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DISTRICT I

January 10, 2023

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You are hereby notified that the Court has entered the following opinion and order:

2021AP643

James Dieter v. ProbuColls Association (L.C. # 2020CV6024)

Before Donald, P.J., Dugan and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James Dieter and Charles Schmitt (collectively “Dieter”) appeal the order dismissing their claims against the City of Milwaukee. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Dieter owns properties in the City of Milwaukee. Adjacent to those properties is the Clark House, which consists of a group of five properties. ProbuColls Association (ProbuColls) owns the Clark House and is a faith-based nonprofit organization that houses people who are unemployed, homeless, recently incarcerated, and otherwise underprivileged.

As relevant for purposes of this appeal, Dieter filed a complaint alleging that the Clark House is a public nuisance and that the properties have been operated, and continue to be operated, as illegal rooming houses.² Dieter, in his second cause of action, sought a declaratory judgment against the City that the rooming house licenses issued to ProbuColls for the Clark House are void. In his third cause of action, he sought a declaratory judgment against the City of Milwaukee's Department of Neighborhood Services (DNS) for its alleged failure to enforce ordinance violations at the Clark House.³ Dieter requested injunctive relief enjoining the City from granting rooming house licenses at the Clark House.

The City and ProbuColls moved to dismiss Dieter's claims. The circuit court held, in pertinent part, that Dieter lacked standing. The circuit court also concluded that the lawsuit against the City could not be maintained because Dieter failed to file a certiorari action and the time to do so had passed.⁴ The circuit court entered an order dismissing Dieter's claims against the City. This appeal follows.

² Dieter's complaint alleged five separate causes of action against three separate defendants. We focus on the causes of action that are at issue on appeal.

³ Dieter later stipulated to the dismissal of DNS as a party to this action.

⁴ The circuit court's decision as to ProbuColls is not final and as such, ProbuColls is not a party to this appeal.

A motion to dismiss for failure to state a claim “tests the legal sufficiency of the complaint.” *Watts v. Watts*, 137 Wis. 2d 506, 512, 405 N.W.2d 303 (1987). We accept as true all facts set forth in the complaint, and we make all reasonable inferences in favor of the plaintiff. *Id.* “This court does not add facts when analyzing the sufficiency of the complaint, nor does this court accept as true any legal conclusions it states. To survive a motion to dismiss, a complaint ‘must allege facts that, if true, plausibly suggest a violation of applicable law.’” *Fleming v. Amateur Athletic Union of U.S., Inc.*, 2022 WI App 46, ¶13, 404 Wis. 2d 377, 979 N.W.2d 614 (citation omitted).

We independently review the circuit court’s decision on a motion to dismiss. *See id.* In reviewing the circuit court’s decision, we can affirm on different grounds than those relied on by the circuit court. *See State v. Gaines*, 197 Wis. 2d 102, 109 n.5, 539 N.W.2d 723 (Ct. App. 1995) (“[W]e may affirm a judgment or order supported by the record even though the [circuit] court may have reached the same result for a different reason.”).

With these standards in mind, we first conclude that the narrow issue of the proper means of seeking judicial review of the issuance of rooming licenses is dispositive as to Dieter’s second cause of action.⁵ Dieter sought to challenge the City’s rooming house license determinations by alleging a claim for declaratory and injunctive relief. However, certiorari review is the appropriate means to challenge the validity of the City’s licensing determinations. *See* WIS. STAT. § 68.13(1) (providing that judicial review of municipal licensing decisions is by certiorari); *see also Ottman v. Town of Primrose*, 2011 WI 18, ¶34, 332 Wis. 2d 3, 796 N.W.2d

⁵ Consequently, we are not going to address standing. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed).

411 (explaining that certiorari is a mechanism by which a court tests validity of municipal, administrative or lower-court decisions). Consequently, Dieter has failed to state a claim upon which relief can be granted, and the circuit court properly dismissed his second cause of action.

In his reply brief, Dieter asserts that “[n]othing in the [C]ity’s response suggests that certiorari review is the exclusive procedure available” to him. The City argued, and provided legal support for the proposition, that “declaratory relief is disfavored if there is a ‘speedy, effective, and adequate’ alternative remedy” and certiorari “represents such an alternative remedy.” See *Voters with Facts v. City of Eau Claire*, 2017 WI App 35, ¶35, 376 Wis. 2d 479, 899 N.W.2d 706 (citation omitted). In contrast, Dieter offers no supporting legal authority for his position on this point. Nor does he offer any support for his “alternative” contention that the circuit court “could have, and perhaps should have, interpreted [Dieter’s] filing as a request for certiorari review.” He likewise requests that—if we accept the City’s position on this issue—we convert his declaratory judgment claim to a certiorari claim and allow the litigation to continue as a blended action.

Dieter is asking the courts to do his work for him. Setting aside the undeveloped nature of his arguments in this regard, see *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992), we cannot act as his advocate and “abandon our neutrality to develop arguments” for him, see *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82. Dieter’s second cause of action was properly dismissed.

Dieter’s third cause of action alleged that DNS failed to enforce licensing and building code ordinances with regard to the Clark House. At the outset, we note that the circuit court’s order indicates that Dieter’s third cause of action was dismissed based on a stipulation by the

parties.⁶ On appeal, however, Dieter continues to highlight his allegations that DNS failed to take action and failed to enforce code violations occurring at the Clark House.

Given that both parties have briefed the issue, we will address the merits. We conclude that the circuit court properly dismissed this claim because a municipality cannot be compelled to enforce its building and license codes. DNS is not required to prosecute every violation of its ordinances. *See Vretenar v. Hebron*, 144 Wis. 2d 655, 664-65, 424 N.W.2d 714 (1988) (holding “there is no obligation on the part of municipal officials to prosecute all cases in which an individual commits a violation of the municipal ordinance code”). “To hold otherwise would be tantamount to divesting a municipality of the discretion necessary for effective and efficient law enforcement. This we decline to do.” *See id.* at 665. The circuit court properly dismissed Dieter’s third cause of action.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁶ During the hearing, the circuit court began its analysis by stating: “First, the [c]ourt grants dismissal of the third cause of action due to the parties’ stipulation that the [DNS] is not a suable entity.” The circuit court then moved on to analyzing Dieter’s second cause of action.