

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 26th day of August, 2020.

Present: Chief Justice Lemons and Justices Mims, Powell, Kelsey, McCullough, and Chafin

Levar Marcus Stoney, Mayor
of the City of Richmond, Petitioner,

against Record No. 200901.
 Circuit Court No. CL2000299-00

Anonymous, Respondent.

Upon a Petition Under Code § 8.01-626

Pursuant to Code § 8.01-626, Levar Marcus Stoney, Mayor of the City of Richmond, petitions this Court to review a July 10, 2020 order of the Circuit Court of the City of Richmond temporarily enjoining him “from causing war memorials to be removed from their locations” in the City of Richmond, or “from directing others to cause war memorials to be removed,” for a period of sixty days. For the following reasons, we grant the petition for review and vacate the temporary injunction.

I. PROCEEDINGS AND FACTS

On July 1, 2020, at a meeting of the Richmond City Council, Mayor Stoney introduced a resolution to authorize him, in his capacity as Director of Emergency Management for the City of Richmond, to order the temporary removal of war memorials “whose presence creates a public safety concern or necessitates their removal for their preservation.” The resolution was referred to a meeting on July 2, 2020, which was cancelled. After the City Council meeting adjourned on July 1, 2020, Mayor Stoney issued a press release stating he had invoked his “emergency powers” to order the “immediate removal” of multiple war memorials in the City of

Richmond, explaining the continued presence of these memorials raised “a severe, immediate and growing threat to public safety.” Mayor Stoney further stated any removed war memorials would “be placed in temporary storage” while the process for removing publicly owned war memorials under the amended version of Code § 15.2-1812(B), effective that day, could take place.

On July 7, 2020, an anonymous plaintiff (“Anonymous”) filed a complaint for a declaratory judgment and emergency injunctive relief, naming Mayor Stoney as the sole defendant. Anonymous alleged that between July 1 and July 7, three war memorials had been removed from their pedestals and that others would be removed on Mayor Stoney’s order in the near future. Anonymous claimed to be an “interested person” who sought to present his or her views at a public hearing, pursuant to Code § 15.2-1812(B), before the Richmond City Council voted on the potential removal of the war memorials.

In count one, brought under Code § 15.2-1812, Anonymous claimed Mayor Stoney deliberately circumvented the new statutory procedures for removing war memorials and usurped the Richmond City Council’s sole authority to determine their final disposition. That statute in pertinent part, states, “[n]otwithstanding any other provision of law, general or special,” a locality may “remove, relocate, contextualize, or cover” war memorials situated on the locality’s public property “after complying with the provisions of subsection B.” Code § 15.2-1812(A). Code § 15.2-1812(B), in turn, directs the locality to provide thirty days’ notice of the time and place of a public hearing “at which interested persons may present their views.” Thereafter, the governing body may vote to remove, relocate, contextualize, or cover the war memorial, although it shall offer the item to a museum, historical society, government, or

military battlefield for a second thirty-day period before doing so. *Id.* The local governing body “shall have sole authority to determine the final disposition” of the war memorial. *Id.*

By ordering the removal of war memorials before a public hearing could occur, Anonymous alleged, Mayor Stoney left all interested persons “without a voice or recourse” and denied Anonymous the statutory right to present his or her views at the hearing required under Code § 15.2-1812(B).

In count two, Anonymous asserted Mayor Stoney’s actions were unlawful under § 4-11 of the Richmond City Charter, which permits the City Council to pass an emergency ordinance “for the immediate preservation of the public peace, health and safety,” provided the emergency ordinance contains a specific statement of the emergency claimed and receives the affirmative votes of at least six council members before it can be adopted. *Id.* Anonymous alleged Mayor Stoney failed to attain the necessary votes, but nevertheless proceeded to order the removal of the war memorials, thereby “unilaterally issu[ing] an emergency ordinance” that enabled Mayor Stoney to remove the war memorials.

Anonymous asked the circuit court to declare that Mayor Stoney’s order to remove the war memorials violated Code § 15.2-1812(B) and § 4-11 of the Richmond City Charter, and to enjoin the Mayor from ordering, authorizing, or otherwise allowing the removal of any further war memorials in any manner violating Code § 15.2-1812(B).

On July 9, 2020, the circuit court held an emergency hearing on Anonymous’ request for a temporary injunction. In the preceding days, more war memorials had been removed on Mayor Stoney’s order. In awarding Anonymous a temporary injunction, the court found that he or she had standing “as a citizen” and “as someone who wanted to appear” at the hearing required under

Code § 15.2-1812, that “Virginia law has been violated,” and that irreparable harm was “obvious and well established.”¹

II. ANALYSIS

We review a circuit court’s decision to grant or deny a temporary injunction for an abuse of discretion. *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 18 (2019); *see also Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008) (“[T]he granting of an injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case.”). A circuit court abuses its discretion, by definition, when it commits an error of law. *Porter v. Commonwealth*, 276 Va. 203, 260 (2008).

Although Mayor Stoney raises several arguments why the temporary injunction is improper, it is sufficient to address only the contention that Anonymous does not have a private right of action under Code § 15.2-1812 or § 4-11 of the Richmond City Charter. *See Commonwealth v. White*, 293 Va. 411, 419 (2017) (stating a court should decide cases on the best and narrowest grounds available).²

“In Virginia, ‘substantive law’ determines whether a private claimant has a right to bring a judicial action.” *Cherrie v. Va. Health Servs. Inc.*, 292 Va. 309, 314 (2016). “Substantive law includes the Constitution of Virginia, laws enacted by the General Assembly, and historic common-law principles recognized by our courts.” *Id.* If, as here, the claimed right does not implicate any protected right under the Constitution of Virginia or any historically recognized

¹ Subsequently, Anonymous moved for leave to file an amended complaint which, *inter alia*, names the Richmond City Council as a co-defendant and adds a due process claim for failing to hold a public hearing before the war memorials were removed. The circuit court granted Anonymous’ motion to amend and stayed further action pending the resolution of this petition for review.

² Consequently, we offer no opinion on the other issues Mayor Stoney raises.

common-law right of action, “[t]he existence of any viable right of action . . . must come from statutory law.” *Id.* at 315. The plaintiff must possess the legal right to bring the action, which depends on the provisions of the relevant statute. *Id.*

Although a statutory right of action exists when a statute expressly authorizes it, when the statute is silent, “we have no authority to infer a statutory private right of action without demonstrable evidence that the statutory scheme necessarily implies it.” *Id.* The necessity for the implication must be “palpable,” and we would never infer a private right of action “based solely on a bare allegation of a statutory violation.” *Id.* at 315-16; *see Touche Ross & Co. v. Redington*, 442 U.S. 560, 576 (1979) (explaining whether a statute creates a private right of action is “definitely answered in the negative” when the statute “by its terms grants no private rights to any identifiable class”).

Clearly, Anonymous does not have an express right of action under Code § 15.2-1812 to challenge the removal of the subject war memorials. Nor does the plain language of Code § 15.2-1812 or its attendant statutory scheme supply Anonymous with an implied right of action.

Code § 15.2-1812 creates a process for the locality to remove war memorials situated on the locality’s publicly owned property. As part of this process, Code § 15.2-1812(B) states the local governing body shall publish advance notice of its intent to remove any such publicly owned war memorial, and that this notice shall specify the time and place of a public hearing at which “interested persons may present their views.” The local governing body, however, “shall have the sole authority” to determine the war memorial’s final disposition. Although Code § 15.2-1812(B) sets forth an order of operations for a public body to follow, it creates no private rights for Anonymous’ benefit. *See Michael Fernandez, D.D.S., LTD v. Comm’r of Highways*, ___ Va. ___, ___, 842 S.E.2d 200, 202-03 (2020) (holding a statute directing that the agency “shall

make fair and reasonable relocation payments to the displaced person” did not create “an individual right to those payments”); *see also Alexander v. Sandoval*, 532 U.S. 275, 289 (2001) (explaining that statutes “focus[ing] on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons”) (internal quotation marks omitted).

Moreover, “where a statute creates a right and provides a remedy for the vindication of that right, then that remedy is exclusive unless the statute says otherwise.” *Cherrie*, 292 Va. at 315-16 (quoting *School Bd. of Norfolk v. Giannoutsos*, 238 Va. 144, 147 (1989)). A related statute, Code § 15.2-1812.1, authorizes actions for damage to war memorials situated on the locality’s public property. With respect to publicly owned war memorials, like the ones at issue in this case, only the attorney for the locality is permitted to bring an action under Code § 15.2-1812.1(A)(1). This marks a recent change in the law. Prior to the amendments to Code § 15.2-1812.1, which became effective on July 1, 2020, “any person having an interest in the matter” was permitted to bring an action for encroachment upon a publicly owned war memorial, provided the attorney for the locality had not already done so. Code § 15.2-1812.1(A)(1) no longer permits even that limited right of action. This change demonstrates legislative intent to exclude a member of the public, like Anonymous, who asserts no more than an “interest” in the removal of a war memorial from seeking a judicial remedy related to such removal. *See Concerned Taxpayers of Brunswick Cty v. County of Brunswick*, 249 Va. 320, 331 (1995) (holding a group of taxpayers lacked a private right of action under the Public Procurement Act, which permitted only bidders, offerors, and contractors to invoke its remedies in court).

Anonymous also lacks an express or implied right of action under § 4-11 of the Richmond City Charter. Section 4-11 does not explicitly authorize any individuals to challenge

the actions of Richmond's mayor, and we may not infer Anonymous possessed a private right of action "without demonstrable evidence" supporting such an inference, and none here exists.

Cherrie, 292 Va. at 316.

Because Anonymous failed to allege a potentially viable right of action, he or she was not entitled to a temporary injunction. The circuit court abused its discretion in determining otherwise, and we vacate the temporary injunction.

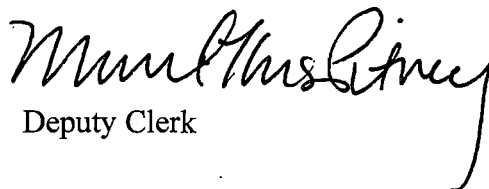
Justice Goodwyn took no part in the resolution of the petition.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:


Deputy Clerk