

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Vassil M. Marinov,
Appellant,

v.

Wastewater Treatment Utility
and City of West Lafayette,
Appellees.

April 26, 2023

Court of Appeals Case No.
22A-SC-2382

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-2006-SC-953

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Vassil M. Marinov appeals the trial court’s entry of summary judgment in favor of the City of West Lafayette (the “City”) and Wastewater Treatment Utility (“WWTU,” and together with the City, “Appellees”) with respect to his claim that he should not be charged a monthly trash fee. We affirm.

Facts and Procedural History

- [2] In June 2020, Marinov filed a notice of claim against Appellees in small claims court alleging that he had never used and did not want to use Appellees’ trash service and he was incorrectly charged \$16 each month for service. He asked the court to order Appellees to refund the amounts they charged him and to not further charge him. On August 31, 2020, Marinov filed a motion for a change of judge, and a special judge was appointed. An entry in the chronological case summary (“CCS”) dated November 30, 2020, indicates a hearing was scheduled for January 28, 2021. On January 12, 2021, Marinov filed another motion for a change of judge, and the court denied the motion.
- [3] On January 21, 2021, Marinov filed a motion stating “I have developed some symptoms of the virus with serious medical problems and from that and from the medications that I take, I received additional medical complications and now I still continue to feel not well” and requested that the January 28, 2021 hearing “be rescheduled for 60 days later.” Appellees’ Appendix Volume II at 23. The CCS indicates the court continued the matter, a status conference was later scheduled for December 2, 2021, Marinov requested a continuance, and the court reset the status conference for February 24, 2022. On February 24, 2022, the court issued an order stating the trial was scheduled for July 25, 2022,

Appellees' deadline to file a motion for summary judgment was June 10, 2022, and Marinov had until July 10, 2022, to file any response.

[4] On May 9, 2022, Marinov filed a motion stating “after my illness with a virus, I received some durable and serious medical complications and problems from which I still do not have any stabilizations and for some of them I have deteriorating and continue to be in very bad medical and physical condition and I am unable to work on my defense for this my Case.” *Id.* at 26. He also stated “[i]n connection with conducting some medical examinations and procedures and continuing of my treatments, from June I will be out of Indiana, and I expect to be back here in the middle of September this year.” *Id.* He requested that the June 10, 2022 deadline and the July 25, 2022 trial be rescheduled until after the end of September 2022. An attached letter from the Office of Westside Family Medicine stated Marinov “had COVID-19 infection in Dec 2020 and has since suffered some difficulties since this time,” “[t]hese difficulties include brain fog, fatigue, memory difficulties and sluggishness/delayed reaction time,” “[h]e also has pain in his temples,” and “[p]lease excuse his inability or delay with tasks that may involve extended writing, typing, or other mentally intensive activities.” *Id.* at 28. On June 6, 2022, the court issued an order stating the matter had been pending for almost two years, affirming the June 10th deadline for filing a motion for summary judgment, “grant[ing] [Marinov’s] request to extend the time to file response from July 10, 2021 to August 10, 2021,” and vacating the July 25, 2022 hearing date. *Id.* at 29.

- [5] On June 10, 2022, Appellees filed a motion for summary judgment and designated evidence. The designated evidence included West Lafayette City Ordinance No. 30-17 dated January 10, 2018, a Waste Water District Map, and an affidavit of the Street Commissioner for the City. Ordinance No. 30-17 stated that Ind. Code § 36-9-23-25(c) allowed WWTU to assess fees for the collection, treatment, and disposal of garbage from the owner of each lot, parcel of real property, or building that is connected with the sewage works by or through any part of the municipal sewer system or uses or is served by the works.¹ Further, Ordinance No. 30-17 provided for the expansion of WWTU's collection of solid waste to "the properties now connected to the WWTU's sewer system, as listed and depicted on Exhibit A attached hereto." *Id.* at 34. The attached Exhibit A, titled List of Newly Added Service Addresses, included Marinov's address.
- [6] The affidavit of the Street Commissioner stated "[t]he City's Waste Water Utility provides sewer and trash service to the real estate located at" Marinov's

¹ Ind. Code § 36-9-23-25(c) provides:

Except as otherwise provided in a provision included in an ordinance under subsection (f), the fees are payable by the owner of each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed and collected accordingly.

address and “[t]he Property is located within the West Lafayette Sewer Service Area.” *Id.* at 46. In its memorandum, Appellees argued that, according to Ind. Code 36-9-23-25(c), WWTU is authorized to collect and dispose of garbage from the owners of every parcel of real property that is connected with the sewage works by or through any part of the municipal sewer system, that Marinov’s property “is connected to the City’s sewer system and within the City’s sewer district,” the City was unsure of how Marinov was disposing of his solid waste, and “[r]egardless of whether Mr. Marinov is actually taking advantage of these services, he, like the rest of his neighborhood, is legally obligated to pay the monthly collection fees.” *Id.* at 51. Marinov did not file a response to Appellees’ summary judgment motion.

- [7] On August 17, 2022, the trial court issued an order finding that Marinov failed to timely file a response to Appellees’ summary judgment motion and that WWTU was authorized to collect and dispose of garbage from the owners of every parcel of real property that is connected with the sewage works by or through any part of the municipal sewer system and that Marinov’s property was connected to the City’s sewer system and within the City’s sewer district. The court entered summary judgment in favor of Appellees and stated Marinov was awarded nothing on his request for relief.

Discussion

- [8] Marinov, in his statement of case, states Appellees “started illegally to charge me for services, that I don’t use from them and I never asked them for this services.” Appellant’s Brief at 4. In the argument section of his brief, he states

“[t]his Order Granting Summary Judgment from August 17, 2022, is not correct and is wrong, Because: . . . [t]he Court wrongly continued the course of the Case, without me and my participation” *Id.* at 6. He argues “[b]y this wrong continuing the course of the Case, . . . I was Deprived from the legal right to participate and defend myself personally in this my Case.” *Id.* at 7.

[9] Summary judgment is appropriate where the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Collins v. HSBC Bank USA, Nat. Ass’n*, 974 N.E.2d 537, 540 (Ind. Ct. App. 2012). All facts and reasonable inferences drawn from those facts are construed in favor of the non-moving party. *Id.* Review of a summary judgment motion is limited to those materials designated to the trial court. *Id.* Further, the decision to grant a continuance of summary judgment deadlines is committed to the sound discretion of the trial court. *Id.* at 541. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In order to establish that a trial court abused its discretion in denying a motion for continuance, the appealing party must show both that good cause existed to grant the motion and that it was prejudiced by the denial. *Id.*

[10] The record reveals that Marinov filed his small claims action in June 2020 alleging he was incorrectly charged a monthly trash fee and that, after a number of continuances, the court issued an order on February 24, 2022, stating that Appellees’ deadline to file a motion for summary judgment was June 10, 2022, and Marinov had until July 10, 2022 to file a response. In May 2022, Marinov

requested the court to extend the deadlines, and the court noted how long the matter had been pending, affirmed Appellees' deadline for filing a motion for summary judgment, and extended the deadline for Marinov to file a response from July 10, 2021 to August 10, 2021. On this record, we find no abuse of discretion. *See Goston v. State*, 200 N.E.3d 920, 921-922 (Ind. 2023) ("Trial Rule 16(J) provides trial courts the authority . . . to enter pre-trial orders controlling the course of proceedings Here, the trial court appropriately exercised the discretion afforded by Trial Rule 16 in a manner that balanced the goals of doing justice to the merits of the case, minimizing the risk of prejudice to the plaintiffs, and maintaining orderly and efficient court proceedings."). Further, the designated evidence supports the trial court's findings that Marinov's property was connected to the City's sewer system and within the City's sewer district and that he was obligated to pay the challenged monthly service fee. We do not disturb the trial court's ruling. *See Raab v. Town of Schererville*, 766 N.E.2d 790, 792-794 (Ind. Ct. App. 2002) (rejecting the appellant's claim that the Town of Schererville could not assess a garbage collection fee against residents who did not actually use the service), *trans. denied*.

[11] For the foregoing reasons, we affirm.

[12] Affirmed.

Bailey, J., and Weissmann, J., concur.