MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dan Van Treese, Todd Marine Corp., and Overlook Partners, LLC,

Appellants-Defendants,

v.

Todd Marine Association, Inc.,

Appellee-Plaintiff

April 24, 2023

Court of Appeals Case No. 22A-PL-2420

Appeal from the Monroe Circuit Court

The Honorable Holly M. Harvey, Judge

Trial Court Cause No. 53C06-1511-PL-2206

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

[1] Dan Van Treese, Todd Marine Corporation, and Overlook Partners, LLC, appeal the trial court's grant of summary judgment to Todd Marine Association, Inc., in this dispute over the ownership of certain boat docks on Monroe Lake. We affirm.

Facts and Procedural History

[2] This case involves Todd Marina, which is located on Monroe Lake and consists of 2.4 acres of land connected by a walkway to two offshore floating docks that provide slips for fifty boats.[1] Dan Van Treese, Todd Marine Corporation, and/or Overlook Partners, LLC (collectively, "Van Treese") developed the marina in the late 1990s. Around the same time, Van Treese established Todd Marine Association, Inc. ("TMA") to manage and operate the marina. TMA is made up of members who pay for the right to use the boat slips on the docks.

[3] In 2005, members of TMA sued Van Treese, claiming he was mismanaging the marina. The case settled in 2006. Among other things, the settlement agreement required Van Treese and his family members to resign from TMA's board.

[1] A storm significantly damaged the docks in April 2022, but the parties do not tell us the current condition.

[4] In 2015, the new leadership of TMA brought this case against Van Treese, alleging that he was not abiding by certain terms of the 2006 settlement. On October 27, 2016, the parties reached a settlement under which Van Treese agreed to pay TMA $60,000, starting with an installment of $10,000 to be paid on or before November 28, 2016. As collateral for this obligation, Van Treese executed a quitclaim deed that would convey most of his interest in the "real estate" to TMA. Appellants' App. Vol. V pp. 19-22. Van Treese failed to pay the first $10,000 by November 28, and TMA recorded the quitclaim deed Van Treese had executed. TMA then filed a "Motion to Enforce Settlement Agreement and Bring Case to Closure," asking the trial court to issue an order "confirming that TMA now retains ownership of the Real Estate free and clear of all claims of ownership by [Van Treese]." Appellants' App. Vol. II pp. 240-44. The court granted TMA's motion on December 12.

[5] A week later, Van Treese moved for reconsideration of the case-closure order. He claimed he had been working on gathering the funds for the first $10,000 payment and that the court's order gave TMA "a substantial windfall as it relates to its possession of the Marina." Appellants' App. Vol. III pp. 2-7. The court invited the parties to file briefs on Van Treese's motion. In January 2017, Van Treese filed a brief arguing, among other things:

> Granting [TMA's] Motion to Enforce would impose an unduly harsh consequence for Van Treese, who was [the] individual responsible for the creation of the Marina itself. Countless hours of Van Treese's blood, sweat, and tears have gone into constructing, managing, and taking the property from concept to

> reality. Granting [TMA's] Motion would also constitute it being unjustly enriched at Van Treese's expense.
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> Here, permitting [TMA] to walk away *scot free* with the Marina without further allowing Van Treese a meaningful opportunity to perform and cure his breach of the Settlement Agreement confers a significant and undeserved windfall for [TMA]. Such an outcome would be grossly unjust to the point that TMA would be required as a matter of law to compensate Van Treese for the windfall. By Van Treese's conservative estimate, the fair market value of the property is $400,000 to $600,000. The amount of debt that the Marina secured per the Settlement Agreement is $60,000. Based on those respective amounts, [TMA] could not possibly retain the Marina without fairly compensating Van Treese therefor.

Id. at 35-36. In March 2017, after reviewing Van Treese's brief and TMA's response, the court denied the motion for reconsideration.

[6] But Van Treese continued the fight. In communications to various parties in late 2020 and early 2021, he held himself out as the owner of the docks at Todd Marina. He took the position that the docks are not fixtures to the 2.4-acre parcel of land and therefore were not included in his conveyance of the "real estate" and instead remain his personal property. In response, in May 2021, TMA filed an amended complaint, seeking a declaratory judgment that the docks are fixtures owned by TMA and its members as well as an injunction barring Van Treese from claiming otherwise. In February 2022, TMA moved for summary judgment, making three alternative arguments: (1) the docks are

fixtures to the land as a matter of fact and law; (2) courts in other cases to which Van Treese was a party had ruled that some or all of the docks are fixtures to the 2.4-acre parcel, and the doctrine of collateral estoppel bars Van Treese from now claiming they are personal property, separate from the land; and (3) Van Treese treated the docks as part of the real estate in his actions relating to the 2006 and 2016 settlements, including in his reconsideration filings in December 2016 and January 2017, and the doctrine of judicial estoppel bars him from now taking the opposite position.

[7] On May 5, the trial court granted Van Treese a final extension of his response deadline until June 1. The same day, the court issued a separate notice setting a summary-judgment hearing on June 17. As ordered, Van Treese filed his response to TMA's motion on June 1. Then, on June 14, three days before the summary-judgment hearing, Van Treese's attorney moved to continue the hearing, explaining that he (the attorney) was "currently out of the state and unable to attend[.]" Appellants' App. Vol. V p. 144. Later that day, TMA filed its reply in support of its motion for summary judgment. In a CCS entry the next day, the trial court denied Van Treese's motion to continue, noting that the hearing "has been scheduled for over thirty days." Appellants' App. Vol. II p. 30.

[8] The court held the hearing as scheduled on June 17, without Van Treese's counsel present. The hearing lasted only a few minutes (the transcript is four pages), during which counsel for TMA briefly summarized his written arguments. No witness testimony or other evidence was presented. After the

hearing, the court issued an order granting summary judgment to TMA. The court referenced generally "the applicable law as cited in TMA's motion[.]" Appellants' App. Vol. V p. 174.

[9] Van Treese now appeals.

Discussion and Decision

I. Summary Judgment

[10] Van Treese contends the trial court erred by granting summary judgment to TMA. We review a motion for summary judgment de novo, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). That is, "The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C).

[11] As noted above, TMA offered three alternative arguments in the trial court: (1) the evidence shows that the docks are fixtures; (2) Van Treese is collaterally estopped from claiming the docks are not fixtures; and (3) Van Treese is judicially estopped from claiming the docks are not fixtures. In granting TMA's motion, the trial court didn't specify which theory or theories it adopted, instead citing generally "the applicable law as cited in TMA's motion[.]" We can affirm the grant of summary judgment "based on any theory supported by record evidence." *Markey v. Estate of Markey*, 38 N.E.3d 1003, 1007 (Ind. 2015).

We find one of TMA's judicial-estoppel arguments—to which Van Treese offers no response—to be particularly compelling.

[12] The doctrine of judicial estoppel "prevents a party from asserting a position in a legal proceeding inconsistent with one previously asserted." *Wabash Grain, Inc. v. Smith*, 700 N.E.2d 234, 237 (Ind. Ct. App. 1998), *reh'g denied*, *trans. denied*. The doctrine serves to "protect the integrity of the judicial process[.]" *Id.* Van Treese's current position in this litigation is that the docks are not fixtures to the land and therefore are not part of the "real estate" he conveyed to TMA in 2016. But in a filing in January 2017, Van Treese attempted to convince the trial court to invalidate that conveyance by arguing that if it was upheld, TMA would receive a windfall because it would receive not only his interest in the 2.4 acres of land but also his interest in the docks. Specifically, he argued that "[c]ountless hours of [his] blood, sweat, and tears have gone into **constructing**, managing, and taking the property from concept to reality" and that granting TMA's motion to confirm Van Treese's conveyance "would constitute [TMA] being unjustly enriched at Van Treese's expense." Appellants' App. Vol. III p. 35 (emphasis added). We agree with TMA that Van Treese's statement about "constructing" the marina was a clear reference to the docks and that he was representing to the trial court that he would lose the docks if the conveyance of the "real estate" was upheld. In addition, Van Treese said in his filing that the fair market value of "the property" he was losing was $400,000 to $600,000. *Id.* at 36. Van Treese does not dispute that this amount includes the docks. *See* Appellee's App. Vol. II pp. 57-68; Appellants' App. Vol. IV p. 217. Because

Van Treese previously represented to the trial court in this litigation that the docks are part of the "real estate," he is now estopped from taking the exact opposite position. *See Wabash Grain*, 700 N.E.2d at 237.

[13] On this basis, we affirm the grant of summary judgment to TMA.

II. Motion to Continue the Summary-Judgment Hearing

[14] At the end of his brief, Van Treese makes the alternative argument that the trial court erred by denying his motion to continue the summary-judgment hearing. He notes, among other things, that continuing the hearing would have allowed him to respond to TMA's reply brief. We share the trial court's misgivings about the timing of Van Treese's request for a continuance—more than a month after the hearing was set and just three days before the hearing was to be held. But ultimately, we need not decide whether the trial court should have granted a continuance. Through this appeal, Van Treese has had a full and fair opportunity to respond to all of TMA's arguments. And we have reviewed the matter de novo and independently determined that TMA is entitled to summary judgment. Van Treese identifies no argument or evidence he could present to the trial court that he hasn't presented to us. Therefore, his challenge to the denial of a continuance is moot.

[15] Affirmed.

Tavitas, J., and Foley, J., concur.