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**IN THE
COURT OF APPEALS OF INDIANA**

CLARK L. BRYANT,)
)
Appellant/Plaintiff,)
)
vs.) No. 31A01-0903-CV-153
)
HARRISON COUNTY PLANNING)
COMMISSION,)
)
Appellee/Defendant.)

APPEAL FROM THE HARRISON CIRCUIT COURT
The Honorable H. Lloyd Whitis, Judge
Cause No. 31C01-0808-PL-30

August 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Clark L. Bryant appeals the trial court's order granting the Harrison County Planning Commission's ("HCPC") motion to dismiss. The dispositive issue is whether the trial court properly granted HCPC's motion to dismiss on the basis that Bryant lacks standing.

We affirm.

FACTS AND PROCEDURAL HISTORY

Bryant owns property located in Odyssey Subdivision in Harrison County, Indiana. At all relevant times, the Harrison County Zoning Ordinance ("Zoning Ordinance") defined the term "Garage" as "[a]n accessory building with capacity for not more than four (4) motor vehicles per family, no more than one (1) of which may be a commercial vehicle." *Appellant's App.* Vol. 2 at 135. The term "Accessory Building" was defined as "[a] building or use subordinated to another structure or use located on the same lot and which does not change or alter the character of the premises and which is not used for human occupancy." *Id.* at 131.

Bryant filed his Complaint for Declaratory, Mandamus and Injunctive Relief against HCPC. In his complaint, Bryant alleged that between 2002 and 2007, HCPC approved permits for five private garages located in Harrison County and that these garages violated the Zoning Ordinance because they were too large. Bryant specifically alleged that each of the garages could house at least six cars, with the largest garage able to accommodate sixteen vehicles. Two of the garages were allegedly located in Odyssey Subdivision. Additionally, Bryant alleged that HCPC was not requiring plot plans from landowner applicants, improperly issuing certificates of occupancy, and not performing

final inspections on buildings. Bryant's complaint contains the following relevant allegations:

17. [Bryant], as a resident of Harrison County, Indiana, is an intended beneficiary of the protection provided by the Zoning Ordinance. The [HCPC] by its failure to enforce its own Zoning Ordinance and Regulations has forced [Bryant] to bring this suit in order to preserve the Ordinance and Regulations so that [Bryant's] investment in his home, his rights and expectations might be protected as well as those of other Harrison County residents.

18. [Bryant] has standing to bring this action as a resident of Harrison County, Indiana, under Section 806.1 of the Harrison County Zoning Ordinance.

21. [HCPC] has allowed and is continuing to allow violations of the Harrison County Zoning Ordinance.

26. [Bryant] is entitled to bring this action for declaratory relief under Ind. Code § 34-14-1-2.

27. [Bryant] is entitled to bring this action for mandate under Ind. Code § 34-27-3-1.

WHEREFORE, [Bryant] respectfully demands:

A. Declaratory relief wherein the Court interprets the provisions of the Harrison County Zoning Ordinance pertaining to the proper issuance of I[mprovement] L[ocation] P[ermit]s, permissible private garages, permissible sizes of private garages, certificates of occupancy, residential plot plans, and final inspections/re-inspections;

B. An order mandating [HCPC] to immediately and forthwith abide by, execute and enforce the provisions of the Harrison County Zoning Ordinance, including requiring the removal and/or modification of the aforementioned garages;

C. Injunctive relief enjoining further violations of the Harrison County Zoning Ordinance, enjoining [HCPC] from allowing existing ordinance violations, and correcting violations of the ordinance, including but not limited to the following:

- (1) Improper issuances of ILP's [sic];
- (2) Removal and/or modification of the aforementioned garages;
- (3) Improper issuances of Certificates of Occupancy;
- (4) Requiring residential plot plans in accordance with the ordinance; and
- (5) Requiring proper final inspections/re-inspections in accordance with the ordinances;

D. An order imposing penalties against [HCPC] under Sections 806.7.4 and 200.58 of the Harrison County Zoning Ordinance;

E. An order requiring [HCPC] to pay [Bryant's] costs and attorney fees to the full extent as allowed by law;

F. An order granting all other relief to which [Bryant] is entitled.

Appellant's App. Vol. 1 at 6-9.

HCPC filed a motion to dismiss contending that Bryant's complaint should be dismissed on a number of bases, including that Bryant lacked standing. The trial court granted HCPC's motion to dismiss, and Bryant now appeals.

DISCUSSION AND DECISION

In its motion to dismiss, HCPC argued that Bryant's complaint should be dismissed pursuant to Trial Rule 12(B)(6) because he lacked standing. "When reviewing a trial court's decision to dismiss for lack of standing, we review the matter de novo." *State ex rel. Steinke v. Coriden*, 831 N.E.2d 753, 754 (Ind. Ct. App. 2005), *trans. denied*. The question whether Bryant has standing is purely one of law and does not require deference to the trial court's determination. *Id.* "Reversal is appropriate if an error of law is demonstrated." *Id.*

Our Supreme Court has explained standing as follows:

The judicial doctrine of standing focuses on whether the complaining party is the proper person to invoke the court's power. It is designed to assure that litigation will be actively and vigorously contested. The standing requirement is a limit on the court's jurisdiction which restrains the judiciary to resolving real controversies in which the complaining party has a demonstrable injury.

This Court recently described the interest which a party must possess to confer standing: “[I]n order to invoke a court's jurisdiction, a plaintiff must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a result of the conduct at issue.”

Schloss v. City of Indianapolis, 553 N.E.2d 1204, 1206 (Ind. 1990) (quoting *Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind. 1985)) (citations omitted).

First, we consider whether Bryant has general standing.

Under our general rule of standing, only those persons who have a personal stake in the outcome of the litigation and who show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct will be found to have standing. Absent this showing, complainants may not invoke the jurisdiction of the court. It is generally insufficient that a plaintiff merely has a general interest common to all members of the public.

State ex rel. Cittadine v. Indiana Dep't of Transp., 790 N.E.2d 978, 979 (Ind. 2003) (citations omitted).

In his complaint, Bryant seeks declaratory, mandamus, and injunctive relief to force HCPC to enforce the Zoning Ordinance. Bryant alleges that HCPC has failed to enforce the Zoning Ordinance by allowing the construction of the over-sized garages, by improperly issuing improvement location permits and certificates of occupancy, by not requiring plot plans, and by not performing final inspections. Bryant, though, has not asserted that HCPC's alleged violations of the Zoning Ordinance have caused him to suffer or have placed him in immediate danger of suffering a direct injury. While he

alleges that two of the over-sized garages are located in the same subdivision as his home, he does not allege that these garages have or will cause him direct injury. Bryant states that he is bringing this action to protect his investment in his home, but he does not allege that HCPC's alleged failure to enforce the Zoning Ordinance has caused or will cause a depreciation in the value of his property. Absent some showing that Bryant has suffered or will immediately suffer a direct injury, Bryant does not have general standing to pursue his claim against HCPC. *See State ex rel. Steinke*, 831 N.E.2d at 754 (concluding that absent a showing that a party has suffered or will immediately suffer a direct injury, there is no standing under the general rule).¹

Although Bryant does not have general standing, he contends that there are several other bases by which standing may be established. First, he asserts that he has standing to seek a declaratory judgment under Indiana Code section 34-14-1-2, which provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Ind. Code § 34-14-1-2. Bryant contends that he has standing under this statute to obtain a declaration of his rights, status, or other legal relations under the Zoning Ordinance.

“[T]he purpose of a declaratory judgment action is to quiet and stabilize legal relations and thereby provide a remedy in a case or controversy when there is still an opportunity for peaceable judicial settlement.” *Ferrell v. Dunescape Beach Club*

¹ Bryant makes no claim that he has standing under the public standing doctrine, and we do not consider it here. The public standing doctrine applies in cases that involve enforcement of a public rather than a private right. *State ex rel. Cittadine*, 790 N.E.2d at 980.

Condos. Phase I, Inc., 751 N.E.2d 702, 707 (Ind. Ct. App. 2001). “The basis of jurisdiction under the Declaratory Judgment Act is a justiciable controversy or question, which is clearly defined and affects the legal right, the legal status, or the legal relationship of parties having adverse interests.” *Little Beverage Co., Inc. v. DePrez*, 777 N.E.2d 74, 83 (Ind. Ct. App. 2002), *trans. denied*. A primary requirement of the Act is that the plaintiff demonstrate that he or she has standing to pursue the relief requested.

Id.

In order to obtain declaratory relief, the person bringing the action must have a substantial present interest in the relief sought, not merely a theoretical question or controversy but a real or actual controversy, or at least the “ripening seeds of such a controversy,” and that a question has arisen affecting such right which ought to be decided in order to safeguard such right.

Id. (quoting *Town of Munster v. Hluska*, 646 N.E.2d 1009, 1012 (Ind. Ct. App. 1995)).

Here, there is no actual controversy or the ripening seeds of a controversy between Bryant and HCPC. HCPC has not denied Bryant an improvement location permit or certificate of occupancy. Bryant alleges that HCPC has violated the Zoning Ordinance by not enforcing the provisions of the ordinance, but he fails to allege that HCPC’s actions have caused him injury. Bryant alleges that he is bringing this action to protect his investment in his home, but he does not state that HCPC’s alleged failure to enforce the Zoning Ordinance has reduced or will reduce the value of his property or that he will be affected any more than any other member of the public. Thus, Bryant has failed to show a substantial interest in the declaratory relief sought, and we conclude Bryant does not have standing to seek a declaratory judgment against HCPC.

Next, Bryant argues that he has standing to pursue an action for mandate under Indiana Code section 34-27-3-1. That statute provides as follows:

An action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any:

- (1) act that the law specifically requires; or
- (2) duty resulting from any office, trust, or station.

Ind. Code § 34-27-3-1.

In his complaint, Bryant requested an order “mandating [HCPC] to immediately and forthwith abide by, execute and enforce the provisions of the Harrison County Zoning Ordinance, including requiring the removal and/or modification of the aforementioned garages” *Appellant’s App.* Vol. 1 at 8. An action for mandate is an extraordinary remedy of an equitable nature that is generally viewed with disfavor. *State ex rel. Steinke*, 831 N.E.2d at 757. “A party requesting mandate must have a clear and unquestioned legal right to the relief sought and must show that the respondent has an absolute duty to perform the act demanded.” *Brant v. Custom Design Constructors Corp.*, 677 N.E.2d 92, 95 (Ind. Ct. App. 1997). Indiana Code section 34-27-3-1 requires that the party seeking an action for mandate have a stake in the outcome. *State ex rel. Steinke*, 831 N.E.2d at 756.

As stated above, Bryant has failed to show that he has a stake in the outcome of this case, and we conclude that Bryant does not have standing to pursue an action for mandate.

Furthermore, a mandate order is not the proper vehicle for compelling adherence to such a general request. *See Hayes v. Trustees of Indiana Univ.*, 902 N.E.2d 303, 316 (Ind. Ct. App. 2009)(concluding that trial court properly granted motion for summary judgment because request for mandate only sought to compel compliance with general requirements rather than performance of a specific act); *State ex rel. Steinke*, 831 N.E.2d at 758 (concluding that it was not within purview of judiciary to issue a writ of mandate compelling adherence to rules pertaining to general requirements, as opposed to compelling performance of specific acts). Bryant’s complaint does not seek to compel a specific act on the part of HCPC. Rather, he merely makes a general request that HCPC “abide by, execute and enforce the provisions of the Harrison County Zoning Ordinance” *Appellant’s App.* Vol. 1 at 8. Because the action Bryant sought to compel was not within the trial court’s purview to mandate, the trial court properly dismissed Bryant’s action for mandate pursuant to Trial Rule 12(B)(6).

Bryant also argues that Section 806.1 of the Zoning Ordinance gives him standing to file this action. Section 806.1 of the Zoning Ordinance provides as follows:

The Commission, the Board, the Administrator, or any designated enforcement official, or any person or persons, firm or corporation jointly or severally aggrieved, may institute a suit for injunction in the Circuit Court of the County to restrain an individual or a governmental unit from violating the provisions of this ordinance.

Appellant’s App. Vol. 2 at 177. This section allows Bryant to seek an injunction if an individual or a governmental unit violates the provisions of the Zoning Ordinance. Here, however, Bryant does not allege that HCPC has violated the Zoning Ordinance. Instead, he asserts that HCPC has failed to enforce the Zoning Ordinance. Because Bryant does

not allege that HCPC has violated the Zoning Ordinance, Section 806.1 does not give Bryant standing to file this action.

Finally, Bryant argues that that he has standing pursuant to the holdings of this court in *T.W. Thom Constr., Inc. v. City of Jeffersonville*, 721 N.E.2d 319 (Ind. Ct. App. 1999), *Misner v. Presdorf*, 421 N.E.2d 684 (Ind. Ct. App. 1981), and *Metropolitan Dev. Comm'n of Marion County v. Douglas*, 180 Ind. App. 567, 390 N.E.2d 663 (1979). However, each of these is distinguishable. In these cases either a private landowner or a county development commission sought injunctive relief against another landowner who allegedly violated the local zoning ordinance. Neither of these cases addressed the situation presented here, where a private individual seeks declaratory, mandamus, and injunctive relief in order to force a county planning commission to enforce a zoning ordinance. As such, these cases do not indicate that Bryant has standing to pursue his action against HCPC.

Affirmed.

NAJAM, J., and BARNES, J., concur.