In the Missouri Court of Appeals
Eastern District
DIVISION FOUR

CITY OF LAKE ST. LOUIS, MISSOURI,	)	No. ED93289
	)	
Appellant,	)	Appeal from the Circuit Court of St. Charles County
	)	
vs.	)	Honorable Ted C. House
	)	
	)	Cause No. 0911-CV03131
CITY OF O'FALLON, MISSOURI,	)	
	)	
Respondent.	)	Filed: January 26, 2010
	)	

OPINION

The City of Lake Saint Louis (hereinafter, "Lake St. Louis") appeals the trial court's judgment dismissing its petition for declaratory judgment with respect to a boundary dispute and alleged annexation against the City of O'Fallon (hereinafter, "O'Fallon"). Lake St. Louis argues on appeal the trial court erred in dismissing its petition because the petition stated a cause of action and was not barred by the statute of limitations or laches. We reverse and remand for further proceedings.

This case comes to us after the trial court granted O'Fallon's motion to dismiss. When reviewing a trial court's dismissal of a declaratory judgment action, we must construe the petition liberally, take the statements of fact in the petition as true, and grant the plaintiff the benefit of every favorable inference that can be reasonably drawn from

the facts pleaded. Dodson v. City of Wentzville, 133 S.W.3d 528, 533 (Mo. App. E.D. 2004). The facts as gleaned from the petition are as follows:

In 1982, Lake St. Louis annexed property to establish its northern boundary as the northern right-of-way line of Interstate 70 from O'Fallon Drive westward. Lake St. Louis alleged a dispute arose with O'Fallon as to the northern boundary of Lake St. Louis. O'Fallon disputes the location of the boundary and claims to have subsequently annexed property, issued permits, and taken other actions within the boundary of Lake St. Louis. On October 31, 2008, O'Fallon's city counselor wrote to St. Charles County officials to dispute the northern boundary of Lake St. Louis, stating in part the adjudication of the dispute between O'Fallon and Lake St. Louis should be resolved in circuit court.

Lake St. Louis filed its declaratory judgment action against O'Fallon on March 26, 2009, challenging the boundary location and alleged annexation. Lake St. Louis attached to its petition the annexation ordinance, a current plat depicting the boundaries, and a narrative description of the property. In its petition, Lake St. Louis averred it had a legally protectable interest in enforcing its ordinances, collecting and administering taxes, and protecting the rights of the city and its residents. As such, Lake St. Louis requested the trial court to enter judgment declaring the northern boundary as depicted in the exhibits and as it has been since 1982. Further, Lake St. Louis asked the trial court to declare O'Fallon has not annexed property within that boundary.

O'Fallon filed a motion to dismiss Lake St. Louis' petition. O'Fallon argued Lake St. Louis lacked the capacity, authority, and standing to sue because the exclusive remedy to resolve jurisdiction over disputed territory, an alleged annexation, or to oust a

city was through a writ of quo warranto. O'Fallon also asserted Lake St. Louis' allegations were barred by the statute of limitations and laches. The trial court granted O'Fallon's motion without comment. Lake St. Louis appeals.

In its sole point on appeal, Lake St. Louis argues the trial court erred when it dismissed its petition seeking a declaratory judgment action with respect to its boundary dispute with O'Fallon. Lake St. Louis argues its petition states a cause of action and is not barred by the statute of limitations or laches.

A motion to dismiss is an attack on the petition and is solely a test of the adequacy of that pleading. Reynolds v. Diamond Foods & Poultry, Inc., 79 S.W.3d 907, 909 (Mo. banc 2002); Moynihan v. City of Manchester, 203 S.W.3d 774, 775 (Mo. App. E.D. 2006). This Court does not endeavor to determine whether the alleged facts are credible or persuasive. Hallquist v. Midden, 196 S.W.3d 601, 603 (Mo. App. E.D. 2006). "Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. banc 1993). We will affirm the order of dismissal if any ground supports the motion, regardless of whether the trial court actually relied upon that ground in making its ruling. Johnson v. Vee Jay Cement, 77 S.W.3d 84, 88 (Mo. App. E.D. 2002).

Lake St. Louis argues its petition does not seek to oust O'Fallon from the disputed property. Rather, Lake St. Louis frames the issue as "merely seek[ing] a declaration of where the boundary lies between the two cities" which it believes can be resolved through a declaratory judgment action. O'Fallon disagrees, arguing the only reasonable construction of the allegations in Lake St. Louis' petition can be that O'Fallon has

engaged in a de facto annexation of undescribed property within Lake St. Louis' boundaries and should be ousted. Thus, O'Fallon claims the exclusive remedy is through a writ of quo warranto.

The petition set forth one pertinent paragraph with respect to Lake St. Louis' purported claim for relief. It states in part: "A dispute exists between the parties as to the northern boundary of Lake St. Louis. O'Fallon disputes the northern boundary of Lake St. Louis and claims to have subsequently annexed property, issued permits, and taken other actions within the boundary of Lake St. Louis…." The petition prayed for the trial court to enter judgment declaring the northern boundary of Lake St. Louis as depicted in the exhibits and as originally annexed by Lake St. Louis in 1982, and to declare O'Fallon has not annexed property within that boundary.

Taking these averments as true, we find Lake St. Louis' petition set forth a cause of action by articulating a dispute with respect to where the boundary lies between the two municipalities. Moreover, the petition averred O'Fallon has annexed property Lake St. Louis believes it has exclusive jurisdiction over. As such, the petition averred more than a "mere boundary dispute" as Lake St. Louis argues, albeit somewhat inartfully.

Moreover, there are insufficient facts contained on the face of the petition to determine whether Lake St. Louis' claim is barred by the statute of limitations or laches. "When an affirmative defense such as the statute of limitations is asserted in support of a motion to dismiss, the petition may not be dismissed unless it clearly establishes on its face and without exception that it is barred." Hemar Ins. Corp. of Am. v. Ryerson, 108 S.W.3d 90, 92 (Mo. App. E.D. 2003); Sheehan v. Sheehan, 901 S.W.2d 57, 59 (Mo. banc 1995). The only date referenced in the petition is Lake St. Louis' initial annexation of

property in 1982. Lake St. Louis has not specified when O'Fallon took steps to purportedly annex property within its jurisdiction. As such, the petition does not clearly establish on its face and without exception that Lake St. Louis' action is barred.

We turn to the crux of the parties' dispute, namely which remedy is available to Lake St. Louis to resolve its boundary dispute with O'Fallon. Lake St. Louis believes declaratory judgment is an appropriate remedy, relying principally upon Walker Reorganized School District R-4 v. Flint, 303 S.W.2d 200 (Mo. App. K.C. Dist. 1957), Reorganized School District R-I of Crawford County v. Reorganized School District R-III of Washington County, 360 S.W.2d 376 (Mo. App. St. L. Dist. 1962), and State ex rel. Junior College District of Sedalia v. Barker, 418 S.W.2d 62 (Mo. banc 1967). O'Fallon disagrees, arguing Lake St. Louis' exclusive remedy is through quo warranto, citing State ex inf. Sanders ex rel. City of Lee's Summit v. City of Lake Lotawana, 220 S.W.3d 794 (Mo. App. W.D. 2007), and the cases it relies upon, State ex rel. Kansas City v. Harris, 212 S.W.2d 733 (Mo. 1948), and State ex rel. Members of Board of Education of Everton R-III School District v. Members of Board of Education of Greenfield R-IV School District, 572 S.W.2d 899 (Mo. App. Spring. Dist. 1978) in support of its argument.

It is well-settled that "[t]he corporate existence of a municipal or public corporation, in the de facto exercise of corporate life, must be challenged by the [S]tate itself by an information in the nature of a quo warranto, and collateral attacks thereon ought not to be tolerated." Spiking Sch. Dist. No. 71, DeKalb County v. Purported "Enlarged Sch. Dist. R-11, DeKalb County, Mo.", 245 S.W.2d 13, 21 (Mo. banc 1952). This rule contemplates that "corporate franchises are grants of sovereignty only, and, if the [S]tate acquiesces in their usurpation, individuals will not be heard to complain."

Junior College of Sedalia, 418 S.W.2d at 65-66. Moreover, public policy dictates an emphasis on "the importance of stability and certainty in such matters, and the serious consequences which might follow if the existence of a public corporation could be called in question by persons who do not have an interest in the matter separate and distinct from that of the State itself." Id. at 66.

Lake St. Louis acknowledges these general propositions; yet, it argues declaratory judgment is an appropriate remedy based upon a series of cases it believes carves out an exception when disputes arise between two or more governmental entities. In Walker Reorganized School District R-4 v. Flint, the Walker Reorganized School District filed a declaratory judgment action to determine whether the Coal Creek Common School District had become part of Walker's school district by annexation. Walker, 303 S.W.2d at 201. Walker filed its action against individual members of Coal Creek's board of directors and the Vernon County Board of Education. The individual defendants filed an answer asking the court to declare the purported annexation void and that Coal Creek was part of the Vernon County Reorganized School District. Id. Vernon County was permitted to intervene, and filed an answer praying the court to declare the annexation elections void, and to find Vernon County had annexed Coal Creek. Id.

At trial, the parties contended quo warranto was the appropriate remedy for the individual defendants to pursue. However, Vernon County argued a declaratory judgment action was proper to resolve the dispute between itself and Walker. Id. at 203. The trial court determined neither the individual defendants nor Vernon County could collaterally attack a valid annexation election in a declaratory judgment action. Id. at 204.

On appeal, the Walker court acknowledged, "It is well established that the legality of the organization of a school district cannot be inquired into by a suit brought directly by an individual, but must be assailed, if at all, by quo warranto in the name of the [S]tate through the prosecuting attorney or attorney general." Id. at 205. Further, "a declaratory judgment action is not available to the individual plaintiffs who are residents, patrons and taxpayers of the reorganized district. They are only indirectly affected by the lack of de jure existence of the reorganized district and the attempted action by them is in the nature of a collateral attack." Id. (citations omitted). The Walker court echoed the general premise that:

> [T]he rule is unanimous that where a public body has, under color of authority, assumed to exercise the power of a public corporation of a kind recognized by law, the validity of its organization can only be challenged by the State. The same rule applies where such public corporation extends it authority, under color of law, over additional territory. Its defacto existence in such territory should not be allowed to be questioned by private individuals.

Id. The court then distinguished the case at issue from the rule articulated above:

> Both [Walker] and [Vernon County] are public school districts. Each in its public corporate capacity is claiming the same territory, the Coal Creek District. Each claims that this district is legally a part of its corporate territory. Each bases its claim thereto on the assertion that it was the one which took the first valid step to acquire…Coal Creek…. Both [Walker] and [Vernon County] have a direct interest in the matter. There is no threat of harassment by individuals questioning the validity of a school district. To permit [Walker] and [Vernon County], in a declaratory judgment action, to determine the question of which took the first valid step to acquire … Coal Creek … does not appear to violate any of the reasons for the rule that an individual cannot question in [sic] legality of the organization of a school district by a declaratory judgment action, but must proceed, if at all, by quo warranto in the name of the State. Since the reason for that rule fails as applied to this case we do not apply the rule.

Id. at 205-06.

As a result, the Walker court held declaratory judgment was an appropriate remedy for determining whether Walker or Vernon County took the first valid step to acquire Coal Creek. Id. at 206. The court also noted, "the Supreme Court has been careful to leave the door open for the decision that the cases in which individuals are endeavoring to attack the validity of an annexation or a reorganization through a proceeding other than by quo warranto in the name of the State are not necessarily controlling where two school districts are claiming the same territory." Id.

Our Court adopted the holding in Walker in Reorganized School District R-I of Crawford County v. Reorganized School District R-III of Washington County, *supra*. In that case, the R-I Reorganized School District of Crawford County instituted a declaratory judgment action against the R-III Reorganized School District of Washington County to fix the boundary between the two districts. Crawford, 360 S.W.2d at 377. Our Court stated, "Ordinarily matters affecting the legality of the organization of a school district cannot be inquired into except by quo warranto in the name of the [S]tate. This action, however, is between two school districts." Id. at 378. Relying upon Walker, we held "a declaratory judgment action will lie in a dispute such as this between two school districts." Id. at 378.

The Supreme Court tacitly affirmed the Walker and Crawford holdings in State ex rel. Junior College District of Sedalia v. Barker, *supra*. In Junior College of Sedalia, individuals sought an action for declaratory judgment, injunction, and a petition for review challenging the validity of a school board. The trial court granted relief and the junior college district appealed. Junior College of Sedalia, 418 S.W.2d at 63-64. The junior college's primary argument was the trial court exceeded its jurisdiction when it

granted injunctive relief because the junior college district's formation and existence could not be challenged by individuals by declaratory judgment action, injunction, or petition for review because it is a public corporation. As such, it argued the individuals' exclusive remedy was through quo warranto. Id. at 65. The Supreme Court agreed, reaffirming the basic premises that:

> The law is settled that when a public body has, under color of authority, assumed to exercise the powers of a public corporation of a kind recognized by law, so as to become at lest [sic] a de facto corporation, the validity of its organization can be challenged only by direct proceedings in quo warranto by the state through its officers designated in [Section] 531.010, and cannot be challenged by individuals.

Id. At the end of this statement, the Supreme Court included a footnote, contrasting its holding with Walker and Crawford, stating:

> *Compare*: Walker Reorganized School District R--4 v. Flint et al., Mo.App., 303 S.W.2d 200, 205--206(2), cited by respondent, holding that one school district can maintain an action against another school district for a judgment declaring that defendant district had become a part of plaintiff district by annexation. In so holding the court referred specifically to page 21 of the Spiking case (245 S.W.2d and noted ''* * * that the Supreme Court has been careful to leave the door open for the decision that the cases in which individuals are endeavoring to attack the validity of an annexation or a reorganization through a proceeding other than by quo warranto in the name of the State are not necessarily controlling where two school districts are claiming the same territory.' However, as to the individual parties in the Walker case, the court held (303 S.W.2d l.c. 206(3)) that the Spiking case was controlling and they had no right to question the validity of the purported annexation. *See also*: Reorganized School District R-I of Crawford County v. Reorganized School District R--III of Washington County, Mo.App., 360 S.W.2d 376, 378(1--2).
>
> Id. at 65 n.1.

It is apparent our Supreme Court had the opportunity to disavow the holdings in Walker and Crawford when resolving the dispute in Junior College of Sedalia, but declined to do so.

O'Fallon believes these cases cannot control because they were decided prior to Cherry v. City of Hayti Heights, 563 S.W.2d 72 (Mo. banc 1978), the most recent Missouri Supreme Court case addressing quo warranto. In Hayti Heights, an individual taxpayer brought a declaratory judgment action seeking to invalidate the incorporation of the City of Hayti Heights. Id. at 75. The Supreme Court recognized the basic doctrine that "the existence, use and exercise of a franchise granted by the [S]tate including the existence and legality of a municipal corporation can only be challenged by the sovereign through the use of an information in the nature of quo warranto." Id. at 80. As a result, it found the taxpayer could not maintain a declaratory judgment action against the city.[1] Id. at 88.

Hayti Heights is distinguishable from the case at bar in that it clearly resolves an individual taxpayer challenge to a municipality's existence, in contrast to the dispute between Lake St. Louis and O'Fallon. Thus, O'Fallon unpersuasively argues the holding in Hayti Heights clouds the lens through which we view the cases Lake St. Louis has presented to support its argument.

O'Fallon further urges us to find the holding in State ex inf. Sanders ex rel. City of Lee's Summit v. City of Lake Lotawana, *supra*, controls our decision. In Lake Lotawana, Lee's Summit brought a quo warranto action to oust Lake Lotawana from exercising jurisdiction over a tract of land and a declaratory judgment action asking the trial court to declare that it took the first valid step toward annexation. Lake Lotawana,

[1] Hayti Heights explicitly reaffirmed the holding that individuals seeking to challenge a governmental entity's existence or annexation proceedings must do so by way of quo warranto. Id. at 80 (*citing* White v. City of Columbia, 461 S.W.2d 806, 806-07 (Mo. banc 1970)(holding property owners and taxpayers could not bring declaratory judgment action attacking regularity of annexation proceedings because exclusive remedy was quo warranto); Three Rivers Junior College Dist. of Poplar Bluff v. Statler, 421 S.W.2d 235, 243 (Mo. banc 1967)(finding taxpayers could not challenge the junior college district's alleged illegal formation through an injunction suit because exclusive remedy was quo warranto); Junior College, *supra*; and Spiking, *supra*.

220 S.W.3d at 798. The trial court issued an order in quo warranto ousting Lake Lotawana and granted declaratory relief finding Lee's Summit had prior jurisdiction over the track. Id. Lake Lotawana appealed, offering several arguments, including the trial court erred in granting declaratory relief because Lake Lotawana believed the exclusive remedy was by way of quo warranto. Id. at 808. The Western District agreed with Lake Lotawana's assertion, stating:

> Quo warranto and not injunction is the proper action for testing the City's right to the disputed territory [in a dispute over annexation]. State ex rel. Kansas City v. Harris, 357 Mo. 1166, 212 S.W.2d 733, 735 (Mo. 1948). Indeed, this court's Southern District held, in State ex rel. Members of Board of Education of Everton R-III School District v. Members of Board of Education of Greenfield R-IV School District, 572 S.W.2d 899 (Mo. App. Spring. Dist. 1978), that quo warranto was the only proper remedy to resolve a dispute over the change of school boundaries when two school districts claimed jurisdiction over the same property. (quotations omitted).
>
> Id.

The Western District concluded the trial court should have dismissed Lee's Summit's action for declaratory judgment and injunction, but found this ruling would not alter the outcome of the case. Id. The Western District explained that when the trial court issued its order in quo warranto ousting Lake Lotawana from exercising jurisdiction over the disputed property, the court had by necessity determined Lee's Summit had taken the first valid step to annexing the land. Id. Thus, Lee's Summit did not need to seek a declaratory judgment in addition to obtaining an order in quo warranto to resolve the issues. Id.

At first glance, it appears Lake Lotawana, as the most recent decision of our appellate court[2] on this issue, resolves the dispute here between Lake St. Louis and

[2] Although there are three districts of the Missouri Court of Appeals, we are considered one Court of Appeals.

O'Fallon. However, a closer look at the cases relied upon in Lake Lotawana reveals a misinterpretation of the holdings in those cases.

Lake Lotawana cites Harris, *supra*, to support its holding that quo warranto is the proper remedy when governmental entities dispute boundary changes. In Harris, Kansas City sought to prohibit a trial judge from proceeding in an action for declaratory judgment and injunction filed by residents in Clay County against Kansas City who sought to annex their county. Harris, 212 S.W.2d at 734. There was a concurrent quo warranto action pending to oust North Kansas City from municipal jurisdiction over the area sought to be annexed by Kansas City and to declare that Kansas City had such jurisdiction. Id. at 734. Kansas City argued on appeal the court had the exclusive right to decide these issues in the concurrent quo warranto case, not the declaratory judgment action. Id. at 735. The residents disagreed, contending their only remedy in the quo warranto case could be to oust Kansas City and did not reach the issues in the declaratory judgment action. Id. at 735. As part of its holding, Harris concluded, "Quo warranto and not injunction is the proper action for testing the City's right to the disputed territory." Id. Similar to Hayti Heights, we find Harris distinguishable from Walker and its progeny in that Harris' holding concerns individuals challenging the municipality, rather than a dispute between two governmental entities.

Lake Lotawana likewise relies on the holding in Everton in reaching its decision. A careful reading of Everton demonstrates its holding rests upon dicta and a misreading of precedent in reaching its decision. In Everton, a dispute arose over an election that changed the boundaries between two school districts. Everton, 572 S.W.2d at 899. Everton R-III School District brought a declaratory judgment and mandamus proceeding

to resolve the dispute. Id. The trial court ruled Everton's exclusive remedy was in quo warranto and entered judgment in favor of Greenfield R-IV School District. Id.

The Southern District declined to address Everton's argument on appeal with respect to the merits, finding the issue "can only be determined in quo warranto since it is clear to us that the dispute in this case involves claim of jurisdiction over the same property by two school districts." Id. at 900. Relying primarily on State ex rel. Purdy Reorganized School District Number 11 v. Snider, 470 S.W.2d 805 (Mo. App. Spring. Dist. 1971) for this proposition, the court reasoned, "the public interest is involved and the rights of the respective districts should be settled in [q]uo [w]arranto." Id., (*quoting* Purdy, 470 S.W.2d at 809).

Our reading of Purdy reveals the foregoing statement, when read in context, is mere dicta. In Purdy, the State, on relation of the school district, sought a peremptory writ of mandamus to compel the clerk of the county court to extend tax books to include certain realty claimed to be within the school district's boundaries. Id. at 806. The trial court refused the writ and the school district appealed. Id. After finding the school district did not carry its burden of showing it was entitled to relief, the Southern District declined to address the remaining issues, explaining:

> It does appear that the real controversy in this case is: Which of the two school districts properly has jurisdiction over the tract of land plotted on our exhibit one? That controversy cannot be settled on this record, nor for that matter in mandamus. Where two school districts claim jurisdiction over the same territory, as is the case here with the southern part of the tract plotted on exhibit one, the public interest is involved and the rights of the respective districts should be settled in Quo Warranto. State ex inf. Dalton ex rel. Hough v. Eckley, Mo., 347 S.W.2d 704, 707(2); Spiking School District v. Purported 'Enlarged School District R-11, DeKalb County, Missouri,' 362 Mo. 848, 865, 245 S.W.2d 13, 21(12).

Id. at 809.

In addition to relying upon Purdy, the Everton decision also cited State ex inf. Dalton ex rel. Hough v. Eckley, 347 S.W.2d 704 (Mo. banc 1961) for the proposition that "[q]uo [w]arranto is a proper remedy to test the jurisdiction of a school board over territory claimed by another school district." Everton, 572 S.W.2d at 900. A plain reading of this sentence makes clear the Hough decision held quo warranto was *a* proper remedy, as opposed to *the* proper or *only* proper remedy as it is represented to be in the text quoted from Lake Lotawana, *supra*. By misconstruing and restricting the holding in Hough, and relying upon dicta in Purdy, we believe Everton improperly fashioned quo warranto into the exclusive remedy, rather than the customary, preferred, or optional remedy it has evolved into since the analysis offered in Walker.

As a result, we find the analysis in Lake Lotawana and the cases it relies upon to be faulty, and therefore, we decline to follow them for the proposition that Lake St. Louis' exclusive remedy in this case was to proceed in quo warranto. Walker and its progeny have carved out an exception which permits governmental entities, such as municipalities and school districts, to bring a declaratory judgment action to resolve boundary disputes because concerns compelling the traditional use of quo warranto are absent. This is not to say an action in quo warranto will not lie. Rather, we believe Missouri precedent supports the election of either remedy to resolve these disputes. Therefore, we hold the trial court erred in dismissing Lake St. Louis' petition because quo warranto was not the exclusive remedy it could pursue to resolve its boundary dispute with O'Fallon. Point granted.

The trial court's judgment is reversed and remanded for further proceedings.

_____

GEORGE W. DRAPER III, Judge

Kurt S. Odenwald, P.J., and Roy L. Richter, J., concur