IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CITY OF KANSAS CITY, MISSOURI,	)	
	)	
Respondent,	)	
	)	**WD75029**
v.	)	
	)	**OPINION FILED:**
	)	**January 15, 2013**
KAREN CHASTAIN, et al.,	)	
	)	
Appellants.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Sandra C. Midkiff, Judge

Before Division IV: James Edward Welsh, Chief Judge, Mark D. Pfeiffer, Judge, and Abe Shafer, Special Judge

This is an appeal from a declaratory judgment proceeding below involving the trial court's pre-election review of the constitutionality of a proposed ordinance initiative petition.[1] Karen Chastain and additional members of a "Committee of Petitioners" (hereinafter "Chastain") appeal the judgment of the Circuit Court of Jackson County, Missouri ("trial court") declaring that a proposed ordinance initiative petition violates the Missouri Constitution. Chastain also appeals the trial court's dismissal of Chastain's counterclaim and the trial court's admission of

[1] Because this appeal involves a challenge to the constitutional validity of a proposed *municipal ordinance*, it does not involve any matter reserved for the exclusive jurisdiction of the Missouri Supreme Court under article V, section III, of the Missouri Constitution. *Chastain v. City of Kansas City*, 289 S.W.3d 759, 763 (Mo. App. W.D. 2009).

several of the City of Kansas City's exhibits at the evidentiary hearing. Finding no error, we affirm the judgment of the trial court.[2]

Factual and Procedural Background

The history of the City of Kansas City ("the City") as a constitutional charter city permitting ordinance proposals by way of the initiative petition process is well documented in *Chastain v. City of Kansas City*, 289 S.W.3d 759, 761 (Mo. App. W.D. 2009) (*"Chastain I"),* and will not be repeated here.

In July of 2011, Chastain and her fellow Committee members submitted to the City Clerk of Kansas City an initiative petition seeking adoption of an ordinance that would impose two sales taxes designed to *"help fund"* the proposed transportation system and to *"finance bonds and secure federal matching funds."* (Emphasis added.) The transportation system contemplated by the proposed ordinance includes: a light rail system; a commuter rail line; a streetcar line; an electric shuttle bus; and bikeway feeder networks that span much of the City's property, including some park land. During the initiative petition signature-gathering process, Chastain's signature gatherers distributed an "Information Sheet for 2011 Transit Initiative" to citizens in which Chastain represented that: (1) the estimated total capital construction and operational costs of the project would exceed $2.5 billion; (2) the proposed sales taxes of the ordinance would only raise approximately $1.0 billion; and (3) the remaining funding would necessarily come from sources such as federal matching funds (if any exist), philanthropic and other private contributions, state contributions, and a contribution from the area transit authority.

The ordinance proposed by Chastain was referred to the City Council's Transportation and Infrastructure Committee, which, after holding a public hearing on the matter, sent the

[2] The City filed a motion to strike Chastain's reply brief, claiming it to be in violation of Rules 84.01 and 84.04. While we find Chastain's reply brief to challenge the boundary of permissible argument in such a filing, we exercise our discretion to deny the motion to strike, and we have considered Chastain's arguments contained therein.

ordinance to the full City Council with a recommendation that the City Council not pass the ordinance. The City Council determined that the City was not required to place the ordinance before the voters. Chastain filed a request with the City Clerk to place the ordinance before the voters.

The City refused to place the ordinance before the voters, and instead, the City filed a petition for declaratory judgment seeking a declaration that the proposed ordinance was facially unconstitutional in that the ordinance failed to provide the revenue needed to construct the transportation system that was the subject of the ordinance. Chastain filed a counterclaim seeking mandamus directing the City to place the proposed ordinance before the voters.

Chastain filed a motion to dismiss the City's action for lack of subject matter jurisdiction, claiming that the City was not entitled to a declaratory judgment because it had an adequate remedy at law. Chastain's motion to dismiss was overruled.

Subsequently, the trial court granted the City's motion to dismiss Chastain's counterclaim for mandamus and entered judgment in favor of the City after an evidentiary hearing. In so doing, the trial court declared that the proposed ordinance was "an unconstitutional appropriation ordinance under Article III, Section 51 of the Missouri Constitution." The trial court concluded that the City was, therefore, not required to place the ordinance before the voters. This appeal follows.

Chastain raises four points on appeal: (1) that the trial court lacked authority to rule on the constitutionality of the proposed initiative ordinance because the City failed to prove that it lacked an adequate remedy at law; (2) that the trial court erred in declaring the proposed ordinance to be a facially unconstitutional appropriation ordinance; (3) that the trial court erred in dismissing its counterclaim for mandamus since, Chastain argues, the ordinance was not

facially unconstitutional; and (4) that the trial court erred in the admission of certain evidence at the evidentiary hearing. We address each point in turn.

Standard of Review

Upon appellate review of a declaratory judgment, we will affirm "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 413 (Mo. banc 2001) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). However, the application of this standard of review will vary depending on the type of error claimed on appeal. *See Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012).

> A claim that there is no substantial evidence to support the judgment or that the judgment is against the weight of the evidence necessarily involves review of the trial court's factual determinations. A court will overturn a trial court's judgment under these fact-based standards of review only when the court has a firm belief that the judgment is wrong. A claim that the judgment erroneously declares or applies the law, on the other hand, involves review of the propriety of the trial court's construction and application of the law. Implicit in these standards is the recognition that the trial court, in reaching its judgment, is in a better position to determine factual issues than an appellate court reviewing only the record on appeal. In this regard, it is necessary for the reviewing court to treat differently questions of law and questions of fact.
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> . . . .
>
> [A reviewing court] will defer to the factual findings made by the trial court so long as they are supported by competent, substantial evidence, but will review de novo the application of law to those facts.

Id. at 43-44 (numerous citations and quotations omitted).

I. Pre-Election Examination of Initiative Petitions

Chastain's first point on appeal is that the trial court was without authority to consider the City's petition for declaratory judgment because, Chastain argues, the City failed to prove that it lacked an adequate remedy at law, one of the elements required before a trial court has the

authority to grant declaratory relief. *See Valley Park Fire Prot. Dist. of St. Louis Cnty. v. St. Louis Cnty.*, 265 S.W.3d 910, 913 (Mo. App. E.D. 2008) (citing *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 (Mo. banc 2005)).

Chastain's contention is that if the ordinance were placed before the voters and passed, and then the City determined that it was necessary to repeal the ordinance, it has the power to do so pursuant to the City's Charter—just as the City did in relationship to Chastain's previous initiative petition and which this Court so affirmed in *Chastain I*. We disagree.

In *Chastain I*, after a similar (though not identical) transportation system ordinance passed via initiative petition, the City conducted studies reflecting that the proposed light rail system could not be constructed, maintained, and operated within the budget outlined in the ordinance. *Chastain I*, 289 S.W.3d at 761. Here, however, *prior to the initiative ordinance being placed on a ballot*, the City challenged the constitutional validity of the ordinance that Chastain proposes to place before the voters. In this context, our courts have long held that an appropriate remedy for challenging the constitutional validity of a proposed ordinance is via declaratory judgment. In authorizing pre-election review of an ordinance that was similarly challenged to violate the constitutional mandates of article III of the Missouri Constitution, our Supreme Court has stated:

> [No Missouri case] hold[s] that the courts of this state lack authority to conduct a pre-election examination of an initiative petition to determine whether it complies with the provisions of article III, § 50.
>
> There are equally compelling reasons to grant pre-election review. The cost and energy expended relating to elections, and the public confusion generated by avoiding a speedy resolution of a question militate in favor of a limited pre-election review. . . . The claim that no initiative proposition has been or can be struck from the ballot prior to election because it submits issues in a manner prohibited by the constitution is unsupported by the cases.

Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 828 (Mo. banc 1990); *see also Union Elec. Co. v. Kirkpatrick*, 678 S.W.2d 402, 405 (Mo. banc 1984); *State ex rel. Card v. Kaufman*, 517 S.W.2d 78, 80 (Mo. 1974); *Kansas City v. McGee*, 269 S.W.2d 662, 664 (Mo. 1954).

Point I is denied.

II. Constitutional Review of Proposed Ordinance

Points II and III of Chastain's appeal both rely upon Chastain's argument that the trial court erred in concluding that the proposed initiative ordinance is unconstitutional on its face. Thus, we address both of these points together.

Article III, section 51 of the Missouri Constitution, states in pertinent part:

> The initiative shall not be used for the appropriation of money other than of new revenues created and provided for thereby, or for any other purpose prohibited by this constitution.

Thus, a proposed initiative ordinance that fails to fund or only *partially* funds the ordinance is an unconstitutional appropriation ordinance. As the trial court concluded, and we agree, Chastain's proposed initiative ordinance is just that—an unconstitutional appropriation ordinance.

Here, Chastain's initiative ordinance states that the proposed sales taxes would only *"help fund"* the mandated improvements and would be used to *"finance bonds and secure federal matching funds."* (Emphasis added.)

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1053 (1971) defines "help" as "to assist in attaining." Although Chastain now argues that "help" *could* mean that the sales tax revenues would not only "help fund" the project, but would actually "fund" the project, Chastain offers no support—dictionary or otherwise—for such an argument, and such an argument defies

the natural and plain meaning of the word "help" as well as other language in the initiative ordinance that contemplates that the sales tax revenue would necessarily have to combine with other sources of funding to complete the ordinance project. In fact, Chastain's argument contradicts the "Information Sheet for 2011 Transit Initiative" that Chastain provided to registered voters in the process of obtaining their signatures in the first place—an information sheet that expressly estimates that the proposed sales taxes would only fund approximately 40% of the project and that philanthropic donations and other sources of private and public moneys would be necessary to completely fund the ordinance project.[3]

Plainly and simply, the trial court correctly declared that the proposed initiative ordinance is a facially unconstitutional appropriation ordinance and, as such, the City was not required to place it before the City's voters.

Points II and III are denied.

III. Evidentiary Objections

Chastain's final challenge to the trial court's judgment is that the trial court improperly admitted certain exhibits submitted by the City, specifically, the "Information Sheet for 2011 Transit Initiative," previously referenced, and two portions of the City Charter. Chastain argues that the exhibits were irrelevant to a determination of whether, on its face, the initiative ordinance was unconstitutional.

> The trial court is accorded considerable discretion in ruling on the admissibility of evidence, particularly where a subjective determination of relevancy must be made.
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> The admission or exclusion of evidence rests in the sound discretion of the trial court, and the court's decision will be reversed only if it constitutes an abuse of

[3] In its appellate briefing to this Court, Chastain shrugs off the facially apparent underfunding of the initiative ordinance by suggesting that, among other options, the City could simply "choose to budget and appropriate sufficient revenues to cover any shortfall," the very constitutional problem that appropriation ordinances present in the first place.

> discretion. The trial court abuses its discretion when its ruling is clearly against the logic of the circumstances then before the trial court and is so unreasonable and arbitrary that the ruling shocks the sense of justice and indicates a lack of careful deliberate consideration. We review for prejudice, not mere error, and will reverse only if the error was so prejudicial that the defendant was deprived of a fair trial.
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> Trial court error is not prejudicial unless there is a reasonable probability that the trial court's error affected the outcome of the trial.

Secrist v. Treadstone, LLC, 356 S.W.3d 276, 280 (Mo. App. W.D. 2011) (numerous internal citations and quotations omitted).

The trial court's judgment (and our appellate ruling today) neither references nor relies upon the excerpts from the City Charter to which Chastain objects that relate to the Board of Parks and Recreation Commissioners and the use of lands dedicated to parks and boulevards. Instead, the trial court's declaratory judgment (and our ruling today) cites and relies upon article III, section 51 of the Missouri Constitution. Chastain offers no argument of any prejudice relating to the admission of these City Charter exhibits and, thus, preserves nothing for appellate review as to these exhibits.

Similarly, the trial court's judgment neither cites nor relies upon the "Information Sheet for 2011 Transit Initiative" and, instead, only references and discusses specific funding language from the face of the initiative ordinance. That said, it is disingenuous for Chastain to suggest that the trial court's admission of this exhibit should shock any sense of justice when Chastain admitted in the trial below[4] that this document was presented by Chastain's signature gatherers to citizens in the signature-gathering process, and it completely contradicts Chastain's argument as to the plain meaning of the phrase "help fund" from the face of the initiative ordinance

[4] Item B.3 of the parties' Joint Stipulation of Facts reads, "Exhibit F to Plaintiff's petition entitled 'Information Sheet for 2011 Transit Initiative' is a true and correct copy of an information sheet that was distributed during the petition signature gathering process."

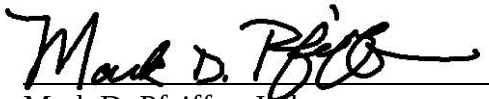
language.[5] This exhibit was relevant to Chastain's argument to the trial court that "help fund" means something contrary to the way Chastain explained "help fund" to citizens when attempting to induce such citizens to sign the initiative petition in the first place.

The trial court did not abuse its discretion in admitting the exhibits into evidence, and irrespective, Chastain cannot demonstrate any prejudice from the introduction of these exhibits that deprived Chastain of a fair trial.

Point IV is denied.

Conclusion

For the reasons stated above, we affirm the trial court's declaratory judgment.



Mark D. Pfeiffer, Judge

James Edward Welsh, Chief Judge, and
Abe Shafer, Special Judge, concur.

[5] In fact, we find it hard for Chastain to deny that this document constitutes an admission against interest, *see Bradley v. Hill Haven Corp. (In re Estate of Daly)*, 907 S.W.2d 200, 205 (Mo. App. W.D. 1995), on the topic of the plain and ordinary meaning of "help fund," as the very "information" document that Chastain was using to solicit signatures plainly admits that the proposed sales taxes are not designed to fully fund the ordinance project, but are only designed to "help" or "partially" fund the project.