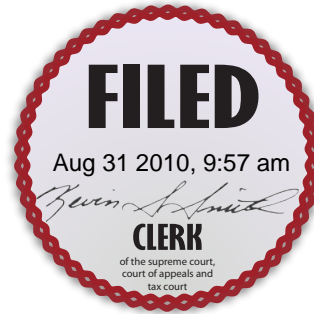


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

DONALD FISHER,)
)
Appellant-Defendant,)
)
vs.)
)
TOWER BANK AND TRUST COMPANY,)
)
Appellee-Plaintiff.)

No. 02A05-1002-MF-97

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0903-MF-206

August 31, 2010

OPINION ON REHEARING - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Donald Fisher has filed a petition for rehearing asking this court to consider again whether the trial court properly granted summary judgment in favor of Tower Bank and Trust Company. Fisher also notes that we cited to evidence not properly designated to the trial court for summary judgment purposes.

We take this opportunity to address the second issue raised by Fisher and clarify our opinion accordingly. It is well established that our review of a summary judgment motion is limited to those materials designated to the trial court. *Weathersby v. J.P.Morgan Chase Bank, N.A.*, 906 N.E.2d 904 (Ind. Ct. App. 2009); Ind. Trial Rule 56(H). In our original opinion we cited to an appraisal report contained in the *Appellee's Appendix* to establish the value of the land "As Is" and the value of Parcel 1 "As If Complete". *See slip op.* at 2, 8. We further referenced the "As If Complete" value in two other instances in our opinion. *See slip op.* at 9, 11. We acknowledge that the appraisal report referred to was never properly designated for summary judgment purposes and was not before the trial court. Our citation to such document was inadvertent. Nevertheless, the information garnered from the appraisal report is contained within materials that were properly designated to the trial court for summary judgment purposes. *See, e.g., Appellant's Appendix* at 119, 179, 180, 227, 230, and 231.

Subject to this clarification, we reaffirm our decision in all respects.

KIRSCH, J., and ROBB, J., concur.