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IN THE
COURT OF APPEALS OF INDIANA

GERALD and SANDRA AYERS, et al.,	)	
	)	
Appellant-Plaintiffs,	)	
	)	
vs.	)	No. 07A04-0904-CV-207
	)	
BROWN COUNTY BOARD OF COMMISSIONERS and BRIGHT PROPERTIES, LLC,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable William Vance, Special Judge
Cause No. 07C01-0705-PL-233

December 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Gerald and Sandra Ayers and twelve other residents of Brown County ("the residents") appeal the trial court's denial of their motion for relief from judgment. For our review, the residents raise four issues, which we consolidate and restate as whether the trial court abused its discretion when it denied their motion for relief from judgment. Concluding the trial court has not entered a final judgment, and therefore, the trial court erred when it denied the residents' motion for relief from judgment, we reverse and remand.

Facts and Procedural History

This case arises out of the residents' opposition to the Brown County Board of Commisioners' (the "Board") approval of two rezoning applications filed by Bright Properties, LLC ("Bright") for the construction of residential condominiums. After the Board approved Bright's first application to rezone several parcels of land from a residential zone to a residential planned unit development zone, the residents filed a seven-count complaint alleging the approval of the rezoning application was contrary to law (Claim 1), Bright had failed to abide by the requirements of several Indiana statutes and regulations that are prerequisite to beginning construction (Claims 2-6), and seeking expedited review of Claims 1-6 (Claim 7). The complaint sought both declaratory and injunctive relief. The Brown Circuit Court judge recused herself and the case was assigned to the Jackson Circuit Court judge, acting as a special judge.

On June 29, 2007, Bright filed a second application to rezone some of the parcels from a residential planned unit development zone to a general business zone. On October 15,

2007, the trial court entered an order granting summary judgment and entering declaratory judgments in favor of the residents on Claims 2-6. The trial court expressly reserved adjudication of Claim 1 because of the pending second rezoning application. The order is silent regarding the issue of injunctive relief.[1] On October 16, 2007, the Board approved Bright's second rezoning application and rezoned the parcels.

On November 14, 2007, the residents sought permission from the trial court to amend their original complaint to include Claim 8, alleging the approval of the second rezoning application was also contrary to law. The trial court granted permission and the amended complaint was entered on February 11, 2008. On May 5, 2008, the residents filed a motion for partial summary judgment on Claims 1 and 8. The motion seeks summary judgment on the issue of whether the "rezoning applications were contrary to law in that they violated key provisions of the legal framework established at the state and local levels under the National Flood Insurance Program to manage the flood plain of the Middle Fork of Salt Creek." Appendix to Brief of Appellants at 148-49. In their motion, the residents "reserve[d] for subsequent proceedings, if necessary, their other 'contrary to law' arguments relating to the rezoning approvals." Id. at 148.

On September 26, 2008, the trial court issued an order titled "Order of Partial Summary Judgment with Respect to Claims One and Eight of Plaintiff's Complaint." Id. at 449. The order states:

> [T]he Court entered summary judgment for [the residents] with respect to Claims Two through Six of their Complaint. Claim Seven of [the residents'] Complaint sought expedited resolution of Claims One through Six. Thus, the

[1] The order is also silent regarding Claim 7; however, this Claim does not require adjudication.

> only substantive claim remaining for determination in October, 2007[,] was Claim One.

Id. at 450. The order goes on to grant summary judgment in favor of the Board and Bright on Claims 1 and 8, considering only the issue of whether the rezoning decisions complied with federal and state flood plain rules.

On October 27, 2008, the residents filed a motion to reconsider and amend the trial court's partial summary judgment order challenging various findings and conclusions in the order. The trial court never ruled on the motion. On December 30, 2008, the residents filed a verified status report and request for status conference. On February 4, 2009, the special judge sent a letter to all parties stating, "It is my belief the eight (8) claims presented by this case were concluded by the rulings of October 15, 2007 (claims 2 through 6) and September 26, 2008 (claims 1 and 8). I have, therefore, closed my special judge file." Id. at 478. On March 4, 2009, the residents filed a motion for relief from judgment, arguing the trial court had not yet disposed of all claims in the case, and a motion to correct error, reasserting the arguments in their motion to reconsider. The trial court denied the motion for relief from judgment on March 20, 2009, and did not explicitly rule on the motion to correct error. The residents now appeal.

Discussion and Decision

I. Standard of Review

We review the denial of a motion for relief from judgment pursuant to Indiana Trial Rule 60(B) for an abuse of discretion, which occurs when the denial is clearly against the logic and effect of the facts and circumstances before the trial court. Dillard v. Dillard, 889

N.E.2d 28, 33 (Ind. Ct. App. 2008). The party seeking relief from judgment bears the burden of demonstrating relief is both necessary and just. Id.

II. Entry of Final Judgment

The residents argue the trial court failed to enter a final judgment because it has not yet addressed the issues of injunctive relief related to Claims 2 through 6 and has not addressed all of their legal arguments regarding the validity of the rezoning applications at issue in Claims 1 and 8.

> A judgment is a final judgment if: (1) it disposes of all claims as to all parties [or] (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims[,] or parties.

Ind. Appellate Rule 2(H).

A. Injunctive Relief

In their complaint, the residents sought both declaratory judgments concluding Bright was required to comply with relevant state statutes and regulations prior to commencing construction and injunctive relief preventing Bright from commencing construction prior to its compliance with the statutes and regulations. The statutes at issue are: Claim 2 – Indiana Code section 8-1-2-89, requiring the issuance of a certificate of territorial authority by the Utility Regulatory Commission prior to commencing the rendering of sewage disposal in any rural area in the state; Claim 3 – Indiana Code section 13-18-12-2, requiring the issuance of a wastewater management permit by the Water Pollution Control Board prior to engaging in the transportation, treatment, storage, or disposal of wastewater; Claim 4 – 327 Indiana

Administrative Code 5-2-2, requiring the issuance of a valid National Pollutant Discharge Elimination System permit by the Water Pollution Control Board prior to discharging any pollutants into the water of the state; Claim 5 – Indiana Code section 14-28-1-22, requiring the issuance of a permit by the Indiana Department of Natural Resources prior to construction in or on a floodway; and Claim 6 – Indiana Code section 32-25-1-1, requiring the recording of a declaration related to the construction of a condominium. The trial court's October 15, 2007, order grants declaratory judgments in favor of the residents on Claims 2-6; however, the order is silent regarding the grant or denial of injunctive relief.

One of the factors generally considered by a trial court when determining whether to grant injunctive relief is whether the plaintiff's remedies at law are inadequate. See Plaza Group Props., LLC v. Spencer County Plan Comm'n, 877 N.E.2d 877, 896 (Ind. Ct. App. 2007), trans. denied. Each of the statutes and regulations discussed above requires compliance as a prerequisite to construction of facilities or commencement of sewage treatment activity. As a result, given the trial court's declaratory judgments that the statutes and regulations apply to Bright, the law likely already provides an adequate remedy to the residents to prevent construction by Bright prior to its compliance with the statutes and regulations. As a result, there is likely no need for the trial court to grant injunctive relief in favor of the residents unless Bright is actually proceeding with construction in violation of the statutes and regulations. That said, the trial court never explicitly ruled on the issue of injunctive relief, nor did it certify either of its orders as final judgments by complying with Trial Rule 56(C). As a result, the issue of injunctive relief remains unresolved.

B. Validity of the Rezoning Application Approvals

The residents moved for partial summary judgment on Claims 1 and 6 regarding only the issue of whether the rezoning violated state and federal rules regarding floodplain management. In their motion, the residents explicitly reserved other issues for subsequent proceedings. Indiana Trial Rule 56(C) states:

> [a] summary judgment upon less than all the issues involved in a claim or with respect to less than all the claims or parties shall be interlocutory unless the court in writing expressly determines that there is no just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims, or parties.

Although the special judge sent a letter to all parties indicating it believed all eight claims were concluded and he was closing his special judge file, the letter does not sufficiently comply with the trial rule requirements to create a final appealable judgment. As a result, to the extent the trial court treated its two orders as a final judgment, the residents are entitled to relief from judgment and further consideration of the remaining issues regarding the validity of the Board's approval of the two rezoning applications and the appropriateness of injunctive relief.

Conclusion

The trial court's orders dated October 15, 2007, and September 26, 2008, did not fully adjudicate all of the issues raised in the residents' complaint and amended complaint. The trial court also did not expressly direct entry of final judgment. As a result, the trial court

abused its discretion when it denied the residents' motion for relief from judgment. Therefore, we reverse the trial court's decision and remand this case for further proceedings.

Reversed and remanded.

DARDEN, J., and MATHIAS, J., concur.