

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

The Lakes of the Four Seasons Property Owners Association,
Inc.,
Appellant

v.

State of Indiana, et al.,
Appellee

March 15, 2024

Court of Appeals Case No.
23A-PL-2393

Appeal from the Lake Superior Court

The Honorable Bruce D. Parent, Judge

Trial Court Cause No.
45D11-2209-PL-556

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] The Lakes of the Four Seasons Property Owners Association, Inc. (hereinafter, “LOFS”) appeals the trial court’s denial of their request for a declaratory judgment regarding the authority of LOFS’s security guards to stop, detain, and/or issue citations to drivers on LOFS property. We affirm.

Issues

- [2] LOFS raises the following two restated issues:
- I. Whether the trial court abused its discretion when it determined this matter was not appropriate for declaratory judgment because such a judgment would not terminate the uncertainty or controversy giving rise to the proceeding and/or result in a more expeditious and economical determination of the entire controversy.
 - II. Whether Indiana law permits LOFS’s private security guards to stop, detain, and/or issue citations to drivers on LOFS property for violations of LOFS’s rules that are also addressed by state laws.

Facts and Procedural History

- [3] LOFS, an Indiana nonprofit corporation, is a homeowners’ association (“HOA”) for the Lakes of the Four Seasons subdivision. The subdivision is a

private, gated community with approximately half of its property located in Lake County and the other half located in Porter County.

- [4] LOFS's Articles of Incorporation provide, in relevant part, that LOFS has the power "to enforce the motor vehicle speed limits prescribed for the [subdivision] by assessing fines for the violations of such speed limits in accordance with a schedule of fines to be promulgated by [LOFS.]" Appellant's App. (hereinafter, "App.") at 40. LOFS's By-laws provide, in relevant part, that LOFS's

Board of Directors shall adopt rules and regulations relating to the use and enjoyment of the streets, parks, pedestrian easements, and any other recreational facilities within the subdivision that are owned by the Association, ... which rules shall include but not be limited to, a schedule of fines for violations of speed limits established for the subdivision or for other violations of the By-laws or such rules and regulations as may be from time to time adopted by the Board of Directors.

Id. at 58.

- [5] LOFS also has Restrictive Covenants which further provide, in relevant part,

Motor vehicle Speed Limits. No motor vehicle shall be driven on any street within the [subdivision] at speed in excess of 15 miles per hour; provided, however, that on every street in the [subdivision] that has pavement not less than 24 feet wide, the maximum speed limit for motor vehicles shall be 25 miles per hour. Appropriate postings of these speed limits shall be made. [LOFS] shall have the power to assess fines for the violation of the motor vehicle speed limits in accordance with [a] schedule of fines promulgated by [LOFS].

Id. at 84.

[6] LOFS also has created a document entitled “[LOFS] Security Manual Rules and Regulations” which governs “Security Department personnel” of LOFS. Appellees’ App. (hereinafter, “A.A.”) at 2, 7. The Security Manual states that “the security officer is a public servant” whose “[g]eneral [d]uties” include “prevent[ing] crime, ... and enforce[ing] covenants, by-laws and rules of [LOFS].” *Id.* at 7, 16. “The basic objectives” of a security officer include “[t]o encourage fair and impartial enforcement of laws and individual rights.” *Id.* at 16, 17. The Security Manual includes a “List of Violations and Fine Structure” for LOFS. *Id.* at 54. Actions on LOFS property that are “violations” for which fines are assessed include: “Disregarding a Posted Stop Sign;” “Speeding” over the “Posted Limit;” Driving without a License; “Illegal Parking;” “Littering;” and “Trespassing.” *Id.* at 54-55. Fines that are incurred by a LOFS member and/or their “children, relatives, or guests,” are the responsibility of the LOFS member. *Id.* at 55. The LOFS security officers are required to “stop and detain drivers” on LOFS property for violating LOFS rules and issue citations to LOFS members for any such violations. Appealed Order at 2.

[7] LOFS also created a document entitled “Know the Rules,” which “summarize[s] LOFS’s] most significant rules” and is given to each LOFS member and posted on LOFS’s website. App. at 24. The List of Violations and Fine Structure is also posted on LOFS’s website. LOFS also “posts signs at its gates that provide all individuals, both residents and non-residents, with notice that by entering into the gated community, they are agreeing to be bound by the

covenants and regulations, and are subject to their enforcement, including possible fines for rules violations.” Appealed Order at 2.

[8] On December 8, 2020, the Lake County Prosecutor’s Office filed a criminal charge against LOFS for Impersonation of a Public Servant—specifically, a law enforcement officer—as a Level 6 Felony under Indiana Code Section 35-44.1-2-6(b)(1). The statute provides that “A person who, with intent to: (1) deceive; or (2) induce compliance with the person’s instructions, orders, or requests; falsely represents that the person is a public servant” commits a Class A misdemeanor. Ind. Code § 35-44.1-2-6(a). The crime is a Level 6 felony if the person falsely represents being a law enforcement officer. I.C. § 35-44.1-2-6(b)(1).

[9] On September 1, 2021, LOFS entered into a pretrial diversion agreement¹ with the State in which it agreed to comply with the terms of the agreement in return for dismissal of the pending criminal charges, following a twelve-month pretrial diversion period. During the pretrial diversion period, the agreement required that LOFS make modifications to its security guard vehicles, uniforms, and operating procedures based on discussions with the prosecutor’s office, and LOFS did so. The agreement also provided that LOFS “understands and acknowledges that their security guards do not have police powers nor arrest

¹ LOFS was required to obtain a security guard agency license before entering into the pretrial diversion agreement, and LOFS secured the license on or around July 8, 2021. That license is not at issue in this appeal.

powers.” App. at 35. The agreement further provided that “State law will be enforced by the appropriate police entities.” *Id.* However, LOFS could “continue to enforce Lakes of Four Seasons covenants that are not in opposition to State law for the welfare and safety of Lakes of Four Seasons.” *Id.*

[10] During the one-year diversion period, the Lake and Porter County Prosecutors’ Offices and Sheriffs’ Departments verbally told LOFS that its security guards “did not have the right to stop drivers who speed on its private streets or otherwise violate the traffic rules established by [LOFS],” because “it was impossible to distinguish a non-member from a member, with 100% certainty, until after stopping the offending driver.” *Id.* at 19. On September 1, 2022, the Lake County Prosecutor’s Office filed a Motion to Dismiss the criminal charges against LOFS, which the court granted the same day.

[11] On September 27, 2022, LOFS filed a complaint for declaratory judgment to obtain, in relevant part, a judgment that it had authority to stop and detain all drivers who enter the subdivision for the purpose of enforcing LOFS’s restrictive covenants and/or rules. The court conducted a hearing on August 2, 2023, at which it heard arguments of counsel, and the parties thereafter simultaneously filed supporting briefs. On September 8, 2023, the trial court issued its order denying LOFS’s request for declaratory judgment on the grounds that such a judgment would not terminate the uncertainty or controversy giving rise to the proceeding and/or result in a more expeditious and economical determination of the entire controversy. This appeal ensued.

Discussion and Decision

- [12] LOFS appeals the trial court’s denial of its request for a declaratory judgment. We review a trial court decision regarding declaratory judgment for an abuse of discretion. *See, e.g., Mid-Century Ins. Co. v. Estate of Morris ex rel. Morris*, 966 N.E.2d 681, 687 (Ind. Ct. App. 2012), *trans. denied*. However, we review questions of law de novo. *E.g., Bruder v. Seneca Mortg. Serv., LLC*, 188 N.E.3d 469, 471 (Ind. 2022).
- [13] Indiana law provides that courts “have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” I.C. § 34-14-1-1; *see also* I.C. § 34-14-1-2 (“Any person ... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the ... statute [or] ordinance ... and obtain a declaration of rights, status, or other legal relations thereunder.”). Such declarations “may be either affirmative or negative in form and effect,” and have “the force and effect of a final judgment or decree.” I.C. § 34-14-1-1. When declaratory relief is sought, “all persons shall be made parties who have or claim any interest that would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” I.C. § 34-14-1-11; *but cf. Harp v. Ind. Dep’t of Highways*, 585 N.E.2d 652, 658 (Ind. Ct. App. 1992) (holding the word “shall,” as used in a prior version of I.C. § 34-14-1-11, is not mandatory, but merely directory, given that the statute is remedial in nature and specifically states that non-parties are not bound).

[14] The purpose of the remedy of declaratory judgment is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations[,]” and the declaratory injunction statutes are “to be liberally construed and administered.” I.C. § 34-14-1-12. The remedy of declaratory judgment “is intended to furnish an adequate and complete remedy where none before had existed.” *Hood’s Gardens, Inc. v. Young*, 976 N.E.2d 80, 84 (Ind. Ct. App. 2012).

‘The test to determine the propriety of declaratory relief is whether the issuance of a declaratory judgment will effectively solve the problem involved, whether it will serve a useful purpose, and whether or not another remedy is more effective or efficient.’ [*Hood*, 976 N.E.2d at 84.] ‘The determinative factor of this test is whether the declaratory action will result in a just and more expeditious and economical determination of the entire controversy.’ *Id.*

Tramill v. Anonymous Healthcare Provider, 37 N.E.3d 553, 557 (Ind. Ct. App. 2015), *trans. denied*. Thus, courts “may refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” I.C. § 34-14-1-6. However, “[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.” Ind. Trial Rule 57.

[15] Here, the trial court did not address the merits of LOFS’s claim because it found that a declaratory judgment was not appropriate. Specifically, it found that, even if it issued the declaratory judgment LOFS seeks, the uncertainty or

controversy would not be at an end because Lake and/or Porter County law enforcement authorities were not made parties to the case and would, therefore, not be bound by the judgment.² That is, the law enforcement authorities could still criminally prosecute LOFS for impersonating public servants and/or police officers by stopping, detaining, and citing motorists.³ Because Indiana law specifically and clearly states that “no declaration shall prejudice the rights of persons not parties to the proceeding[,]” I.C. § 34-14-1-11, the trial court acted within its discretion when it found that a declaratory judgment would not bind law enforcement authorities and, therefore, would not furnish an adequate and complete remedy or effectively “terminate the uncertainty or controversy,” I.C. § 34-14-1-6.

[16] However, even if LOFS had included Lake and Porter County law enforcement authorities as defendants, LOFS would not have been entitled to the declaratory relief it seeks.⁴ LOFS seeks a declaratory judgment that its security

² The issue of joinder of necessary parties has not been raised and is, therefore, waived. *See, e.g., City of Terre Haute v. Simpson*, 746 N.E.2d 359, 365 (Ind. Ct. App. 2001), *trans. denied*. However, the trial court correctly addressed the separate issue of whether the declaratory relief sought would resolve the controversy, given that county law enforcement departments were not parties to the action.

³ The trial court also found that “it would have been more efficient to simply try this case” in the prior criminal proceeding. *Appealed Order* at 7. It is true that LOFS could have raised its claims as a defense in the prior criminal case, but the failure to do so, alone, would not necessarily make it inappropriate to seek declaratory relief in a separate action. *See* T.R. 57.

⁴ The State contends that we should not address the merits on appeal because the State “did not have the opportunity to address [LOFS’s] merits argument.” *Appellee Br* at 19. That is an incorrect statement. The State had the opportunity to, and did, address the merits at the hearing on August 2, 2023, but it chose to focus mostly on the propriety of declaratory judgment as a remedy. *See, e.g., Tr.* at 21. The State also claims that the parties need to develop the factual record, but the parties conducted discovery, admitted exhibits into evidence, and discussed the facts orally and in briefing. The trial court also found over two pages of facts,

guards may stop drivers on its property to enforce its covenants and rules. However, its covenants and rules include traffic laws.⁵ LOFS's list of traffic violations that are also violations of state law includes: disregarding a stop sign;⁶ speeding;⁷ driving without a license;⁸ and "illegal" parking.⁹ A.A. at 54. LOFS also lists littering and trespassing as rule violations for which it imposes fines; however, again, those prohibitions are also violations of Indiana law. *Id.* at 54, 55; *see* I.C. § 35-45-3-2 (regarding littering, a Class A infraction); I.C. § 35-43-2-2 (regarding trespass, as a Class A misdemeanor or Level 6 felony).¹⁰

[17] Police power, which is defined as "[a] State's Tenth Amendment right, subject to due-process and other limitations, to establish and enforce laws or to delegate this right to local *governments*," is inherent in the states. *Police Power*, Black's Law Dictionary (10th ed. 2014) (emphasis added); *see also* U.S. Const., amend. X. Thus, Indiana laws, including motor vehicle laws, may be enforced by the State government and local governments to whom the State grants such

none of which are contested on appeal; rather, this matter involves mainly questions of law. In short, we see no reason to remand this matter, and we therefore proceed to the merits.

⁵ This case does not involve LOFS's restrictive covenants and rules that are *not* covered by state laws.

⁶ This is a Class C infraction under state law. I.C. §§ 9-21-4-18 and -19.

⁷ This is a Class C infraction under state law. I.C. §§ 9-21-5-1 and -2.

⁸ This is a Class A or C misdemeanor under state law. I.C. § 9-24-18-1.

⁹ This is a Class C infraction under Indiana law. I.C. § 9-21-16-9.

¹⁰ LOFS's rules also prohibit "[p]hysical battery to any POA Employee," but specifies that the action to be taken by a security guard for the violation is "Call 911." A.A. at 54. Thus, while the rule against battery is also a criminal law, I.C. § 35-42-2-1, LOFS does not seek to enforce any such violations itself but, rather, would leave enforcement to police officers, as is proper.

authority. *See, e.g., Williams v. State*, 444 N.E.2d 888, 890 (Ind. Ct. App. 1983) (noting the term police power “generally concerns the power inherent in government to enact laws, within constitutional limits, to promote the order, safety, health, morals, and general welfare of society.”); *see also* I.C. § 9-14-8-3 (providing that the Indiana Bureau of Motor Vehicles has the power to “adopt and enforce” rules regarding Motor Vehicles).

[18] Although Indiana law permits “local authorities” to adopt additional traffic regulations, *see* I.C. § 9-21-1-2, and alter speed limits, *see* I.C. § 9-21-5-6, within its jurisdiction, such power is not granted to private entities or individuals. *See* I.C. § 9-13-2-94 (defining “local authority” as “every county, municipal, and other local board or body having authority to adopt local police regulations under the laws and the Constitution of the State of Indiana”). LOFS is not a “local authority;” rather, as a HOA, it is a private entity. *See* I.C. § 32-25.5-2-4 (defining HOA). And, of course, private entities do not have police powers.

[19] However, LOFS asserts that Indiana Code Section 9-21-18-14 grants it the authority to regulate and enforce traffic and speeding rules on its private property. That statute provides:

Except as provided in sections 9 through 13 of this chapter, nothing in this chapter may be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from:

(1) prohibiting the property’s use;

(2) requiring other, different, or additional conditions than those specified *in this chapter*; or

(3) otherwise regulating the property's use as determined best to the owner.

Id. (emphasis added). But nothing in Indiana Code Section 9-21-18-14 or the Chapter entitled “Regulation of Traffic on Private Property” grants police powers to owners of private property. That is, the cited statute does not empower a private property owner to create laws applicable to its property and enforce those laws against the public.

[20] As this Court has previously held, “merely working as a private security guard does not vest that person with the auspices of being a public servant and a law enforcement officer.” *Rogers v. State*, 741 N.E.2d 395, 398 (Ind. Ct. App. 2000), *trans. denied*. We note that Indiana law does permit a sheriff's office to appoint a private security guard as a special deputy and thereby grant the guard law enforcement powers under Indiana Code Section 36-8-10-10.6. *See, e.g., Scott v. State*, 855 N.E.2d 1068, 1070 (Ind. Ct. App. 2006) (noting off-duty police officers could stop an individual on HOA property where HOA had an agreement with the local police department that officers could enforce HOA trespassing rules). However, that is not what happened here. In fact, the Lake County and Porter County Sheriff Departments specifically informed LOFS that its security guards “do not have police powers,” App. at 35, to “stop drivers who speed on its private streets or otherwise violate the traffic rules established by [LOFS],” *id.* at 19. And LOFS signed a diversion agreement in

the criminal case in which it stipulated that its “guards do not have police powers” and that “State law will be enforced by the appropriate police entities.” *Id.* at 35.

[21] LOFS does not have the legal authority to stop, detain, and cite motorists on its property for violations of Indiana traffic laws that are listed as violations in the LOFS rules. Therefore, it was not entitled to the declaratory relief it sought.

Conclusion

[22] The trial court did not abuse its discretion when it denied the motion for declaratory relief on the ground that such relief would not terminate the uncertainty or controversy giving rise to the proceeding. And, even if a request for declaratory relief had been the proper remedy, LOFS would not have been entitled to such relief because it has no legal authority to stop, detain, and cite motorists on its property for violations of Indiana traffic laws that also are listed as violations in the LOFS rules.

[23] Affirmed.

Crone, J., and Pyle, J., concur.

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