MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Ondrea Hartley, Lillian Jones, Regina Redding, Linda Spivey, Individually and derivatively on behalf of Chatam Walk Townhouses, Inc.,

Appellants-Plaintiffs,

v.

October 4, 2023

Court of Appeals Case No. 23A-MI-421

Appeal from the Marion Superior Court

The Honorable David J. Dreyer, Senior Judge

Trial Court Cause No. 49D03-2207-MI-24899

Chatham Walk Townhouses, Inc.; Blue Sky Community Manaement, LLC; All Seasons Lawn Care d/b/a All Seasons Lawn Care, Inc.; and Quality Maintenance 360, LLC,

Appellees-Defendants.

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Ondrea Hartley, Lillian Jones, Regina Redding, and Linda Spivey (the "Homeowners") appeal the trial court's denial of their request for a preliminary injunction against their homeowners' association, Chatham Walk Townhouses, Inc. (the "HOA"), following the HOA's demand that its members pay a $100 monthly surcharge for all water and sewer services provided to its members. The Homeowners raise a single issue for our review, which we restate as the following dispositive issue: whether the trial court abused its discretion when it concluded that the Homeowners' injuries did not outweigh the threatened harm because, if the HOA failed to pay for its members' water and sewer services, those services could be disconnected.

[2] We affirm.

Facts and Procedural History

[3] The HOA is an Indiana not-for-profit that has as its primary purpose the management of the residential Chatham Walk community in Indianapolis. The Chatham Walk community consists of 126 residential units. The Homeowners are each property owners in the Chatham Walk community, and, by extension, they are members of the HOA.

[4] Article IV of the Declaration of Covenants, Conditions, and Restrictions that established the HOA provides in part as follows:

> Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed thereof . . . is deemed to covenant and agree to pay the [HOA]: (1) annual assessments or charges, and (2) special assessments for capital improvements . . . .
>
> Section 2. Purpose of Assessments. The assessments levied by the [HOA] *shall be used exclusively to promote the recreation, health, safety[,] and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area[] and of the homes situated upon the Properties*.
>
> Section 3. Maximum Annual Assessments. . . .
>
> > (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

> (b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the members . . . at the meeting duly called for this purpose. . . .

Ex. Vol. 3, pp. 104-05 (emphasis added).

[5] At all relevant times, the water and sewer utilities servicing the homeowners of Chatham Walk have not been metered to the individual homeowners. Instead, there is a single meter for the entire community, and, thus, the invoices for those utilities have been sent directly to the HOA. The HOA has historically paid the monthly water and sewer costs for all of its members out of the assessments the HOA charged to its members.

[6] In 2019, the HOA's Board of Directors entered into an association management agreement with Blue Sky Community Management, LLC ("Blue Sky"), which agreement the HOA and Blue Sky renewed in 2021 under slightly different terms. According to the Homeowners, Blue Sky almost immediately began engaging in self-dealing and neglected its financial duties to the HOA. At least in part because of this, again, according to the Homeowners, the HOA became delinquent in its payment of the water and sewer invoices, and the utility provider threatened disconnection of those services. The HOA eventually entered into a payment arrangement with the utility provider to avoid disconnection.

[7] In 2021, the HOA held meetings with its members about the HOA's substantial arrearage in paying the water and sewer utilities. To bring the HOA's payment on those utilities current, the HOA sought to increase its assessment to its members by 20%. In October, the HOA called a special meeting of its members for the purpose of voting on that 20% increase. The members voted against it.

[8] The HOA then increased its assessment to the members by 5% for 2022, raising each member's monthly payment to the HOA from $289.40 to $303.87. The HOA further announced that, "[a]s a result of the insufficiency" of the 5% increase to cover the water and sewer costs, the HOA would "no longer be able to pay for the community's monthly water and sewer fees out of" its assessments to the members. Appellant's App. Vol. 2, p. 25. Instead, the HOA informed its members that it "will be billing each owner $100.00 per month, separate from the general . . . assessment, to cover the . . . water and sewer monthly expense that is billed to the [HOA]." *Id.*

[9] The Homeowners here objected to paying the $100 monthly surcharge from the HOA. They then filed their complaint and sought, in relevant part, a preliminary injunction to prohibit the HOA from continuing to collect the $100 monthly surcharge from its members without an appropriate vote from the membership.

[10] At an ensuing hearing on the Homeowners' request for the preliminary injunction, the HOA called Freddie Edwards, the President of the HOA's Board of Directors, to testify. Edwards testified that he first joined the Board

around 2019 as its Treasurer, and, at that time, the HOA was $199,000 in arrears on the water and sewer charges to the community. The average water and sewer bill at that time was about $21,000 per month, and the HOA's payments on those bills were not sufficient to get the HOA out of the "big hole" it was in. Tr. Vol. 2, p. 50. The HOA had entered into a payment plan with the utility provider to pay approximately $24,000 per month, but the HOA's annual assessments to its members "couldn't cover it" along with "all the other . . . common expenses[] for the community." *Id.* at 53. Edwards also acknowledged that the "[B]oard's hands were tied" by the 5% annual restriction on assessment increases. *Id.*

[11] Accordingly, Edwards pushed for a 20% increase in the annual assessment, but that measure was defeated by the members. Edwards then recommended the Board separately bill the members monthly for only the water and sewer charges, which resulted in the $100 monthly surcharge from the HOA to its members. Edwards testified that "100% of the money goes straight towards the water bill." *Id.* at 55. He further testified that the $100 monthly surcharge does not completely cover the HOA's monthly water and sewer charges, but between the surcharge and the HOA's operating funds, the HOA has been able to begin "climbing out of this hole" and avoid disconnection. *Id.* at 56. Edwards added that the HOA is now in a financial position, for the first time since he joined the Board, to put funds toward other common community expenses.

[12] Following that hearing, the court denied the Homeowners' request for a preliminary injunction. The court concluded that the Homeowners could not

show a reasonable likelihood of success on the merits of their claim against the HOA. The court also concluded that the Homeowners' injuries did not outweigh the threatened harm to the HOA because, if the HOA failed to pay for the water and sewer services, those services could be disconnected. The trial court did not address the other requirements for the issuance of a preliminary injunction.

[13] This appeal ensued.

Standard of Review

[14] The Homeowners appeal the trial court's denial of their request for a preliminary injunction against the HOA. "It is well settled" that the trial court's decision on a preliminary injunction is "within the sound discretion of the trial court, and our review is limited to whether the court abused that discretion." *Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 964 (Ind. 2023). 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. *Bruder v. Seneca Mortg. Servs., LLC*, 188 N.E.3d 469, 471 (Ind. 2022).

[15] As our Supreme Court has explained:

> To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence that: (1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial

> by establishing a prima facie case; (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and (4) the public interest would not be disserved.

Apple Glen Crossing, LLC v. Trademark Retail, Inc., 784 N.E.2d 484, 487 (Ind. 2003). "If the movant fails to prove any of these requirements, the trial court's grant of an injunction is an abuse of discretion." *Id.* at 487-88.

1. The trial court's conclusion that the threatened injury to the Homeowners was not outweighed by the potential harm to the HOA is within the facts and circumstances before the court.

[16] The Homeowners raise several issues for our review, but we need only consider the following issue: whether the trial court abused its discretion when it concluded that the threatened injury to the Homeowners—i.e., their payment of the potentially *ultra vires* $100 monthly surcharge—did not outweigh the potential harm to the HOA—i.e., the risk of having the water and sewer services for the HOA's members disconnected.

[17] The trial court's conclusion was within the facts and circumstances before it. Around 2019, the HOA was $199,000 in arrears on the water and sewer charges the HOA paid on behalf of its members. There is no dispute that the HOA had received notices of possible disconnection from those services due to the HOA's failure to be current in its payments on them. And Edwards made clear in his testimony that the $100 monthly surcharge had made it possible for the HOA to begin "climbing out of this hole" and avoid disconnection. Tr. Vol. 2, p. 56.

[18] Thus, the trial court's conclusion that the HOA's potentially *ultra vires* surcharge was nonetheless keeping the HOA—and, by extension, its members—from having the water and sewer services disconnected is supported by the evidence. And the Homeowners' argument on appeal that their likely harms outweigh the harm to the HOA is simply a request for this Court to reweigh the evidence, which we will not do.

[19] We cannot say that the trial court abused its discretion when it found that the risk to the Homeowners was not outweighed by the risk to the HOA. And the Homeowners' failure to show any one element for a preliminary injunction required the trial court to deny their request. *Apple Glen Crossing, LLC*, 784 N.E.2d at 487-88. We therefore affirm the trial court's judgment.

[20] Affirmed.

Vaidik, J., and Pyle, J., concur.