



Judgment Order further set forth that it “does not dispose of Count IV of the Complaint which raises unrelated issues.” (Order p.15).

2. Because the Summary Judgment Order does not dispose of all claims in the Complaint, it is not a final judgment as to Counts I, II, and III unless the Court, in writing, expressly determines that there is no just reason for delay and expressly directs the entry of judgment as to those Counts. Ind. App. Rule 2(H). This “magic language” is currently not in the Summary Judgment Order.

3. Typically, a final judgment “disposes of all issues as to all parties thereby ending the particular case.” *Georgos v. Jackson*, 790 N.E.2d 448, 451 (Ind. 2003) (quoting *Doperalski v. City of Michigan City*, 619 N.E.2d 584, 585 (Ind. Ct. App. 1993)). “It leaves nothing for future determination.” *Id.* This concept is articulated in Appellate Rule 2(H), which provides that a judgment is final if “it disposes of all claims as to all parties[.]”

4. Even so, a judgment as to less than all claims is a final appealable order if “the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties[.]” Ind. App. Rule 2(H)(2).

5. As the Indiana Supreme Court explained:

[C]ertification of an order that disposes of less than the entire case must contain the magic language of the rule [either Rule 54(B) or Rule 56(C)]. This is intended to provide a bright line so that there is no mistaking whether an interim order is or is not appealable. As we recently held in *Martin v. Amoco Oil Co.*, 696 N.E.2d 383 (Ind. 1998), an order becomes final and appealable under Rule 54(B) [or Rule 56(C)] “only by meeting the requirements of Rule 54(B) [or Rule 56(C)]. These requirements are that the trial court, in writing, expressly determine that there is no just reason for delay and, in writing, expressly direct entry of judgment.

*Georgos*, 790 N.E.2d at 452 (discussing Rule 54(B)).

6. Here, the Summary Judgment Order does not contain the “magic language” of either Trial Rule 54(B) or Trial Rule 56(C), and therefore currently is not a final judgment for purposes of appeal. *See Cincinnati Ins. Co. v. Davis*, 860 N.E.2d 915, 921 (Ind. Ct. App. 2007) (concluding *sua sponte* that Court of Appeals had no jurisdiction to consider appeal absent required language in appealed order).

7. Because the unresolved Count IV contains “unrelated issues,” (Order p.15), and because the Order fully addresses the legal issues raised by Counts I, II, and III, “there is no just reason for delay” with respect to the entry of final judgment as to Counts I, II, and III.

8. Accordingly, to allow Bloomington to proceed with an appeal of the resolved Counts I, II, and III, Bloomington respectfully request this Court to amend its Summary Judgment Order to include the following additional language:

IT IS FURTHER ORDERED that, pursuant to Indiana Trial Rule 56(C), the Court hereby determines that there is no just reason for delay and hereby directs entry of final judgment as to Counts I, II, and III, as set forth in this Order. The Court, therefore, directs the Clerk of the Court to enter this judgment as a final judgment in the Judgment Docket as to Counts I, II, and III for all of these consolidated cases.

9. Counsel for Bloomington has communicated with counsel for the State concerning the request to convert the Summary Judgment Order to a final appealable order under Trial Rule 56(C) as to Counts I, II, and III, and counsel for the State advised that it did not object to amending the Summary Judgment Order to incorporate the final judgment language of Trial Rule 56(C).

**B. Alternative Motion to Certify Summary Judgment Order for Interlocutory Appeal.**

10. In the event the Court grants the unopposed relief requested above thus rendering the Summary Judgment Order a final appealable order as to Counts I, II, and III, Bloomington’s alternative request to certify the Order for interlocutory appeal is moot. However, out of an

abundance of caution, in the alternative, Bloomington respectfully request that the Court certify the Summary Judgment Order for interlocutory appeal. *See* Ind. App. R. 14(B)(1)(b)(i).

11. Indiana Appellate Rule 14(B)(1) allows the Court, in its discretion, to certify an interlocutory order to allow for an immediate appeal. A motion requesting an immediate appeal must contain a concise statement of the issues to be addressed in the interlocutory appeal and the reasons why an interlocutory appeal should be permitted. Ind. App. R. 14(B)(1)(b)(ii)-(iii).

12. Grounds for granting an interlocutory appeal include that (i) the “appellant will suffer substantial expense, damage or injury if the order is erroneous and the determination of the error is withheld until after judgment” or that (ii) the “order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case.” Ind. App. Rule 14(B)(1)(c)(i) & (ii). Both grounds apply here, and important issues warrant this Court certifying the Order for interlocutory appeal.

13. The issues to be addressed in the interlocutory appeal include the same issues argued in Bloomington and the State’s summary judgment briefing, including the following:

A. This case presents significant constitutional questions that have implications for every municipality in the State of Indiana, the early determination of which will promote a more orderly disposition of this case. This includes whether the Indiana General Assembly’s 2019 enactment of Sections 83 and 112 of House Bill 1427 (“2019 Law”) that retroactively voided approximately 966 of Bloomington’s sewer extension contracts with private parties unconstitutionally impairs contractual obligations in violation of Article I, Section 24 of the Indiana Constitution and Article I, Section 10 of the United States Constitution. If the 2019 Law is determined to be unconstitutional and the invalidated sewer extension contracts are determined to be valid and enforceable, Bloomington’s halted annexations would be permitted to proceed, and

could render Bloomington's remaining Count IV immaterial. Accordingly, the early determination of the issues decided in the Summary Judgment Order could determine whether the parties need to proceed to trial on Count IV, which would promote a more orderly disposition of this case. *See Scott v. Bodor, Inc.*, 550 N.E.2d 1326, 1328 (Ind. Ct. App. 1990) ("This Court finds that the denial of Scott and Brown's motion for partial summary judgment involves substantial questions of law, the early determination of which will promote a more orderly disposition of the case.")

B. Bloomington will also suffer substantial expense, damage, and injury if the Summary Judgment Order is determined to be erroneous. Indeed, all parties will incur the unnecessary delay, damage, and injury of prolonged litigation on Count IV if it is ultimately determined the 2019 Law is unconstitutional and that many of Bloomington's annexations should have already occurred. This is particularly true for Bloomington, as its annexation process that started in 2017 was already unconstitutionally halted once. Bloomington's first challenge to the General Assembly's illegal special legislation lasted from 2017 to the end of 2020. *See Holcomb v. City of Bloomington*, 158 N.E.3d 1250 (Ind. 2020). While Bloomington was challenging the legislation determined to be unconstitutional in *Holcomb*, the General Assembly enacted the 2019 Law and invalidated hundreds of sewer extension contracts. Had Bloomington not be unconstitutionally stopped in 2017, most of the annexations would already be completed due to the then-valid sewer waivers. Under the circumstances, the 2019 Law should not be permitted to scuttle Bloomington's 2017 annexations that were delayed by unconstitutional legislation.

C. Bloomington reserves the right to address other issues and errors with the Order.

14. Accordingly, if the Court does not amend the Summary Judgment Order to include the final judgment language in Trial Rule 56(C), this Court should certify the Order for interlocutory appeal. There is no just reason for delaying appellate review of the Summary

Judgment Order where the case presents significant constitutional questions and delay will cause substantial expense, damage, and injury to Bloomington.

WHEREFORE, the Plaintiff, City of Bloomington, respectfully move the Court to (a) amend its June 18, 2024, Order on Partial Summary Judgment, as described herein, or (b) in the alternative, certify its Summary Judgment Order for interlocutory appeal.

Respectfully submitted,

/s/ Andrew M. McNeil

Stephen C. Unger, Atty. No. 25844-49  
Andrew M. McNeil, Atty. No. 19140-49  
BOSE McKINNEY & EVANS LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
(317) 684-5000 (Phone)  
(317) 684-5173 (Fax)  
[sunger@boselaw.com](mailto:sunger@boselaw.com)  
[amcneil@boselaw.com](mailto:amcneil@boselaw.com)

Marjorie K. Rice, Atty. No. 19731-53  
Larry D. Allen, Atty. No. 30505-53  
City of Bloomington  
401 N. Morton St, Ste. 220  
Bloomington, IN 47401  
(812) 349-3557  
[margie.rice@bloomington.in.gov](mailto:margie.rice@bloomington.in.gov)  
[allenl@bloomington.in.gov](mailto:allenl@bloomington.in.gov)

*Attorneys for City of Bloomington*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 2nd day of July, 2024, I electronically filed the foregoing with the Clerk of the Court using the Indiana E-Filing System (“IEFS”), and a copy of the foregoing was served upon the follow counsel of record via IEFS:

E. Jeff Cockerill [jcockerill@co.monroe.in.us](mailto:jcockerill@co.monroe.in.us)  
Justin D. Roddye [jroddye@co.monroe.in.us](mailto:jroddye@co.monroe.in.us)  
James A. Barta [James.Barta@atg.in.gov](mailto:James.Barta@atg.in.gov)  
Katelyn E. Doering [Katelyn.Doering@atg.in.gov](mailto:Katelyn.Doering@atg.in.gov)

*/s/ Andrew M. McNeil* \_\_\_\_\_  
Andrew M. McNeil