IN THE COURT OF APPEALS OF IOWA

No. 9-063 / 97-1185
Filed August 27, 1999

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CLERK SUPREME COURT

DON BERKEY,

Plaintiff-Appellant,

vs.

CITY OF MITCHELLVILLE, IOWA, MITCHELLVILLE BOARD OF ADJUSTMENT, DICK TRIMBLE, PAUL MacKENDRIK, DEBBI COOPER, VIRGINIA HARGIS and MARY KENNEDY, as Members of the Mitchellville Board of Adjustment,

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, D.J. Stovall and Donna Paulson Judges.

The plaintiff appeals the district court's ruling dismissing his petition for writ of certiorari challenging the defendants' decision granting a variance to build a garage. **AFFIRMED.**

Donald F. Berkey, Mitchellville, pro se.

Dennis F. Chalupa, Newton, for appellee.

Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J.*

***Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).**

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PETERSON, S.J.

The plaintiff-appellant, Don Berkey, appeals the district court's ruling dismissing his petition for writ of certiorari challenging the defendant-appellee's decision to grant a city resident a variance to build a garage. Berkey claims the district court erred in dismissing his certiorari petition for the failure to allege specific grounds of illegality as required by Iowa Code section 414.15 (1995). We affirm.

On August 28, 1996, the City of Mitchellville Board of Adjustment granted a variance to Nancy Hay to build a two-car garage. The minutes for the board's meeting were not filed until October 1, 1996. On October 29, 1996, the board met to approve the August meeting minutes and amended them by adding a citation to the section of the zoning ordinance under which the Board granted the variance.

On November 1, 1996, the plaintiff, Don Berkey, as a city resident and taxpayer, filed a *pro se* petition for writ of certiorari, alleging the board acted illegally in granting the variance. Berkey c aimed the city council had been advised that the board's decision as stated in the original minutes was illegal. The defendants filed a motion to dismiss, claiming the petition was untimely, did not specify grounds of illegality, and Berkey had no standing as an aggrieved party.

After a hearing, in which Berkey participated *pro se*, the district court entered a ruling dismissing Berkey's petition for writ of certiorari. The court expressed some doubt whether Berkey was an aggrieved party permitted to bring the action pursuant to Iowa Code section 414.15, but concluded dismissal was appropriate because the petition did not allege specific grounds of illegality as required by the statute.

In his *pro se* appeal, Berkey claims the court erred in dismissing his petition for writ of certiorari because there was not "sufficient evidence in the record for a rational finding of fact that plaintiff's request for writ of certiorari should be dismissed."

Under Iowa Rule of Civil Procedure 318, our scope of review on appeal from a district court's judgment in a certiorari proceeding is "governed by the rules applicable to appeals in ordinary actions." *Id.* We are restricted to correction of errors at law and are bound by the findings of the trial court if supported by substantial evidence in the record. Iowa R. App. P. 14(f)(1); *Fox v. Polk County Bd. of Sup'rs*, 569 N.W.2d 503, 507 (Iowa 1997). The district court found Berkey's petition "does not allege the specific grounds of the illegality referred to in Paragraph 4 of the Plaintiff's Petition." Substantial evidence supports this finding.

Iowa Code section 414.15 sets forth the requirements for a petition for writ of certiorari to challenge the legality of a board of adjustment's decision. It requires, in pertinent part, a petition to the court "setting forth that such decision is illegal, in whole or in part, *specifying the grounds of the illegality*." Iowa Code § 414.15 (1995) (Emphasis added). The court concluded the petition must be dismissed because it failed to comply with section 414.15. We determine the district court acted correctly in dismissing Berkey's petition for failure to comply with the requirements of section 414.15 and affirm the dismissal.

The statute also requires the person requesting the writ to be "aggrieved" by the decision. *Id.* The district court gave Berkey the benefit of the doubt and

concluded "that because the Plaintiff has filed a Petition for Writ of Certiorari and has alleged that the Board granted another citizen a variance, that the Board action resulted in the Plaintiff being aggrieved." We determine there is not substantial evidence in the record to support a finding Berkey was "aggrieved by any decision of the Board of Adjustment" as required in Iowa Code section 414.15 and as defined in Iowa law. *See Chrischilles v. Arnolds Park*, 505 N.W.2d 491, 494 (Iowa 1993) (requiring a person to provide evidence of "(1) a specific personal and legal interest in the subject matter of the agency decision and (2) a specific and injurious effect on this interest by the decision"). Berkey only generally alleged in his petition, "Plaintiff is a resident and citizen and taxpayer of the town of Mitchellville, Iowa."

Appellant, Don Berkey, did not provide sufficient evidence of his standing as an aggrieved person or specify the grounds of the alleged illegality in the Board of Adjustment's decision. Iowa Code § 414.15. Accordingly, we affirm the decision of the district court to dismiss his petition for writ of certiorari.

AFFIRMED.