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IN THE
COURT OF APPEALS OF INDIANA

Rupinder Thind,
Appellant,

v.

Delaware County, Indiana,
Appellee.

March 20, 2023

Court of Appeals Case No.
22A-PL-2332

Appeal from the Delaware Circuit
Court

The Honorable Linda Ralu Wolf,
Judge

Trial Court Cause No.
18C03-2207-PL-69

Opinion by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Rupinder Thind (“Thind”) appeals the entry of a preliminary injunction and order that he pay fines and costs. We affirm in part and reverse in part.

Facts and Procedural History

- [2] Thind owns certain land on North Shaffer Road in Muncie, Delaware County, Indiana. On July 13, 2022, Delaware County (the “County”), through its Administrative Zoning Officer, Tom Fouch, filed a Complaint for Preliminary and Permanent Injunction alleging that the County had adopted the Delaware County Comprehensive Zoning Ordinance (the “Zoning Ordinance”), Thind’s property is located within an F Farming Zone, Thind was “engaging in a trucking business use, as well as the storage of trucking business vehicles,” on the property, and a trucking business use is not permitted within an F Farming Zone without a variance of use issued by the Delaware Muncie Metropolitan Board of Zoning Appeals (the “BZA”). Appellant’s Appendix Volume II at 10.
- [3] The Complaint alleged that Manpreet Thind (“Manpreet”), who transferred the property to Thind in March 2021, had petitioned for a variance of use, the BZA denied the petition on June 25, 2020, Manpreet was informed that, if more than one semi-tractor and one trailer continued to be located on the Property, he would be in violation of the Zoning Ordinance, and in April 2021 and again in April 2022, the Administrative Zoning Officer found that multiple trucking business vehicles were being stored on the property. The County requested preliminary and permanent injunctions against Thind. The Complaint also stated: “Pursuant to Ind. Code § 36-7-4-1014(e), [the County] is seeking the levy

of a fine and penalty for the enforcement of the County’s ordinances, including reimbursement for the costs of this action pursuant to Ind. Code § 36-7-4-1014(f).”¹ *Id.* at 11.

[4] On August 24, 2022, the court held a hearing on the County’s request for a preliminary injunction. The court admitted a portion of the Zoning Ordinance. Administrative Zoning Officer Fouch testified that he was familiar with Thind’s property, the property was gated, the roadway abutting the property was not designed for semi traffic and heavy equipment, and his office received complaints from neighbors regarding the use of the property. He indicated that he informed Manpreet about the Zoning Ordinance and how he could apply for a variance, Manpreet applied for a variance, and the BZA denied the request. The court admitted Manpreet’s May 22, 2020 application for a variance,² the minutes of the BZA’s meeting on June 25, 2020, and the BZA’s decision denying Manpreet’s application. The minutes of the BZA’s meeting indicate that Manpreet stated he “would like to continue to use the land for truck

¹ Ind. Code § 36-7-4-1014 provides:

(a) The plan commission, board of zoning appeals, or any enforcement official designated in the zoning ordinance may bring an action under IC 36-1-6 to enforce any ordinance adopted or action taken under this chapter.

* * * * *

(e) An action for the levy of a fine or penalty for enforcement of a zoning ordinance may be brought in any court located within the jurisdiction of the plan commission or board of zoning appeals.

(f) If the plan commission, board of zoning appeals, or designated enforcement official is successful in an action brought under this section, the respondent shall bear the costs of the action. . . .

² Manpreet’s application stated: “Request for a variance of use from the terms of the [Zoning Ordinance] to allow a trucking business use and storage of trucking business vehicles in a farming zone” and “[t]rucking business use for parking, service and inspection of equipment. Maximum 30 vehicles.” Exhibit 22.

parking and add a small repair space for those trucks,” he would have “between 10 and 15 trucks” on the property, he was at home for a few days at a time each month, and “5 people live at the house who all drive trucks.” Exhibit 22. The minutes also reveal that a person who appeared in opposition stated that Thind “has had trucks here for a long time and . . . does not keep the property maintained,” “he has trucks running all night sometimes,” “the fumes from the diesel are a problem,” and “these roads were not meant to handle the size of [the] trucks.” *Id.* Fouch testified Manpreet “was given 30 days to make the corrections that needed to be made” and “he was granted to be able to keep one semi which is his – because the BZA looked at that as they didn’t want to deny somebody to use his work vehicle and not be able to park it on his property – so they said he could have one semi on the property at that time. That included the trailer, too.” Transcript Volume II at 15.

[5] Fouch further testified that he “started getting complaints again that there were still multiple semis pulling in and off of the property.” *Id.* The court admitted without objection several photographs depicting more than one semi-tractor and semi-trailer on the property on occasions between August 2020 and June 2022.³ Fouch testified that he had been to the property in 2022 and observed multiple semis on the property. He indicated the property owner did not appeal the BZA’s decision. When asked if there was a regulation that says semis

³ Notes attached to the photographs indicate they were taken on the following dates: August 2020, September 2020, January 2021, April 2021, June 2021, April 2022, May 2022, and June 2022.

cannot travel on North Shaffer Road, he replied “this isn’t really about semis travelling – this was about him wanting to run a business and have multiple semis running up and down that road” *Id.* at 30.

[6] Manpreet testified he had lived at the property for almost four years, he used to own the property, and he sold it to Thind, who was his brother, in March 2021. When asked what he did for a living, he indicated he had a small trucking company which “[h]aul[ed] freight.” *Id.* at 34. He indicated Thind also had a trucking company which hauled freight. When asked “where is your brother right now,” he replied “[h]e’s on his way to California” and “[w]e have . . . like a base office over there – and a yard and a small warehouse as well.” *Id.* at 35. When asked if Thind ever “hauled freight from the home in Muncie,” he replied “[n]o.” *Id.* When asked if he and Thind owned trucks besides the ones shown in the photographs, he answered affirmatively and testified “[i]n combined – we have like 32 trucks and 50 plus trailers” with locations in California, Connecticut, and New Jersey. *Id.* at 36. He stated twenty-eight drivers worked for his and his brother’s trucking businesses.

[7] Manpreet indicated that neither he nor his brother sold any goods or provided any services to customers out of the home. When asked if customers were ever on his property, he testified: “No, we are a third-party logistics. So, we are just a for-hire kind of thing. So, we do not have any manufacturing or distribution or anything . . . we pick up from the customer’s place and take it to the customer We do not do anything here.” *Id.* at 37. He referred to one of the photographs and stated that one of the trucks had been parked where

depicted for a while, it was one of the first trucks he had in the fleet, and he was emotionally attached to it. He identified two other trucks as “the one I drive and the one my brother drives” and indicated “the same vehicles” are shown in a number of the photographs. *Id.* at 39. He indicated there were currently two trucks at the home. When asked why he kept them at the home, he stated “I have just a hobby to build these trucks the way I want,” “insurance doesn’t cover them up to their value,” and “[s]o, I cannot leave it on the truck stop.” *Id.* at 42. When asked if he was currently driving trucks, he stated that he stopped driving in February because he had a stroke and had not fully recovered. When asked, “[o]ver the last couple of years, how many trucks are usually parked at the home,” he answered “I don’t think you’d get over three trucks at one given time.” *Id.* at 43. When asked “[d]o you ever do or have repairs done to the trucks while they’re . . . at the home,” he answered: “We’ve never called any professional service out there . . . If I like to do something myself – I do it – but it’s not like – for professional reasons that it has to go on the road or something – just my hobby. I like to do these kind of things with my truck.” *Id.*

[8] On cross-examination, when asked “[h]ow many semi-trailers are on your property today,” he said “[t]wo,” and when asked how many tractors were on the property, he answered “[t]wo.” *Id.* at 47. When asked “you don’t drive, correct,” he answered affirmatively, and when asked who was “using those two tractors and trailers now,” he replied “the one is my truck is parked inside and the other one – my brother is using that one.” *Id.* at 47-48. When asked

“[w]ell, he’s driving a different truck and trailer now, isn’t he,” Manpreet stated “[h]e’s going in to fly today so, he’s not driving a truck – the truck has some issues so, it’s just park[ed] over there” and “it’s not even I think registered yet . . . so, he cannot drive that truck yet.” *Id.* at 48. When asked “then there’s another truck in the garage – and trailer – that’s not being used as well,” he said “[y]es, that’s correct.” *Id.* When asked “since you were advised that there was . . . a restriction as to one truck and one trailer on your property - there have been multiple occasions when you had more than one truck and one trailer on your property,” he replied “[y]es.” *Id.* at 54. The court took the matter of the preliminary injunction under advisement. The parties submitted proposed findings of fact and conclusions of law.

[9] On September 2, 2022, the trial court issued an order granting the County’s request for a preliminary injunction. The court found the Property was transferred from Manpreet to Thind in March 2021, after the purchase Thind started using the property “to store semi tractors and trailers as well as service of said equipment and having multiple vehicles on The Property at any one time,” in May 2020 Manpreet made an application to engage in a trucking business on the property and for a variance of use for “parking, service and inspection of equipment,” a trucking business use is not permitted on property located within an F Farming Zone, the BZA denied the petition on June 25, 2020, and Manpreet was informed that, if more than one semi-tractor and one trailer continued to be located on the property, he would be in violation of the Zoning Ordinance and that he was able to appeal the decision. Appellant’s

Appendix Volume II at 5. The court further found that Administrative Zoning Officer Fouch found, in April 2021 and in April 2022, that multiple trucking business vehicles were being stored on the property in violation of the Zoning Ordinance, that Manpreet admitted that “he continued to have multiple semi-tractors and semi-trailers on The Property at various occasions,” and that he “admitted that he was building, repairing and customizing semi-tractors on The Property.” *Id.* at 6. The court concluded Thind was violating the Zoning Ordinance and, without an injunction issued by the court, he will continue to do so. It ordered that Thind “shall be enjoined from using the property . . . for business purposes which include parking, servicing and inspecting vehicles and equipment in relation to his business.” *Id.* at 8. The court also ordered: “[Thind] shall be responsible for the costs of this action and fines will be assessed and attributed against [him].” *Id.*

Discussion

[10] Thind contends that he did not use the property for a business use. He argues that he and Manpreet parked their work vehicles on the property between trips and that this activity does not rise to the level of a business use. He argues the Zoning Ordinance does not prohibit Manpreet from keeping multiple semi-trucks on the property for non-business uses such as customizing the trucks as a hobby. He argues: “The Thinds simply want the same rights given to all other residents of Delaware County—the right to park their work vehicles at their home. They should not be deprived of this right just because they own their own business and because this business involves driving and parking a truck

that neighbors apparently find unsightly.” Appellant’s Reply Brief at 9. He further argues “[t]his ‘action’ is not over” and an award of costs is premature. Appellant’s Brief at 38. He also argues the Zoning Ordinance does not authorize fines.

[11] The grant or denial of a request for a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion. *Gleeson v. Preferred Sourcing, LLC*, 883 N.E.2d 164, 171-172 (Ind. Ct. App. 2008) (citing *Ind. Family & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002)). We will reverse the trial court’s judgment only when it is clearly erroneous. *Id.* at 172. Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* We consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment. *Id.*

[12] To obtain a preliminary injunction, a party must show by a preponderance of the evidence: (1) a reasonable likelihood of success at trial; (2) the remedies at law are inadequate; (3) the threatened injury to the movant outweighs the potential harm to the nonmoving party from the granting of an injunction; and (4) the public interest would not be disserved by granting the requested injunction. *Id.* The difference between a preliminary and a permanent injunction is procedural. *Ferrell v. Dunescape Beach Club Condominiums Phase I*,

Inc., 751 N.E.2d 702, 712-713 (Ind. Ct. App. 2001). A preliminary injunction is issued while an action is pending, while a permanent injunction is issued upon a final determination. *Id.* at 713. A plaintiff's remedies at law are inadequate for purposes of issuing an injunction where irreparable harm would be caused pending resolution of the substantive action if the injunction did not issue. *Id.*

[13] To the extent we must interpret the Zoning Ordinance, we will apply the same principles as those employed for the construction of statutes. *Hauck v. City of Indianapolis*, 17 N.E.3d 1007, 1014 (Ind. Ct. App. 2014), *trans. denied*. We seek to ascertain the intent of the drafter by giving effect to the ordinary and plain meaning of the language used. *Id.* We interpret an ordinance as a whole. *Hamby v. Bd. of Zoning Appeals of Area Plan Comm'n of Warrick Cnty.*, 932 N.E.2d 1251, 1255 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*.

[14] The parties do not dispute that Thind's property is located within an F Farming Zone. The court found the Zoning Ordinance "identifies the F Farming Zone and its uses as being those of residential, farming, and agricultural uses." Appellant's Appendix Volume II at 5. The parties also do not disagree that Manpreet previously applied for a variance to use the property in his trucking business, the BZA denied the petition on June 25, 2020, and Manpreet did not appeal the BZA's decision. The court found that Fouch subsequently observed multiple trucks on the property and Manpreet admitted that he continued to have multiple semi-tractors and semi-trailers on the property and that he was building, repairing, and customizing semi-tractors on the property. The court heard extensive evidence regarding the presence of semi-tractors and semi-

trailers on the property on various occasions and Manpreet’s testimony regarding his and Thind’s trucking businesses and the activities on and use of the property. To obtain the preliminary injunction, the County was required to show by a preponderance of the evidence a reasonable likelihood of success at trial and we consider the evidence only in the light most favorable to the judgment. Our review of the record does not leave us with a firm conviction that a mistake has been made. We cannot say that reversal of the court’s preliminary injunction is required.

[15] With respect to the court’s order that Thind “shall be responsible for the costs of this action and fines will be assessed and attributed against [Thind],” Appellant’s Appendix Volume II at 8, we note that, while a permanent injunction is issued upon a final determination, a preliminary injunction is issued while an action is pending and such an injunction is issued where irreparable harm would be caused pending resolution of the substantive action. *See Ferrell*, 751 N.E.2d at 713. The court issued a preliminary injunction and not a final determination. Further, we note the County did not present evidence of the fines or penalties it wished to have levied against Thind. We conclude, on this record and in light of the stage of the proceedings, that the court’s imposition of fines and costs at this juncture is premature.

[16] For the foregoing reasons, we affirm the grant of the County’s motion for a preliminary injunction and reverse the order imposing costs and fines on this record at this stage of the proceedings.

[17] Affirmed in part and reversed in part.

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