IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PARNEET S. SOHI, Plaintiff-Appellant, vs. SYCAMORE TOWNSHIP, OHIO, BOARD OF TRUSTEES, Defendant-Appellee.	: : : : : :	APPEAL NO. C-180288 TRIAL NO. A-1706337 *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Parneet S. Sohi was the sole member of Sean S. Properties, LLC, and Sean Holding Company, LLC. Sean S. Properties formerly owned property at 7767 Montgomery Road in Sycamore Township. Sean Holding Company formerly owned property at 7775 Montgomery Road in Sycamore Township. On December 5, 2017, Sohi filed a lawsuit claiming that Sycamore Township had violated Ohio's Open Meetings Act, R.C. Chapter 121, on several occasions. In the first cause of action, Sohi claimed that the township had violated the act in 2008, when it created and adopted a master plan for property acquisition. In the second cause of action, Sohi claimed that the township had violated the act in 2009, when it purchased the 7767 and 7757 Montgomery Road properties through a third-party buyer. The third cause of action involved a lawsuit filed by the township in 2016 regarding zoning code violations, the authorization for which he claimed violated the Open Meetings Act.

The township filed a motion to dismiss pursuant to Civ.R. 12(B)(6). In that motion, the township claimed that the first two causes of action had been untimely filed. The township further argued that the third claim had been improperly filed in

the case below, claiming that the claim should have been filed in the underlying 2016 zoning-violation litigation. Alternatively, the township argued that that claim should be dismissed because the decision to file the 2016 zoning-violation lawsuit did not require an open meeting. The trial court dismissed all three causes of action, the first two because they had been untimely filed, and the third claim because it should have been filed in the 2016 litigation. On appeal from that judgment, Sohi presents three assignments of error.

In the first assignment of error, Sohi claims that the trial court improperly dismissed the first two causes of action as untimely. The timeframe for bringing an action under the Open Meetings Act is governed by R.C. 121.22(I)(1). That provision states that

> [a]n action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

Sohi argues that he did not know about the violations during the timeframe in which he was required to file the suit. But the statute does not provide—and Sohi cites no legal authority adopting—the discovery rule for the statute. "Ordinarily, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed." *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 21, quoting *Collins v. Sotka*, 81 Ohio St.3d 506, 507, 692 N.E.2d 581 (1998). But a discovery rule provides that a cause of action does not arise until the plaintiff knows, or by the exercise of reasonable diligence should know, that he or she has been injured by the defendant's conduct. *Bd. of Edn. of Loveland City School Dist. v. Bd. of Trustees of Symmes Twp.*, 2018-Ohio-1731, 111 N.E.3d 833, ¶ 54 (1st Dist.). This discovery rule has been given narrow

application and applied in only limited situations, such as malpractice actions. *See Oliver v. Kaiser Community Health Foun.*, 5 Ohio St.3d 111, 449 N.E.2d 438 (1983) (medical malpractice); *Skidmore Hall v. Rottman*, 5 Ohio St.3d 210, 450 N.E.2d 684 (1983) (legal malpractice). There is no precedent for applying a discovery-rule safe-harbor to cases involving an alleged violation of the Open Meetings Act. And as one court noted, "In light of the narrow application of the discovery rule, we cannot, without express legislative or judicial authority, create law where none exists." *Hughes v. City of N. Olmstead*, 8th Dist. Cuyahoga No. 70705, 1997 WL 25515 (Jan. 23, 1997).

The trial court properly determined that the first two causes of action were barred by the applicable statute of limitations. We overrule Sohi's first assignment of error.

In the second assignment of error, Sohi claims that the trial court improperly dismissed his third cause of action on the basis that he should have sought, instead, to intervene in the 2016 zoning litigation. As R.C. 121.22(I)(1) states, "Any person may bring an action to enforce this section." The statute imposes no limitation on who can bring an action under the Open Meetings Act based on a governmental decision involving litigation. The statue is drafted to allow anyone to bring a claim. And Sohi's claim—that the township was required to conduct an open meeting before proceeding with the zoning litigation is not an attack on the zoning litigation itself, but rather an attack on the mechanism by which the township commenced the litigation. So the trial court was incorrect for dismissing the action pursuant to Civ.R. 12(B)(6) for that reason.

But the trial court can be right for the wrong reason. A reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof. *Cook v. Cincinnati*, 103 Ohio App.3d 80, 90, 658 N.E.2d 814, 820 (1st Dist.1995), citing *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994). Thus, "when a trial court has stated an erroneous basis for

its judgment, an appellate court *must* affirm the judgment if it is legally correct on other grounds, that is, it achieves the right result for the wrong reason, because such an error is not prejudicial." (Emphasis added.) *Widlar v. MatchMaker Intern.*, 6th Dist. Lucas No. L-01-1433, 2002-Ohio-2836, ¶ 18. As long as the argument was presented to the trial court, a reviewing court can consider the rationale as an alternative basis for affirming. Numerous courts have held that a dismissal pursuant to Civ.R. 12(B)(6) that relies on a faulty rationale must still be affirmed if the complaint was otherwise subject to dismissal as a matter of law. *See Davis v. Widman*, 184 Ohio App.3d 705, 2009-Ohio-5430, 922 N.E.2d 272, ¶ 24 (3d Dist.) (dismissal was proper even if statute-of-limitations analysis was faulty, when the complaint failed to state a claim upon which relief could be granted); *Shamansky v. Massachusetts Fin. Serv. Co.*, 127 Ohio App.3d 400, 404, 713 N.E.2d 47 (10th Dist.1998) (erroneous consideration of matters outside of pleadings was harmless error, since appellee had no legal duty to notify shareholders of uncashed dividend checks); *Smith v. Asbell*, 4th Dist. Scioto No. 03CA2897, 2005-Ohio-2310, ¶ 45, 47 (erroneous consideration of matters outside of the pleadings was harmless error, since it was clear from the face of the complaint that the claim was barred by the applicable statute of limitations).

The 2016 zoning-violation litigation filed by the township sought an injunction to enforce its zoning code. In particular, the law director alleged that signs on the Montgomery Road properties violated the code. The township is under limited home rule, and the law director has the authority to enforce the township's zoning code. R.C. 504.15(A) gives the township law director authority to (1) prosecute and defend all suits and actions that the board or any township officer directs or to which an officer or the board is a party, and (2) prosecute any violation of a township resolution. In the provision for prosecuting violations of the township resolutions, there is no requirement for board oversight or direction—the law director is directly empowered by statute to prosecute violations. Additionally, R.C.

519.24 empowers the "township zoning inspector" to seek injunctive relief for violations of township zoning regulations. Again, the statute indicates that the office operates upon its independent discretion when enforcing zoning regulations. Taking the allegations of the complaint as true, Sohi has failed to state a claim for which relief can be granted. Because the third cause of action should have been dismissed on that basis, the trial court was correct when it dismissed the claim. We overrule Sohi's second assignment of error.

A dismissal for failure to state a claim is without prejudice, except in those cases where the claim cannot be pleaded in any other way. *Collins v. Natl. City Bank*, 2d Dist. No. 19884, 2003-Ohio-6893, 2003 WL 22971874, ¶ 51. In this case, there is no way that Sohi can plead his third claim—that the township was required to hold a public meeting before commencing the 2016 zoning litigation—that would result in a cognizable claim. Thus, the dismissal was a determination on the merits, and the third claims was properly dismissed with prejudice. We therefore overrule Sohi's third assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and **BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on September 18, 2019

per order of the court _____.

Presiding Judge