

IN THE COURT OF APPEALS OF IOWA

No. 20-1350
Filed September 22, 2021

ERICH RIESENBERG,
Plaintiff-Appellant,

vs.

**SCOTT SANDERS, IN HIS OFFICIAL CAPACITY AS CITY MANAGER OF THE
CITY OF DES MOINES, and THE CITY OF DES MOINES, IOWA, CITY
COUNCIL,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Sarah Crane (motion to dismiss) and David Nelmark (summary judgment), Judges.

Erich Riesenbergs appeals the rulings dismissing his petition against the defendants. **AFFIRMED.**

Erich Riesenbergs, Des Moines, self-represented appellant.

Michelle Mackel-Wiederanders, Assistant City Attorney, Des Moines, for appellee.

Considered by Bower, C.J., and Tabor and Ahlers, JJ.

AHLERS, Judge.

Erich Riesenbergs filed a four-count petition alleging the city council of Des Moines and city manager Scott Sanders (collectively “City”) violated Iowa law when the City entered into a contract with a private company for animal control property and services. Specifically, Riesenbergs alleged the contract was illegal because it: (1) was exempted from competitive bidding without good cause, (2) prohibited public oversight, (3) subsidized a private company, and (4) imposed an illegal tax. Riesenbergs cast his filing as a petition for writ of certiorari. The district court granted the City’s motion to dismiss because Riesenbergs’s claims were not appropriate for certiorari action. The court then recast the proceeding as a declaratory-judgment action, dismissed count 1 for failure to state a claim, dismissed counts 2 and 4 for lack of standing, and found count 3 survived dismissal as a declaratory-judgment claim. The court later granted summary judgment in favor of the City on the remaining count, count 3.

Riesenbergs appeals the rulings granting the City’s motions to dismiss and for summary judgment. We review the district court rulings for correction of errors at law. See *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 863 (Iowa 2005) (certiorari); *Turner v. Iowa State Bank & Tr. Co.*, 743 N.W.2d 1, 2–3 (Iowa 2007) (motion to dismiss); *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008) (summary judgment). In reviewing claims resolved by motion to dismiss, we view “the well-pled facts of the petition in the light most favorable to the plaintiff, resolving any doubts in the plaintiff’s favor.” *Turner*, 743 N.W.2d at 3. “A motion to dismiss is properly granted only if a plaintiff’s petition on its face shows no right of recovery under any state of facts.” *Rees v. City of*

Shenandoah, 682 N.W.2d 77, 79 (Iowa 2004) (altered for readability) (quoting *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003)). In reviewing the claim resolved by summary judgment, we view the facts in the light most favorable to Riesenbergs as the non-moving party, and we will affirm summary judgment only “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” *Wallace*, 754 N.W.2d at 857 (quoting Iowa R. Civ. P. 1.981(3)).

Riesenbergs raises numerous issues with the district court’s rulings in his appellate brief. We find it necessary to address only the court’s ultimate conclusions.

We begin with Riesenbergs’s claim the district court erred by concluding he could not seek review of the contract by a certiorari action. Initiation of certiorari actions are governed by Iowa Rule of Civil Procedure 1.1401, which states:

A party may commence a certiorari action when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.

Riesenbergs does not claim his action was authorized by statute, so, by rule, the only remaining manner by which Riesenbergs could initiate a certiorari action would be if the City acted illegally in “exercising judicial functions.” The district court found Riesenbergs could not seek review of the contract by writ of certiorari because the City did not exercise “judicial functions” in approving the contract. We consider the following factors in determining whether a body exercised judicial functions:

(1) whether the questioned act involves a proceeding in which notice and an opportunity to be heard are required; (2) whether a determination of rights of parties is made which requires the exercise of discretion in finding facts and applying the law thereto; or (3)

whether the challenged act goes to the determination of some right the protection of which is the peculiar office of the courts.

Wallace, 754 N.W.2d at 858 (internal quotations and citation omitted). None of these factors indicates the City exercised judicial functions. Riesenbergs was not entitled to notice and an opportunity to be heard beyond open-meetings requirements, which do not convert an action into a judicial exercise. See *id.* The City did not determine the rights of parties or otherwise act as a court. See *Hoefler v. Sioux City Cmty. Sch. Dist.*, 375 N.W.2d 222, 223–25 (Iowa 1985) (finding a board exercised judicial functions in selecting from multiple bidders). The City simply chose how to appropriate money, which “is a legislative function left up to the discretion of the political system.” *Wallace*, 754 N.W.2d at 859. We find no error in dismissing Riesenbergs claims as a certiorari action. In doing so, we note the court did not deny Riesenbergs a forum but instead considered his claims as a proceeding for declaratory judgment. See *id.* (“We note the [petitioners] are not without a remedy.”).

The court dismissed count 1 for failure to state a claim upon which relief could be granted. Count 1 alleges the City failed to show good cause when approving the contract. In his petition, Riesenbergs asserts the City violated its ordinances, which allow the City to exempt contracts from the competitive bidding process only “for good cause shown.” See Des Moines, Iowa, Mun. Code § 7-210 (2018). However, Riesenbergs petition acknowledges the City found good cause existed when it approved the contract. Relying only on the ordinance, Riesenbergs complains the City did not make specific findings as to what constituted good cause when it approved the contract. The ordinance does not require the City to

make such findings, and the court did not err in dismissing count 1 for failure to state a claim.

The court dismissed counts 2 and 4 for lack of standing. To have standing, Riesenbergs “must ‘(1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.’” *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (quoting *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 864 (Iowa 2005)). “A general interest shared by all citizens in making sure government acts legally is normally insufficient to support standing” *Id.* at 423–24. However, a person may acquire standing as a taxpayer if the person shows “some personal injury connected with the alleged” illegal act and “some link between higher taxes and the government action being challenged.” *Id.*

In count 2, Riesenbergs asserts the contract prevents public oversight through a provision stating, “Any inquiries from the media, which are specifically about the” private company, “will be immediately directed to the” private company. Riesenbergs does not claim he is a member of the media or that he has had a request for information denied under this provision. In fact, his petition includes information and exhibits he obtained from the City regarding the contract. We agree Riesenbergs has not shown a specific interest in this claim or injury resulting from this claim, and he does not have standing to pursue count 2.

In count 4, Riesenbergs asserts the contract imposes an illegal tax on animal owners by requiring an owner to pay \$25 per day to the private company if the animal is held during an administrative process. Again, Riesenbergs does not claim he has ever been required to pay this boarding fee. The fact others may be required to pay for boarding does not establish standing for Riesenbergs to

challenge the contract. Again, Riesenbergs has not shown a specific interest in this claim or injury resulting from this claim, and he does not have standing to pursue count 4.

On summary judgment, the court dismissed count 3, which alleges the City is illegally subsidizing the private company. Riesenbergs specifically alleges the City is illegally paying the private company and allowing the company to use City property in order for the private company to sell animals for profit. The district court treated this count as an allegation of a constitutional violation.¹ See Iowa Const. art. III, § 31 (stating “no public money or property shall be appropriated for . . . private purposes” without legislative approval). To succeed on a constitutional claim, Riesenbergs must show “an absence of all public interest in the purposes for which the appropriation’ is made.” *McMurray v. City Council of W. Des Moines*, 642 N.W.2d 273, 283 (Iowa 2002) (quoting *Richards v. City of Muscatine*, 237 N.W.2d 48, 61 (Iowa 1975)). As the district court noted, the City contracted with the private company to provide animal control, which is a legitimate exercise of the police power. See *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 701–03 (1897). We agree the contract shows a public purpose, and the court did not err in granting summary judgment to the City on count 3.

AFFIRMED.

¹ On appeal, Riesenbergs also alleges the City violated the procedures of Iowa Code section 364.7 (2018) in providing money and property to the private company. Riesenbergs did not raise section 364.7 until his rule 1.904(2) motion—and the district court did not address the section—which is insufficient to preserve the issue for appeal. See *Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 543 (Iowa 2019). Even if Riesenbergs’s section 364.7 arguments were preserved for our review, he provided no evidence to support his assertion the City violated section 364.7.