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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-73

No. COA20-328

Filed 16 March 2021

Guilford County, No. 19 CVS 5975

J. DWAYNE CRAWFORD, Resident of Town of Summerfield and DON A. WENDELKEN, Resident of Town of Summerfield, Plaintiffs,

v.

TOWN OF SUMMERFIELD, C. DIANNE LAUGHLIN, Individually and in her disputed Official Capacity as Town of Summerfield Council Member, DENA H. BARNES, Individually and in her Official Capacity as Town of Summerfield Council Member, JOHN W. O'DAY, Individually and in his Official Capacity as Town of Summerfield Council Member, and E. REECE WALKER, Individually and in his Official Capacity as Town of Summerfield Council Member, Defendants.

Appeal by Plaintiffs from order entered 22 January 2020 by Judge David L. Hall in Guilford County Superior Court. Heard in the Court of Appeals 10 February 2021.

Rossabi Reardon Klein Spivey PLLC, by Gavin J. Reardon, for the Plaintiffs-Appellants.

Nelson Mullins Riley & Scarborough LLP, by Lorin J. Lapidus, G. Gray Wilson, and Stuart Russell, for the Defendants-Appellees.

GRIFFIN, Judge.

Plaintiffs J. Dwayne Crawford and Don A. Wendelken brought this action seeking a declaratory judgment that Defendant Town of Summerfield

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(“Summerfield”) had violated N.C. Gen. Stat. § 1-512 by using public funds to pay for Defendant C. Dianne’s Laughlin’s (“Laughlin”) attorney’s fees in a *quo warranto* action challenging her right to serve on the Summerfield Town Council. The trial court dismissed Plaintiffs’ action with prejudice for (1) failure to properly allege standing, (2) failure to allege injury, and (3) in consideration of prior decisions which concerned the same or similar underlying facts.

¶ 2 Plaintiffs appeal from an order of the trial court denying their motion to amend their complaint to properly show standing and granting Summerfield’s motion to dismiss with prejudice. Because Plaintiffs’ complaint failed to properly allege standing and the trial court did not abuse its discretion in denying Plaintiffs’ motion to amend their complaint, we affirm.

I. Factual and Procedural Background

¶ 3 In April 2018, the Guilford County Board of Elections (the “BOE”) determined that then-councilman Todd E. Rotruck (“Rotruck”) was not a resident of Summerfield and removed Rotruck from his seat on the Summerfield Town Council. Rotruck responded by filing two lawsuits challenging their decision. Both lawsuits alleged that the BOE had improperly determined that he was ineligible to serve on the Summerfield Town Council, improperly removed him from his seat, and improperly declared the seat vacated. The first action named the Town of Summerfield as a defendant; the trial court dismissed this action with prejudice pursuant to Rules

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12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. The second action named the BOE as a defendant; the trial court affirmed the BOE's decisions, and this Court later affirmed the trial court's ruling. *See Rotruck v. Guilford Cty. Bd. of Elections*, 267 N.C. App. 260, 833 S.E.2d 345 (2019).

¶ 4 In October 2018, the Summerfield Town Council appointed Laughlin to fill the seat vacated by Rotruck. Rotruck obtained permission from the North Carolina Attorney General's Office to file a *quo warranto* action challenging Laughlin's right to hold the seat; Rotruck then filed a *quo warranto* action on 3 January 2019, his third action arising from these circumstances. The trial court stayed Rotruck's *quo warranto* action pending the result of this Court's decision on appeal in his second action. Rotruck ultimately voluntarily dismissed his *quo warranto* action in January 2020.

¶ 5 On or about 30 May 2019, Plaintiffs filed a *pro se* complaint contending that Summerfield had unlawfully spent public funds to pay for Laughlin's legal defense in Rotruck's *quo warranto* action. Plaintiffs amended their complaint *pro se* on 5 July 2019. Plaintiffs' amended complaint requested the trial court declare that Summerfield had violated Section 1-521 of the North Carolina General Statutes and Article V, Section 2(1) of the North Carolina Constitution by improperly appropriating public funds to pay for Laughlin's legal fees in Rotruck's *quo warranto* action; declare that Summerfield's contract with Laughlin's attorneys was void;

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enjoin Summerfield from paying any further legal fees; and direct the members of the Summerfield Town Council to repay the improperly appropriated funds. Plaintiffs' first complaint and amended complaint did not include any grounds describing Plaintiffs' standing to bring their claim on behalf of all taxpayers in Summerfield.

¶ 6 On 5 September 2019, Summerfield filed a motion to dismiss Plaintiffs' amended complaint, arguing, *inter alia*, that Plaintiffs "failed to plead that they have standing as taxpayers of the Town of Summerfield." Summerfield then filed an answer to the amended complaint on 9 September 2019. The trial court scheduled a hearing on Summerfield's motion to dismiss for 28 October 2019. Plaintiffs thereafter retained legal counsel and, immediately prior to the hearing on the morning of Monday, 28 October 2019, filed a motion to amend their complaint a second time.¹

¶ 7 Summerfield's motion to dismiss came on for hearing on 28 October 2019, but the trial court deferred the matter to be heard on 9 December 2019 alongside Plaintiffs' newly filed motion to amend. Following the hearing on the matters, the trial court entered an order (the "Dismissal Order") on 22 January 2020 denying

¹ Plaintiffs were initially joined by a third co-plaintiff, Danny B. Nelson, in the filing of their complaint and amended complaint. After retaining counsel and prior to the filing of Plaintiffs' motion to amend their complaint a second time, Nelson dismissed each of his claims against Summerfield without prejudice under Rule 41(a)(1) of the North Carolina Rules of Civil Procedure.

Plaintiffs’ motion to amend their complaint a second time and granting Summerfield’s motion to dismiss Plaintiffs’ amended complaint. Plaintiffs appeal.

II. Analysis

¶ 8 Plaintiffs first contend the trial court abused its discretion by denying their motion to amend their complaint under Rule 15 of the North Carolina Rules of Civil Procedure. “When reviewing the denial of a motion to amend, the standard of review is whether the trial court’s denial amounted to a manifest abuse of discretion.” *Pruett v. Bingham*, 238 N.C. App. 78, 86, 767 S.E.2d 357, 363 (2014) (citing *Calloway v. Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972)), *aff’d*, 368 N.C. 709, 782 S.E.2d 510 (2016).

¶ 9 Under Rule 15, a party may only amend a pleading after a responsive pleading has been served if the party seeking amendment moves for leave of court to amend. N.C. Gen. Stat. § 1A-1, Rule 15 (2019). Leave of court to amend a pleading “shall be freely given when justice so requires.” *Id.* Nonetheless, “[i]f the trial court articulates a clear reason for denying the motion to amend, then our review ends.” *NationsBank of N.C., N.A., v. Baines*, 116 N.C. App. 263, 268, 447 S.E.2d 812, 815 (1994). Further, “[w]here a trial court fails to state specific reasons for denial of a motion to amend or where the trial court cites reasons that are inconsistent or incomplete, this Court may examine any apparent reasons for such a denial.” *Brown v. N.C. Div. of Motor Vehicles*, 155 N.C. App. 436, 439, 573 S.E.2d 246, 248 (2002) (citation omitted).

“Reasons justifying denial of an amendment are (a) undue delay, (b) bad faith, (c) undue prejudice, (d) futility of amendment, and (e) repeated failure to cure defects by previous amendments.” *Martin v. Hare*, 78 N.C. App. 358, 361, 337 S.E.2d 632, 634 (1985) (citation omitted).

¶ 10 The trial court in this case articulated its reasoning for denying Plaintiffs’ motion to amend in its Dismissal Order. While “cognizant that findings of fact and conclusions of law are not congruent with orders on motions to amend and to dismiss,” the court chose to “provide guidance for any reviewing Court regarding the propriety and necessity of” its decision to deny Plaintiffs’ motion to amend and grant Summerfield’s motion to dismiss. The Dismissal Order explained, *inter alia*,

The legal basis for denying [Plaintiffs’ motion to amend] and for allowing [Summerfield’s motion to dismiss] dovetails in law and in fact. First, the Motion to Amend, which seeks to amend [Plaintiffs’ amended complaint], should not be allowed because justice does not so require. To the contrary, to allow the amendment and the filing of [a second amended complaint by Plaintiffs] would frustrate the ends of justice as related herein. Absent the [additional amendments proposed by Plaintiffs], [P]laintiffs lack standing to bring this action and have failed to allege actual injury or damages.

The Dismissal Order also explained that the trial court felt further compelled to reach its decision based on prior decisions reached by the trial court and this Court in Rotruck’s actions against Summerfield and the BOE. The explanations in the Dismissal Order do not clearly articulate a reason we have specifically recognized as

justifying denial of a motion to amend. However, its explanations guide our examination.

¶ 11 Plaintiffs filed their first complaint *pro se* on 30 May 2019, then amended their complaint over one month later on 5 July 2019—again *pro se*—as a matter of right before Summerfield filed a response. *See* N.C. Gen. Stat. § 1A-1, Rule 15(a) (“A party may amend his pleading once as a matter of course at any time before a responsive pleading is served[.]”). Plaintiffs concede in their brief on appeal that their first complaint and their amended complaint “admittedly failed to adequately allege their standing as taxpayers.” Plaintiffs then filed their motion to amend their complaint a second time on 28 October 2019, nearly four months after they filed the first amended complaint, almost two months after Summerfield filed its motion to dismiss and its answer, and only hours before the hearing on Summerfield’s motion to dismiss.

¶ 12 The Record therefore supports a conclusion that Plaintiffs failed to cure the defect in their complaint in a prior amendment, and unduly delayed in filing an amendment which actually cured the defect. Indeed, the trial court’s decision to postpone the October 28 hearing on Summerfield’s motion to dismiss until December 9 shows that the filing of Plaintiffs’ motion to amend for a second time mere hours before the hearing was prejudicial to Summerfield’s readiness to argue its case. *See Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679, 748 S.E.2d 154, 161 (2013) (holding trial court did not abuse its discretion in denying the plaintiff’s motion to amend for

undue delay and prejudice where motion was filed “*only* five days before the hearing on [the] defendants’ motion for summary judgment” (emphasis added)).

¶ 13 Notably, Plaintiffs retained counsel and sought to amend their complaint a second time only after Summerfield filed its motion to dismiss, which argued for dismissal based in part on Plaintiffs’ failure to properly allege standing. Plaintiffs’ motion to amend for a second time states that they did not retain counsel until “early October 2019” and that newly retained counsel felt amendment was appropriate to “clarify certain jurisdictional issues” unclearly raised in Plaintiffs’ first *pro se* amended complaint, among other reasons. But this Court has made it clear that “[i]gnorance of the law is no excuse; a party does not need notice that she must allege standing because standing is a jurisdictional prerequisite and the complaining party bears the burden of alleging in its pleadings that it has standing.” *Cherry v. Wiesner*, 245 N.C. App. 339, 353, 781 S.E.2d 871, 881 (2016) (citation omitted); *see also Rabon v. Hopkins*, 208 N.C. App. 351, 354, 703 S.E.2d 181, 185 (2010) (affirming denial of leave to amend where the moving party offered no defensible explanation for why it failed to make a more timely motion to amend).

¶ 14 The trial court’s decision to provide substantial guidance for any reviewing Court shows that it considered Plaintiffs’ attempt to file a second amendment to cure the jurisdictional defects in their first two complaints to be untimely, prejudicial, and

futile. We cannot say that the trial court committed a “manifest abuse of discretion” in denying Plaintiffs’ motion. *Pruett*, 238 N.C. App. at 86, 767 S.E.2d at 363.

¶ 15 Plaintiffs next contend the trial court erred by granting Summerfield’s motion to dismiss their appeal under Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Motions to dismiss under Rule 12(b)(1) assert that the trial court lacked jurisdiction over the subject matter of the case. N.C. Gen. Stat. § 1A-1, Rule 12(b)(1) (2019). “We review the decision of a trial court to dismiss an action for lack of subject matter jurisdiction de novo.” *Catawba Cty. ex rel. Rackley v. Loggins*, 370 N.C. 83, 87, 804 S.E.2d 474, 477–78 (2017) (citation omitted). Motions to dismiss under Rule 12(b)(6) argue that the complainant failed to state a claim for which the court can provide a remedy. N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2019). Rule 12(b)(6) motions to dismiss are also reviewed de novo to determine “whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory.” *Bridges v. Parrish*, 366 N.C. 539, 541, 742 S.E.2d 794, 796 (2013) (citation omitted).

¶ 16 Plaintiffs failed to plead standing in the pleadings before the trial court, and the trial court therefore did not err by dismissing their complaint for failure to state a claim for relief. *See Energy Inv’rs Fund, L.P., v. Metric Constructors, Inc.*, 351 N.C. 331, 337, 525 S.E.2d 441, 445 (2000) (“A lack of standing may be challenged by motion to dismiss for failure to state a claim upon which relief may be granted.” (citation

omitted)). Even treating each pleaded allegation in the complaint as true, Plaintiffs failed to plead that they were the proper plaintiffs to bring their claim before the court. *See Brown*, 155 N.C. App. at 440, 573 S.E.2d at 249 (affirming dismissal of the plaintiffs' complaint for failure to properly plead standing where trial court did not abuse its discretion in denying plaintiffs' motion to amend the complaint to cure the defect).

III. Conclusion

¶ 17

We hold that, based on the Record before us, the trial court did not abuse its discretion by denying Plaintiffs' motion to amend their complaint. We further hold the trial court did not err by dismissing Plaintiffs' complaint because their complaint failed to show proper standing to bring the claims as alleged and therefore failed to state a claim for which the court could provide a remedy.

AFFIRMED.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).