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Indiana

MONROE CIRCUIT COURT CAUSE NO. 53C06-1912-MI-002936

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STATE OF INDIANA

COUNTY OF MONROE

JUDIE BAKER & DAVID HOLDMAN,

Plaintiffs,

v.

TERRI PORTER, in her capacity as Director of the

) City of Bloomington Planning and Transportation) Department, & JIM

GERSTBAUER, in his

) Capacity as the Building Commissioner of the

) Monroe County Building Department,

)

) Defendants.

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DEFENDANT'S OBJECTION TO PLAINTIFFS' MOTION TO SET HEARING

Comes now Defendant, Terri Porter in her capacity as Director of the
City of Bloomington Planning & Transportation Department

("Defendant"), by counsel, Larry D. Allen, and objects to "Plaintiffs'
Motion for One Hour Bench Trial Prior to March 19, 2020":

1. On December 18, 2019, the Plaintiffs filed their complaint for a
mandamus action under Indiana Code Section 34-27-3-1, et seq.

2. Defendant Jim Gerstbauer filed an answer on December 26, 2019, and,
following motions for change of judge and an enlargement of time,
Defendant Terri Porter filed her answer on February 12, 2020.

3. On February 24, 2020, this Court granted Petitioners' motion to
file an amended complaint (Docket).

4. On February 25, 2020, the Plaintiffs filed a Motion for One Hour
Bench Trial Prior to March 19, 2020 (Docket).

5. None of the attorneys for Defendant Porter were served with
Plaintiffs' motion.

6. That same day, on February 25, 2020, this Court entered upon the
docket an order for the Defendants to response to Plaintiffs' motion

(Docket).

OBJECTION

7. Defendant Porter objects to the Plaintiffs' request for a hearing because (1) it would prejudice Defendant, (2) this matter is separate and distinct from the administrative proceeding before the Board of Zoning Appeals ("BZA"), and (3) even if a writ were issued in this matter, it would not be dispositive of the pending administrative action.

8. Porter would be prejudiced by a hearing set on or before March 19, 2020, because it would not allow for Porter to conduct necessary discovery, including depositions required to fully defend herself in this action.

9. Porter intends to depose individuals within the Monroe County government that have knowledge of Plaintiffs' alleged facts in this case. However, at this juncture, with no pretrial case management order, Porter has not yet been able to schedule said depositions. Additionally, no formal discovery requests have been made as the parties have attempted to dispose of the action through settlement discussions.

10. Porter must have the ability to conduct discovery in this action. Actions for mandate under Indiana Code are analogous to any other civil action, which necessarily includes the ability to conduct discovery and depositions prior to final disposition. Ind. Code § 34-27-3-3(a) (noting that an action for mandate shall stand for trial and "as in other civil actions" the court may join issues; grant amendments, continuances, and appeals; and render final judgments); Ind. Trial Rule 1 ("Except as otherwise provided, these rules govern the procedure and practice in all courts of the state of Indiana in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin. They shall be construed to secure the just, speedy and inexpensive determination of every action." (emphasis added)); Ind. Trial Rule 26.

11. Plaintiffs have never alleged that this proceeding need to proceed as an emergency, as required by statute, in order to accelerate the time for appearances and answers. See Ind. Code § 34-27-3-2(b) (requiring complaint to show emergency for the judge to issue an order "at the time the complaint is filed" for a shorter time for return of the summons and filing of answers). Therefore, there is no reason to foreclose the necessities of discovery and a full and fair proceeding to accelerate the schedule now.

12. Our Supreme Court has noted that a writ of mandate is "an extraordinary remedy, viewed with extreme disfavor." State ex rel.

Goldsmith v. Superior Court of Marion Cty., Criminal Div., Room No. Four, 463 N.E.2d 273, 275 (Ind. 1984). Ignoring this unambiguous discouragement toward hastily using this process, Plaintiffs want to compound the risk of extreme prejudice to the Defendants by speeding through this process without affording Defendants the proper opportunity to gather all evidence necessary to proceed in this action. Obviously, Plaintiffs' bare assertions that "[t]he interests of justice would be served" by setting an early hearing date cannot justify denying Porter's ability to gather information through discovery. In fact, Plaintiffs fail to make plain why they believe it is vital to hold this hearing prior to the BZA appeal. That is because Plaintiffs simply cannot show that any interests can be served by their request.

13. This mandate is a separate action from Plaintiffs' appeal before the City of Bloomington's Board of Zoning Appeals ("BZA"). Plaintiffs' request for mandate, while involving some of the same set of facts, does not involve the same parties or involve similar requests for relief. Therefore, the request to have this proceeding be heard prior to any BZA administrative review is unnecessary and largely irrelevant.

14. Even if this Court were to grant a mandate, it would not be dispositive of Plaintiffs' separate appeal before the BZA. Plaintiffs are appealing a fine for demolishing a property without authorization (Plaintiffs' Motion ¶¶ 9, 10; Plaintiffs' Ex. 1). An order from this Court for the Defendants to issue a Certificate of Zoning Compliance (CZC) now, would not retroactively moot the existing fines, because at the time of the demolition, the Plaintiffs did not have the required CZC or demolition permit and therefore violated Bloomington's ordinance. On the other hand, if the BZA determines that the Plaintiffs committed no violation of the Bloomington Municipal Code, this request for a writ of mandate be moot and Porter would move to dismiss this case. Therefore, if anything, it stands to reason that it is better for the efficient administration of justice for this Court to set a hearing after the BZA hearing on March 19, 2020, not before.

WHEREFORE, Defendant Porter respectfully requests that this Court deny Plaintiffs' motion to set a hearing, and that this Court instead order a status conference whereby the parties can enter into an appropriate case management plan that includes time for discovery in this matter, and grant all other just and proper relief.
Respectfully submitted,

/s/ Larry D. Allen
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