ass'n v Lansing Sch Dist Bd of Ed*, 293 Mich App 506, 519; 810 NW2d 95 (2011).

Both the United States and Michigan Constitutions guarantee that no person will be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003). Due process includes procedural and substantive components. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 197; 761 NW2d 293 (2008). “In disputes over municipal actions, the focus is on whether there was egregious or arbitrary government conduct,” and “only the most egregious official conduct can be said to be arbitrary in the constitutional sense. *Id.* In fact, “[t]o sustain a substantive due process claim against municipal actors, the governmental conduct must be so arbitrary and capricious as to shock the conscience.” *Id.* at 198; see also *Landon Holdings*, 257 Mich App at 176.

In this case, plaintiff failed to state a claim on which relief can be granted. See *El-Khalil*, 504 Mich at 159; see also *Mettler*, 281 Mich App at 198. Plaintiff alleged that defendant expressed concern about the safety of left turns in and out of the Property. And he alleged that, although he modified his proposed driveway in a way that would prevent left turns, defendant denied his final request. These are factual allegations that this Court must accept as true. *El-Khalil*, 504 Mich at 159. However, plaintiff’s “allegation” that defendant’s denial of a variance therefore lacked a rational basis is not a factual allegation; it is a conclusion reached after applying legal standards to a set of facts and is not sufficient to state a cause of action. See *Lansing*, 293 Mich App at 519. Additionally, plaintiff wholly fails to offer an argument that defendant’s decision should shock this Court’s conscience.

Plaintiff argues that defendant’s denial of his variance denies him reasonable access to the Property in violation of the Driveway Act, MCL 247.321 *et seq.* Section 324 of the Driveway Act requires that driveways built after its enactment conform with the rules the responsible road commission promulgates. Plaintiff’s complaint, of which the Memorandum is a part, acknowledges that the minimum sight-distance standard, set by a national organization, the American Association of State Highway & Transportation Officials, is 500 feet. And plaintiff himself alleges, as the Memorandum reflects, that the sight distance to the south of plaintiff’s proposed driveway is roughly half that distance. Plaintiff merely asks this Court to insert its

judgment over that of defendant that a driveway with about half the standard sight distance conforms with public safety.¹

As to plaintiff's claim that the trial court abused its discretion when it denied him leave to amend his complaint, we decline to address its merits. The record reflects that plaintiff did not move for leave to amend as MCR 2.118(A) requires. He merely "requested" leave to amend in his brief in support of his motion for reconsideration. Accordingly, the trial court could not have abused its discretion.

Affirmed.

/s/ Michael F. Gadola
/s/ David H. Sawyer
/s/ Michael J. Riordan

¹ Because the record does not establish when the Property was platted or when neighbors' nonconforming driveways were built, we decline to review in this posture the parties' arguments concerning the Land Division Act, MCL 560.101 *et seq.*, and the significance of the neighbors' driveways. *El-Khalil*, 504 Mich at 159-160.