MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Historic Landmarks Foundation of Indiana d/b/a Indiana Landmarks,

Appellant-Plaintiff

v.

Nicholas Yrjo Nifadeff,

Appellee-Defendant.

November 28, 2023

Court of Appeals Case No. 23A-PL-1302

Appeal from the LaPorte Circuit Court

The Honorable Thomas J. Alevizos, Judge

Trial Court Cause No. 46C01-2105-PL-1044

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Historic Landmarks Foundation of Indiana d/b/a Indiana Landmarks ("Indiana Landmarks") appeals the trial court's denial of its motion for a preliminary injunction requesting the trial court to order Nicholas Nifadeff ("Nifadeff") to comply with protective covenants on the Orr Lake Mansion ("the Orr Lake Mansion") in LaPorte, Indiana. Indiana Landmarks argues that the trial court erred by failing to enter findings of fact and conclusions thereon as required by Indiana Trial Rule 52(A) when it denied Indiana Landmarks' preliminary injunction motion. Agreeing that the trial court failed to comply with the requirements of Indiana Trial Rule 52(A), we reverse and remand with instructions for the trial court to issue an order that contains the required findings of fact and conclusions thereon.

[2] We reverse and remand with instructions.

Facts

[3] Indiana Landmarks is a private, not-for-profit Indiana corporation "with a mission to save historic places." (Tr. Vol. 2 at 8). One strategy that Indiana Landmarks uses to accomplish its goal of saving historic places is the use of protective covenants. Indiana Landmarks has a variety of methods for obtaining protective covenants on historic properties, and one of those methods is a conditional loan. Specifically, Indiana Landmarks loans money to the owner of an historic property, and, as a condition of that loan, the property owner files protective covenants on the property.

[4] In 1999, Dean White ("White") owned the Orr Lake Mansion, which had been placed on the National Register of Historic Places in 1984 because of its architectural significance. In May 1999, Indiana Landmarks loaned White money to make repairs on the property. As a condition of that loan, White filed restrictive covenants on the property. The covenants specifically provide that they run with the Orr Lake Mansion "in perpetuity" and are binding on any person or entity having any right, title, or interest in the Orr Lake Mansion. (Ex. Vol. at 4).

[5] In addition, the protective covenants require the owner of the Orr Lake Mansion to: (1) submit a restoration plan "[w]ithin ninety (90) days hereof, and before beginning any restoration work[;]" (2) begin restoration work "[w]ithin thirty (30) days following approval of the restoration plan . . . and proceed with diligence to complete the restoration work in strict compliance with the restoration plan . . . no later than eighteen (18) months following approval of the restoration plan[;]" and (3) maintain the exterior of the Orr Lake Mansion in a "first class condition[.]" (Ex. Vol. at 4, 5). In addition, the protective covenants provide that the failure to satisfy any of the covenants entitles Indiana Landmarks to seek injunctive relief to enforce compliance with the covenants and to pursue any other remedies available in law or in equity.

[6] The protective covenants further provide that in the event the owner intends to sell the Orr Lake Mansion, Indiana Landmarks has a right of first refusal to match any bona fide offer to purchase. Indiana Landmarks maintains this right of first refusal to make sure the prospective purchasers understand that they will

be bound by the protective covenant. In this regard, when Indiana Landmarks learns that a property with a protective covenant is for sale, Indiana Landmarks typically contacts the prospective buyer to be sure that the prospective buyer is aware of the protective covenant and understands the obligations that the protective covenant imposes.

[7] At some point after filing the protective covenants, White defaulted on the Orr Lake Mansion's mortgage, resulting in a foreclosure action. In 2006, Bank One, N.A., ("Bank One") took title to the property under a Sheriff's deed. In 2007, Bank One transferred the title to David and Leah Peake (collectively, "the Peakes") via a special warranty deed. Indiana Landmarks was not aware of the transfer and, therefore, did not contact the Peakes about the protective covenants. In 2009, the Peakes transferred the Orr Lake Mansion to William Jacobson II ("Jacobson") and Diane Benke ("Benke"). Indiana Landmarks was not aware of the transfer and, therefore, did not contact Jacobson and Benke about the protective covenants. Jacobson and Benke defaulted on their mortgage, resulting in a foreclosure action. In 2016, Horizon Bank, N.A., ("Horizon Bank") took title to the Orr Lake Mansion under a Sheriff's deed. Horizon Bank subsequently transferred the property to the Federal National Mortgage Association via a quit claim deed.

[8] In March 2017, Nifadeff became interested in purchasing the Orr Lake Mansion. On March 23, 2017, Nifadeff sent an email to Indiana Landmarks, wherein he stated that he intended to "restore [the Orr Lake Mansion] to its original glory, and keep it that way." (Ex. Vol. at 13). Nifadeff also stated that

he would submit a "[d]etailed restoration plan, within **90 days** after transaction is closed[]" and confirmed that all exterior work would be completed "within **18 months** after the approval of the restoration plan[.]" (Ex. Vol. at 13) (emphases in the original). Based upon Nifadeff's email, Indiana Landmarks was satisfied that Nifadeff understood the covenants and, therefore, chose not to exercise its right of first refusal. Nifadeff acquired the title to the Orr Lake Mansion on April 13, 2017.

[9] In July 2017, Nifadeff sent Indiana Landmarks an email and attached a "draft of [his] restoration plan." (Ex. Vol. at 15). In the email, Nifadeff set forth a schedule to complete the restoration work on the Orr Lake Mansion within an eighteen-month time frame and advised Indiana Landmarks that he was "focused to be within the schedule." (Ex. Vol. at 15).

[10] Indiana Landmarks heard nothing further from Nifadeff about a restoration plan for the Orr Lake Mansion. One year later, in July 2018, Indiana Landmarks sent a letter to Nifadeff. In this letter, Indiana Landmarks detailed the deterioration of the Orr Lake Mansion and reiterated the terms of the protective covenants and Indiana Landmarks' right to enforce them. Nifadeff cut back the vegetation that had been encroaching on the Orr Lake Mansion but did not otherwise respond to Indiana Landmarks' letter. One month later, Indiana Landmarks sent a second letter to Nifadeff regarding his failure to provide a final restoration plan and the lack of restoration progress at the Orr Lake Mansion. Nifadeff did not respond to Indiana Landmarks' letter.

[11] In January 2019, counsel for Indiana Landmarks sent a letter to Nifadeff. In this letter, Indiana Landmarks' counsel outlined the terms of the protective covenants and the work that Nifadeff was obligated to perform on the Orr Lake Mansion. Nifadeff did not respond to the letter or perform any work on the property.

[12] In May 2021, Indiana Landmarks filed a motion for a preliminary injunction requesting that the trial court require Nifadeff to comply with the protective covenants. The trial court held a hearing on Indiana Landmarks' motion in June 2022. At the hearing, the director of Indiana Landmarks' northern regional office, Todd Zeiger ("Director Zeiger"), testified that he had driven past the Orr Lake Mansion that day shortly before the hearing and had noticed that the "house [was] in severe deterioration[,]" as evidenced by the trees in the gutters and the collapsing porch. (Tr. Vol. 2 at 21).

[13] Following Director Zeiger's testimony, the trial court asked Indiana Landmarks "what exactly [was it] seeking in terms of injunctive relief[.]" (Tr. Vol. 2 at 57). Indiana Landmarks responded as follows:

> In terms of relief, Your Honor, we're asking for a detailed restoration plan to be submitted as quickly as possible. We're willing to give them seven days. That would be subject to approval. As [Director Zeiger] testified, that approval could be turned around within 24 to 48 hours. And then we're requesting to see some movement on this. We would request to come back in 60 days and see where he's at. We're set for a trial a year out. By that time, the damage to this home, it could be gone.

(Tr. Vol. 2 at 57).

[14] Although Nifadeff did not testify, Nifadeff's counsel argued as follows:

> [T]here's no emergency here. These covenants have been in place for 23 years. The property has been deteriorating since 1999 with Mr. White's ownership. Ownership in between, there wasn't any action taken until now. We feel that the 90-day restoration in the covenants is not binding to my client[.] To the extent that anything in the covenants is binding on [Nifadeff], it may be about maintaining the property, which he is doing.

(Tr. Vol. 2 at 59). Nifadeff's counsel further told the trial court that Nifadeff had moved into the Orr Lake Mansion in 2020 and had had "issues with contractor supplies." (Tr. Vol. 2 at 59). Nifadeff's counsel also told the trial court that Nifadeff had had serious health concerns.

[15] The trial court told the parties that they had one week "to brief the extent these covenants apply to Mr. Nifadeff." (Tr. Vol. 2 at 60). Both parties submitted briefs in support of their respective positions. In addition, Indiana Landmarks tendered to the trial court a proposed ten-page order with findings of fact and conclusions of law supporting the grant of a preliminary injunction. As its final order, the trial court stamped the word "DENIED" on Indiana Landmarks' tendered proposed order. (App. Vol. 2 at 14). The stamp included the trial court judge's initials, "T.A." (App. Vol. 2 at 14). The trial court did not sign the order or issue its own findings of fact and conclusions thereon in support of its denial of Indiana Landmark's motion for a preliminary injunction.

[16] Indiana Landmarks now appeals.

Decision

[17] As a preliminary matter, we note that Indiana Landmarks first argues that because the trial court used Indiana Landmarks' proposed findings of fact and conclusions thereon as its final order, the trial court "adopted" Indiana Landmarks' proposed findings and conclusions, and the trial court's denial stamp is "contradictory to the rest of the Order." (Indiana Landmarks' Br. 16, 17). Therefore, Indiana Landmarks asks us to vacate the order and remand it to the trial court with instructions to issue a new order consistent with its "adopted" findings of fact and conclusions thereon. However, we agree with Nifadeff that Indiana Landmarks' argument "stretch[es] the rules of logic to imply that the trial court must have meant to adopt all of their proposed findings of fact and conclusions of law only to change course and deny the proposed Order on the last page." (Nifadeff's Br. 9-10). The trial clearly denied Indiana Landmarks' preliminary injunction.

[18] We, therefore, turn to Indiana Landmarks' alternative argument that the trial court erred by failing to enter findings of fact and conclusions thereon as required by Indiana Trial Rule 52(A) when it denied Indiana Landmarks' preliminary injunction motion. We agree.

[19] Indiana Trial Rule 52(A) requires a trial court to "make special findings of fact without request . . . in granting or refusing preliminary injunctions." Ind. Trial Rule 52(A). A trial court's failure to enter findings of fact and conclusions thereon, as required by Indiana Trial Rule 52, in an order denying a preliminary injunction constitutes reversible error. *See GKC Indiana Theatres, Inc. v. Elk*

Retail Investors, LLC, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002) (explaining that a trial court's failure to make special findings of fact and conclusions thereon, as required by Indiana Trial Rule 52, in an order granting a preliminary injunction is reversible error). "The purpose of Rule 52(A) is to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that the right of review for error may be effectively preserved." *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885 (Ind. Ct. App. 2017) (cleaned up). Here, the trial court committed reversible error by failing to enter findings of fact and conclusions thereon as required by Indiana Trial Rule 52(A) when it denied Indiana Landmarks' preliminary injunction motion. Therefore, we reverse and remand with instructions for the trial court to issue an order that contains the required findings of fact and conclusions thereon.[1]

[20] Reversed and remanded with instructions.[2]

Tavitas, J., and Foley, J., concur.

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[1] We decline Indiana Landmarks' request that we grant its motion for a preliminary injunction despite the lack of findings and conclusions. Nifadeff correctly points out that "the lack of specific findings of fact and conclusions of law leave us only to speculate which [preliminary injunction] element(s) the trial court based this decision upon." (Nifadeff's Br. 13). Further, according to Nifadeff, "[i]f any remedy is appropriate other than affirming the decision of the trial court, that remedy is properly limited to remanding the issue to the trial court for specific findings of fact and conclusions of law supporting its decision to deny the preliminary injunction." (Nifadeff's Br. 14). We agree.

[2] We do not retain jurisdiction of this matter.