STATE OF MICHIGAN

COURT OF APPEALS

KARTER LANDON,

Plaintiff-Appellant,

v

CITY OF FLINT,

Defendant-Appellee.

UNPUBLISHED
July 25, 2013

No. 310241
Genesee Circuit Court
LC No. 11-096696-CH

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's dismissal of this action. We affirm, albeit on alternative grounds than the trial court.

Plaintiff owns rental property in the City of Flint. Defendant refused to provide water service to one of plaintiff's properties on request from a tenant, citing plaintiff's failure to pay $100 for a three-year rental inspection. Plaintiff contended that he never received the notice that defendant claimed to have sent, and in any event the property had been inspected only a few months ago. Plaintiff nevertheless agreed to pay the $100, whereupon defendant informed plaintiff that he now also owed an additional $300 late fee. Plaintiff refused, contending that the late fee was exorbitant and unlawful. Plaintiff then commenced the instant suit, asserting generally that defendant was acting illegally and that any ordinance supporting its actions was likewise illegal. Defendant never seriously contended any of plaintiff's factual allegations, instead asserting that the water had been turned on and that it was immune to liability. The trial court agreed that plaintiff's claims were moot in part, outside its jurisdiction in part, and authorized by law in part. This appeal followed.

Initially, we disagree with defendant that plaintiff's arguments on appeal are unpreserved. Plaintiff is in propria persona, and his pleadings are difficult to understand. Nevertheless, issues are generally considered unpreserved only if they are raised for the first time on appeal. See *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Plaintiff's complaint clearly sets forth at least the general assertion that the late fee is illegal, and under Michigan's notice-pleading standard, a complaint need only "give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). Plaintiff makes a much more sophisticated argument on appeal than was made in his initial pleadings, but that alone is

not enough to bar consideration of an issue. See *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court did not specify the subrule or subrules upon which it based summary disposition; it appears to this writer that its ruling was based on multiple subrules. Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id.* at 119. A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. *Id.* When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, summary disposition should be granted only where the submitted evidence, when viewed in the light most favorable to the non-moving party, fails to establish a genuine issue regarding any material fact. *Id.* at 120. This Court will affirm a grant of summary disposition that reached the correct result irrespective of whether the trial court granted it on an improper basis. *Klooster v City of Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011).

Defendant correctly asserts that the circuit court does not have jurisdiction over a civil claim where the amount in controversy is less than $25,000. MCL 600.8301(1). However, the circuit court has jurisdiction to consider "constitutional issues related to the validity of laws" as well as claims for declaratory or injunctive relief. *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 37-38; 494 NW2d 787 (1992). The gravamen of plaintiff's claim is for a declaratory judgment that defendant's late fee is unlawful and for injunctive relief, both of which would unambiguously be within the circuit court's jurisdiction. Defendant correctly points out that plaintiff's claim for injunctive relief became ostensibly moot when defendant turned the water on to the residence; however, *if* defendant truly was engaging in illegal extortion by withholding services to collect unlawful payments of money, that would seem to fit squarely in the category of a publicly significant issue likely to recur but evade judicial review. *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010).

Furthermore, defendant's claim for a money refund satisfies the requirements for ancillary jurisdiction to attach: it arises from the same allegedly-illegal imposition of a late fee, determining whether plaintiff would be entitled to the refund would flow naturally from the resolution of the other issues without new fact finding, defendant would have no rights invaded as a consequence, and a determination that the late fee was unlawful without a concomitant refund would frustrate the purpose of finding the late fee unlawful. See *WPW Acquisition Co v City of Troy*, 254 Mich App 6, 9; 656 NW2d 881 (2002). Conversely, plaintiff's initial complaint alleged tort claims seemingly sounding in intentional infliction of emotional distress; however, plaintiff appears only to be pursuing declaratory and injunctive relief, and the return of money plaintiff paid under protest. The trial court's grant of summary disposition did not discuss immunity, but to the extent plaintiff alleged claims sounding in tort in his complaint, summary disposition as to those claims would have been proper, because defendant is generally immune from tort and plaintiff alleged no exemptions to that immunity. See *Mack v City of Detroit*, 467 Mich 186, 201; 649 NW2d 47 (2002).

While the trial court erred in dismissing plaintiff's claims on mootness or jurisdictional grounds, dismissing plaintiff's tort claims on immunity grounds would have been proper. The trial court correctly observed that defendant's late fee is authorized by an ordinance enacted by defendant, but the trial court failed to address the real gravamen of plaintiff's claim: that the ordinance itself is illegal.

Plaintiff contends substantively that defendant's "late fee" is in fact nothing but a disguised revenue generator or tool for harassment. All statutes and ordinances are presumed to be constitutional unless they are clearly shown to be unconstitutional. *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 413-415; 488 NW2d 182 (1992). Superficially, there appears to be some intuitive merit to plaintiff's contention that a $300 late fee for a $100 inspection *seems* unreasonably high. Nevertheless, it is plaintiff's burden to *prove* that it is disproportionate, and nothing in the record suggests that, say, the $300 is unrelated to costs defendant will incur in arranging or executing a late inspection. We appreciate that no discovery has been permitted in this case and that plaintiff is in propria persona.[1] However, particularly given the presumption of constitutionality, it is not enough simply to make the bald assertion that the amount of the fee is unreasonable.

Presuming for the sake of argument that the $300 late fee is, in fact, grossly disproportionate, that does not necessarily mean it is illegal. As much as it is intuitive that a $300 late fee seems high for a $100 inspection, it is equally intuitive that the purpose of a late fee is generally to deter dereliction. In this case, creating a late fee would seem to be a very poor and unreliable way to generate revenue unless it would be difficult or impractical for those subject to the late fee to avoid its application—by, for example, obtaining regular inspections. In contrast, imposing a late fee is a classic example of deterrence against omitting regular inspections. See *Houston*, 237 Mich App at 716. Therefore, even if the late fee is not a true fee, it would be a permissible fine.

[1] We would, however, point out to plaintiff that "[o]ur legal system favors the representation of litigants by counsel," *Friedman v Dozorc*, 412 Mich 1, 49-50; 312 NW2d 585 (1981), and parties representing themselves are held to the same standard of presentation as would be a member of the bar. *Baird v Baird*, 368 Mich 536, 539; 118 NW2d 427 (1962). We have made every attempt to give plaintiff the benefit of any doubt in the instant matter, and courts generally should overlook minor errors that lack significant practical effect. See *Totman v School Dist of Royal Oak*, 135 Mich App 121, 126-127; 352 NW2d 364 (1984). Nevertheless, the courts are not obligated to rescue parties, whether or not they are represented by counsel, from their own inartful drafting. Plaintiff may be better served in the future by retaining counsel.

We therefore conclude that the trial court's stated grounds for granting summary disposition in defendant's favor were erroneous, but the trial court ultimately reached the right result, because plaintiff has not articulated enough of a basis for concluding that the late fee was illegal to withstand summary disposition.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause