

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sturdy Road Prairie Ridge
Property Owners' Association,
Inc.,

Appellant-Plaintiff,

v.

City of Valparaiso, Indiana, et
al.,

Appellees-Defendants.

May 3, 2023

Court of Appeals Case No.
22A-PL-2781

Appeal from the Porter Superior
Court

The Honorable Michael A. Fish,
Judge

Trial Court Cause No.
64D01-2203-PL-2328

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] This case involves an annexation ordinance adopted by the City of Valparaiso (“the City”) and a petition of remonstrance against the annexation filed by Sturdy Road Prairie Ridge Property Owners’ Association, Inc. (“POA”). POA appeals the trial court’s order granting the City’s motion to dismiss the petition pursuant to Indiana Trial Rules 12(B)(1) and 12(B)(6).

[2] We reverse and remand.

Issues

[3] POA raises the following two restated issues:

- I. Whether the trial court erred when it dismissed POA’s remonstrance petition for lack of subject matter jurisdiction pursuant to Indiana Trial Rule 12(B)(1).
- II. Whether the trial court erred when it dismissed POA’s remonstrance petition for failure to state a claim pursuant to Indiana Trial Rule 12(B)(6).

Facts and Procedural History

[4] POA is a non-profit corporation whose members are all of the property owners of the sixty-nine properties within the “Prairie Ridge Subdivision” (hereinafter, “Annexation Area”) in the City. App. v. II at 28. On October 25, 2021, the

City adopted an ordinance that annexed the Annexation Area. On December 28, 2021, fifty-nine¹ of the POA members signed and filed with the Porter County Auditor (“Auditor”) a “Petition Requesting the Remonstrance Against Annexation.” *Id.* at 37.

[5] The City provided Auditor with “final documentation of waivers” of the right to remonstrate that allegedly applied to the properties of the remonstrators. *Id.* at 19. On December 8, 2004, an Indiana limited liability company (“the LLC”)² that, at that time, owned the entire Annexation Area, and the City both had executed a waiver of the right to remonstrate (“Original Waiver”) against future annexation of property within the Annexation Area in consideration for multiple services to the property. Subsequently, during the term of the Original Waiver, the City caused waivers to be signed for each lot within the Prairie Ridge subdivision (“Individual Waivers”). The Individual Waivers purport to affect forty-nine of the fifty-nine properties owned by the POA remonstrators but were signed by someone who was not the property owner at the time the Individual Waivers were executed. There was no additional consideration supplied by the City for the Individual Waivers.

[6] Nevertheless, on February 28, 2022, Auditor issued to the City an “Auditor’s Verification Statement” in which Auditor stated that the properties of all fifty-

¹ The petition also contained three additional signatures for property that the Auditor determined had already been signed for in the petition.

² The LLC had developed the Prairie Ridge neighborhood.

nine remonstrators were subject to “valid waiver[s]” of the right to remonstrance. App. v. II at 70. POA was informed of Auditor’s verification statement on March 9, 2022, and filed its “Complaint for Remonstrance Against Annexation and for Judicial Review” on March 18, 2022. *Id.* at 14. In its Complaint, POA alleged that the Original Waiver had “expired, by operation of law, on December 9, 2019[,]” and the Individual Waivers were invalid. *Id.* at 20. Therefore, POA asserted, the annexation is void as a matter of law because the remonstrance petition was signed by more than 65% of the property owners in the Annexation Area. POA also asserted that Auditor had breached her statutory duty to verify that any purported waivers were valid. In the alternative, POA alleged that the annexation was subject to judicial review because the petition was signed by at least 51% of the property owners, and the City had failed to comply with “all statutory pre-requisites” for an annexation. *Id.* at 22. The complaint listed each such failure and the applicable law.

[7] On March 19, 2022, the City filed its Motion to Dismiss the annexation petition pursuant to Indiana Trial Rule 12(B)(1) and 12(B)(6). Following a hearing and argument of the parties, the trial court granted the motion to dismiss. This appeal ensued.

Discussion and Decision

Subject Matter Jurisdiction

- [8] POA asserts that the trial court erred when it dismissed this action pursuant to Trial Rule 12(b)(1) for lack of subject matter jurisdiction over POA’s claims; the City contends that the dismissal was proper because the Auditor’s verification was a final, unappealable decision.

The standard of appellate review for Trial Rule 12(B)(1) motions to dismiss is a function of what occurred in the trial court. *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001). If the facts before the trial court are not in dispute, then the question of subject matter jurisdiction is purely one of law. *Id.* Under those circumstances no deference is afforded the trial court’s conclusion because “appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law.” *Id.* (quoting *Bader v. Johnson*, 732 N.E.2d 1212, 1216 (Ind. 2000)). Thus, we review de novo a trial court’s ruling on a motion to dismiss under Trial Rule 12(B)(1) where ... the facts before the trial court are undisputed. *Id.* As a general proposition, the party challenging subject matter jurisdiction carries the burden of establishing that jurisdiction does not exist. *Id.* at 404.

Fight Against Brownsburg Annexation v. Town of Brownsburg, 32 N.E.3d 798, 801-02 (Ind. Ct. App. 2015).

- [9] In *Fight Against Brownsburg*, another panel of this Court addressed subject matter jurisdiction over remonstrances. We noted that a question of subject matter jurisdiction entails a determination of whether the court has jurisdiction “over a general class of actions to which the particular case belongs.” *Id.* at 802. We held that “challenges to the sufficiency of a remonstrance petition

under Indiana Code Section 36-4-3-11 are not properly raised by a Trial Rule 12(B)(1) motion,” *id.* at 804, because that statute “expressly provides that a party may file a remonstrance petition ‘with the circuit or superior court of a county in which the annexed territory is located,’” *id.* at 802 (quoting Ind. Code § 36-4-11). That is, the applicable statute contains no statutory jurisdictional prerequisites to the filing of a remonstrance petition and, in fact, “demonstrates that the legislature intended not to create such a barrier.” *Id.* at 805. Therefore, “[a] party seeking to challenge a remonstrance petition under that statute may not move to dismiss the petition under Trial Rule 12(B)(1).” *Id.* at 805 (citing *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006) and disagreeing with prior Court of Appeals opinions allowing such a challenge under Rule 12(B)(1)).³

[10] Yet, the City asserts that Indiana Code Section 36-4-3-11.2, which was added to the code effective July 1, 2015, gave county auditors the final, *non-appealable* word on whether remonstrance petitions contain the necessary number of valid signatures of owners of real property within the area to be annexed. The City’s contention requires that we construe the applicable statutes, which is a question of law that we review *de novo*. See *Abbott v. State*, 183 N.E.3d 1074, 1080 (Ind. 2022).

In interpreting a statute, the first step is to determine whether the Legislature has spoken clearly and unambiguously on the point in question. When a statute is clear and unambiguous, we apply

³ However, we noted that a dismissal of a remonstrance petition for failure to include the minimum number of signatures could be appropriate under Rule 12(B)(6). *Id.* at 805 n.7.

words and phrases in their plain, ordinary, and usual sense. When a statute is susceptible to more than one interpretation it is deemed ambiguous and thus open to judicial construction. When faced with an ambiguous statute, our primary goal is to determine, give effect to, and implement the intent of the Legislature with well-established rules of statutory construction. We examine the statute as a whole, reading its sections together so that no part is rendered meaningless if it can be harmonized with the remainder of the statute. And we do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result.

Anderson v. Gaudin, 42 N.E.3d 82, 85 (Ind. 2015) (quotations and citations omitted).

[11] Both before and after the 2015 amendments, the remonstrance statutes require that remonstrance petitions have signatures of a certain percentage of property owners within the annexed area. *See* I.C. § 36-4-3-11(a) (effective to June 30, 2015); I.C. § 36-4-3-11.3(b), (c) (effective July 1, 2015). Prior to July 2015, Indiana Code Section 36-4-3-11 provided that the question of the correct number of signatures on a remonstrance petition was to be decided by a court only. I.C. § 36-3-4-11(a), (b) (2015). Effective July 2015, section 11.2 was added to the remonstrance statutes, providing, in relevant part, that “the county auditor’s office shall make a final determination of the number of owners of real property within the territory to be annexed who signed the remonstrance...”⁴

⁴ Effective July 2016, that statute was further amended to provide that the auditor’s final determination must include the number of property owner signatures “whose property is not subject to a valid waiver of the right of remonstrance.” I.C. § 36-4-3-11.2(i)(2) (2016).

I.C. § 36-4-3-11.2(g) (2015). At the same time that section 11.2 was added, section 11 was amended to provide that, for annexation ordinances adopted after June 30, 2015, the annexation still may be appealed to a court by filing certain documentation—including the auditor’s determination made under section 11.2. I.C. § 36-4-3-11(d) (2015). However, such a court action may proceed only if the signature requirements of section 11.3(c)⁵ are met.

[12] Thus, while the plain language of section 11.2 states that an auditor must make a final determination regarding signatures on a remonstrance petition, the plain language of section 11(d) also provides that an annexation may be appealed to a court if the signature requirements of section 11.3(c) are met. That is, both before and after the 2015 amendments, the remonstrance statutes provide that a court must determine if the statutorily required percentage of property owners have signed the remonstrance before a remonstrance action can proceed in the court. *See Certain Tell City Annexation Territory Landowners v. Tell City*, 73 N.E.3d 210, 215 (Ind. Ct. App. 2017) (noting that, if the court “determines the

⁵ Section 11(d) does not reference section 11.3(b), which is a requirement that was added for the first time by the 2015 amendments; however, claims under subsection (b) may also be brought in court. That subsection provides in relevant part that, effective July 1, 2015, an annexation ordinance is *void as a matter of law* if a written remonstrance petition is validly signed by at least sixty-five percent of the owners of land in the annexed territory. I.C. § 36-4-3-11.3(b). Thus, if a municipality moves forward with an annexation despite a remonstrance petition signed by at least 65% of the relevant landowners, it exceeds its authority per section 11.3(b). Whether the municipality exceeds its authority in that manner is a question of law to be decided by the courts. *See Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1197-98 (Ind. 2016) (citation omitted) (“Because a municipality’s authority to annex territory is defined by statute, the court’s role is to determine whether the municipality has exceeded its statutory authority, and whether it has met the conditions imposed by the statute.”). Furthermore, there is nothing in the language of the remonstrance statutes that limits the courts’ power to determine whether an annexation is void as a matter of law under section 11.3(b).

remonstrance has the necessary signatures, ... it must then schedule a hearing on the merits of the remonstrance”), *trans. denied*.

[13] Despite the plain language of section 11(d) allowing an appeal to the courts, the City contends that the words “final determination” in reference to an auditor necessarily mean an auditor’s decision regarding signatures is non-appealable. However, the Indiana Code is replete with statutes allowing appeals of “final” determinations. *See, e.g.*, the Indiana Administrative Orders and Procedures Act, I.C. § 4-21.5 (providing that, within the State agency context, judicial review is the exclusive means to appeal a “final agency action”). The words “final determination,” alone, do not mean that the determination is not appealable.

[14] Trial courts have subject matter jurisdiction over remonstrances to annexations. I.C. § 36-3-4-11; *Fight Against Brownsburg*, 32 N.E.3d at 802. Therefore, the trial court erred to the extent it dismissed the remonstrance petition for lack of subject matter jurisdiction.

Alleged Failure to State a Claim

[15] POA also challenges the trial court’s dismissal per Trial Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

We review a Rule 12(B)(6) dismissal *de novo*. In conducting our review, we take the facts alleged in the complaint as true, consider all complaint allegations in the light most favorable to the nonmoving party, and draw every reasonable inference in that party’s favor. Ultimately, we must determine whether the

nonmovant has stated some factual scenario in which a legally actionable injury has occurred. If so, dismissal is improper.

It is well settled that a motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of the plaintiff's claim, not the facts supporting it.... To be sure, the question at this early stage of litigation is not whether the [non-movant] is entitled to relief; rather, the narrow inquiry is whether it is apparent that the complaint allegations are incapable of supporting relief under any set of circumstances.

Residences at Ivy Quad Unit Owners Ass'n, Inc. v. Ivy Quad Dev., LLC, 179 N.E.3d 977, 981 (Ind. 2022) (quotations and citations omitted).

[16] POA's complaint states factual scenarios in which legally actionable injuries have occurred. Indiana Code Section 36-4-3-11.3(b) provides, in relevant part: "An annexation ordinance [adopted after June 30, 2015] is void if a written remonstrance petition is signed by ... (1) At least sixty-five percent (65%) of the owners of land in the annexed territory." POA's complaint alleges that more than 65% of the property owners in the Annexation Area signed the remonstrance petition against the annexation ordinance adopted on October 25, 2021. It further alleges that none of those properties were subject to valid waivers of the right to remonstrance and the annexation ordinance is void as a matter of law. The complaint also asserts that the Auditor failed to perform her statutory duty to determine whether valid waivers of the right to remonstrate applied to the relevant properties. *See* I.C. § 36-4-3-11.2 (regarding Auditor's duty to determine whether properties are subject to valid waivers). Thus, taking

the facts alleged in the complaint as true, POA has stated claims upon which relief may be granted.

[17] In addition, Indiana Code Section 36-4-3-11.3(c) provides, in relevant part: “The annexation [ordinance adopted after June 20, 2015] may be appealed to the court under section 11 of this chapter, if a written remonstrance is signed by ... (1) At least fifty-one percent (51%) but less than sixty-five percent (65%) of the owners of land.” In such an appeal, “the burden is on the municipality to demonstrate its compliance with the annexation statutes.” *Tell City*, 73 N.E.3d at 215. Indiana Code Section 36-4-3-11.13(d) provides that the municipality must develop and adopt an adequate fiscal plan that makes nine specified showings, and subsection (e) states the court must order that an annexation not take place if it finds that all of certain specified conditions exist.

[18] In the alternative to its claim that the annexation is void as a matter of law, POA’s complaint asserts that more than fifty-one percent of the property owners in the Annexation Area signed the remonstrance petition against the annexation ordinance adopted on October 25, 2021, and that there were no applicable valid waivers of the right to remonstrate; therefore, POA is entitled to judicial review. *See* I.C. § 36-4-3-11.3(c). POA’s complaint further asserts that the City violated the annexation statutes by failing to develop an adequate fiscal plan that makes all the statutorily required showings and that specified conditions listed in section 11.13(e) exist. Taking those factual allegations as true, POA has stated a claim in the alternative upon which relief may be granted.

[19] The trial court erred when it dismissed POA's complaint on the grounds that it failed to state a claim pursuant to Trial Rule 12(b)(6).

Conclusion

[20] The trial court erred when it dismissed POA's remonstrance complaint for lack of subject matter jurisdiction. It also erred when it dismissed the complaint for failure to state a claim upon which relief may be granted. Therefore, we reverse and remand for further proceedings consistent with this opinion.

[21] Reversed and remanded.

Brown, J., and Weissmann, J., concur.