



election results, and to order the City to improve its voting procedures to ensure greater transparency and clarity of voter information.

The City moved to dismiss plaintiff's complaint for failure to state a claim for which relief could be granted, arguing that plaintiff had failed to allege that the ultimate result of the election was affected by the defects in the warning, as required by this Court's precedent. The trial court agreed and dismissed the complaint. This appeal followed.

Plaintiff argues that the statute governing election challenges, 17 V.S.A. § 2603, does not require him to allege that the defects in the warning affected the outcome of the election. Section 2603 provides in pertinent part:

A contest is initiated by filing a complaint with a Superior Court alleging:

(1) that errors were committed in the conduct of the election or in count or return of votes, sufficient to change the ultimate result;

(2) that there was fraud in the electoral process, sufficient to change the ultimate result; or

(3) that for any other reason, the result of the election is not valid.

17 V.S.A. § 2603(b). Plaintiff argues that complaints brought under (b)(1) and (2) require pleading of allegations showing a change in the election result, but complaints brought under (b)(3) do not. He argues that his allegations regarding the deficiencies in the City's warning were sufficient to state a claim for invalidating the election under the statute.

We review a trial court's decision granting a motion to dismiss under Vermont Rule of Civil Procedure 12(b)(6) de novo. Deutsche Bank v. Pinette, 2016 VT 71, ¶ 9, 202 Vt. 328. "[W]e assume that the facts pleaded in the complaint are true and make all reasonable inferences in the plaintiff's favor, and will conclude that a party fails to state a claim only when it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Baldauf v. Vt. State Treasurer, 2021 VT 29, ¶ 8 (quotation omitted). As discussed below, dismissal was proper in this case.

It is well settled under Vermont law that "[i]nvalidation of an election requires more than merely a claim of election irregularity, even one of constitutional dimensions." Putter v. Montpelier Pub. Sch. Sys., 166 Vt. 463, 467 (1997). Rather, plaintiffs must "demonstrate that the unconstitutional practice had a significant impact on the particular election they seek to have declared invalid." Id. at 469 (quotation omitted). Plaintiff did not allege in his original or amended complaints that the City's defective warning had a significant impact on the outcome of the election. Even if he had, the procedural shortcomings alleged by plaintiff did not demonstrate that the election was fraudulent or improper or constitute misconduct of such an egregious nature as to invalidate the vote. See id. at 468 (observing that vote dilution, discrimination against voters of a particular class, and pervasive election fraud "represent the kinds of violations for which courts have . . . employed the new-election remedy"); see also Daims v. Town of Brattleboro, 2016 VT 55, ¶ 16, 202 Vt. 276 (explaining that even if town selectboard had exceeded its authority in distributing information sheet opposing voter-initiated petitions, "its conduct did not rise to the level that would compel this Court to order the extraordinary remedy of a reelection"). Accepting as true plaintiff's allegations that the City's

warning failed to comply with the election statute, these defects would not warrant the “extraordinary and destabilizing” remedy of election invalidation. Putter, 166 Vt. at 468. The trial court therefore properly dismissed his complaint.

Plaintiff suggests that the defects in the warning constituted such a wholesale failure to give notice to voters of the charter amendments that it necessarily had an impact on the election results. Taking the allegations in the complaint in the light most favorable to plaintiff, we conclude that his claim fails. Although the warning published by the City did not include the full text of some of the proposed charter amendments, articles 2, 4, and 5 contained a basic description of the content and effect of the changes. Article 3 contained the full text of its proposed charter amendment and article 7 was an advisory question that did not impact the charter. Thus, even if plaintiff is correct that the warning did not fully comply with the election statute, the articles were not so bereft of description that they deprived the voters of fair notice of how the charter was to be changed. This case is therefore distinguishable from those cited by plaintiff in his brief, which involved election notices that completely omitted the substance of proposed charter amendments. See Allen v. City of Burlington, 45 Vt. 202, 212 (1873) (holding that warning stating that an election would be held “[t]o vote upon the question of raising money by tax, or otherwise, to meet the accruing expenses of the city government, and for school purposes for the ensuing year” gave no notice that voters were to vote on a tax to erect a high-school building); Turner v. Lewie, 201 S.W.2d 86, 91 (Tex. Civ. App. 1947) (invalidating election results where neither pre-election notice nor ballot described nature and substance of proposed charter amendments).

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice