IN THE COURT OF APPEALS OF IOWA

No. 1-148 / 10-0559
Filed April 13, 2011

CITY OF DES MOINES,
Plaintiff-Appellee.

vs.

MARY AMERSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don Nickerson, Judge.

Property owner Mary Amerson appeals the district court's order taxing the costs of a public-nuisance action against her. **AFFIRMED.**

Mary Amerson, Des Moines, pro se appellant.

Gary D. Goudelock Jr., Des Moines, for appellee.

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

TABOR, J.

This pro se appeal poses the question whether costs may be taxed against a defendant in a public nuisance action after the city voluntarily dismisses its lawsuit based on the defendant's abatement of the nuisance. Property owner Mary Amerson challenges the district court's order denying her motion to reopen litigation with the City of Des Moines. Amerson wished to reinstate the matter so that she could challenge $480 in legal and administrative costs charged to her by the city. On appeal, Amerson contends that the district court erred in taxing the costs of the matter to her. Because the city prevailed in its action by virtue of the defendant's abatement of the nuisance, we conclude that Iowa Code section 625.1 (2009) allows the district court to tax the costs to defendant.

I. Background and Proceedings

On February 5, 2009, the city attorney's office filed a petition alleging Amerson's garage was structurally unsound and constituted a public nuisance. The petition asserted that under the Des Moines municipal code, the garage should be immediately emptied and the nuisance should be abated at the owner's expense. The petition further urged that if Amerson did not abate the nuisance in the time ordered by the court that the city be authorized to enter Amerson's property and demolish the structure.

The city had a difficult time personally serving Amerson with an original notice of the petition; a process server unsuccessfully tried to serve Amerson five times between February 24, 2009, and May 12, 2009. The process server's affidavit alleged that Amerson "never answers [the door] for us" and recounted

that Amerson's neighbors described her as "a hermit." On May 26, 2009, the city asked for permission to serve Amerson by the alternative means of publication, which the court granted.

On June 9, 2009, Amerson filed a pro se pre-answer motion, asking to dismiss the action and to disqualify the judge. She alleged that the city had been harassing her for years through the use of its nuisance ordinances. On July 10, 2009, the district court denied the motion to dismiss and the motion for recusal. The court taxed the costs to Amerson.

On March 1, 2010, Amerson filed a second pre-answer motion to dismiss, alleging—among other things—that her garage was demolished in late June 2009. Amerson also attached to the motion an invoice sent to her by the city on February 18, 2010, demanding that she reimburse the city for $480 in charges incurred as a result of its administrative or legal action taken against her property. The charges included $200 for legal inspections; $30 for photographs; $125 for a title search; $25 for a service fee; and $100 in court costs. The invoice explained that her failure to pay the costs by March 20, 2010, would result in an assessment to Amerson's property.

On March 3, 2010, the city voluntarily dismissed its cause of action, noting that Amerson's property was "brought into compliance" with the municipal code and that the city "has elected to seek [an] alternative legal remedy for the collection of costs and fees associated with this cause of action."

On March 8, 2010, Amerson filed a pro se motion to reopen the case and for a ruling on a pending motion. Amerson alleged that the assistant city attorney

attempted to "extort $780.00" from Amerson "for court costs, service fees, and publication fees related to this litigation" in return for the city's dismissal of the petition. Amerson's motion also mentioned the $480 invoice from the city. Amerson asked the court to address the alleged misconduct by the assistant city attorney by issuing sanctions. The city attorney's office resisted the motion to reopen and denied that Amerson's personal attacks were supported by any credible evidence.

On March 24, 2010, the district court denied Amerson's motion to reopen the case and determined that the reasonable costs of the city's nuisance action were appropriately assessed to Amerson. The court found no evidence in the record to support Amerson's allegations that the assistant city attorney acted unprofessionally. The court taxed the costs of the matter to Amerson.

In her pro se appeal, Amerson alleges that the district court was "without jurisdictional authority" to enter any ruling ordering her to pay costs under Iowa Code chapter 625. She also contends the city did not properly serve her with the petition and that the administrative and legal costs of the city's nuisance action may not be assessed against her. Amerson alleges in her brief that the district court is "aiding and abetting" the assistant city attorney "in extorting money from defendant Amerson in violation of Iowa Code § 711.4(5)." The city did not file a brief.

II. Standard of Review

Because Amerson is alleging the lack of personal jurisdiction in an equity case, our review is de novo. *See Local Bd. of Health, Boone Cnty. v. Wood*, 243

N.W.2d 862, 864 (Iowa 1976); *In re Marriage of Thrailkill*, 438 N.W.2d 845, 846 (Iowa Ct. App. 1989). To the extent our determination of Amerson's claims involves the interpretation of provisions in chapter 625, review is for errors at law. *See Van Sloun v. Agans Bros., Inc*., 778 N.W.2d 174, 182 (Iowa 2010).

III. Merits

As a threshold matter, we tackle the issue of personal jurisdiction. Personal jurisdiction refers to the court's power to bring a person into its adjudicative process. Black's Law Dictionary 857 (7th ed. 1999). "[T]here are only two ways to acquire personal jurisdiction: (1) by service of process on the defendant; or (2) by defendant's voluntary appearance and submission." *Fisher v. Keller Indus., Inc.*, 485 N.W.2d 626, 628 (Iowa 1992), *abrogated on other grounds by Thomas v. Hansen*, 524 N.W.2d 145, 148 (Iowa 1994).

We conclude that the district court had personal jurisdiction over Amerson. The city obtained court permission to serve Amerson by the alternative method of publication after its process server was repeatedly unable to personally serve Amerson. *See* Iowa Rs. Civ. P. 1.305(14), 1.306. Moreover, Amerson submitted to the jurisdiction of the court by filing a motion, which sought sanctions against the assistant city attorney, and by filing a motion asking to reopen the dismissed action. *Cf. In re Estate of Borrego*, 490 N.W.2d 833, 836–37 (Iowa 1992) (attorney consented to jurisdiction of the probate court by requesting fees).

Having decided that the court had jurisdiction over Amerson, we next address her claim that the city's voluntary dismissal of its public nuisance suit foreclosed the court's ability to tax the costs of the action against her. Amerson

correctly notes that the district court may tax costs only to the extent provided by statute. *See Schark v. Gorski*, 421 N.W.2d 527, 528 (Iowa 1988). But she mistakenly interprets sections 625.1 and 625.11 as precluding the district court from ordering her to pay the costs of the nuisance action.

Section 625.1 provides that costs "shall be recovered by the successful against the losing party." Section 625.11 states that "[w]hen a plaintiff dismisses the action . . . judgment for costs may be rendered against such plaintiff . . . ." The general rule in Iowa has long been that when a plaintiff voluntarily dismisses the suit, it is error to require the defendant to pay costs. *See Hyde v. Cole*, 1 Clarke 106, 108 (Iowa 1855) (interpreting earlier statute); *see also Acres v. Hancock*, 4 Iowa 568, 569–70 (1857). But that interpretation of section 625.11 does not apply when the plaintiff dismisses the lawsuit solely because the purpose of the suit has been achieved. In this public nuisance action, the city was the successful party because Amerson abated the nuisance by demolishing her garage—while the suit was pending and most likely because the suit was pending. *See Wolf v. Ranck*, 161 Iowa 1, 4, 141 N.W. 442, 443 (1913) (affirming defendant tenant's liability for costs where equitable action for injunction by landlord was dismissed after lease had expired and parties had agreed on release of personal property to lessee).

An Ohio appellate court considered a similar question in the context of a nuisance action, concluding that court costs could be taxed against the defendant because its conduct was the "cause of the law suit." The court persuasively reasoned:

> The fact that we are not now willing to grant an injunction on the ground that the nuisance complained of no longer exists should not be regarded by counsel for the plaintiff as a defeat, for the simple reason that through the coercion of his law suit, he has accomplished the results sought, through the remedial actions of the defendant, so that there now exists nothing which was formerly the basis of his complaint. The defendant has voluntarily done that which plaintiff sought to compel him to do through an order of the court. The result is the same and the plaintiff is just as well of[f] as if the court by its order has compelled the defendant to do that which it has done without, but probably in anticipation of, such an order.

Antol v. Dayton Malleable Iron Co., 38 N.E.2d 100, 102 (Ohio Ct. App. 1941).

The district court's decision to tax the costs of the nuisance matter to Amerson complied with sections 625.1 and 625.11. In addition, we disagree with Amerson's contention that section 625.13 applies to this case; Amerson's motion to dismiss for lack of personal jurisdiction was without merit.

While it is unclear from Amerson's brief, she appears to challenge not only the court costs, but also the city's $480 invoice for administrative and legal charges associated with the nuisance action. The city stated in its voluntary dismissal that it had "elected to seek [an] alternative legal remedy for the collection of the costs and fees associated with this cause of action." Under Iowa Code section 364.12(4), a city may seek reimbursement for costs incurred in performing any act authorized to abate a public nuisance. *See City of Muscatine v. Northbrook P'ship Co*., 619 N.W.2d 362, 367–68 (Iowa 2000) (affirming that city had authority under section 364.12(4) to pursue a civil action against defendants for abatement costs); *City of Ottumwa v. Hill*, 567 N.W.2d 424, 426 (Iowa 1997) (noting that section 364.12(4) "give[s] broad powers to a city to collect the costs of a nuisance abatement"). In this case, the city did not specify

how it would seek to collect those costs and fees from Amerson and we do not find a court order in this record that they be paid. Accordingly, we do not address this claim.

Finding no error in the district court's denial of the motion to reopen the litigation, we affirm.

AFFIRMED.