[Cite as *Tyler v. Batavia*, 2010-Ohio-4078.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

SUMMER TYLER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-01-002
	:	O P I N I O N
- vs		8/30/2010
	:	
VILLAGE OF BATAVIA,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2008CVH01695

Lawrence R. Fisse, 34 North Third Street, Batavia, Ohio 45103, for plaintiff-appellant

Elizabeth Mason and George E. Pattison, 285 East Main Street, Batavia, Ohio 45103, for defendant-appellee

POWELL, J.

{¶1} Plaintiff-appellant, Summer Tyler, appeals a decision of the Clermont County Court of Common Pleas, granting summary judgment in favor of defendant-appellee, village of Batavia. We affirm.

{¶2} On July 18, 2007, the Batavia Village Planning Commission (Commission) held a regular public meeting, during which it scheduled a special

meeting for August 1, 2007 at 7:00 p.m. to discuss Design Guidelines for the Historic Main Street District. However, the Commission subsequently failed to post notice of the August 1 meeting. Despite the lack of notice, on August 1 at approximately 7:00 p.m. Commission members Kathy Leone and Rory Banziger convened at the Batavia Village Hall, along with several members of the public. At that time, Leone and Banziger developed suggestions for the Design Guidelines, including changing the word "may" to "shall" in many instances, because the Guidelines were intended to be mandatory. During a regular public meeting on August 15, 2007, the Commission unanimously approved the Guidelines, including Leone and Banziger's suggestions, and prepared to submit the Guidelines to the village council for further approval.

{¶3} On August 20, 2008, appellant filed a complaint against appellee, alleging appellee: (1) violated R.C. 121.22(F) and Batavia Cod. Ord. 33.04 when it held a meeting on August 1, 2007, without providing proper prior notice, and (2) met on a number of other occasions without giving prior notice of its meetings or making such meetings open to the public, as required by R.C. 121.22.[1] Appellant requested relief in the form of an injunction, court costs, attorney fees, and a declaration that all actions taken by appellee were null and void, pursuant to R.C. 121.22(H).

{¶4} In 2009, both parties filed opposing motions for summary judgment. The trial court entered judgment in favor of appellee, concluding that no notice was required because the August 1, 2007 session did not constitute a "meeting."

{¶5} Appellant timely appealed, raising one assignment of error:

{¶6} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF-

1. Appellant's second claim for relief was voluntarily dismissed on December 21, 2009, with prejudice.

APPELLANT IN FINDING THAT THE SUNSHINE ACT WAS NOT VIOLATED, IN OVERRULING HER MOTION FOR SUMMARY JUDGMENT, AND IN GRANTING THE MOTION OF DEFENDANT-APPELLEE FOR SUMMARY JUDGMENT."

{¶7} Summary judgment is a procedural device used to terminate litigation and avoid a formal trial when there are no issues in a case to try. See *January Invests., LLC v. Ingram*, Warren App. No. CA2009-09-127, 2010-Ohio-1937, ¶13. This court reviews summary judgment decisions de novo. Id. Summary judgment is appropriate under Civ.R. 56 when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. Id.; *Zivich v. Mentor Soccer Club*, *Inc.*, 82 Ohio St.3d 367, 369-370, 1998-Ohio-389.

{¶8} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Ingram*, 2010-Ohio-1937 at ¶14. Once the moving party satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the moving party's pleadings. Id. The nonmoving party's response, by affidavit or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. Id.; Civ.R. 56(E). Doubts must be resolved in favor of the nonmoving party. Id.

{¶9} The trial court held that pursuant to R.C. 121.22(B)(2) and Batavia Cod. Ord. 33.01, a "meeting" is defined as "any pre-arranged discussion of the public business of a public body by a majority of its members." The trial court held that

because a majority of the Commission members were not present on August 1, 2007, "there [was] no 'meeting' as defined by the statute and, therefore, no notice [was] required." The trial court further refused to invalidate the Commission's formal action on August 15, when it unanimously approved a version of the Design Guidelines that included Leone and Banziger's suggestions. In so holding, the trial court stated that the Commission's formal action did not violate R.C. 121.22(H) because the suggestions from August 1 were not the product of "deliberations in a meeting not open to the public" as defined by statute.[2]

{¶10} On appeal, appellant's arguments are twofold. First, appellant argues that R.C. 121.22(F) and Batavia Cod. Ord. 33.04[3] require advance notice of all scheduled "meetings," and the "determinative issue is whether or not *at the time the meeting is scheduled* the anticipated meeting satisfies the legal definition of a 'meeting' * * * [i]f the answer is 'yes' then advance notice must be given. If the answer is 'no' then there is no such requirement. The answer to this question can not [sic] be decided in retrospect." (Emphasis sic.) Secondly, appellant argues that the Commission's approval of the Design Guidelines was invalid pursuant to R.C. 121.22(H), because the approved version resulted from "deliberations in a meeting not open to the public" on August 1, 2007.

{¶11} In contrast, appellee argues that because a majority of Commission

2. R.C. 121.22(H) states, in pertinent part: "[a] resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section."

3. R.C. 121.22(F) requires "every public body, by rule, shall establish a reasonable method whereby any person may determine * * * the time, place, and purpose of all special meetings." Batavia Cod. Ord. 33.04(A) requires the Village Clerk to "post a statement of the time, place and purposes of" a special meeting "no latter than twenty-four hours before the time of a special meeting of a Municipal body[.]"

members did not attend the August 1 session, no meeting occurred, and therefore no prior notice was required pursuant to R.C. 121.22(F). Appellee also argues that without a "meeting," there could be no violation of R.C. 121.22(H).

{¶12} R.C. 121.22, the "Sunshine Law," provides in relevant part that:

{¶13} "(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings * * *.

{¶14} "(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings."

{¶15} The intent of the Sunshine Law is to require governmental bodies to deliberate public issues in public. See *Berner v. Woods*, Lorain App. No. 07CA009132, 2007-Ohio-6207, ¶15, citing *Moraine v. Montgomery Cty. Bd. of Commrs.* (1981), 67 Ohio St.3d 139, 145. To violate the Sunshine Law, a public body must simultaneously (1) conduct a "meeting," and (2) "deliberate" over "public business." *Woods* at ¶17; R.C. 122.22(B)(2).

{¶16} In the case at bar, the only disputed issue is whether a "meeting" occurred on August 1, 2007. "The elements of the statutory definition of a meeting are (1) a prearranged discussion, (2) a discussion of the public business of the public body, and (3) the presence at the discussion of a majority of the members of the public body." *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543, 1996-Ohio-372.

{¶17} Initially, we note that the Commission constitutes a "public body," defined as: "any legislative authority or board, commission, committee, council,

agency, authority, or similar decision-making body of any * * * municipal corporation; [or] [a]ny committee or subcommittee of [such] a body[.]" R.C. 121.22(B)(1)(a)-(b). In general, for there to be a "meeting" as defined by the Sunshine Law, a majority of a public body's members must come together. *Woods* at ¶17; *Cincinnati Post* at 543; *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 59, 2001-Ohio-130. But, see, *Cincinnati Post*, 76 Ohio St.3d 540.

{¶18} Because only two out of the five Commission members attended the August 1 session, it follows that no "meeting" occurred on that date. We note that appellant does not allege such incidents occurred more than once, thus this is not a case in which a public body sought to circumvent the open meeting requirements "by holding several identical back-to-back sessions attended by fewer than a majority of its members," which would be liberally construed as two parts of the same meeting. *State ex rel. Schuette v. Liberty Twp. Bd. of Trustees*, Delaware App. No. 03-CAH-11064, 2004-Ohio-4431, ¶35; *Cincinnati Post*, 76 Ohio St.3d at 543-544.

{¶19} Further, there is no evidence that the suggestions developed on August 1 resulted in the final action taken by the Commission. Cf. *Stainfield v. Jefferson Emergency Rescue Dist*., Ashtabula App. No. 2009-A-0044, 2010-Ohio-2282, ¶35 ("Besides the act of deliberation, there must be proof of causation. * * * Thus, there must be evidence in the record that the public body arrived at its decision on the matter *as a result of* the nonpublic deliberations"). (Emphasis sic.) On the contrary, additional deliberations were sought during a regular public meeting on August 15, 2007, which was attended by all five Commission members, who unanimously

approved the Design Guidelines as presented.[4]

{¶20} In light of the significant fact that the August 1, 2007 session was the only alleged session of its kind, we find that, in the absence of a majority of Commission members, no "meeting" occurred on that date. See R.C. 121.22(B)(2). Based on these specific facts and circumstances, we find that in the absence of a "meeting," the Sunshine Law did not apply to the August 1 session. Therefore, appellant's argument that notice was required pursuant to R.C. 121.22(F) and Batavia Cod. Ord. 33.04(A) is without merit.

{¶21} Additionally, our conclusion that no "meeting" took place on August 1, 2007 obviates the need to discuss whether R.C. 121.22(H) was violated. Because appellant has failed to show the existence of any genuine issue of material fact as to whether a "meeting" occurred, we conclude that the trial court did not err in granting appellee's summary judgment motion.

{¶22} Accordingly, appellant's assignment of error is overruled.

{¶23} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.

4. The minutes from the August 15, 2007 meeting reflect that the Commission members were asked if they "wanted to make any further additions or deletions before recommending [the Design Guidelines] to the Village Council."