

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD ROE,

Plaintiff-Appellant,

v

BLOOMFIELD TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

February 4, 2014

No. 308906

Oakland Circuit Court

LC No. 2010-115591-CZ

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Plaintiff Richard Roe brought this declaratory judgment action to obtain a declaration that two ordinances enacted by defendant Bloomfield Township are partially void because they prohibit conduct permitted by the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.* Plaintiff appeals as of right from the trial court's order denying his request for declaratory relief. We affirm.

On December 14, 2010, two unidentified plaintiffs referred to as "Richard Roe" and "John Doe" filed this action for declaratory relief to determine the validity of two of defendant's ordinances. Plaintiffs sought a declaration that Ordinance Nos. 627 and 628 are preempted by the MMMA to the extent that they prohibit the medical usage of marijuana permitted under the MMMA and require a medical-marijuana patient who is registered under the MMMA to also register with defendant's police department. Plaintiffs also sought a declaration that the registration requirements are in conflict with and preempted by rules promulgated pursuant to the MMMA. Plaintiff Richard Roe also alleged:

Richard Roe is currently a registered patient and registered caregiver. He resides in Bloomfield Township, and has done so for many years. His current registered patients include individuals who suffer from hepatitis c, muscular dystrophy, multiple sclerosis, epilepsy, and severe and crippling rheumaty arthritis. He desires to keep the nature of his medical ailments confidential. In light of the criminal penalties associated with Bloomfield Township's two ordinances, he must remain anonymous.

In March 2011, the trial court entered a protective order requiring plaintiffs to provide their names and addresses to defendant's counsel. Plaintiffs also were ordered to provide an affidavit to defendant's counsel containing information that they are registered medical-

marijuana patients and caregivers. Following the entry of this order, and upon stipulation of the parties, the complaint was dismissed with respect to plaintiff John Doe.

Plaintiff Richard Roe (hereinafter “plaintiff”) thereafter moved for summary disposition under MCR 2.116(C)(9) and (10) with respect to the merits of his request for declaratory relief. Defendant filed a cross-motion for summary disposition under MCR 2.116(C)(4) (lack of subject matter jurisdiction) and (8) (failure to state a claim), seeking to have the trial court deny declaratory relief under MCR 2.605 or to uphold the validity of the ordinances. Following a hearing, the trial court issued a written opinion and order denying plaintiff’s request for declaratory relief. The court determined that plaintiff’s arguments concerning the impact of the ordinance on him were hypothetical and failed to establish an actual controversy necessary to entitle him to declaratory relief. The trial court also determined that the questions presented in the case were moot because the MMMA prescribes a process to be applied if defendant were to elect to enforce either against plaintiff.

On appeal, plaintiff argues that the trial court erred in dismissing this declaratory judgment action on the basis that no actual controversy existed. Plaintiff also seeks a determination that defendant’s ordinances are invalid because they conflict with the MMMA. Because we conclude that the trial court properly determined that there was no actual controversy, we affirm on that basis.

A trial court’s decision on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 43; 742 NW2d 624 (2007). Although defendant’s motion was brought under MCR 2.116(C)(4) (lack of subject-matter jurisdiction), we note that this Court has also considered a defendant’s motion involving the propriety of declaratory relief under MCR 2.116(C)(5) (lack of standing). *Int’l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012). Under either rule, however, a court considers the pleadings and any documentary evidence submitted by the parties. MCR 2.116(G)(5); *C C Mid West, Inc v McDougall*, 470 Mich 878; 683 NW2d 142 (2004); *Int’l Union, United Auto, Aerospace & Agricultural Implement Workers of America*, 295 Mich App at 493. Therefore, any error in failing to apply the proper subrule would be harmless. MCR 2.613(A). Under either rule, summary disposition is proper “[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact.” MCR 2.116(I)(1).

A party’s entitlement to declaratory relief is governed by MCR 2.605(A)(1), which provides:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

The permissive language “may declare” denotes discretionary action. *PT Today, Inc v Comm’r of Office of Fin & Ins Servs*, 270 Mich App 110, 126; 715 NW2d 398 (2006). But

before the trial court's discretion may be invoked, there must be an actual controversy. *Allstate Ins Co v Hayes*, 442 Mich 56, 66,74; 499 NW2d 743 (1993).

An "actual controversy" under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues. However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred. The essential requirement of an "actual controversy" under the rule is that the plaintiff pleads and proves facts that demonstrate an "adverse interest necessitating the sharpening of the issues raised." [*Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America*, 295 Mich App at 495 (footnotes with citations omitted).]

We review de novo the trial court's determination regarding the existence of an actual controversy. *Kircher v City of Ypsilanti*, 269 Mich App 224, 226-227; 712 NW2d 738 (2005). "Assuming the existence of a case or controversy within the subject matter of the court, the determination to make such a declaration is ordinarily a matter entrusted to the sound discretion of the court." *Allstate Ins Co*, 442 Mich at 74. "An abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

It is unclear from the trial court's decision what process under the MMMA it believed would apply if defendant elected to enforce its ordinances against plaintiff to thereby render this case "moot." The MMMA provides immunity from arrests, prosecutions, and penalties, MCL 333.26424, and an affirmative defense to a criminal prosecution, MCL 333.26428. See also *People v Koon*, 494 Mich 1, 5; 832 NW2d 724 (2013), *People v Bylsma*, 493 Mich 17, 22; 825 NW2d 543 (2012). In any event, while a case is considered moot when it presents abstract questions of law that do not rest on existing facts or rights, *PT Today Inc*, 270 Mich App at 127, the record in this case indicates that plaintiff was seeking a declaratory judgment to guide his future conduct regarding the cultivation of marijuana and registration requirements. It was not necessary that plaintiff wait until an arrest or other injury to seek declaratory relief. *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America*, 295 Mich App at 495. Thus, the trial court incorrectly applied mootness principles to the controversy in this case.

Nonetheless, we agree with the trial court that the injury that plaintiff sought to prevent is "hypothetical" in nature. The most that can be said from the allegations in the complaint is that plaintiff alleged that he is a registered patient and caregiver, who wanted to remain anonymous. A party seeking declaratory relief must still plead and prove facts demonstrating an adverse interest necessitating the sharpening of the issues raised. *Id.* Plaintiff did not offer any evidence that he is a registered medical marijuana patient or caregiver. Although the trial court considered this issue in the context of a motion for summary disposition, considering that plaintiff's allegations were made anonymously, and his failure to offer any evidence to demonstrate his adverse interest, we affirm the trial court's determination that no actual controversy under MCR 2.605(A)(1) has been demonstrated.

In light of our decision, it is unnecessary to address the other arguments raised by the parties on appeal with respect to the substantive merits of plaintiff's declaratory judgment action, or defendant's argument that plaintiff's claims are not ripe for judicial review absent an application for a "medical marijuana usage" land use. In sum, we affirm the trial court's refusal to grant declaratory relief on the basis that plaintiff failed to establish an "actual controversy" necessary to invoke relief under MCR 2.605(A)(1).

Affirmed.

/s/ Deborah A. Servitto
/s/ Christopher M. Murray
/s/ Mark T. Boonstra