

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000891-MR

CITY OF INDIAN HILLS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 06-CI-008373

DAVID METTS; JENNIFER
METTS; AND LOUISVILLE
METRO PLANNING COMMISSION

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; NICKELL AND TAYLOR, JUDGES.

TAYLOR, JUDGE: The City of Indian Hills brings this appeal from an April 9, 2008, order of the Jefferson Circuit Court granting summary judgment and declaring Ordinance No. 06-01 void for failure to comply with Kentucky Revised Statutes (KRS) Chapter 100. We affirm.

In 2005, John Conti Realty, LLC (Conti Realty) purchased a 1.7 acre residential lot located in the City of Indian Hills.¹ Conti Realty then filed a subdivision application with the Department of Planning and Zoning Services (Department) of the Louisville Metro Planning Commission (Planning Commission). In the application, Conti Realty sought to subdivide the 1.7 acre lot into two smaller lots. In January 2006, Indian Hills adopted Ordinance No. 06-01, which provides, in relevant part:

Section 1. No residential property line as shown on a subdivision plat of any area in the city, or as such boundary line may exist as of January 1, 2006 (where the boundary line was heretofore changed) shall be relocated or created so as to create an additional lot or lots.

After adoption of the ordinance, the Department refused to process Conti Realty's subdivision application. Consequently, Conti filed this action in circuit court on September 21, 2006. Therein, Conti Realty maintained that Ordinance No. 06-01 was void.

By deed recorded February 6, 2007, Conti Realty sold the property to David A. Metts and Jennifer H. Metts. By order entered August 8, 2007, the Metts were substituted as plaintiffs for Conti Realty. The Metts subsequently filed a motion for summary judgment. Kentucky Rules of Civil Procedure (CR) 56. Therein, the Metts argued that the ordinance was void as violative of KRS 100.211. By order entered January 31, 2008, the circuit court denied the Metts' motion for summary judgment. The Metts then filed a CR 59 motion to alter,

¹ The City of Indian Hills is a fourth-class city located in Jefferson County, Kentucky.

amend, or vacate the January 31, 2008, order. By an April 9, 2008, order, the circuit court granted the CR 59 motion to vacate and concluded that “Ordinance 06-01 is void as it was not enacted in accordance with the requirements set forth in KRS Chapter 100.” This appeal follows.

Indian Hills has filed an appellate brief with this Court that is wholly deficient. CR 76.12. The brief neither sets forth a statement of points and authorities nor a specific argument on appeal.² *See Pierson v. Coffey*, 706 S.W.2d 409 (Ky.App. 1985). Upon the latter deficiency, Indian Hills included a section in the brief with a heading titled “Argument.” This argument section was comprised of one and one-half pages and included only one citation to legal authority. After reviewing the substantive content of the argument presented therein, we were unable to discern any particular allegation of error raised for our review.

As an intermediate appellate court, we are endowed with general appellate jurisdiction by § 111 of the Kentucky Constitution. Consequently, the Court of Appeals is a court of review; our primary task is to review errors that are alleged to have been made by an inferior court. In so doing, we generally limit our review to issues of error raised by parties. *Treacy v. James*, 274 S.W.2d 46 (Ky. 1954); *Herrick v. Wills*, 333 S.W.2d 275 (Ky. 1960); *Ballard v. King*, 373 S.W.2d 591 (Ky. 1963); *Rainey v. Mills*, 733 S.W.2d 756 (Ky.App. 1987). And, if an

² We note that under Kentucky Rules of Civil Procedure 76.12(4)(f), the requirement of including a statement of points and authorities does not apply to briefs of five pages or less. However, Indian Hills’ brief is six pages. Notwithstanding, we cannot discern from Indian Hills’ brief what specific errors were made by the trial court below and what authority supports its argument.

appellant fails to raise any allegations of error capable of meaningful discernment, we are bound to affirm the circuit court's decision as "if no brief had been filed." *R.E. Gaddie, Inc. v. Price*, 528 S.W.2d 708, 710 (Ky. 1975); *see also, Grief v. Wood*, 378 S.W.2d 611 (Ky.App. 1964). Indeed, this court is ever cognizant that "[i]t is not our function . . . to research and construct a party's legal arguments[.]" *Hadley v. Citizens Deposit Bank*, 186 S.W.3d 754, 759 (Ky.App. 2005).

Nonetheless, we observe that the circuit court's April 9, 2008, order declaring the ordinance void was a summary judgment. A summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Upon review of the April 8, 2008, order, and the record before this Court, we conclude that no material issue of fact existed and that Ordinance No. 06-01 was violative of KRS Chapter 100 as a matter of law.

In sum, we affirm the circuit court's April 9, 2008, order declaring Ordinance No. 06-01 void.

For the foregoing reasons, the order of the Jefferson Circuit Court is affirmed.

NICKELL, JUDGE, CONCURS.

COMBS, CHIEF JUDGE, CONCURS IN RESULT ONLY.

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