IN THE COURT OF APPEALS OF IOWA

No. 8-219 / 07-0426
Filed June 25, 2008

KATHY J. BRADSHAW,
Plaintiff-Appellant,

vs.

BUNN PROPERTIES, L.L.C. and CITY OF CLIVE, IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher Judge.

The plaintiff appeals from the district court's order granting summary judgment in favor of the defendants. **AFFIRMED.**

James Nervig of Brick Gentry P.C., West Des Moines, for appellant.

Samuel Kreamer and Michael Roberts of Kreamer Law Firm, P.C., West Des Moines, for Bunn Properties L.L.C., and Jason Palmer and Timothy Lillwitz of Bradshaw, Fowler, Procter & Fairgrave P.C., Des Moines, and James C. Wine of Nyemaster, Goode, West, Hansell & O'Brien, Des Moines, for City of Clive.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Kathy Bradshaw appeals from the district court's order granting summary judgment in favor of the City of Clive and Bunn Properties. We affirm.

I. Background Facts and Proceedings.

In August 2006 Bradshaw filed a petition at law seeking declaratory judgment, a permanent injunction, and monetary damages against Bunn Properties and the City of Clive (City). She asserted Bunn had illegally begun constructing a veterinary clinic building and other site improvements on a commercial parcel located across the street from Bradshaw's residence. The petition requested a declaratory judgment that Bunn was violating zoning ordinances and was required by law to comply with the zoning ordinances, and that the City was legally compelled to bring Bunn's project into compliance. Bradshaw also requested an injunction to halt construction and to prevent the City from issuing any certificates of occupancy for the clinic until the zoning violations were abated.

Prior to construction, Bunn had submitted a proposed site plan for the clinic to the Clive Community Development Department (CCDD) on January 30, 2006. Within one week, the CCDD director requested Bunn submit a revised site plan, which Bunn did on February 15. The Clive Planning and Zoning Commission reviewed and discussed a staff report concerning the site plans on February 28 and recommended approval of the Bunn site plans. Upon receiving the commission's recommendation, the Clive City Council met on March 16, 2006, where it approved the proposed site plans. Notices required by law were issued prior to both the February commission meeting and the March city council

meeting. Bradshaw did not attend either meeting, nor has she ever filed an appeal with the Clive Board of Adjustment to contest a zoning violation. Following the City's actions and the filing of Bradshaw's petition, the City issued a certificate of occupancy in late October 2006. According to Clive City Ordinance section 175.42(4)(J) and the affidavit of CCDD director Doug Ollendike, a building inspector must inspect the property and find it to be in conformance with plans approved by the commission and city council before an occupancy permit may be issued.

Bunn filed a motion to dismiss/motion for summary judgment on December 5, 2006, arguing that City officials had taken official action before the petition was filed but Bradshaw failed to exhaust her administrative remedies before filing her petition with the district court. Bradshaw resisted, contending no "Clive zoning official" had made a decision that could be appealed before the Board of Adjustment regarding the Bunn property, thereby bestowing original jurisdiction to the district court on her petition. Bradshaw also filed a motion to remand in late December 2006 asking the district court to remand her case to the Clive Board of Adjustment if necessary to exhaust her administrative remedies. After a hearing on all motions, the district court issued a ruling in February 2007 determining it lacked jurisdiction to entertain Bradshaw's petition at the time for failure to exhaust administrative remedies, granting summary judgment in favor of the defendants, and dismissing the case. Bradshaw appeals.

II. Scope and Standards of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. *Schlote v. Dawson*, 676 N.W.2d 187, 188 (Iowa

2004). Summary judgment is available only when there is no genuine issue of material fact, *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008), and the moving party is entitled to judgment as a matter of law. *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). "A 'genuine issue' of material fact exists if the evidence is such that a reasonable fact finder could return a verdict for the nonmoving party." *Baratta v. Polk Co. Health Serv.*, 588 N.W.2d 107, 109 (Iowa 1999) (citing *Fees v. Mutual Fire & Auto. Ins. Co*., 490 N.W.2d 55, 57 (Iowa 1992)). The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Randol v. Roe Enters., Inc.*, 524 N.W.2d 414, 415-16 (Iowa 1994) (quoting *Martinko v. H-N-W Assocs.*, 393 N.W.2d 320, 321 (Iowa 1986)).

III. Issue on Appeal.

The sole issue on appeal is whether the district court erred in determining Bradshaw had failed to exhaust her administrative remedies and granting summary judgment to the defendants. It was uncontested at hearing that Bradshaw had never sought recourse through the City or the Clive Board of Adjustment regarding her zoning violation allegations before she filed suit in district court. Although the parties continuously refer to this issue as one concerning subject matter jurisdiction, that is a misstatement. The district court always has subject matter jurisdiction over a case such as this, only certain things may prevent the court having authority at a particular time to hear a case. *See State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993) (noting that subject matter jurisdiction should not be confused with authority, as "A court may have

subject matter jurisdiction but for one reason or another may not be able to entertain a particular case. . . . In such a situation we say the court lacks authority to hear that particular case."); *Holding v. Franklin County Zoning Bd. of Adjustment*, 565 N.W.2d 318, 319 (Iowa 1997) (same).

In particular to the facts of this case, "[a] court may lack authority to hear a particular case 'where a party fails to follow the statutory procedures for invoking the court's authority.'" *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 875 (Iowa 2007) (quoting *Schrier v. State*, 573 N.W.2d 242, 244-45 (Iowa 1997)).[1] It is well established that a party must exhaust any available administrative remedy before seeking relief in the courts. *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998). The statute establishing Bradshaw's duty to seek administrative remedy in this zoning dispute is Iowa Code section 414.10 (2005), which states:

> Appeals to the board of adjustment may be taken by any person aggrieved . . . by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

[1] Our supreme court further analyzed the difference between subject matter jurisdiction and authority to hear a case when confronted with a remedy exhaustion issue in *Duckett*, 732 N.W.2d at 875:

> Generally, the exhaustion-of-remedies requirement does not implicate subject matter jurisdiction. This is because the exhaustion-of-remedy doctrine does not preclude judicial review, but merely defers it until the administrative agency has made a final decision. Our legislature has given the district court subject matter jurisdiction to act in response to challenges to decisions made by administrative agencies, but requires this authority to be withheld until any available administrative remedies have been exhausted. Thus when a litigant requests judicial review before exhausting administrative remedies, the district court merely lacks authority to entertain a particular case.

We agree with the district court that Bradshaw simply filed her petition seeking redress with the district court too early. She failed to undertake her duty to adequately exhaust administrative remedies for her zoning violation concerns with the appropriate City entities. In fact, it appears the City was possibly still in the process of conducting its approval of the Bunn Properties site plans and construction until October 2006 when the certificate of occupancy was finally issued.[2] Therefore, the district court lacked authority to entertain this matter at the time it was presented with Bradshaw's petition, and the defendants are entitled to judgment as a matter of law. Bradshaw requested the district court remand her petition to the Clive Board of Adjustment for redress of her grievances and satisfaction of her administrative remedies. She cites no authority for this action by the district court when the party has failed to exhaust administrative remedies, and we decline to find error in the court's refusal to do so. We affirm the grant of summary judgment in favor of the defendants and subsequent dismissal of the petition.

AFFIRMED.

[2] We also note that a challenge to a zoning decision by the board of adjustment or a city council is properly brought before the district court on a writ of certiorari, Iowa R. Civ. P. 1.1401, not a petition for declaratory judgment.