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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-773

Filed 2 April 2024

Richmond County, No. 22 CVS 56

CURTIS EDENS and EDWIN EDENS, Plaintiffs,

v.

CITY OF HAMLET, MATTHEW CHRISTIAN, City Manager, and KIM LYERLY, City Code Enforcement Officer, Defendants.

Appeal by Plaintiffs from an order entered 22 March 2023 by Judge Craig Croom in Richmond County Superior Court. Heard in the Court of Appeals 21 February 2024.

*Curtis Edens and Edwin Edens, pro se, Plaintiffs-Appellants.*

*The Brough Law Firm, PLLC, by Brady N. Herman and T.C. Morphis, Jr., for Defendants-Appellees.*

WOOD, Judge.

Curtis and Edwin Edens (together, “Plaintiffs”) appeal the trial court’s dismissal of their complaint against the City of Hamlet, Matthew Christian, and Kim Lyerly (together, “Defendants”). The trial court dismissed Plaintiffs’ complaint pursuant to N.C. R. Civ. P. 12(b)(6), based on res judicata and collateral estoppel, and 12(b)(1) for failure to exhaust administrative remedies. We affirm.

**I. Factual and Procedural History**

On 20 July 2021, Kim Lyerly (“Lyerly”), the City of Hamlet Code Enforcement Officer, issued to Curtis an order to demolish a structure on property Curtis owns in Hamlet, North Carolina (the “Order to Demolish”). The Order to Demolish noted Lyerly and City Manager Matthew Christian (“Christian”) had “held a hearing” on 5 May 2021 “to consider the condition of the structure on the property.” The City of Hamlet’s Code of Ordinances § 5-112A provides:

[W]henever it appears to the Inspector, upon inspection, that any [structure] exists in violation hereof, he or she shall, if his or her preliminary investigation discloses a basis for the charges, issue and cause to be served, upon the owner of and parties in interest in the structure, a complaint stating the charges and containing a notice that *a hearing will be held before the Inspector* at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint.

(Emphasis added). Plaintiffs dispute the characterization of Curtis’ 5 May 2021 meeting with Lyerly and Christian as an “actual hearing,” arguing the “meeting was unable to go as planned due to members of [a neighboring family] being caught trespassing on” the property.

The Order to Demolish listed Lyerly’s findings as a result of the “evidence presented” at the “hearing”:

The open rear porch of the structure is falling, and is not completely secured . . . . There is deterioration throughout

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the exterior of the structure which requires immediate repair. A chimney has previously fallen onto an adjacent property, which concerns that other parts of the structure thereof could potentially collapse at any time. Holes/cracks in the structure's floors, walls, ceilings, or roof which might attract or admit rodents, and insects and/or become a breeding place. The collection of garbage, rubbish, or combustible material in or near the structure that constitute a fire hazard . . . . In addition, there is severe overgrowth on, and around the property to which, the uncontrolled growth of noxious weeds or grass to a height in excess of 12 inches is declared to be dangerous and prejudicial to the public health and safety.

The Order to Demolish declared the structure to be “an imminent danger to life or other property” and listed specific code violations of the City of Hamlet’s “Minimum Housing Code & General Ordinance.” The Order to Demolish specifically required Curtis to “[r]emove or demolish the structure within 30 days.” Finally, the Order to Demolish informed Curtis he had “the right to appeal this Order to the City of Hamlet within thirty (30) days from the date of this Order.”

On 10 August 2021, the City of Hamlet adopted an “Ordinance Directing The Building Inspector To Remove And Demolish Property As Unfit For Human Habitation And Directing That A Notice Be Placed Thereon That The Same May Not Be Occupied” (the “Ordinance”) (capitalization modified for ease of reading). The Ordinance stated Curtis had “been given a reasonable opportunity to bring the dwelling up to the standards of the Housing Code” and that Curtis “has failed to comply with the lawful order of the Building Inspector to repair or demolish the property within the time therein described.” The Ordinance authorized and directed

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the Building Inspector to “remove or demolish the dwelling” after 18 August 2021. The Ordinance was recorded in the Richmond County Register of Deeds Office. Curtis contends he did not realize the Order to Demolish and Ordinance existed until he searched the Richmond County Registry “for another document” on 22 August 2021.

Curtis sought to appeal the Order to Demolish by letter dated 25 August 2021. In the letter, Curtis accused the neighbors of damaging and defacing the property in retaliation for his refusal to allow them to park on it any longer. He also challenged Lyerly’s findings of fact in the Order to Demolish, arguing: the property was not “irreparable” because “over 6 different companies and contractors . . . let me know it is salvageable and worth saving”; there was never an infestation of insects or rodents; he intended to remedy issues with the structure; and Defendants did not provide him proper notice.

By letter dated 4 October 2021, T.C. Morphis (“Morphis”), the City Attorney, informed Curtis his attempted appeal fell outside the thirty-day deadline for appeal of the Order to Demolish. Morphis noted the thirty-day deadline for appeal was beyond the requirements of § 5-116B of the City of Hamlet’s Code of Ordinances<sup>1</sup> and

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<sup>1</sup> § 5-116B states, “Any appeal from the Inspector shall be taken *within ten days* from the rendering of the decision or service of the order, by filing with the Office of the Inspector, a notice of appeal to the Board, which shall specify the grounds upon which the appeal is based.” (Emphasis added).

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N.C. Gen. Stat. § 160D-1208(a).<sup>2</sup> He explained that “City staff elected to provide additional time.” Morphis further informed Curtis that Lyerly sent the Order to Demolish “via certified mail, return receipt requested, and first-class mail” to the address on record in the Richmond County Tax Department for the record owner of the property. Lyerly also sent a “courtesy copy” to Curtis’ email address. Morphis attached the Order to Demolish to this letter.

On 15 October 2021, Plaintiffs filed their first complaint (the “First Complaint”) in Richmond County Superior Court, 20 CVS 1011, naming the same Defendants as in this case (the City of Hamlet, Christian, and Lyerly). In the complaint, Plaintiffs requested “a fair trial” and that the City of Hamlet not proceed with demolishing the structure.

In an email dated 15 October 2021 and delivered to Curtis on 18 October 2021, Morphis stated he “received a copy of the Complaint you filed with the Richmond County Superior Court” and that he “review[ed] the file again last week.” Morphis stated, “[i]t appears that it is possible the City missed a single procedural step in the [i]nspection and hearing process.” He decided “[u]pon further review” to recommend

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<sup>2</sup> N.C. Gen. Stat. § 160D-1208(a) states:

An appeal from any decision or order of the public officer is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board, or commission of the local government. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the housing appeals board a notice of appeal that shall specify the grounds upon which the appeal is based.

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to the City of Hamlet to hold a hearing before the Hamlet Board of Adjustment (“BOA”). The City of Hamlet agreed with Morhpis’ recommendation to hold a hearing before the BOA. Morphis explained:

I know you will find this hard to believe, but the decision to provide the hearing was made last week before you filed your complaint. We were not able to communicate with you before today, however. The City staff will reach out to you as soon as possible regarding the date and time of the hearing.

Morphis requested that Curtis file a dismissal of his complaint pending in Richmond County Superior Court, explaining, “I believe you do not have a right to proceed in Superior Court without first having your hearing before the Board of Adjustment.”

On 20 October 2021, assistant City Attorney Brady Herman (“Herman”) sent an email to Curtis in which he asked, “Hamlet City staff would like to know if Monday November 15 starting at 7:00 pm would work for your schedule to conduct this hearing in front of the Hamlet Board of Adjustment? . . . Please let us know as soon as possible if this date and time works for you.” Herman further requested to schedule a date with Curtis to allow Lyerly to conduct an inspection of the structure and property. On 26 October 2021, Curtis responded to Herman, stating, “we are left feeling as though we are being taken advantage of and are being forced to undergo a process that has not been coordinated and carried out with full due diligence.” Curtis characterized the proffered BOA hearing as a “setup” and stated, “the Edens would

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like to decline both a hearing in front of the Hamlet Board of Adjustments to hear our appeal, and the proposed inspection of our property.”

The BOA held the hearing as scheduled on 15 November 2021 and wrote its “Final Order.” Plaintiffs did not attend the hearing. In the Final Order, the BOA voted 5 to 1 to affirm Lyerly’s Order to Demolish. The BOA made four conclusions of law:

1. The Board concludes that the Minimum Housing Code was in effect at the time Mr. Edens obtained ownership of the . . . property and residential structures located thereon.
2. The Board concludes that the [Order to Demolish] was made after proper inspections and hearing procedures were followed.
3. The Board concludes that the [Order to Demolish] was supported by substantial, competent, and material evidence in the record, and was not affected by any errors of law.
4. Per Code § 112(D)(2),<sup>3</sup> the Board concludes that because the structures on the Property cannot be brought into compliance with the Minimum Housing Code at a cost of less than 50% of the value of the structures, the Code Enforcement Officer was authorized to order that the structures be demolished.

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<sup>3</sup> City of Hamlet’s Code of Ordinances § 5-112(D)(2) states:

If the repair, alteration or improvement of the dwelling, building or structure cannot be made at a cost of less than 50% of the value of the dwelling or building, as determined and published most recently by the Richmond County Tax Assessor, the order may require the owner, within the time specified, to remove or demolish the structure or dwelling within 90 days.

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The BOA's Final Order further informed Curtis of his "right to appeal the decision to the Richmond County Superior Court in the nature of certiorari within 15 days after the decision of the Board is filed with the Clerk or sent to the applicant/party requesting the appeal, whichever is later."<sup>4</sup> Plaintiffs did not appeal the BOA's Final Order.

On 15 November 2021, Defendants filed an Answer and Motion to Dismiss the First Complaint, arguing the trial court should dismiss Plaintiffs' complaint pursuant to N.C. R. Civ. P. 12(b)(1), pertaining to subject matter jurisdiction, "because Plaintiffs have failed to exhaust their administrative remedies." The trial court held a hearing on the matter during the 29 November 2021 Civil Session of Richmond County Superior Court. On 29 December 2021, the trial court entered its written order dismissing the First Complaint on the basis that Plaintiffs failed to exhaust their administrative remedies "because they did not obtain a decision from the Hamlet Board of Adjustment before filing their Complaint." The trial court noted that "Per N.C. Gen. Stat. § 160D-1208 and Hamlet Code of Ordinances § 5-116, the Plaintiffs may appeal the November 15, 2021 decision of the Hamlet Board of

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<sup>4</sup> See City of Hamlet's Code of Ordinances § 5-116(D) ("Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise."); see also N.C. Gen. Stat. § 160D-1208(c) ("Every decision of the housing appeals board is subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.").



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Adjustment to the Richmond County Superior Court, once the Board of Adjustment adopts a written order.”

On 13 January 2022, Plaintiffs filed a Second Complaint which is the subject of this appeal. Plaintiffs named the same Defendants as in the First Complaint. Plaintiffs bring the same claims in the current case, requesting the City of Hamlet not to proceed with any plans to demolish any structures on the property and for a “fair jury trial.” On 11 March 2022, Defendants filed a Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(1) and (6). On 22 March 2023, the trial court filed its written order granting Defendant’s motion. Specifically, the trial court dismissed Plaintiffs’ complaint on the basis of res judicata and collateral estoppel principles as well as for Plaintiffs’ failure to exhaust their administrative remedies.

Plaintiffs were not served with the trial court’s order until 12 April 2023. On 12 May 2023, Plaintiffs filed written notice of appeal pursuant to N.C. Gen. Stat. § 7A-27(b).

**II. Analysis**

Plaintiffs raise seven issues on appeal. However, we reach only the issue of the trial court’s subject matter jurisdiction. “The standard of review on a motion to dismiss under Rule 12(b)(1) for lack of jurisdiction is *de novo*.” *Strates Shows, Inc. v. Amusements of Am., Inc.*, 184 N.C. App. 455, 459, 646 S.E.2d 418, 422 (2007). This Court has explained:

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Subject matter jurisdiction is a prerequisite for the exercise of judicial authority over any case or controversy. A party may not waive jurisdiction, and a court has inherent power to inquire into, and determine, whether it has jurisdiction and to dismiss an action *ex mero motu* when subject matter jurisdiction is lacking.

*Askew v. City of Kinston*, 287 N.C. App. 222, 228, 883 S.E.2d 85, 90 (2022) (citation and quotation marks omitted).

N.C. Gen. Stat. § 160D-1201 authorizes “any local government” to “exercise its police powers to repair, close, or demolish the dwellings consistent with the provisions of this Article” whenever a local government finds that there is a dwelling that is “unfit for human habitation” in accordance with the statute. N.C. Gen. Stat. § 160D-1201(a). N.C. Gen. Stat. § 160D-1208(a) provides:

An appeal from any decision or order of the public officer is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board, or commission of the local government. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the housing appeals board a notice of appeal that shall specify the grounds upon which the appeal is based.

Appeals are heard before a housing appeals board. The housing appeals board, in turn, must “fix a reasonable time for hearing appeals, . . . give due notice to the parties, and . . . render its decision within a reasonable time.” N.C. Gen. Stat. § 160D-1208(b). The housing appeals “board may reverse or affirm, wholly or partly, or may

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modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter.” *Id.*

Finally, N.C. Gen. Stat. § 160D-1208(c) states, “Every decision of the housing appeals board is subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, *but not otherwise.*” (Emphasis added).

The City of Hamlet’s Code of Ordinances mirrors state statute. Section 5-116B of the Code states, “Any appeal from the Inspector shall be taken within ten days from the rendering of the decision or service of the order, by filing with the Office of the Inspector, a notice of appeal to the Board, which shall specify the grounds upon which the appeal is based.” Section 5-116D states, “Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.”

Here, Lyerly issued the Order to Demolish on 20 July 2021. Pursuant to both N.C. Gen. Stat. § 160D-1208(a) and Code § 5-116B, Plaintiffs had ten days to appeal the decision. As both the Order to Demolish and Morphis noted, the City of Hamlet elected in their discretion to allow Plaintiffs thirty days to appeal the decision. Curtis sought to appeal the Order to Demolish by letter dated 25 August 2021, which was outside the thirty-day deadline for appeal. Noting that it was “possible the City missed a single procedural step in the [i]nspection and hearing process,” Morphis recommended that the City of Hamlet allow Plaintiffs to have a hearing anyway, and it agreed to do so. On 15 October 2021, Plaintiffs filed their First Complaint without

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appealing the Order to Demolish to the BOA or superior court. On 20 October 2021, Herman asked Curtis by email if a BOA hearing on 15 November 2021 at 7:00 p.m. would work with his schedule.

On 26 October 2021, Curtis responded by email that he and his brother declined to participate in a hearing. The BOA held a hearing as scheduled on 15 November 2021. Plaintiffs did not attend. The same day, the BOA affirmed the Order to Demolish by a vote of 5 to 1. Pursuant to both N.C. Gen. Stat. § 160D-1208(c) and Code § 5-116D, Plaintiffs had fifteen days to appeal by *certiorari* the BOA's decision before Richmond County Superior Court. They did not do so. Following the court's dismissal of Plaintiffs' First Complaint for failure to exhaust their administrative remedies "because they did not obtain a decision from the Hamlet Board of Adjustment before filing their Complaint," Plaintiffs filed a new complaint after the 15 November 2021 BOA hearing.

First, Plaintiffs failed to appeal the Order to Demolish, although informed of their right to appeal and how to appeal in the order itself. However, after being contacted by Plaintiffs, the City agreed to hold a hearing before the BOA anyway, which Plaintiffs then chose not to attend. Second, they failed to appeal the BOA's Final Order, which they were informed they could have done "in the nature of *certiorari*" before the superior court. N.C. Gen. Stat. § 160D-1208(c). Instead of appealing the BOA's Final Order, they filed their Second Complaint, which was merely an attempt to appeal the Order to Demolish and BOA's Final Order without

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complying with the necessary appellate procedure provided by statute and the Code of Ordinances. N.C. Gen. Stat. § 160D-1208(c) states, “Every decision of the housing appeals board is subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, *but not otherwise.*” (Emphasis added). Thus, Plaintiffs were required to seek review of the BOA’s Final Order with the superior court through *certiorari*. Because they did not seek review of the order by *certiorari* pursuant to N.C. Gen. Stat. § 160D-1208(c) or even the City of Hamlet’s own Code § 5-116D, their complaint was not properly before the trial court. Thus, the trial court did not have subject matter jurisdiction over the issues raised in Plaintiffs’ Second Complaint and properly dismissed it.

**III. Conclusion**

For the foregoing reasons, we affirm the trial court’s dismissal of Plaintiffs’ complaint for lack of subject matter jurisdiction pursuant to N.C. R. Civ. P. 12(b)(1).

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).