

STATE OF INDIANA)
) SS:
COUNTY OF MONROE) CAUSE NO. 53C06-2203-PL-000509

COUNTY RESIDENTS AGAINST ANNEXATION,)
INC., et al.,)
)
 Petitioners/Remonstrators,)
)
 v.)
)
CITY OF BLOOMINGTON, INDIANA, et al.)
)
 Respondents.)

MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Respondents City of Bloomington, Indiana, (“Bloomington”), by counsel, and pursuant to Rule 12(C) of the Indiana Rules of Trial Procedure move the Court to enter judgment in favor of Bloomington and against Remonstrators on Count II of Remonstrators’ Petition for Appeal of Annexation, for Declaratory Judgment, and for Damages (hereafter “Complaint”), wherein Remonstrators request an extension of the period of remonstrance to annexation. In support, Bloomington states the following:

1. Remonstrators filed their Complaint on March 16, 2022.
2. Remonstrators brought the following Counts as part of their Complaint:
 - Count I: appeal of Bloomington’s annexation of Areas 1A and 1B that was adopted by the City’s Common Council in Ordinances 17-09 and 17-10;
 - Count II: requesting that the Court extend the period in which potential remonstrators could execute and file remonstrance

petitions as set forth in Indiana Code Section 36-4-3-11.1 by additional 90 days due to COVID-19; and

- Count III: declare that the Auditor improperly disqualified petitions of remonstrance in accordance with Indiana Code 36-4-3, *et seq.*

(Compl. at 2-8).

3. In support of Count II, Remonstrators alleged that the annexation ordinances were adopted during the COVID-19 pandemic and that “the existence of the COVID-19 pandemic prevented property owners and representatives from executing Remonstrance Petitions that would otherwise have been included within the Certifications attached[...]as **Exhibits C and D.**” (Compl. at 6, ¶¶2-3) (emphasis in original).

4. Count II of Remonstrators’ Complaint is not based on any legal justification, is directly contrary to the plain language of the statute, and is incapable of supporting relief under any circumstance.

5. A motion under Trial Rule 12(C) tests the legal sufficiency of a claim presented in the pleadings only. *KS & E Sports v. Runnels*, 72 N.E.3d 892, 898 (Ind. 2017). That is, a motion challenging the legal sufficiency of a claim is testing the law of the claim more so than the facts alleged in the claim. *Davis v. Ford Motor Co.*, 747 N.E.2d 1146, 1149 (Ind. Ct. App. 2001) (discussing 12(B) and 12(C) motions). A trial court must grant a motion on the pleadings under Trial Rule 12(C) if it is clear on the face of the pleadings that the plaintiff cannot succeed under the operative facts and

allegations made in the complaint. *Bayer Corporation v. Leach*, 147 N.E.3d 313, 315 (Ind. 2020) (citing *Murray v. City of Lawrenceburg*, 925 N.E.2d 728, 731 (Ind. 2010); *Noblesville Redevelopment Comm’n*, 674 N.E.2d 558, 562 (Ind. 1996).

6. In determining whether the facts alleged in the complaint are incapable of supporting relief, the court must accept as true the well-pleaded material facts and “base [its] ruling solely on the pleadings.” *Bayer Corporation*, 147 N.E.3d at 315. The court can only rely upon the complaint and answer and must not accept any “extraneous material alleged after the pleadings closed.” *Noblesville Redevelopment Comm’n*, 674 N.E.2d at 562. “[W]hen a pleaded claim provides no circumstances in which relief can be granted, there is no need to put either the parties or the court through costly and time-consuming litigation.” *Id.* Even in cases with multiple claims, the Court is required to address the viability of each claim presented and dispose of any nonviable claims. *Bayer Corporation*, 147 N.E.3d at 316.

7. Count II of the Remonstrators’ complaint is legally insufficient. It seeks relief unauthorized by law. Indiana Code § 6-4-3-11.1 provides the procedure for notice for a period of annexation following the passage of annexation ordinances, and limits the period in which remonstrance petitions may be accepted to 90 days. Under the statute, the City is required to publish a notice in the newspaper and mail the notice to any owners of real property within the area(s) proposed to be annexed. The notice informs those real property owners wanting to remonstrate against the annexation that they must file their remonstrance petition “not later than ninety (90) days after the date that notice of the adoption of the annexation ordinance was

published...” Ind. Code § 6-4-3-11.1(d). The statute requires that the City provide a location for remonstrators to sign petitions during regular business hours and an additional location for at least five (5) days in the 90-day remonstrance period that is open from at least 5 p.m. to 9 p.m. for week days, or four hours between 9 a.m. and 5 p.m. on weekends. Ind. Code § 6-4-3-11.1(e). The time frame for the period of remonstrance is again explicitly set by the statute as “[b]eginning the day after publication of the notice under subsection [Ind. Code § 6-4-3-11.1](c) and ending *not later than ninety (90) days after publication of the notice* under subsection (c).” *Id.* (emphasis added).

8. Our Supreme Court has held that this statutory deadline is “in effect a statute of limitations as to the filing of remonstrances to annexation proceedings.” *Petercheff v. City of Indianapolis*, 179 N.E.2d 866, 866 (Ind. 1962); *Herdt v. City of Jeffersonville (In re Petition to Annex Approximately 7,806 Acres of Real Estate into City of Jeffersonville)*, 891 N.E.2d 1157, 1162 (Ind. Ct. App. 2008), *trans. not sought*.

9. Even accepting the allegations in the complaint as true—that the COVID-19 pandemic may have somehow prevented some landowner or landowners from filing remonstrance petitions within the 90-day statutory period—there is no mechanism under Indiana Code Chapter 36-4-3 for an extension of the remonstrance period under any circumstances. *Petercheff*, 179 N.E.2d at 866-67 (“[W]e are unable to perceive the basis for...[the] argument that new petitions (remonstrators) after the expiration of the... period should be permitted to appear as new proponents of the remonstrance...”). The claim fails as a matter of law.

10. Remonstrators have not alleged that any emergency order in place during the COVID-19 pandemic might have given any party or governmental agency the authority to extend the remonstrance period or cited any statute or case that says such authority exists (Compl. at 6, ¶¶2-3). Further, the Remonstrators never filed a contemporaneous claim during the 90-day period that they were in any way inhibited from either obtaining remonstrance petition signatures or delivering those signatures to the Monroe County Auditor.

11. Any such allegation would be contradicted by the pleadings and their exhibits, which show that the auditor received more than 2,500 remonstrance petitions for Area 1A and Area 1B (Pet. Ex. C and D). According to the exhibits, even after the Auditor disqualified hundreds of those petitions, the percentage of unique land owners filing petitions in Areas 1A and 1B were 60.94% and 57.50% respectively (Pet. Ex. C and D). Thus, even if there were some legal authority for the relief Remonstrators seek in Count II, there are no factual allegations to support granting it.

12. Considering all of the allegations in the Complaint to be true and taking into account the applicable law, nothing in the Complaint supports this Court's jurisdiction to reopen and extend the remonstrance period, which would be expressly contrary to the language found in Ind. Code § 6-4-3-11.1. *See Herdt*, 891 N.E.2d at 1160, 1162-63 (holding that "[Annexation] is subject to judicial review only as provided by statute...", and that the statute provided no mechanism for amending petitions to add signatures after the 90-day period as run); *cf. Fight Against*

Brownsburg Annexation v. Town of Brownsburg, 32 N.E.3d 798, 805, 809 (Ind. Ct. App. 2015) (distinguishing *Herd* on the grounds that the trial court had subject matter jurisdiction to rule on the sufficiency of a remonstrance petition, but noting that while a signature may be included any time before, the statute limits consideration of remonstrance signatures to those submitted within ninety days after the annexation ordinance is published).

13. Because this Court cannot grant relief for Petitioner's Count II under any circumstances presented in the pleadings, judgment should be entered in favor of the Respondent City of Bloomington as it pertains to Count II.

WHEREFORE Bloomington, by counsel, move the Court to enter judgment on the pleadings in favor of Respondent City of Bloomington in regard to Petitioner's Count II pursuant to Rule 12(C) of the Indiana Rules of Trial Procedure, and for all other just and proper relief.

Respectfully submitted,

/s/ Larry D. Allen

Larry D. Allen
Assistant City Attorney
Attorney No. 30505-53
401 N. Morton Street
Bloomington, IN 47404
(812) 349-3426

/s/ Beth Cate

Beth Cate, Attorney No. 21218-49
Corporation Counsel, City of Bloomington

/s/ Michael Rouker

Michael Rouker, Attorney No. 28422-53
City Attorney, City of Bloomington

/s/ Daniel Dixon

Daniel Dixon, Attorney No. 30585-53

Assistant City Attorney, City of Bloomington

Attorneys for Bloomington

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2022, that the foregoing document was filed and served upon the following person(s) electronically via the Indiana E-Filing System (IEFS):

William Jonathan Beggs
wjbeggs@lawbr.com

Ryan Matthew Heeb
rheeb@lawbr.com

Michael Thomas Miller
mmiller@lawbr.com

Edward J. Cockerill
jcockerill@co.monroe.in.us

I further certify that on May 6, 2022, the foregoing document was served upon the following via first class, United States mail, postage prepaid:

Hon. Nathan G. Nikirk, Special Judge
Lawrence Circuit Court
Lawrence County Courthouse
916 15th Street
Bedford, IN 47421

/s/ Larry D. Allen
Larry D. Allen,
Attorney No. 30505-53
Assistant City Attorney

CITY OF BLOOMINGTON
401 N. Morton St.
Bloomington, IN 47404
Phone (812) 349-3426
allenl@bloomington.in.gov