

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 29, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 01-2550

Cir. Ct. No. 01 CV 3493

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**THE LAKEFRONT NEIGHBORHOOD COALITION,
DAVID AND HELEN MACGREGOR, MIMI MULLENAX,
BARBARA STEIN, ANNETTE STODDARD-FREEMAN AND
EDWIN AND BARBARA WILEY,**

PLAINTIFFS-APPELLANTS,

v.

**CITY OF MILWAUKEE AND THE REDEVELOPMENT
AUTHORITY OF THE CITY OF MILWAUKEE,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Reversed and cause remanded.*

Before Wedemeyer, P.J., Fine and Peterson, JJ.

¶1 PER CURIAM. The Lakefront Neighborhood Coalition, David and Helen MacGregor, Mimi Mullenax, Barbara Stein, Annette Stoddard-Freeman, and Edwin and Barbara Wiley appeal from a judgment dismissing their complaint

against the City of Milwaukee and the Redevelopment Authority of the City of Milwaukee. The Coalition contends that the trial court erred when it concluded that the Coalition and the individual plaintiffs lacked standing to sue. Because the trial court erred when it concluded at the motion to dismiss stage that the plaintiffs did not have standing to pursue this matter, we reverse and remand for further proceedings.

I. BACKGROUND

¶2 In August 2000, the City issued a request for proposals for the purchase and development of a vacant piece of land owned by the City, which was located at 923 East Kilbourn Avenue. The property includes a green space at the southwest corner of the intersection of Kilbourn and Prospect Avenues and the right turn right-of-way lane at that intersection (“vacant land”). The City accepted New Land Enterprises’ proposal to construct a thirty-story tower luxury condominium project on the vacant land.

¶3 On January 4, 2001, the Redevelopment Authority published notice of a public hearing at which it would consider whether to designate the vacant land as “blighted” under the Blight Elimination and Slum Clearance Act. *See* WIS. STAT. § 66.1333(2m)(bm). The Coalition attempted to prevent the Redevelopment Authority from declaring the vacant land “blighted.” On January 1, 2001, the Coalition filed a formal objection with the Redevelopment Authority asserting that the property at issue did not satisfy the statutory requirements to be declared “blighted.” Despite the objection, on January 18, 2001, the Redevelopment Authority declared the vacant land as “blighted,” and proceeded to obtain the approval of the common council. On February 6, 2001,

the common council approved the resolution designating the property “blighted” and approved the transfer of the property to the Redevelopment Authority.

¶4 On April 20, 2001, the Coalition and the individual plaintiffs filed a complaint in the circuit court of Milwaukee County to challenge the “blighted” designation and to stop the proposed new condominium development. The complaint alleges two claims: one for declaratory judgment seeking a declaration that the Redevelopment Authority erroneously declared this property “blighted,” and one for certiorari review alleging that the resolution declaring the property “blighted” was unconstitutional, unlawful, arbitrary and capricious and constituted an abuse of authority.

¶5 The City filed motions to dismiss, which the trial court granted. The trial court ruled that the Coalition and the individual plaintiffs lacked standing to sue and that the complaint was insufficient to state a claim for relief. The Coalition and the individual plaintiffs now appeal.

II. DISCUSSION

¶6 The issue in this case is whether the Coalition and the individual plaintiffs have the requisite standing to assert a complaint against the City and the Redevelopment Authority with respect to the designation of the vacant land as “blighted.” The trial court reviewed the complaint and determined that the Coalition and the individual plaintiffs failed to allege any identifiable injury and, therefore, did not have standing to sue. The trial court also ruled that the complaint failed to state a claim for which relief could be granted. We disagree with the trial court’s ruling. Accordingly, we reverse the judgment and remand for further proceedings.

¶7 A motion to dismiss for failure to state a claim tests whether the complaint is legally sufficient to state a claim for which relief may be granted. *Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 331, 565 N.W.2d 94 (1997). The legal sufficiency of the complaint is a question of law that this court reviews *de novo*. *Wausau Tile, Inc. v. County Concrete Corp.*, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). In examining the legal sufficiency of the complaint, the court assumes that the facts alleged in the complaint are true. *Id.*

¶8 In order to maintain a declaratory judgment action, a plaintiff must show: (1) a justiciable controversy exists; (2) the controversy is between persons whose interests are adverse; (3) the parties seeking declaratory relief must have a legal, protectible interest in the controversy; and (4) the issue is ripe for judicial determination. *Tooley v. O'Connell*, 77 Wis. 2d 422, 433-34, 253 N.W.2d 335 (1977). In order to demonstrate proper standing, the party must show that he or she has “a personal stake in the outcome of the controversy as to give rise to that adverseness necessary to sharpen the presentation of issues” *Moedern v. McGinnis*, 70 Wis. 2d 1056, 1064, 236 N.W.2d 240 (1975). Our courts have held that an “identifiable trifle” is enough to confer standing. *State ex rel. First Nat'l Bank v. M&I Peoples Bank*, 95 Wis. 2d 303, 309, 290 N.W.2d 321 (1980). Having set forth the appropriate legal standards, we turn to an analysis of the complaint.

¶9 The first claim in the complaint seeks declaratory judgment. The declaratory judgment statute provides: “Any person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” WIS. STAT.

§ 806.04(2). Based on our review, we conclude that the complaint states a claim for which relief could be granted. The complaint identifies a justiciable controversy—whether the vacant land was properly designated as “blighted;” the complaint identifies parties with adverse interests; the complaint alleges that the parties seeking relief have an identifiable interest; and the controversy is certainly ripe for determination.

¶10 The City and the Redevelopment Authority suggest that the Coalition and the individual plaintiffs do not satisfy the third requirement because each failed to allege an identifiable injury. We disagree. The complaint specifically states that both the Coalition and the individual plaintiffs will be injured by the “blighted” designation. The injuries identified include: the inability of the parties to use and enjoy their residences by decreasing the green space which is currently used for recreation and aesthetic enjoyment; an increase in potential safety hazards resulting from the removal of the right-of-way while driving to and from the residences; and obstruction of the view of the lakefront. Plaintiffs who allege injury to aesthetic, recreational, health and safety interests, based solely on their physical proximity to the affected area, may satisfy standing criteria. *Milwaukee Brewers Baseball Club v. DHSS*, 130 Wis. 2d 56, 65-69, 387 N.W.2d 245 (1986). The interests alleged in the instant complaint rise above the mere “trifle” standard that is required to justify standing.

¶11 Whether the plaintiffs will actually be able to prove the allegations is not the question. At this stage of the lawsuit, we are required to accept the allegations in the complaint as true and view them in a light most favorable to the plaintiffs. *Keller v. Welles Dep’t Store*, 88 Wis. 2d 24, 28-29, 276 N.W.2d 319 (Ct. App. 1979). Applying this standard, we conclude that the plaintiffs’ complaint states a viable claim for declaratory judgment.

¶12 The declaratory statute permits “any person” whose “rights” are affected by a statute to seek a declaration of those rights. Here, the plaintiffs allege that their rights are affected by the City and Redevelopment Authority’s failure to follow proper statutory procedures when rendering the decision to declare the vacant land “blighted.” Their pleading is sufficient to withstand a motion to dismiss.

¶13 We also conclude that the pleading is sufficient to state a claim for a certiorari action. The complaint alleges that adopting the resolution, which declared the vacant land “blighted,” constituted “unlawful, arbitrary and capricious” conduct. The complaint alleges that, as a result, the plaintiffs are entitled to certiorari review pursuant to WIS. STAT. § 781.01 to determine the legality of the actions taken. This method of challenging determinations made by governmental bodies under particular statutes was recognized in *State ex rel. Parker v. Fiedler*, 180 Wis. 2d 438, 443-44, 509 N.W.2d 440 (Ct. App. 1993), *rev’d on other grounds*, 184 Wis. 2d 668, 517 N.W.2d 449 (1994). In *Parker*, we held that the plaintiffs, who lived near where an allegedly “homicidal pedophile” prisoner, released for “good time served,” had standing to file a writ of certiorari asking the court to review the “good time” calculation. *Id.* at 441, 452-55.

¶14 Similarly, the plaintiffs in the instant case filed a writ of certiorari asking the court to review whether the Redevelopment Authority’s decision declaring the vacant land as “blighted” was proper. As in *Parker*, the plaintiffs here are basing standing on proximity—the fact that their residences adjoin the

property involved. We conclude that the pleading as to the certiorari claim is sufficient to withstand a motion to dismiss.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

