FIRST DIVISION
February 13, 2018

No. 1-16-2075

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TERIE L. KATA, MAUREEN SULLIVAN, NICHOLAS CLARKE, BOHDAN GERNAGA and NIRAJ RAMI, individually and on behalf of all others similarly situated,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 12 CH 14186
v.	)	
CITY OF CHICAGO, an Illinois Municipal Corporation,	)	Honorable Rita M. Novak,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment dismissing plaintiffs' complaint is affirmed where the City properly exercised its home-rule authority when it established an automated traffic law enforcement system in 2003, and plaintiffs' allegations that the yellow light signals on the City's traffic control devices are too short in duration are based on speculation. Also, the court did not abuse its discretion in dismissing the complaint with prejudice and denying plaintiffs leave to file a third amended complaint after final judgment, where plaintiffs did not attach any proposed amended complaint to their motion and they had sufficient time prior to final judgment to request a third amendment.

¶ 2 Plaintiffs, Terie L. Kata, Maureen Sullivan, Nicholas Clarke, Bohdan Gernaga, and Niraj Rami, appeal the order of the circuit court granting defendant City of Chicago's motion to dismiss their class action complaint. On appeal, plaintiffs contend the trial court erred in dismissing their complaint because (1) the City had no legal authority to implement its red-light camera ordinance in 2003, rendering that ordinance void; (2) Public Act 94-0795 (P.A. 94-795 (H.B. 4835)), is an unconstitutional local law and, alternatively, the City failed to re-enact its ordinance after the legislature enacted PA 94-0795; and (3) the minimum duration of the yellow light signal does not comply with federal and state requirements. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court granted the City's motion to dismiss on April 1, 2016. Plaintiffs filed a post-judgment motion which the trial court denied on July 1, 2016. Plaintiffs filed a notice of appeal on July 25, 2016. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. May 30, 2008), governing appeals from final judgments entered below.

¶ 5 BACKGROUND

¶ 6 The City adopted its automated red-light camera ordinance on July 9, 2003, pursuant to its home rule authority. The ordinance established an automated traffic law enforcement system to photographically record a vehicle and the vehicle's registration plate at various traffic intersections. See Chicago Municipal Code §§ 0-102-010 to 9-102-070 (added July 9, 2003). Before the ordinance, red-light violations were enforced by an arresting officer issuing a Uniform Citation Notice, and adjudicated in the circuit court. See Chicago Code ch. 9-8-020(c). Since the City's adoption of the 2003 ordinance, red-light cameras are used to detect violations

and a civil violation notice is issued to the registered owner of the offending vehicle. Owners of offending vehicles may challenge the citation either through adjudication by mail or an administrative hearing, or they can elect to pay the fine. *Id*. The system is an alternative means of enforcing existing rules governing vehicles at steady red traffic signals.

¶ 7 In 2006, the legislature enacted PA 94-0795 (referred by the parties as the "Enabling Act") which authorized automated red-light camera programs in eight Illinois counties and municipalities within those counties, including the City. See 625 ILCS 5/11-208.6 (West 2012). The statute states that "[a]n automated traffic law enforcement system is a system *** that produces a recorded image of a motor vehicle's violation of a provision of the [Illinois Vehicle] Code or a local ordinance and is designed to obtain a clear recorded image of the vehicle and the vehicle's license plate." 625 ILCS 5/11-208.6(a) (West 2012). It provides that for each violation, a written notice will be issued and a person may either pay the fine or challenge the charge in court, by mail, or by administrative hearing. 625 ILCS 5/11-208.6(d)(10)(A),(B) (West 2012). It further provides that "[a] violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle." 625 ILCS 5/11-208.6(j) (West 2012).

¶ 8 Plaintiffs each received red-light camera violation notices from the City: Sullivan on March 13, 2011, Kata on December 4, 2011, and Rami on March 30, 2014. Sullivan paid the $100 fine without contest, while Kata and Rami paid the fine after being found liable in administrative proceedings. Plaintiffs filed a complaint on April 18, 2012. The complaint was stayed pending resolution of *Keating v. City of Chicago*, 2013 IL App (1st) 112559-U, which also challenged the City's red-light camera ordinance. After *Keating* found that the City had

home-rule authority to enact the ordinance, and that the ordinance was not void prior to or subsequent to the Enabling Act, plaintiffs filed an amended complaint on June 19, 2013.

¶ 9 Plaintiffs filed a second amended complaint on December 22, 2014, alleging that the City's program and the Enabling Act violate the Illinois Constitution's uniformity clause, equal protection clause, due process clause, and the prohibition against special or local law. The complaint also alleged that the City lacked authority to enact the 2003 ordinance and needed to re-enact the ordinance after passage of the Enabling Act, which it did not do. The complaint further alleged that the City lacked authority to issue tickets for red-light violations where the yellow light duration was less than 3 seconds. Plaintiffs requested as relief a list of declaratory judgments, an injunction, and equitable restitution.

¶ 10 On February 10, 2015, the City filed a motion to dismiss under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)), arguing *res judicata* and statute of limitations as grounds for a 2-619 dismissal, and as a basis for a 2-615 motion to dismiss, argued that the City had authority as a home-rule unit to enact and enforce its red-light camera ordinance. The trial court granted dismissal pursuant to section 2-619 against plaintiffs Gernaga and Clarke, and held a separate hearing on the section 2-615 motion for dismissal against the remaining plaintiffs. After the hearing, the trial court granted the City's motion to dismiss pursuant to section 2-615, with prejudice. Plaintiffs moved to vacate and reconsider, and requested leave to file an amended complaint. The trial court denied plaintiffs' motion and this appeal followed.

¶ 11 ANALYSIS

¶ 12 Plaintiffs' arguments on appeal pertain only to the trial court's judgment granting dismissal pursuant to section 2-615. A section 2-615 motion to dismiss attacks the legal

sufficiency of the complaint, and does not raise any affirmative defenses. *Illinois Graphis Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). Dismissal pursuant to section 2-615 is proper if the allegations in the complaint, when viewed in the light most favorable to the nonmoving party, does not state a cause of action upon which relief may be granted. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). Although we must accept all well-pled facts when reviewing a motion to dismiss, we need not accept conclusions of law or conclusory allegations unsupported by specific facts. *Munizza v. City of Chicago*, 222 Ill. App. 3d 50, 51-2 (1991). We review the trial court's grant of a section 2-615 motion to dismiss *de novo*. *Lipinksi v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139, 1144 (2001). "In reviewing a dismissal, this court may affirm the decision of the trial court on any basis found in the record." *Employers Mutual Companies/Illinois Emasco Insurance Co. v. Country Companies*, 211 Ill. App. 3d 586, 590 (1991).

¶ 13 Plaintiffs contend the trial court erred in granting the dismissal where their complaint sufficiently alleged that the City had no authority to enact and enforce its 2003 red-light camera ordinance. The trial court, however, determined that plaintiffs lacked standing to challenge the pre-2006 validity of the City's red-light camera ordinance because they received their tickets after 2006, after the Enabling Act went into effect. We respectfully disagree. Plaintiffs were ticketed under the substantive provisions of the automated traffic law enforcement system established by the 2003 ordinance, which they alleged was invalid. Plaintiffs also alleged that the 2003 ordinance remained invalid after passage of the Enabling Act. Therefore, plaintiffs have standing to challenge the 2003 ordinance. *People v. Ziltz*, 98 Ill. 2d 38, 41 (1983) (a party "has standing to challenge the validity of a statute if he or she has sustained *** some direct injury as a result of enforcement of the statute").

¶ 14 The City argues that the enactment of the 2003 ordinance falls within its home-rule authority. As a home-rule unit, the City "may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare ***." Ill. Const.1970, art. VII, § 6(a). Home-rule units possess the same powers as, and may act and perform concurrently with, the State unless the General Assembly specifically limits the City's authority to do so. See Ill. Const.1970, art. VII, § 6(i); *Johnson v. Halloran*, 194 Ill. 2d 493, 496-97 (2000). The 1970 Illinois Constitution contains "clear constitutional guidelines for the General Assembly to follow in preempting the powers of a home rule unit." *Village of Bolingbrook v. Citizens Utilities Co. of Illinois*, 158 Ill. 2d 133, 137 (1994). To limit the City's home-rule authority "[i]t is not enough that the State comprehensively regulates an area which otherwise would fall into home rule power." *Id.* at 138. Rather, "legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State." *Id*.

¶ 15 Prior to the adoption of the 1970 Illinois Constitution, municipalities could regulate motor vehicles only in ways specifically authorized by the General Assembly. *Ruyle v. Reynolds*, 43 Ill. App. 3d 905, 907 (1976). The 1970 constitution, however, allowed home rule units "to make any and all regulations not specifically prohibited by the General Assembly." *Id*. This court subsequently found that "the legislature has not preempted the field of traffic regulation." *Village of Cherry Valley v. Schuelke*, 46 Ill. App. 3d 91, 93 (1977). However, home-rule "municipalities are limited to enacting traffic ordinances that are consistent with the provisions of chapter 11 of the [Illinois Vehicle] Code and that do not upset the uniform enforcement of those provisions throughout the State." *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 525-26 (1999); see also 625 ILCS 5/11-207 (West 2014) ("[l]ocal authorities *** may adopt

additional traffic regulations which are not in conflict with the provisions of this Chapter ***.") When the City adopted its red-light camera ordinance in 2003, no existing legislation explicitly limited a home-rule unit's power to enact an automated traffic law enforcement system. Therefore, the City had authority to enact the ordinance, provided that it is "consistent with the provisions of chapter 11 of the Code and [does] not upset the uniform enforcement of those provisions throughout the State." *Village of Hanover Park*, 311 Ill. App. 3d at 525.

¶ 16 Plaintiffs first contend that the City had no authority to enact the 2003 ordinance because it results in non-uniform enforcement. Plaintiffs argue that the City's ordinance improperly creates a different enforcement scheme from that contemplated by the Illinois Vehicle Code. As support, plaintiffs cite *Village of Park Forest v. Thomason*, 145 Ill. App. 3d 327 (1986), and *Village of Hanover Park*. *Village of Park Forest* is distinguishable because the issue therein was "whether the State's expression of interest in the subject of drunk driving, as evidenced by its statutory scheme, amounted to an express attempt to declare the subject one requiring exclusive State control." *Village of Park Forest*, 145 Ill. App. 3d at 330. The issue of drunk driving regulation is not before us, and this court has already found that "the legislature has not preempted the field of traffic regulation." *Village of Cherry Valley*, 46 Ill. App. 3d at 93.

¶ 17 In *Village of Hanover Park*, this court looked at the alternative traffic programs of various villages that "allow[ed] the traffic offender to pay a settlement fee in lieu of court adjudication" and "eliminate[d] the possibility of the offender receiving a conviction for the offense and having the conviction reported to the Secretary of State." *Village of Hanover Park*, 311 Ill. App. 3d at 518-19. In contrast, under the Illinois Vehicle Code a traffic offense is adjudicated in circuit court and if a conviction results, the clerk of the court reports the conviction to the Secretary of State who maintains records of repeat offenders and may suspend

or revoke their driver's licenses. *Id*. The court found that the alternative programs gave "the offender an opportunity to circumvent the potential consequences of committing the offense, namely, a chance to avoid an adjudication in the circuit court, a finding of guilty, and a guilty finding being reported to the Secretary of State." *Id*. at 527. It further found that not only does enforcement under the alternative programs lack uniformity with enforcement under the Illinois Vehicle Code, but these programs "derail one of the Secretary of State's most important duties - monitoring traffic offenders through reports of convictions." *Id*. By interfering with the Secretary of State's exclusive duties to issue, deny, cancel, suspend or revoke driving privileges, the alternative programs "undermine[] the policies set forth by the legislature regarding" those duties. *Id*. at 528. The court concluded that the villages lacked "authority to enact and maintain such alternative traffic programs as they pertain to chapter 11 of the Code." *Id*.

¶ 18 The Attorney General's opinion letter of June 22, 1992, upon which plaintiffs also rely, considered an alternative program similar to the ones in *Village of Hanover Park*, and came to the same conclusion. "Well-reasoned opinions of the Attorney General interpreting or construing an Illinois statute are persuasive authority and are entitled to considerable weight in resolving a question of first impression, although they do not have the force and effect of law." *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 283 (2006). In the letter, the Attorney General discussed "an alternative traffic enforcement program which authorizes municipal police officers to elect to issue an 'ordinance violation ticket', rather than a Uniform Traffic Citation and Complaint, for minor traffic offenses and which provides for the payment by the motorist of an 'administrative penalty.' The penalty provided is in an amount less than the usual fine and costs and payment thereof results in avoidance of the issuance of a complaint and any report of the violation to the Secretary of State." 1992 Ill. Att'y Gen. Op. No. 92-013, slip op. at 1.

¶ 19 Relevant to the case before us, the Attorney General found that such alternative programs resulted in non-uniform enforcement of the Illinois Vehicle Code because a person could receive an ordinance violation ticket "several times for various traffic ordinance violations within a twelve month period in the same or neighboring municipalities with no report being made to the Secretary of State." *Id*., at 10. These ordinances do not support the policies underlying the Secretary of State's "duty to suspend the driving privileges of repeat offenders" expressed in the Illinois Vehicle Code. *Id*. at 7. Rather, "[t]he ordinances in question create an entire enforcement mechanism which deviates significantly from that created by statute." *Id*. at 7. The Attorney General concluded that "alternative traffic enforcement ordinances of the type described are void and unenforceable." *Id*. at 12-13.

¶ 20 Plaintiffs argue that according to *Village of Hanover Park* and the opinion letter, uniform enforcement requires "police officer involvement, issuance of a Uniform Citation, and circuit court adjudication." However, neither opinion states or implies such a rigid requirement. Although the Attorney General found that "alternative traffic enforcement ordinances of the type described" in the opinion letter are unenforceable, his statement implies that other types of alternative enforcement programs may be permissible. The City's red-light camera enforcement system as set forth in the 2003 ordinance is distinguishable in that it provides an alternative means of enforcing *existing rules* governing traffic. Unlike the alternative programs discussed in *Village of Hanover Park* and the opinion letter, it does not create new rules that allow a violator to bypass the consequences of a violation he would normally face under the provisions of the Illinois Vehicle Code and, therefore, does not interfere with the Secretary of State's duties as expressed by this court in *Village of Hanover Park* and by the Attorney General. Accordingly,

we find that the 2003 ordinance does not upset the uniform enforcement of chapter 11 of the Illinois Vehicle Code.

¶ 21 Next, plaintiffs contend that the City had no authority to enact the 2003 ordinance because it provides for the administrative adjudication of violations governing the movement of vehicles, a process state law explicitly prohibits. Under the ordinance, a civil violation notice is issued to the registered owner of the offending vehicle and challenges to these violations are heard at city administrative hearings. However, section 1-2.1-2 of the Illinois Municipal Code (65 ILCS 5/1-2.1-2 (West 2014)) states that a "municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution *** except for *** any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles ***." Plaintiffs argue that a violation of the City's red-light camera ordinance is an offense that is "a traffic regulation governing the movement of vehicles." As such, section 1-2.1-2 specifically prohibits administrative adjudication of these violations. As support, plaintiffs cite to *Catom Trucking, Inc. v. City of Chicago*, 2011 IL App (1st) 101146.

¶ 22 This court in *Catom Trucking* reviewed sections 9-72-070 and 9-72-080 of the City's Municipal Code (Chicago Municipal Code, ch. 9-72), which regulated vehicle size and weight limits on the City's roadways, to determine whether they were traffic regulations governing the movement of vehicles. *Id.* ¶¶ 1-3, 18. Although the City argued that sections 9-72-070 and 9-72-080 regulated the operation, rather than the movement, of vehicles, this court disagreed. *Id.* ¶ 18. We noted that under section 9-72-070, the executive director may " 'issue a special permit authorizing a vehicle *** not in conformity with the size regulations of this chapter *** to be operated *or moved upon* any street or highway under the jurisdiction of the city.' (Emphasis

added.) Chicago Municipal Code §9-72-070(a)(1).” *Id*. Furthermore, the City’s Municipal Code refers to violations under sections 9-72-070 and 9-72-080 as “traffic violations” and “traffic” is defined as “ ‘vehicles[] and other conveyances *** while using any public way *for the purposes of travel*.’ (Emphasis added.) Chicago Municipal Code §9-4-010 (eff. Feb. 11, 2009).” *Id*. We found that “[s]ections 9-72-070 and 9-72-080 are clearly traffic regulations governing the movement of vehicles” and as such, violations under these sections “cannot be administratively adjudicated.” *Id*.

¶ 23 Here, the City’s ordinance at issue is chapter 9-102, not 9-72 as was the case in *Catom Trucking*. Chapter 9-102 characterizes its violations as “[a]utomated traffic law enforcement system violation[s]” rather than “traffic violations.” Chicago Municipal Code §9-102-020. Also, the purpose of chapter 9-102 is not to regulate the movement of vehicles, but rather to establish “an automated traffic law enforcement system” which “shall utilize a traffic control signal monitoring device which records, through photographic means, the vehicle and the vehicle registration place of a vehicle operated in violation of Section 9-8-020(c).” Chicago Municipal Code §9-102-010(a), (b). We find that the City’s 2003 ordinance is not a traffic regulation governing the movement of vehicles. Therefore, it does not conflict with state legislation prohibiting the administrative adjudication of an offense that is a traffic regulation governing the movement of vehicles. See 65 ILCS 5/1-2.1-2 (West 2014). Our determination is supported by the legislature’s subsequent passage of the Enabling Act, specifically section 11-208.6 (625 ILCS 5/11-208.6(j) (eff. May 22, 2006)), which states that an automated traffic law violation “for which a civil penalty is imposed *** is not a violation of a traffic regulation governing the movement of vehicles***.”

¶ 24 Having determined that the City's automated traffic law enforcement system does not upset the uniform enforcement of chapter 11 of the Illinois Vehicle Code, and violations under the system are not offenses that are traffic regulations governing the movement of vehicles, we find that the City had the authority as a home-rule unit to enact the 2003 ordinance. As a result, the validity and enforceability of the ordinance does not depend upon the General Assembly's subsequent passage of the Enabling Act. Therefore, we need not address plaintiffs' contention that the Enabling Act could not grant the City authority to enforce its automated traffic enforcement system because the act is unconstitutional local legislation. "[C]ourts do not rule on the constitutionality of a statute where its provisions do not affect the parties ***, and decide constitutional questions only to the extent required by the issues in the case." (Internal citations omitted.) *People v. Mosley*, 2015 IL 115872, ¶ 11. We also need not address plaintiffs' argument that the City had to re-enact its invalid 2003 ordinance after passage of the Enabling Act in 2006.

¶ 25 Next, plaintiffs contend dismissal was improper because their complaint sufficiently alleged that the yellow light duration on the City's traffic control devices is shorter than the legal standard. Plaintiffs argue that the devices must comply with the duration standards "specified in both the federal and Illinois Manuals of Uniform Traffic Control Devices ('MUTCD')." According to plaintiffs, the MUTCD, which Illinois has adopted, provides that a yellow light "*should* *** have a minimum duration of 3 seconds and a maximum duration of 6 seconds." (Emphasis added.) MUTCD §4D.26. The MUTCD, however, cautions that the descriptions pertaining to the application of traffic control devices "shall not be a legal requirement for their installation." *Id.* § 1A.09. The Manual further states that while it "provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment." *Id.* The Illinois MUTCD (Illinois Manual)

states that when the verb "should" is used, it references a "recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate." Illinois Manual § 39-1.03. Although plaintiffs rely on the MUTCD in arguing that the duration of the City's yellow light signal violates the three-seconds minimum requirement, the MUTCD contains no such requirement.

¶ 26 This fact is illustrated by plaintiffs' argument on appeal, which sets forth three different minimums allegedly required by the MUTCD. First, plaintiffs argue that "[t]he three second minimum yellow light duration specified in both the federal and Illinois Manuals of Uniform Traffic Control Devices *** applies to [the City]." Plaintiffs then argue that the MUTCD actually requires that the yellow light duration "be determined by engineering practices," and directs the user to two publications of the Institute of Traffic Engineers (ITE). Plaintiffs contend that according to the ITE, on level streets the proper duration is calculated by adding 7 miles per hour to the posted speed, which results in a minimum yellow light duration of 3.6 seconds for a posted speed of 30 miles per hour. Plaintiffs then argue that, "[e]ven assuming that the 30 mph speed limit is the actual 'approach' speed, the ITE specifies [a] Minimum Clearance Interval of ***3.2*** seconds for a yellow change. (Emphasis in the original.)" It is telling that the ITE itself, in its Traffic Control Devices Handbook, refers to the calculations based on their formulas as "a guideline for yellow interval determinations" rather than a "requirement." Traffic Control Devices Handbook, 2d Edition, chapter 10, p. 377.

¶ 27 Even if we presume the MUTCD sets a three-second minimum requirement for yellow light durations, plaintiff's complaint does not sufficiently allege the City violated that standard. The complaint acknowledges that "[f]or all intersections with a speed limit of 30 miles per hour, [the City] sets its traffic signal controllers at 3.0 seconds." Plaintiffs contend, however, that

"[d]ue to fluctuations in equipment timing and voltage fluctuations," many of the City's traffic signals "actually have yellow durations less than 3.0 seconds, even where the meta data on the ticket suggests otherwise." They allege that the duration may be "as low as 2.89 seconds" and refer to their Exhibit D, which is a letter from the chief technology officer of Peek Traffic/Signal Group stating that given fluctuations in power line frequencies, "[i]n the case of a yellow time programmed as 3.0 seconds, the actual time could range from 2.89 seconds to 3.12 seconds and be completely within standard tolerances." (Emphasis in the original.)

¶ 28 Essentially, plaintiffs argue that the City's yellow light signals do not conform to MUTCD standards because given normal fluctuations in power line frequencies, the actual minimum duration *could* be as short as 2.89 seconds. However, as noted in the Peek Traffic/Signal Group letter, the actual duration could also be from 3.0 to 3.12 seconds which would be in compliance with the MUTCD minimum recommendations. Plaintiffs' allegations of non-conformance are thus based on mere speculation, and such speculative claims cannot withstand a motion to dismiss. See *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996) (to oppose a section 2-615 motion to dismiss, "plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action being asserted").

¶ 29 Plaintiffs also argue that the trial court should not have granted the motion to dismiss because the City's compliance with the MUTCD is a question properly for the jury. As support, plaintiffs cite to *Snyder v. Curran Township*, 167 Ill. 2d 466 (1995). *Snyder* involved a negligence action where the plaintiff alleged injuries based on the township's breach of duty when it failed to comply with the Illinois Manual. The plaintiff in *Snyder* was driving along a narrow road when she came to a sharp right bend at the top of a hill and lost control of her vehicle. *Id.* at 467. The defendant township had placed a sign warning of the curve on the left

side of the road approximately 67 to 120 feet before the curve. The Illinois Manual, however, required defendant to place the warning sign on the right side of the road and 425 feet in advance of the curve. *Id*. The township highway commissioner testified that he did not consult the Illinois Manual prior to placing the warning sign. *Id*. at 468. The plaintiff filed a negligence complaint against the township, alleging that the failure to place the warning sign in conformity with the Illinois Manual proximately caused her injuries. *Id*. at 467-68.

¶ 30 The case proceeded to jury trial and the jury returned a verdict in favor of the plaintiff. *Id*. at 468. The trial court denied the township's motion for a judgment notwithstanding the verdict and the township appealed. The appellate court reversed, finding that the township's placement of the sign was protected by discretionary immunity and defendant owed no duty to plaintiff as a matter of law. *Id*. Our supreme court, however, found that the appellate court's determination "rested on an impermissibly expansive definition of discretionary immunity." *Id*. at 472. The court determined that state law required the township to comply with the Illinois Manual, and this mandate "establishes [the township's] duty of reasonable care. Whether that duty was breached is a jury question, turning on an examination of the applicable provisions of the Illinois Manual and the facts of a particular case." *Id*.

¶ 31 *Snyder* merely followed the general rule that whether a defendant breached a duty owed to plaintiff, and whether that breach was the proximate cause of plaintiff's injuries, "are factual matters for the jury to decide, provided there is a genuine issue of material fact regarding those issues." *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 430 (2006). *Snyder* is distinguishable from the case before us. Unlike *Snyder*, plaintiffs' case did not involve a breach of duty stemming from non-compliance with the Illinois Manual. *Snyder* does not support plaintiffs' contention that the issue of compliance is a question only for the jury.

¶ 32 For the reasons set forth, plaintiffs' complaint fails to state a claim for which relief may be granted and dismissal of the pursuant to section 2-615 was proper.

¶ 33 Plaintiffs contend that the trial court should have granted them leave to amend rather than dismiss their complaint with prejudice. They argue their complaint alleged "substantial facts" that could support valid claims, including that the City's violation notices do not comply with the Enabling Act's requirements, the administrative adjudication process violates state law and due process, and the ordinance actually decreases public safety. Plaintiffs argue that whatever defects exist are to the form rather than substance of the pleadings, and therefore they should have an opportunity to cure the defects by amendment.

¶ 34 Whether to grant plaintiffs leave to amend their complaint is a determination within the sound discretion of the trial court. *Goldberg v. Brooks*, 409 Ill. App. 3d 106, 113 (2011). Plaintiffs sought leave to amend their complaint when they filed their motion to reconsider, and did not attach any proposed amended complaint. "After final judgment, a plaintiff has no statutory right to amend a complaint and a court commits no error by denying a motion for leave to amend." *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14. It is also well established that the trial court's denial of leave to amend is not an abuse of discretion if plaintiffs do not present the proposed amendment. *Loftus v. Mingo*, 158 Ill. App. 3d 733, 746 (1987). "Where the party seeking to amend does not attach a proposed amended pleading to its motion or otherwise specify the new allegations that it would include, a trial court has no basis on which to consider whether the amendment would cure the defects in the current pleading." *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 128 (2010).

¶ 35 Furthermore, plaintiffs' complaint was first filed in 2012 and stayed pending resolution of *Keating v. City of Chicago*, 2013 IL App (1st) 112559-U, which resolved the same home-rule

authority and constitutional issues raised by plaintiffs in the City's favor. Knowing the outcome of *Keating*, plaintiffs twice amended their complaint. The City then filed its motion to dismiss in February 2015, and arguments on the section 2-615 motion to dismiss took place in October 2015. Thus, plaintiffs had sufficient time prior to final judgment to develop their other claims and request leave to amend their complaint a third time. "Where a moving party had previous opportunities to cure the asserted defect, the trial court does not abuse its discretion by denying leave to amend." *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 708-09 (2010).

¶ 36 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 37 Affirmed.