

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STANLEY ALLEN VEZEY)
)
 Plaintiff,)
)
 v.)
)
 BRYCE EDGMON, Speaker of the)
 Alaska State House of)
 Representatives, and CATHERINE A.)
 GIESSEL, President of the Alaska)
 State Senate, individually,)
)
 Defendants.)

Case No. 4FA-19-02233CI

**REQUEST FOR SUPPLEMENTAL BRIEFING ON THE ISSUE OF THE
PLAINTIFF'S STANDING**

“[A]ll that is required of a complaint seeking declaratory relief is a simple statement of facts demonstrating that the superior court has jurisdiction and that an actual justiciable case or controversy is presented.”¹ For a claim to be justiciable, the plaintiff must have standing.² The standing requirement is “a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions. The basic requirement for standing is adversity.”³

¹ *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Alaska 2004), quoting *Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969).
² *Ruckle*, 85 P.3d at 1034.
³ *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (internal citations omitted).

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Alaska courts have recognized two different forms of standing.⁴ The first form is the interest-injury approach, under which “a plaintiff must have an interest adversely affected by the conduct complained of.”⁵ That interest can either be economic or intangible, and can even be of trivial significance.⁶ The second form is citizen-taxpayer standing, under which a plaintiff must show that (1) the case is of public significance, (2) the plaintiff is not a “sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action,” and (3) there is no other “plaintiff who is more directly affected by the challenged conduct in question who has or is likely to bring suit.”⁷

In discussing the standing requirement, the Alaska Supreme Court has held that “an Alaska court has no subject matter jurisdiction unless the lawsuit before it

⁴ *Trustees for Alaska*, 736 P.2d at 327.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 329. The Alaska Supreme Court discussed the third prong of the citizen-taxpayer standing test extensively in *Keller v. French*, 205 P.3d 299 (Alaska 2009), the facts of which may be elucidating for the parties in this case. In *Keller*, five sitting state legislators sued two other legislators to enjoin what they believed to be an illegal, politically motivated legislative investigation into then-Governor Palin’s termination of the state Public Safety Commissioner. *Id.* at 300. In affirming the superior court’s dismissal of the case, the Court held that the plaintiffs lacked citizen-taxpayer standing because there were other, more appropriate potential plaintiffs, particularly Governor Palin, who were more directly affected by the defendant’s actions. *Id.* at 303. The Court further noted that the decision of those other potential plaintiffs not to sue did not confer standing on an inappropriate plaintiff. *Id.* Because the plaintiff lacked standing, the Court declined to address whether the complaint was non-justiciable for other reasons. *Id.* at 305.

presents an actual controversy involving a genuine relationship of adversity between the parties.”⁸ A lack of standing is therefore a proper basis for dismissal pursuant to Civil Rule 12,⁹ which provides that “[w]hen it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter the court shall dismiss the action.”¹⁰ This is because “a court which does not have subject matter jurisdiction is without power to decide a case.”¹¹

⁸ *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995), citing *Trustees for Alaska*, 836 P.2d at 329-30, and *Wagstaff v. Superior Court*, 535 P.2d 1220, 1225 (Alaska 1975); see also *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1218 (Alaska 2009) (affirming the trial court’s decision granting the defendant’s motion to dismiss pursuant to Civil Rule 12(b)(1) due to lack of standing and 12(b)(6) for failure to state a claim).

⁹ Lack of standing is frequently grounds for dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. See Civ. § 1350 *Motions to Dismiss—Lack of Jurisdiction Over the Subject Matter*, 5B Fed. Prac. & Proc. (Wright & Miller) (3d ed.) (“[T]he Rule 12(b)(1) motion to dismiss for a lack of subject matter jurisdiction may also be appropriate . . . when the plaintiff lacks standing to bring the particular suit before the district court.”); see also *Donoghue v. Bulldog Investors General Partnership*, 696 F.3d 170, 173 (2d Cir. 2012) (“In conducting de novo review of the denial of a Rule 12(b)(1) motion to dismiss for lack of standing, we borrow from the familiar Rule 12(b)(6) standard”); *Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 994 (D. Md. 2002), aff’d, 92 F. App’x 933 (4th Cir. 2004) (Standing, therefore, is a fundamental component of a court’s subject-matter jurisdiction. As such, defendants may aptly challenge its existence by a motion to dismiss for lack of jurisdiction over the subject matter, pursuant to Federal Rule of Civil Procedure 12(b)(1).”) (internal citations omitted); *Sullo & Bobbitt P.L.L.C. v. Abbott*, 536 F. App’x 473, 475 (5th Cir. 2013) (“Subject matter jurisdiction includes the ‘irreducible constitutional minimum of standing.’”) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

¹⁰ AK R. Civ. P. 12(h)(3).

¹¹ *Wanamaker v. Scott*, 788 P.2d 712, 714 n. 2 (Alaska 1990).

The plaintiff, in his complaint, describes himself as a “public interest claimant” for the protection and enforcement of a constitutional claim pursuant to AS 09.60.010(c). However, that statutory provision does not confer general standing for citizens to sue for the protection and enforcement of the state or federal constitution.¹² Instead, it governs the awarding of attorney fees in cases that do involve constitutional claims.¹³ The plaintiff has not alleged any facts on the face of his complaint or other filings suggesting that he has suffered any form of direct economic or even intangible injury as a result of the defendants’ actions. Nor has the plaintiff established that he has met the requirements for citizen-taxpayer standing, as there appear to be other potential plaintiffs who have been more directly affected by the defendants’ actions. However, the defendants have also not addressed the issue of standing in their

¹² Even if the statute cited by the plaintiff did confer general standing to sue to enforce provisions of the constitution, it is not clear that the statute would apply, as the plaintiff’s claim is not rooted in a provision of the constitution. Rather, he is seeking to enforce AS 24.05.100, which is the source of the Governor’s authority to call special legislative sessions in a particular location.

¹³ AS 09.60.010(c) reads as follows: “In a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the Constitution of the State of Alaska, the court (1) shall award, subject to (d) and (e) of this section, full reasonable attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting the right; (2) may not order a claimant to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or appeal asserting the right was not frivolous, and the claimant did not have sufficient economic incentive to bring the action or appeal regardless of the constitutional claims involved.”

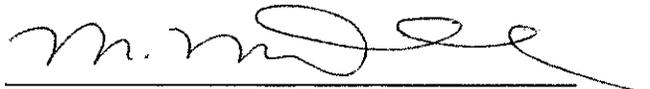
opposition to the plaintiff's motion or in their motion to dismiss, though they have noted other issues related to the justiciability of the plaintiff's claim.

Unless the plaintiff is able to establish that he has either interest-injury or citizen-taxpayer standing, this Court will be obliged to dismiss the case due to lack of subject-matter jurisdiction. However, because the parties have not yet addressed this issue in their briefs, the Court finds that it is in the interests of justice to permit the parties to submit supplemental briefs on this issue, so that this issue can be heard with the other Rule 12 issues that have been raised.

Accordingly, for the reasons set forth above,

IT IS HEREBY ORDERED that the parties are invited to submit supplemental memoranda and points of authority on the issue of whether the plaintiff has standing to bring his claims. The parties may file a brief in support of or opposition to dismissal on the basis of lack of standing, and shall do so by November 15, 2019. Any reply to such a filing is due by October 22, 2019.

DATED this 4th day of November, 2019 at Fairbanks, Alaska.



Michael A. MacDonald
Superior Court Judge

I certify that on 11/4/19 copies of this
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