MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Jim Brugh
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Mark K. Leeman
Leeman Law Offices
Logansport, Indiana

Jeffrey D. Stanton
Logansport, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jim Brugh,
Appellant,

v.

Board of Commissioners of Cass County, Indiana, et al.,
Appellees.

November 2, 2022

Court of Appeals Case No. 22A-PL-1474

Appeal from the Cass Circuit Court

The Honorable Stephen R. Kitts, II, Judge

Trial Court Cause No. 09C01-1905-PL-40

Bailey, Judge.

Case Summary

[1] Jim Brugh ("Brugh") appeals the trial court order denying his motion to correct error. The error Brugh alleged in that motion was that the trial court approved a proposed Agreed Order reached by the Board of Commissioners of Cass County, Indiana ("the County"), and the City of Logansport, Indiana ("the City") in a partition action through a mediation that took place without Brugh, who previously had been permitted to intervene in the action. The dispositive issue on appeal is whether Brugh had standing to participate in the mediation in the partition action. Holding that he did not,[1] we affirm.

Facts and Procedural History

[2] This case involves real property that is located in Logansport, Indiana, and dedicated for use as a war memorial ("the War Memorial Property").[2] The background facts of this case were discussed in *Brugh v. Sailors*, 130 N.E.3d 149 (Ind. Ct. App. 2019).

> In 1922, Cass County dedicated a World War I memorial (Memorial Home) in Logansport. The Board of Trustees for Memorial Home stopped functioning around 2001 and the County took over maintenance, but Memorial Home fell into

---

[1] Because we ultimately hold that Brugh no longer has standing in the partition action, we do not address the other two issues he raises on appeal that relate to that action.

[2] The parties refer to the relevant property as "Memorial Home." However, as the subject property, which has been designated as a war memorial, involves not just the buildings located on it but all of the property, we refer to the property as the "War Memorial Property."

> disrepair. In 2014, the Cass County Commissioners deeded Memorial Home to the City of Logansport without reference to the property's dedicated purpose. Jim Brugh, a concerned citizen,[3] filed a complaint for declaratory judgment against the County and the City, challenging the transfer. Brugh's suit resulted in entry of an agreed judgment between the parties in February 2016 (the Agreed Judgment).[4]
>
> Brugh filed a petition for enforcement of the Agreed Judgment in May 2018, arguing that the City and County had yet to comply. Additionally, Brugh alleged that the County Council should be found in contempt due to its refusal to commit $62,500 toward improvements for Memorial Home as part of a second grant application.

Id. at 151. Following a hearing, the trial court denied Brugh's petition for enforcement and held the County Council was not in contempt of the Agreed Judgment. Brugh appealed.

[3] While Brugh's appeal in *Brugh v. Sailors* was pending, the City executed a Warranty Deed of Dedication on December 12, 2018, transferring the War Memorial Property located at 706 East Market Street in Logansport, Indiana to

---

[3] Brugh's standing in *Brugh v. Sailors* apparently was based on the "public standing doctrine," discussed in more detail below.

[4] The Agreed Judgment provided that: (1) the City would execute a new deed transferring the War Memorial Property to itself and the County Commissioners, jointly, and referring to the dedication and preservation of the War Memorial Property as a war memorial; (2) the City and the County would enter into a contract regarding the War Memorial Property, which contact would include a provision stating that "the necessary cost[s] and expenses for the management, maintenance, repairs, and improvements of the [War Memorial Property] shall be paid by the county and city in the same proportion that they contribute to the establishment of the memorial"; and (3) the War Memorial Property "is dedicated as a war memorial and shall be preserved for that purpose, pursuant to [the] contract" between the County and the City. *Brugh v. Sailors*, 130 N.E.3d 149, 151 (Ind. Ct. App. 2019).

itself and to the Cass County Commissioners, jointly. The deed referred to the dedication and preservation of the property as a war memorial, pursuant to statute:

> This transfer is subject to the restrictive covenant that this land, and the buildings on this land, are dedicated as a City and County World War Memorial. It shall be maintained as a memorial and may be used for other public purposes, as provided in the War Memorials law of the State of Indiana, I.C. 10-18-1 et. seq.…. This restrictive covenant runs with the land.

Appellees' Joint App. v. II at 86.

[4] Also, while the appeal was pending, on May 10, 2019, the County filed a "Petition to Compel Partition" of the War Memorial Property, naming the City as a defendant. *Id*. at 19. On May 24, 2019, Brugh filed a Motion to Intervene pursuant to Indiana Trial Rule 24 and alleged he had standing under the "public interest" standing doctrine. *Id*. at 34. In support, Brugh claimed his interest in the partition action was a "declaration of the dedication status of Memorial Home as a war memorial," which was the subject of the Agreed Judgment that was pending on appeal in *Brugh v. Sailors*. Appellees' Joint App. v. II at 35. Brugh claimed an order permitting partition of the War Memorial Property would "impede" his protection of that interest. *Id*. On May 31, the trial court granted Brugh's motion to intervene in the partition action.

[5] On June 12, 2019, Brugh filed a motion to dismiss the partition action on the grounds that "substantially the same matter" was pending in the *Brugh v. Sailors* case. *Id*. at 51. While that motion was pending in the trial court, on August 2,

2019, another panel of this court issued its decision in *Brugh v. Sailors*, holding, in relevant part, that the County and the City had complied with the Agreed Judgment by entering into an agreement to preserve and maintain the War Memorial Property. 130 N.E.3d at 157. In reaching that holding, this Court noted that neither the Agreed Judgment nor applicable law required the County and the City to "include a detailed plan" for the maintenance, repair, and improvement of the War Memorial Property. *Id*. Rather, we stated,

> it is within the City and County's discretion,… to determine how, when, and in what amount costly improvements will be made. We have no authority, nor does Brugh, to require the City and County to each allocate $1 million toward rehabilitation of Memorial Home, which is essentially what Brugh desires.

Id. at 157-58.

[6] On September 3, 2019, the trial court denied Brugh's motion to dismiss the partition action, referred the action to mediation, and ordered that the real property would be sold if the parties were unable to reach an agreement. On September 12, 2019, Brugh filed a motion to correct error regarding the September 3 order and a "Counterclaim for Declaratory Judgment that Cass County Has No Legal Right to Sell or Dispose of the Dedicated War Memorial." *Id*. at 70.

[7] Following several continuances, the court held a hearing "on pending matters," and noted the only remaining issues were (1) whether the County had the right to sell its interest in the War Memorial Property, and (2) whether the County

and the City could proceed under the partition statute. *Id*. at 138. In its June 29, 2020, order, the trial court answered each question in the affirmative. In reaching those conclusions, the trial court noted:

> The court has been asked to refer to the Opinion from the Court of Appeals in its consideration of this matter and does [so]. In this case, words such as "shall," "may," and "can" matter, because they indicate clearly to the court when it is being asked to wander into the arena of a question that is political rather than legal. The court is not being asked to pass judgment on what the County and City governments *can* do, but what they *should* do.
>
> What they *can* do is not ambiguous to this court.
>
> Whoever acquires (or keeps...) this property has acquired (or kept...) a war memorial.
>
> There being no statute or covenant dictating the memorial's *form*, whether that memorial should be a home or statue is a political question, a matter of what local authorities *should* do.
>
> What they *should* do is a question from which this court, like the Court of Appeals, is precluded constitutionally.

Id. at 141-42 (emphasis in original). The trial court also denied Brugh's motion to correct error.

[8] On November 12, 2020, Brugh filed a petition to refer the partition action to mediation, noting that mediation had not yet occurred as previously ordered. The court granted Brugh's motion on December 14, 2020. On February 10, 2021, the County and the City filed a notice with the court that they had

engaged in mediation in December of 2020, were unable to reach a settlement of the case at that time, and were continuing settlement negotiations. On February 25, 2021, Brugh filed an "Objection to Governmental Delay" in which he objected, in relevant part, to the County and the City's "abuse of process by failing to include the citizen Brugh in any mediation." *Id*. at 162. The County responded on March 24 that it and the City were engaged in on-going settlement negotiations and that the trial court's mediation order "did not require Mr. Brugh's participation in mediation or settlement discussions." *Id*. at 170. The County further stated: "Mr. Brugh has no authority to object to the City … and [the] County's efforts to mediate and/or attempt to resolve this matter." *Id*. The County requested that the court "permit [the County and the City] to continue to attempt to resolve this matter without interference from Mr. Brugh." *Id*. at 171.

[9] The trial court held a hearing on August 12, 2021, at which the County and the City argued that the trial court's June 29 order "ma[d]e it clear" that mediation was between the City and the County and that Brugh should not be involved in the mediation process in the partition action as he had "no authority to dictate how much a city and/or a county should spend" in the matter. Tr. at 84. In an order dated August 31, 2021, the trial court addressed the appointment of an appraiser and ordered continuing mediation which "shall include the Board of Commissioners of Cass County, Indiana, and the City of Logansport, Indiana." Appellees' Joint App. v. II at 181. On September 2, Brugh filed an "Objection

to County's Proposed Form of Order" for the August 12 hearing and argued that he "ha[d] standing in this case to participate in any mediation." *Id*. at 177.

[10] The County and the City subsequently filed a proposed Agreed Order in which they agreed that the County would convey its interest in the War Memorial Property to the City and pay the City $150,000. In exchange, the County and the City agreed that the County would have no further obligations in relation to the War Memorial Property. Further, the City agreed that it would "continue to maintain [the War Memorial Property] as a War Memorial as is defined by I.C. § 10-18." *Id*. at 185. It was also agreed that, "[c]onsistent with Indiana law" and the trial court's "order of June 29, 2020," the City as sole owner of the War Memorial Property "may remove all or portions of structures and/or improvements[,] with the real estate itself continuing to be maintained as a War Memorial." *Id*. The trial court adopted the proposed Agreed Order as an order of the court on April 6, 2022.

[11] On May 6, Brugh filed a "Motion to Correct Error and Objection to Court's Entry of Agreed Order without [Brugh's] Consent." *Id*. at 189. In that motion, Brugh argued that, as a third-party intervenor, he had standing to participate in the settlement of the partition action and that the Agreed Order which was entered into without his consent was "void as a matter of law." *Id*. at 193. He also argued that the Agreed Order provision which stated that it was lawful for the City to "remove all or portions of structures and/or improvements" from the War Memorial Property was erroneously approved. *Id*. at 197. The County replied on May 19 that the only basis for the order allowing Brugh to intervene

in the partition action was that he had a pending appeal regarding the War Memorial Property. The County argued that Brugh's "grounds for intervention expired" when the Court of Appeals issued its decision in his case on August 2, 2019. *Id*. at 223. The County asserted that Brugh "no longer ha[d] an interest in [the partition] action," therefore the court's decision to exclude him from mediation was not erroneous. *Id*. at 224. The City made a similar argument in its response, stating that Brugh "has no right to object because he has no standing in this case to do that based on *Brugh v. Sailors*." *Id*. at 235.

[12] On May 26, the trial court denied Brugh's motion to correct error. This appeal ensued.

Discussion and Decision

[13] Brugh appeals the trial court's denial of his motion to correct error. We review a ruling on such a motion for an abuse of discretion. *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id*. However, where the questions raised in the motion are questions of law, our review is de novo. *Id*.

[14] Here, the dispositive issue is whether Brugh had standing[5] to challenge the County and the City's settlement agreement in the partition action on the grounds that the agreement was reached without his participation. "The threshold issue of standing determines whether a litigant is entitled to have a court decide the substantive issues of a dispute." *Solarize Ind., Inc. v. S. Ind. Gas and Elec. Co.*, 182 N.E.3d 212, 216 (Ind. 2022). To show common-law standing, generally a party must "demonstrate a personal stake in the outcome of the litigation and ... show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct." *Id*. at 217 (quotation and citation omitted).

[15] However, the doctrine of "public standing" recognizes "an exception to the general requirement that a plaintiff must have an interest in the outcome of the litigation different from that of the general public." *21st Amendment, Inc. v. Ind. Alcohol & Tobacco Comm'n*, 84 N.E.3d 691, 698, n.3 (Ind. Ct. App. 2017) (quotation and citation omitted), *trans. denied*. Under the public standing doctrine, in "extreme cases," *id*., a litigant "may enforce certain public rights and duties when the plaintiff's injury is no greater than that of any member of the general public, *Gaddis v. McCullough*, 827 N.E.2d 66, 77, n.7 (Ind. Ct. App. 2005), *trans. denied*. However, "*a redressable injury is still required*." *Id*. (emphasis added) (citing *Embry v. O'Bannon*, 798 N.E.2d 157, 159–60 (Ind. 2003)); *see also*

---

[5] The County and the City did not waive the issue of standing by not raising it to the trial court, as Brugh alleges in his Reply Brief. As noted above, both parties and Brugh raised and/or argued the issue of standing in the trial court.

City of Gary v. Nicholson, 190 N.E.3d 349, 351-52 (Ind. 2022) ("Although our public-standing doctrine is unsettled in Indiana, at a minimum it requires some type of injury."); *Serbon v. City of E. Chicago*, 194 N.E.3d 84, 93 (Ind. Ct. App. 2022) ("[E]ven if plaintiffs claim public standing, there must be some injury, even if that injury is common to any member of the public.").

[16] Yet, standing—even public standing—is "not immutable." *Simon v. Simon*, 957 N.E.2d 980, 989 (Ind. Ct. App. 2011). Rather, "it is well established that a person with standing can lose it." *Id*. (citing *United States Fid. & Guar. Co. v. Griffin*, 541 N.E.2d 553, 555-56 (Ind. Ct. App. 1989) (holding that shareholders had failed to maintain their status as shareholders by selling their shares after they had filed their complaint and, therefore, had lost standing to maintain a derivative suit)).

[17] Here, even assuming Brugh had public standing at the time he was permitted to intervene in the partition action,[6] he lost his public standing when the Court of Appeals issued its decision in *Brugh v. Sailors*, as noted by the trial court when it issued its June 29, 2020, order. Brugh's interest and alleged injury that gave him public standing in the partition action was his right, as a citizen, to hold the

---

[6] To intervene as of right under Trial Rule 24(A), intervenors generally must show: (1) an interest in the subject of the action; (2) disposition of the action may as a practical matter impede the protection of that interest; and (3) representation of the interest by existing parties is inadequate. *E.g.*, *Moran Elec. Serv., Inc. v. Comm'r, Ind. Dep't of Env't Mgmt.*, 8 N.E.3d 698, 707 (Ind. Ct. App. 2014), *trans. denied*. "Whether a particular factual situation satisfies this three-part test is within the discretion of the trial court." *Id.* As the trial court granted Brugh's May 24, 2019, motion to intervene in the partition action, it necessarily determined he had at that time an interest in the action sufficient to not just allow him to intervene, but also to give him public standing. And that ruling was not challenged.

County and the City to their Agreed Judgment that the War Memorial Property "is dedicated as a war memorial and shall be preserved for that purpose, pursuant to their contract." *Brugh*, 130 N.E.3d at 152. Brugh was allowed to intervene in the partition action because the enforcement of that Agreed Judgment was still at issue in a pending appeal. However, on August 2, 2019, this Court issued its decision in *Brugh v. Sailors* in which it held, in pertinent part, that the County and the City had fulfilled the terms of the Agreed Judgment by entering into a contract "for the preservation and maintenance of" the War Memorial Property. *Id*. We specifically noted that neither the Agreed Judgment nor Indiana law required that such contract include a detailed plan for *how* the preservation and maintenance was to occur. *Id*. at 156. Rather, we noted that, "[w]hile they continue to fund maintenance of Memorial Home, it is within the City and County's discretion … to determine how, when, and in what amount costly improvements will be made." *Id*. at 157. We further noted that neither Brugh nor the courts have authority to dictate to the County and/or City exactly how they accomplish the preservation and maintenance of the War Memorial Property. *Id*. at 157-58.

[18] In short, following the County and the City's compliance with the Agreed Judgment's requirement that they enter into a contract to preserve and maintain the War Memorial Property, Brugh no longer had public standing. That is, his only interest in the partition action had been achieved—the County and the City formally agreed in writing to preserve and maintain the War Memorial Property. And the *Brugh v. Sailors* opinion made it clear that Brugh had no

enforceable interest in dictating how the preservation and maintenance was to be accomplished, which is his only remaining claim.

[19] Following a June 19, 2020, hearing on pending matters, the trial court cited our holding in *Brugh v. Sailors* in concluding that, while the County and/or the City was obliged to keep the War Memorial Property as a war memorial, it was up to the County and/or the City—not Brugh or the courts—to determine *how* to do so and what *form* the war memorial would take. In its August 31, 2021, order, the trial court also made it clear that Brugh no longer had an interest and/or redressable injury—i.e., no longer had standing—in the partition action, ruling that his presence and participation was not required in the on-going settlement negotiations.

[20] We agree with the trial court's ruling that Brugh was not entitled to participate in the mediation in the partition action. As of the date this Court ruled in *Brugh v. Sailors* that Brugh's only potential injury had been redressed through the contract agreement to maintain the War Memorial Property as a war memorial, Brugh no longer had a redressable injury. That is, Brugh no longer had standing in the partition action. *See Simon*, 957 N.E.2d at 989.

Conclusion

[21] Brugh lost his public standing to participate in the partition action when a panel of this Court ruled that his only redressable injury relating to the War Memorial Property had been achieved—i.e., the County and/or City entered into a

contract providing that the War Memorial Property would be preserved and maintained as a war memorial. As we held in *Brugh v. Sailors*, Brugh has no authority to require a more detailed plan as to *how* the preservation and maintenance is to be achieved. Because Brugh no longer has a redressable injury or interest in the partition action, he no longer has standing in that action. And, because Brugh lacks standing, we do not address the other issues he raises on appeal regarding the War Memorial Property.

[22] Affirmed.

Riley, J., and Vaidik, J., concur.