

IN THE JEFFERSON CIRCUIT COURT
STATE OF INDIANA

JEFFERSON COUNTY PLAN)
COMMISSION,)
)
Plaintiff,)
)
-vs-) CAUSE NO. 39C01-0706-PL-304
)
SHERRY J. CHAPO and JESSIE CHAPO,)
)
Defendants.)

MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Defendants, by counsel, and pursuant to Trial Rule 41(E), move the Court to dismiss this case, with prejudice. In support of this Motion, the Defendants state:

1. The Jefferson County Plan Commission (the “Commission”) instituted this action against the defendants almost 1½ years ago, on June 17, 2007. Since that time, the Commission has failed to prosecute its case.

2. The existence of this lawsuit has created a cloud on the title of an uninterested party by erroneously including the uninterested party’s address in the complaint. On September 7, 2007, counsel for the Commission acknowledged this mistake and stated that the Commission “will be filing an Amended Complaint in the coming week to change the address of the property which is the subject of the Complaint....” That never happened, and no other action to advance its case has been taken by the Commission since then.

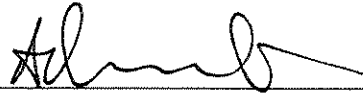
3. Trial Rule 41(E) permits this Court to dismiss this case, with prejudice, “[w]henever there has been a failure to comply with these rules or when no action has been taken in a civil case for a period of sixty [60] days....” T.R. 41(E). The Court is required to hold a hearing on this Motion. Id. Dismissal under T.R. 41(E) in this case should be with prejudice.

Patton Electric Co., Inc. v. Gilbert, 459 N.E.2d 1192, 1194 (Ind. Ct. App. 1984)(“A dismissal for failure to prosecute under TR. 41(E) is a dismissal with prejudice, unless the trial court provides otherwise.”).

4. The government has abused its discretion by failing to move forward in this case and by failing to amend the complaint after being given notice that said complaint clouded the property rights of an uninterested party. Dismissal under Trial Rule 41(E) is designed for this very circumstance, and the Defendants request that this Court dismiss the Commissions' Complaint, with prejudice.

Respectfully submitted,

LEWIS WAGNER, LLP

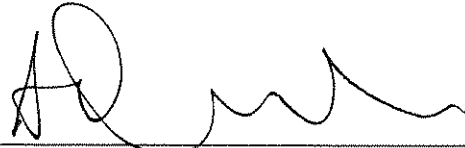


A. RICHARD M. BLAIKLOCK

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon all counsel of record, as follows, by first class U.S. mail, postage prepaid, this ~~4th~~ day of December, 2008.

Kristen Vandewater
Kemper & Vandewater
218 East Second Street
Madison, IN 47250



A. RICHARD M. BLAIKLOCK

LEWIS WAGNER, LLP
501 Indiana Avenue, Suite 200
Indianapolis, IN 46202-3199
Telephone: (317) 237-0500
Facsimile: (317) 630-2790