IN THE COURT OF APPEALS OF IOWA

No. 0-718 / 10-0683
Filed October 20, 2010

JAMES EDWARD BANKS,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF PUBLIC SAFETY, DIVISION OF NARCOTICS ENFORCEMENT OF THE IOWA DEPARTMENT OF PUBLIC SAFETY, IOWA DIVISION OF CRIMINAL INVESTIGATION OF THE IOWA DEPARTMENT OF PUBLIC SAFETY, AND THE IOWA STATE PATROL DIVISION OF THE IOWA DEPARTMENT OF PUBLIC SAFETY,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

James Edward Banks appeals from a district court ruling which granted summary judgment in favor of defendants, denied his motion for summary judgment, and dismissed his action. **AFFIRMED.**

Dean Stowers, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Jeffrey Peterzalek and Matthew Oetker, Assistant Attorneys General, for appellee State.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

James Edward Banks filed a petition for declaratory judgment and injunctive relief against the defendants alleging agents of the defendants illegally utilized controlled substances, obtained from active and closed cases, in "reverse sting" operations. He requested, among other things, that the court declare as illegal the use of such drugs in reverse sting operations. The district court concluded Banks did not have standing to bring the action. We agree and therefore affirm.

***I. Background Facts and Proceedings*.**

On March 13, 2009, some two kilograms of cocaine and forty-four pounds of marijuana were furnished to Banks by law enforcement agents in a "reverse sting" operation.[1] The marijuana and cocaine used in the operation were obtained by law enforcement from other active or closed cases. Banks was arrested and charged with possession with intent to distribute cocaine and marijuana. The State's charges were later dismissed contemporaneously with the initiation of a federal criminal prosecution against Banks. He pled guilty to federal charges and was sentenced.

Banks filed his petition for declaratory judgment and injunctive relief in September 2009. The crux of his claim was that controlled substances in possession of law enforcement agencies, not needed as evidence in a criminal case, are required to be destroyed, except for those substances used for the sole

[1] In a "reverse sting" operation, law enforcement sells, rather than purchases, controlled substances. *State v. Maghee*, 573 N.W.2d 1, 3 (Iowa 1997).

purpose of canine controlled substance detection training. In his amended petition for declaratory judgment, Banks prayed for a declaration

> that unless a request for a court order under Iowa Code [s]ection 124.506(2A) [(2009)] is made and granted by a court, that:
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> 1. Controlled substances that have come into the custody of the department of public safety or any peace officer, when such are no longer needed as evidence or in connection with an investigation arising from the circumstances under which they were originally obtained by law enforcement, shall be disposed of by being destroyed pursuant to a judicial order directing that such controlled substances be forfeited and destroyed;
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> 2. It is a violation of Iowa law for controlled substances that have come into the custody of the department of public safety or any peace officer to be distributed or possessed by them as part of a law enforcement investigation unrelated to the circumstances leading to the controlled substances originally coming into their possession. This specifically addresses reverse stings and the use of controlled substances as "flash";
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> 3. That a record of the place where such controlled substances were seized, and of the kinds and quantities so destroyed and of the time, place and manner of destruction shall be kept for ten years after destruction;
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> 4. That a return under oath, reporting said destruction shall be made and filed with the court ordering destruction;
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> 5. That the declaration requested above does not address procedures for the destruction of controlled substances prior to the conclusion of an investigation or prosecution as allowed by Iowa Code [s]ection 124.506A.

The parties filed cross-motions for summary judgment. The district court found Banks had shown neither a specific, personal, and legal interest in the litigation, nor had he been presently injuriously affected by the policy he sought to invalidate. The court concluded Banks did not have standing to bring the action. The court denied Banks's motion for summary judgment, granted the defendants' motion for summary judgment, and dismissed the action.

Banks now appeals. He contends he had standing to bring the action, but if the court finds he did not, he requests the court to waive the standing rule under the "great public importance" doctrine.

II. Scope and Standard of Review.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.907 (2009); *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc*., 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. The court reviews the record in a light most favorable to the opposing party. *Frontier Leasing Corp. v. Links Eng'g, L.L.C.*, 781 N.W.2d 772, 775 (Iowa 2010). We afford the opposing party every legitimate inference the record will bear. *Id*. "No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts." *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006) (citation omitted).

III. Analysis.

"'Standing to sue' has been defined to mean that a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) (citations omitted).

> Standing is a doctrine courts employ to refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.

Alons v. Iowa Dist. Ct., 698 N.W.2d 858, 864 (Iowa 2005) (citation omitted). The focus is on the party, not the claim. *Id.* Even if the claim could be meritorious, the court will not hear the claim if the party bringing it lacks standing. *Id.*

To have standing, "a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Citizens for Responsible Choices*, 686 N.W.2d at 475 (citations omitted). "[H]aving a legal interest in the litigation and being injuriously affected are separate requirements for standing, both of which must be satisfied." *Id.* The district court found that Banks met neither prong of the standing test. Banks challenges this finding.

The doctrine of standing was last thoroughly discussed by our supreme court in *Godfrey v. State*, 752 N.W.2d 413, 427-28 (Iowa 2008). In *Godfrey*, the court concluded that "cases involving actions by private persons to enforce public rights may be brought under the personal-interest alternative to the first element" (must have a specific personal or legal interest in the litigation). *Id*. at 420. This allows a court "to focus on the factual-injury element of standing by considering the types of injuries a litigant must show to satisfy the test." *Id*.

We therefore focus on the injury element of Banks's claim. Banks seeks to vindicate the public interest through his challenge to the alleged illegal governmental action. Although Banks is not required to have suffered traditional

damages, he must "allege some type of injury different from the population in general." *Id*. In that regard, Banks must establish the following three elements:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Alons, 698 N.W.2d at 867-68 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992) (alterations in original). An injury is "particularized" if it affects the plaintiff in a personal and individual way; an abstract injury is not enough. *Id.* at 868.

Furthermore:

> [W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. Thus,
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> > [A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not provide a basis for standing.
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> The claimed nonobservance of the law, "standing alone," affects only the generalized interest of all citizens, and such an injury is abstract in nature, which is not sufficient for standing.

Id. at 868-69 (internal citations omitted).

Banks argues his injury-in-fact is his guilty plea and sentence in federal court and that he has been deprived of property because it was seized. Further he argues "[b]eing subjected to an unlawfully-conducted reverse sting, arrested,

having to bond out of jail, and having property seized for forfeiture is clearly being 'injuriously affected.'" The district court concluded "the fact that [Banks] has previously been impacted (even injured, for purposes of this ruling) by the actions of the state in using improperly retained controlled substances in a reverse sting does not translate to a sufficient interest in the present litigation to create standing." We agree.

Banks's asserted past injury is insufficient to establish standing to challenge defendants' actions through this declaratory action. We find his position no different than the plaintiff in the case of *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983). In *Lyons*, the plaintiff had been subjected to a potentially life-threatening choke hold while being arrested. *Lyons*, 461 U.S. at 97-98, 103 S. Ct. at 1663, 75 L. Ed. 2d at 681. He sought an injunction to prohibit the future use of the choke hold by police. *Id*. at 98, 103 S. Ct. at 1663, 75 L. Ed. 2d at 681-682. His action was dismissed for lack of standing because he failed to demonstrate any immediate or continuing injury based on the prior injury. *Id*. at 111, 103 S. Ct. at 1670, 75 L. Ed. 2d at 690. Specifically, the Court held that the plaintiff's prior injury did nothing to ensure or predict that he would be subject to such an injury in the future. *Id*. The Court stated:

> That Lyons may have been illegally choked by the police on October 6, 1976, while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the City, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part.

Id. at 105, 103 S. Ct. at 1667, 75 L. Ed. 2d at 686. The Court concluded that there was no "real or immediate threat that the plaintiff will be wronged again" for purposes of establishing the irreparable harm required to obtain an injunction. *Id*. at 111, 103 S. Ct. at 1670, 75 L. Ed. 2d. at 685.

Our supreme court relied heavily on *Lyons* to conclude the plaintiff in *Godfrey* lacked standing to challenge the constitutionality of the enactment of a statute.

> In this case, Godfrey claims a future injury based solely on her status as a worker with a prior work-related injury covered by the workers' compensation statute. Yet, this status does nothing to establish the likelihood of an actual or immediate threat of another covered injury. There is nothing to show that the future injury asserted by Godfrey is the same type of injury that fell short of establishing standing in [*Lyons*]. . . . As in *Lyons*, Godfrey's claim of injury lacks any immediacy to support standing to raise a constitutional claim. The important fact is that Godfrey's prior status as a worker who has suffered a prior work-related injury does not make it any more likely that she will suffer another injury in the future.

Godfrey, 752 N.W.2d at 423. We apply the same analysis here. Banks's prior arrest does nothing to establish a real and immediate threat that he would again be subject to a reverse sting utilizing recycled controlled substances. His interest to prevent further injury rises no higher than any other member of the general public. We therefore conclude, as the district court did, that Banks has no standing to challenge the actions of the government.

Additionally, we decline Banks's invitation to waive the standing requirement under the "great public importance" doctrine. *Id*. at 427-28. Banks did not raise the issue before the district court, nor was it decided there. It is a fundamental doctrine of appellate review that issues must ordinarily be both

raised and decided by the district court before we will decide them on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

***IV. Conclusion*.**

Because Banks failed to establish standing to assert his claim, we affirm the decision of the district court.

AFFIRMED.