

STATE OF INDIANA)
)
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

CASE NO. 53C08-2312-MI-002703

JOSEPH BRADLEY DAVIS,
 PETITIONER,

AND

CITY OF BLOOMINGTON DEPARTMENT OF PUBLIC WORKS,
 RESPONDENT.

AMENDED
ORDER ON EMERGENCY MOTION TO STAY

The Court has received the Petitioner’s *Emergency Injunction* filed on October 22, 2024. The Petitioner also filed a *Notice of Appeal* on October 17, 2024, which stated that Petitioner intended to file an appeal within thirty (30) days and that “Petitioner asks the Circuit Court to maintain the existing temporary restraining order, preliminary injunction, and permanent injunction that is attached to the above cause.” The Court construed this language in the *Notice of Appeal* to be a Motion to Stay under Indiana Rule of Trial Procedure 62(B)(5). The Court directed the Respondent to notify the Court whether they intended to file a Response, which *Respondent’s Verified Response to Petitioner’s Notice of Appeal* was filed on October 21, 2024, after close of business. The Petitioner then filed an *Emergency Injunction*, again requesting a stay of the abatement apparently currently in process pursuant to the Court’s Order on Verified Petition for Judicial Review issued on October 16, 2024. The Court, being duly advised in the premises, now ORDERS:

1. That, pursuant to Indiana Rule of Appellate Procedure 39, “An appeal does not stay the effect or enforceability of a judgment or order of a trial court or Administrative Agency unless the trial court, Administrative Agency or Court on Appeal otherwise orders.”
2. That, pursuant to Indiana Rule of Trial Procedure 62(B)(5), “In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the filing and disposition of (5) an appeal.”
3. That, though the Respondent contends that the lack of **Petitioner's** actual filing of an appeal means that his Motion to Stay fails, Rule 62 contemplates a stay pending the filing of an appeal as well as the disposition of an appeal.
4. That, however, Rule 62 also contemplates that the discretion of the Court is paramount and that it is the responsibility of the trial Court to ensure conditions for the security of the adverse party that are proper. Rule 62 specifically contemplates the appropriate conditions for the security of the adverse party in subsection (D) regarding the Procedure for Obtaining

an appeal bond or other security and states, “the stay is effective when the appeal bond, letter of credit, or other form of security is approved by the appropriate court.”

5. That, though this is not a case in which a money judgment was owed, the requirement for an appeal bond or security is not exclusive to money judgments. *Dzur v. Northern Indiana Public Service Co.*, 278 N.E.2d 563, 564-65 (Ind. 1972).
6. That the Petitioner has failed on appeal previously in an almost identical situation due to his failure to comply with the procedural requirements of the appellate rules and has failed to articulate or identify any error upon which he would succeed on appeal.
7. That the Petitioner has failed to identify or offer any evidence that he is able to obtain an appeal bond or security to comply with Rule 62.
8. That Petitioner’s Notice of Appeal is not moot absent the Court’s grant of his Motion to Stay, as the Court’s Order of October 16, 2024, reinstated a Continuous Order of Abatement and the underlying denial of the appeal of his Notice of Violation.
9. That the Petitioner’s Motion to Stay under Indiana Rule of Trial Procedure 62 and Emergency Injunction, which the Court construes as renewing the Petitioner’s Motion to Stay, are hereby DENIED.
10. That all prior Orders of this Court, including the Order on Verified Petition for Judicial Review issued on October 16, 2024, and the corresponding timeframes laid out therein, remain in full force and effect.

SO ORDERED this 22nd day of October, 2024.



Emily A. Salzmnn, Judge
Monroe Circuit Court VIII