FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

266

CITY OF BOONE, IOWA,

Plaintiff-Appellee,

vs.

FORREST B. MILLIKEN and WILLIAM E. MILLIKEN,

Defendants-Appellants.

Filed October 23, 1984

4-270
84-40

Appeal from the Iowa District Court for Boone County - Dale E. Ruigh, Judge.

The trial court enjoined the defendants from violating a city ordinance prohibiting the outdoor storage of junk vehicles. The trial court also granted the city permission to enter the defendants' property to remove the offending vehicle. The defendants, representing themselves pro se, have appealed. AFFIRMED.

William Milliken, pro se.

Alan C. Schroeder, Boone City Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

Defendants appeal from a trial court order enjoining them from violating a city ordinance which prohibits the outdoor storage of junk vehicles, and granting the City permission to enter defendants' property to remove a vehicle. They allege the ordinance in question is unconstitutional and conflicts with state statutes. They also contend the trial court erred in overruling their motion to dismiss and their motion to amend and enlarge the findings and conclusions. We affirm.

Section 8.20.040 of the Boone Municipal Code prohibits the outdoor storage of junk vehicles, which are defined to include vehicles not currently licensed and not in use. In January 1983, the City of Boone sought an injunction to prevent Forrest Milliken and William Milliken from continuing to violate this ordinance. The City also sought a court order permitting it to enter the Millikens' property and remove the offending vehicle. The Millikens, representing themselves pro se, challenged the city ordinance as unconstitutional and in conflict with state statutes. The trial court rejected these arguments and granted the City the relief it requested. The Millikens, once again acting pro se, have appealed from the trial court's ruling.

Our review of this proceeding is de novo. Iowa R. App. P. 4. It is our duty at the appellate level to review the record and adjudicate rights anew on issues properly presented. Rouse v. Rouse, 174 N.W.2d 660, 666 (Iowa 1970).

I.

Defendants' first argument is that the district court erred in finding the city ordinance constitutionally valid. They contend the ordinance is unconstitutional because it permits the city council to exercise "judicial" power, it creates an "irrational classification," and it permits the City to enter private property and seize a vehicle without a search warrant. The City argues that these consti-

tutional issues should not be addressed since they were not specifically raised by the pleadings.

In Cole v. City of Osceola, 179 N.W.2d 524 (Iowa 1970), the supreme court discussed at length constitutional challenges to city ordinances. The court recognized:

> As a general rule, invalidity of a statute or ordinance, in order to be relied on, must be specifically raised by the pleadings distinctly pointing out in what manner or respect the statute or ordinance violates the provision invoked and the facts relied on to show unconstitutionality must be clearly made to appear.

Id. at 531.

As the trial court recognized, the defendants' answer is not sufficient to raise constitutional issues when tested by the aforementioned principles. In fact, the only reference in their answer to the constitutional challenges is the following statement:

> Plaintiff's alleged ordinance is an abridgement of rights and privileges afforded and secured Defendants by law and Constitution of Iowa and These United States.

While this argument is addressed with more specificity on appeal, this court will not consider for the first time on appeal constitutional claims which were not properly raised in the pleadings. Id. at 532.

II.

Defendants also argue that the ordinance in question conflicts with section 321.89 of the Code, which sets forth the authority to take possession of abandoned vehicles. The Millikens contend that this provision does not grant police power over "a vehicle parked 'illegally' on private property."

We cannot ignore the constitutional ramifications of this argument and the fact that it was not specifically pled below. However, even if the issue had been properly raised we believe the ordinance properly grants authority within the police powers of the City. Contrary to defendants' claim, Chapter 8.20 of the

Boone Municipal Code was not enacted as a motor vehicle provision under section 321.89 of the Code. Rather, it was enacted pursuant to section 364.1 which grants cities the right to enact laws to ". . . improve the peace, safety, health, welfare, comfort and convenience of its residents." As plaintiff recognizes in its brief, the ordinance is designed to prevent the accumulation of junk and promote the safety of Boone residents. We believe an ordinance with this purpose is entirely within the police powers statutorily granted to the City.

III.

The defendants' remaining claims are that the trial court erred in overruling their motion to dismiss and motion to amend and enlarge findings and conclusions.

As the trial court recognized, the defendants have a heavy burden to sustain a motion to dismiss. Notice pleading only requires a "short and plain statement of the claim." Iowa R. Civ. P. 69(a). It does not require a pleading of the facts. In order to sustain a motion to dismiss for failure to state a claim for relief, there must be no conceivable state of facts under which the plaintiff might prove its right of recovery. Van Meter v. Van Meter, 328 N.W.2d 497, 497 (Iowa 1983). We cannot say the defendants in the present case met this burden.

The supreme court has recognized that an injunction may issue in the discretion of the trial court for conduct which endangers public health and safety. City of Cedar Rapids v. Coch, 299 N.W.2d 656, 660 (Iowa 1980). We agree with the trial court that it was entirely conceivable the plaintiff could prove a state of facts which would entitle it to equitable relief.

Additionally, we cannot agree with the defendants' claim that the trial court erred in overruling their motion to amend and enlarge findings and conclusions. The motion was dismissed by the court as untimely pursuant to Iowa R. Civ. P. 247. The Millikens argue on appeal that the court overruled its motion due to its "label" rather than its content. They contend the trial court should have viewed the motion as a joinder in the City's timely motion to amend. We find this

argument to be without merit. The Millikens' motion to amend raises completely different issues than the City's motion to amend. Furthermore, the Iowa Rules of Civil Procedure require that all post-judgment motions be filed within ten days of the decision. Iowa R. Civ. P. 247. Defendants cannot avoid this time limitation without an application to the trial court for additional time to file the motion.

Finding no error, we affirm the trial court decision.

AFFIRMED.