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IN THE COURT OF APPEALS OF INDIANA

PATTON HOMES, LLC, KENNETH PATTON and ELIZABETH PATTON,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 03A04-0906-CV-358
ROBERT BELLOWS, CROSS CREEK, LLC, and THE CITY OF COLUMBUS,	)	
Appellees-Defendants.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Joseph W. Meek, Special Judge
Cause No. 03D02-0611-CC-161

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Patton Homes and Kenneth and Elizabeth Patton (collectively "Patton") sued the City of Columbus, Cross Creek, LLC, and Cross Creek's owner, Robert Bellows, after the City used money from Patton's letter of credit at Salin Bank to complete sidewalks in a subdivision where Patton bought lots from Cross Creek. Patton purports to raise twelve allegations of error,[1] of which we find one dispositive: whether Patton was bound by Bellows' contractual obligation to the City to provide the sidewalks in question. As the obligation was personal to Bellows and never assigned to Patton, we reverse.

Facts[2] and Procedural History

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[1] We remind Patton's counsel that Indiana Appellate Rule 46(A)(4) requires the statement of issues "shall concisely and particularly describe each issue presented for review." Many of the issues Patton presents meet neither requirement, and for that reason it has been particularly burdensome for us to determine what allegations of error Patton is raising on appeal. Patton's counsel offers as "issues" such vague questions as "Whether the trial court: . . . Violated the *Statute of Frauds*?" (Appellants' Br. at 2); "Whether the trial court: . . . Abused its discretion?" (*id.*); and "Whether the trial court: . . . Did not follow the applicable law and applied the incorrect legal standards?" (*Id.*)

We addressed a similar statement of issues in *Lakes and Rivers Transfer, a Div. of Jack Gray Transport, Inc. v. Rudolph Robinson Steel Co.*, 691 N.E.2d 1294, 1294-95 n.1 (Ind. Ct. App. 1998). Lakes and Rivers offered as its Statement of the Issues "Did the trial court error [sic] in denying the motion for summary judgment of plaintiff, Lakes and Rivers, and further error [sic] in granting summary judgment for the defendant, Rudolph Robinson Steel Company?" *Id.* We noted counsel are obliged by the appellate rules to include in their brief a statement of the issues presented for review and the absence of a useful statement of the issues subjects an appeal to dismissal:

> Nothing is more important in an appeal than a concise statement of the issues upon which an appellant relies, and we must be able to discern the issues from an appellant's brief, without reference to the record. *Moore v. State*, 441 N.E.2d 220, 221-22 (Ind. Ct. App. 1982). In *Moore*, we dismissed the appeal when the statement of the issues merely referred us to the issues that had been raised in the appellant's motion to correct error. We determined that such a statement of the issues did not constitute a good faith effort to comply with our rules, *id.* at 222, and we noted that while the strictness of our rules was sometimes "relaxed," that was only true in cases where we could clearly understand from the briefs the questions sought to be presented. *Id.* at 221.

[2] We direct Patton's counsel to Ind. Appellate Rule 46(A)(6)(c), which indicates the statement of facts "shall be in narrative form and shall not be a witness by witness summary of the testimony." We further remind counsel that a Statement of the Facts should be a concise narrative of the facts stated in a light most favorable to the judgment and should not be argumentative. *Schaefer v. Kumar*, 804 N.E.2d 184, 196 n.13 (Ind. Ct. App. 2004), *trans. denied*. Patton's statement of facts is a "transparent attempt to discredit either the judgment

Robert Bellows bought some land and, through his corporation Cross Creek, LLC, subdivided it. In 1996, as part of the process of obtaining plat approval from the City of Columbus (hereinafter "the City"), Bellows entered into a Subdivision Improvement Agreement with the City. That Agreement required sidewalks be installed in the subdivision. Bellows prepared a sidewalk plan and provided the City a bond to assure the sidewalks would be completed after the houses were built. The bond was in the form of a letter of credit at Salin Bank.

The only parties to the Subdivision Improvement Agreement that created the obligation to install sidewalks were "**Robert Bellows** ("the developer") and the **City of Columbus, Indiana** ("the City")." (Appellants' App. at 785) (emphasis in Agreement). The Agreement provided:

> The benefits of this agreement are personal and may not be assigned without the express written approval of the city. . . . any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the developer and will also be binding on the heirs, successors, and assigns of the developer.

(*Id*. at 789.) The Agreement is explicit that "no statement(s), promise(s), or inducement(s) that is/are not contained in this agreement will be binding on the parties." (*Id*. at 788.)

By 2002, the subdivision had houses on twenty-seven lots and nineteen lots were unsold. In the summer of 2002, Patton indicated to Bellows he wanted to buy the remaining lots. Bellows testified Patton indicated "he was going to make an offer on everything and I

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or the opponent's argument," *see id*., and was "clearly not intended to be a vehicle for informing this court." *See id*.

told him I'll sell you everything. I'll sell you the subdivision, I'll even sell you my house." (*Id*. at 653.) Bellows told Patton he would have to take over Bellows' sidewalk bond when it expired the next year. Bellows explained he had built sidewalks along some of the common areas of the subdivision but not others.[3]

Patton bought the nineteen lots and a proportional share in the common areas to which the owner of each of the nineteen lots would be entitled. Bellows' letter of credit expired in August 2003, and Patton executed one to replace it. However, the Appellees have not directed us to any evidence in the record that Bellows assigned the benefits and obligations of the Subdivision Improvement Agreement to Patton, or that Bellows obtained "express written approval" from the City for such assignment. (*Id.* at 789.)

Neither Bellows nor Patton completed certain sidewalks serving the common areas. The City asked the Bank to provide the funds from Patton's letter of credit and it used the money to finish the sidewalks. Patton sued for reimbursement of the bond from Bellows, Cross Creek, and the City, and the trial court found against Patton.

DISCUSSION AND DECISION

Where, as here, a party has requested findings and conclusions under Indiana Trial Rule 52(A), our standard of review is well-settled. We must first determine whether the

[3] The City and Bellows both assert Bellows pointed out to Patton the sidewalks in common areas that "Patton would have to finish." (Br. of Appellee (hereinafter "City Br.") at 7); (Appellees' Br. of Bob Bellows and Cross Creek, LLC (hereinafter "Bellows Br.") at 5). That misrepresents the testimony to which the City and Bellows direct us. That testimony, by Bellows, was that Bellows told Patton certain common-area sidewalks were "not done," (Appellants' App. at 656), but there was no testimony that Bellows told Patton he would "have to finish" those sidewalks. Patton testified Bellows told him he would be obliged to finish sidewalks only in front of the nineteen lots he had purchased from Bellows.

evidence supports the findings and second, whether the findings support the judgment. *Maxwell v. Maxwell*, 850 N.E.2d 969, 972 (Ind. Ct. App. 2006), *trans. denied*. We will disturb the judgment only where there is no evidence supporting the findings or the findings do not support the judgment. *Id*. We do not reweigh the evidence and consider only the evidence favorable to the judgment. *Id*. Appellants must establish the findings are clearly erroneous, which occurs only when a review of the record leaves us firmly convinced a mistake has been made. *Id*. We defer substantially to findings of fact, but we do not defer to conclusions of law. *Id*. A judgment is clearly erroneous if it relies on an incorrect legal standard. *Id*. When a party requests findings and conclusions, a trial court is required to make complete special findings sufficient to disclose a valid basis under the issues for the legal result reached in the judgment. *Id*. The purpose of Rule 52(A) findings and conclusions is to provide the parties and reviewing courts with the theory on which the case was decided. *Id*.

Patton correctly notes there was never an amendment, modification, or assignment of the Subdivision Improvement Agreement, which Agreement by its terms imposed on Bellows a personal obligation to construct the sidewalks.[4] Therefore, under the terms of the agreement any purported assignment to Patton of Bellows' obligation would have been "void," (Appellants' App. at 788), and no obligation to provide sidewalks was imposed on

[4] Neither the City nor Bellows directs us to evidence in the record to indicate otherwise, and at trial counsel for Bellows and the City stipulated there was no assignment of the Agreement to Patton. (Appellants' App. at 465-66.) In its Order, the trial court acknowledges Bellows and the City executed the Subdivision Agreement, but it does not acknowledge the language reflecting the obligations in the Agreement were personal to Bellows and could be assigned only in writing.

Patton by any amendment to the agreement.[5] We accordingly must agree with Patton that "the *only* party to whom the City legally and contractually could turn for completion of the required sidewalks (or payment or financial guarantees therefor) was Bellows." (Appellants' Br. at 46.)

Bellows offers, apparently for the first time on appeal, an argument that the Agreement "is not a contract in the normal sense" because it lacks consideration. (Bellows Br. at 17.) He asserts, without explanation or citation to authority, "the Columbus Subdivision Control Ordinance and Indiana Code provisions required acceptance," (*id.*), if he did everything required by the Agreement. As the City "provides nothing in the so-called Agreement that is not already granted by the law," he asserts, the Agreement is not a binding contract. (*Id.*)

Generally, a party may not raise an issue on appeal that was not raised in the trial court. *First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 615 (Ind. Ct. App. 2008), *trans. denied*. A party also generally waives any issue for which it fails to develop a

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[5] The trial court states in its conclusions that "Privity of contract between an applicant (Patton) and a beneficiary (City) is not necessary for the beneficiary of an irrevocable letter of credit to make presentment to the issuer of the funds pursuant to IC 26-1-5.1-103(d)." (Appellants' App. at 345.) That code section provides:

> Rights and obligations of an issuer [here, Salin Bank] to a beneficiary [here, the City] or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

But the case before us does not involve the "[r]ights and obligations of [Salin Bank] to [the City] under a letter of credit," so that statute is not determinative of Patton's claim against Bellows and the City.

cogent argument or support with adequate citation to authority and portions of the record. *Romine v. Gagle*, 782 N.E.2d 369, 386 (Ind. Ct. App. 2003), *trans. denied*; Ind. Appellate Rule 46(A)(8)(a). As Bellows does not indicate what provisions of the ordinance or code "required acceptance," (Bellows Br. at 17), or explain why those provisions would render void the agreement Bellows entered into with the City, we will not address these claims.

The City asserts, without explanation or citation to authority, "The fact that the City had no Subdivision Improvement Agreement with Patton is irrelevant if the City does not object to Bellow's [sic] sale of the subdivision to Patton, which it does not." (City Br. at 22.) It also asserts, again without explanation or citation to authority, that Bellows' failure to assign the subdivision agreement to Patton is not determinative: "Merely because a particular contract says there shall be no waiver without a writing, that provision may be waived just as an [sic] substantive part of a contract may be waived as well." (*Id*. at 30.)

As explained above, both of those arguments are unavailable on appeal because the City did not develop a cogent argument or provide support with citation to authority and portions of the record. *Romine*, 782 N.E.2d at 386. Notwithstanding the waiver, we note adopting the City's position would permit a party to a contract to bind a non-party without the non-party's knowledge or consent, merely by 1) declining to "object" to an act by another party, or 2) by purporting to unilaterally and retroactively "waive" a contract term.[6] We

[6] The agreement provides "no waiver of any provision of this agreement . . . will be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this agreement signed by both city and developer . . . ." (Appellants' App. at 788.)

decline to so hold. The obligation to construct the common-area sidewalks in question was imposed on Bellows, and only Bellows, by the Subdivision Agreement, and there is no evidence that obligation was ever assigned to Patton.

The City next asserts, again without explanation or citation to authority, that "Patton's duty to build the sidewalks came from two separate documents, the purchase agreement [for the sale of the subdivision property to Patton] and the [sic] indirectly from the letter of credit." (City Br. at 22.) As explained below, the letter of credit imposed no such duty on Patton. As for the purchase agreement, the City directs us to no language concerning either party's obligation to construct sidewalks and we find none.

Finally, the trial court stated in its Conclusions the City "had the right to rely upon the language in the letter of credit that the Pattons *had assumed the duties of building sidewalks for all of Cross Creek Subdivision, including common areas*." (Appellants' App. at 346) (emphasis added).

As the letter of credit contains no such language, no such reliance could be warranted. The letter of credit is almost entirely boilerplate, and the only mention of the sidewalks is in a section addressing the content of a statement *the City must provide the Bank* in order to be paid from the funds of the letter of credit. That section required a "statement from the [City] that the funds are being draw [sic] to satisfy the obligation of [Patton] pursuant to the construction of sidewalk improvements in [Cross Creek]." (Appellants' App. at 839.) That language, which refers only to the procedure the City and Bank must follow, does not establish Patton "assumed" any duties, nor does it establish the extent of any such duties.

As Patton never acquired Bellows' obligation to provide the common-area sidewalks at issue, we must reverse.

Reversed.

BAILEY, J., and BARNES, J., concur.