[Cite as *Engelman v. Budish*, 2015-Ohio-1153.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101746

WILLIAM C. ENGELMAN, ET AL.

PLAINTIFFS-APPELLEES

vs.

ARMOND BUDISH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-11-771521

BEFORE: Kilbane, P.J., E.T. Gallagher, J., and Boyle, J.

RELEASED AND JOURNALIZED: March 26, 2015

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, the Cuyahoga County Executive,[1] appeals from the order of the trial court declaring that the county's sewer connection/tap-in fees charged to plaintiffs-appellees William Engelman ("William"), Arthur Engelman ("Arthur"), and 27098 Cook Road Investments, L.L.C. ("Cook LLC"), (collectively referred to as "appellees") are unconstitutional, and awarding appellees restitution of fees paid to the county under protest, attorney fees, and other costs. Finding no error, we affirm the judgment of the trial court.

{¶2} William and Arthur are the co-owners of real estate located at 27080 Cook Road, Olmsted Township, Cuyahoga County, Ohio, which is comprised of two parcels, permanent parcel no. 264-12-010 and permanent parcel no. 264-12-007. Cook L.L.C. is the owner of 27098 Cook Road, Olmsted Township, Cuyahoga County, Ohio, permanent parcel no. 264-12-006. All three parcels are located within the Cuyahoga County Sewer District 14 ("District No. 14."). Because of the topography of this area, sewage from the area flows to the North Olmsted sewer system, and the area is subject to various service agreements between the county and the city of North Olmsted. The terms of the 1988 Sewer Service Agreement ("sewer service agreement") were in effect at all relevant times.[2] Pursuant to the sewer service agreement, North Olmsted has agreed to accept the sewage from areas of District 14, including the areas within which the subject parcels are located, which are designated as "the service area."

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[1]The original defendant-appellant was former Cuyahoga County Executive Ed FitzGerald. In a prior entry (motion no. 483664), we recognized that Armond Budish succeeded Ed FitzGerald in office and have instructed the clerk to substitute Armond Budish as the defendant-appellant and to change the caption accordingly. *See* App.R. 29(C).

[2]There were amendments to the service agreement in 1991 and 1993; however, the amendments are not germane to this matter.

{¶3} Section 2.02 of the service agreement provides:

> Users within the Service Area shall pay a charge for a tap-in or curb connection to a sanitary sewer in the Service Area as set forth in Chapter 911 of the Codified Ordinances of North Olmsted. * * * Such tap-in or connection charges shall be collected by North Olmsted *as the agent of the County* prior to the issuance of a permit in accordance with subsection 2.01." (Emphasis added.)

{¶4} The service agreement also limits the amount of sewage North Olmsted will allow into its system and provides that when that limit is reached, the county must contain and manage the sewage within its own sanitary sewer system.

{¶5} By 2005, Olmsted Township asked the Board of County Commissioners ("the Board") to construct additional sewers in District 14 to service the rest of the township. The Board required the township to commission an engineering study to outline a master plan for construction and proposed connection charges in District 14 so that the county could equitably recover its sewer installation capital expenses. This report, by sanitary engineers Ruth Langsner & Associates ("Langsner Report") was received by the Board in January 2005. The Langsner Report recommended that properties requiring new sewers pay a charge, computed in accordance with Langsner's estimates, and those properties with existing sewers would not be charged. The Board accepted the Langsner report by Resolution No. 0522209, on June 2, 2005. In relevant part, Resolution No. 0522209 approved new connection/tap-in fees. The resolution provided in part:

> WHEREAS, in order to preserve and promote the public health and welfare, this Board has previously established County Sewer District No. 14, adopted a general plan for the sewerage of that District and constructed a system of sanitary facilities therein and may from time to time authorize the construction of extensions of and improvements to that system (such system, together with any extensions and improvements thereto, the "System"); and

WHEREAS, the County will finance the costs of construction of the Improvements, in part, by the incurrence of intergovernmental loans to be paid by the application of available revenues of the System; and

WHEREAS, the County has financed and will finance the costs if such construction, in part, by issuance of general obligation securities paid or to be paid from special assessments levied against the benefitted properties in proportion to the benefits conferred and, in part, by the issuance of general obligation securities or the incurrence of intergovernmental loans * * * ; and

WHEREAS, this Board is authorized by the pertinent provisions of Section 6117.02 of the Revised Code to establish reasonable charges for the privilege of connecting to the sanitary facilities of the District and the terms upon which those charges may be paid; and

* * *

WHEREAS, as an essential part of the County's program for the construction of extensions of and improvements and additions to the System, this Board has determined that it is necessary to revise its charges for the privilege of connecting properties to the System and to include additional charges for connecting properties with respect to which appropriate assessments have not been levied, with such connection charges to be determined, in accordance with the recommendations set forth in the Report, so as to reimburse the County for reasonable costs of inspection and other administrative costs related to the making of connections to the System, to provide additional funds required for the purposes of the System and to distribute as fairly and equitably as possible among the users of the System the cost of providing the System; and

WHEREAS, the revised connection charges to be established herein, in the judgment of this Board, are reasonable and proper, having due regard to all relevant circumstances and condition[.]

{¶6} Within Resolution No. 0522209, the Board implemented a fee schedule in order to pay the costs of the system. The new fees included: (1) "Permit and/or Inspection Fees"; (2) "Intercepting or Trunk Sewer Connection Fees," to be charged to everyone in the district according to the "use benefits" received; and (3) "Local Sewer Connection Fees," for those parcels where the county was required to install a local line to serve the property.

{¶7} The record further demonstrates that in December 2010, appellees paid sewer connection/tap-in fees to the city of North Olmsted in order to tie each subject parcel into the sewers. On December 16, 2010, appellees paid sewer connection fees of $2,453 and a $750 security deposit to North Olmsted for permanent parcel no. 264-12-010. On December 17, 2010, appellees paid sewer connection fees of $9,812 and a $750 security deposit to North Olmsted for permanent parcel no. 264-12-006. On December 22, 2011, after appellees built an expansion to this property a year later, appellees paid additional sewer connection/tap-in fees of $7,359 and a $750 security deposit to North Olmsted for permanent parcel no. 264-12-006.

{¶8} After appellees paid the above-described sewer connection/tap-in fee payments to the city of North Olmsted, the county required the additional payments from appellees in accordance with Resolution No. 0522209. Appellees' counsel submitted a letter to the county on December 13, 2010, indicating that appellees were making the additional payments under protest. In relevant part, appellees' counsel asserted that the requirement of additional payment was not proportionate to the benefit received, were not proportionate to the burden placed on the county's system, were not reasonable, and were contrary to the county's authority set forth in R.C. Chapter 6117. After lodging this protest, appellees paid the county $55,964 for a sewer connection/tap-in fee for permanent parcel no. 264-12-006, and then paid an additional $58,542, advanced through a tap-in fee mortgage and promissory note for the addition and expansion to this parcel. For permanent parcel no. 264-12-007, appellees paid a connection/tap-in fee to the county in the amount of $10,114, and for permanent parcel no. 264-12-010, appellees paid a connection/tap-in fee to the county of $11,360.

{¶9} On October 5, 2011, this court issued a decision in *Cook Rd. Invest., L.L.C. v. Bd. of Cuyahoga Cty. Commrs.*, 194 Ohio App.3d 562, 2011-Ohio-2151, 957 N.E.2d 330 (8th Dist.), a

related matter that contested the county's connection/tap-in "trunk sewer fees" paid by a District 14 property owner, Cook L.L.C., under protest in connection with a planned 120-unit senior apartment complex. The property owner, "The Arbors," argued on appeal that the county's trunk sewer fees were an unconstitutional taking because it had already paid a connection/tap-in fee to the city of North Olmsted.

{¶10} This court found the argument to be well taken and stated:

> As previously explained, the Ohio Supreme Court held in *Huber* [*v. Denger*, 38 Ohio St.3d 162, 527 N.E.2d 802 (1988)] that R.C. Chapter 6117 authorizes a board of county commissioners to allocate the cost of a new facility among all residents regardless of benefit. *Huber* at syllabus. However, the facts of the instant case are unique in that Cuyahoga County has a valid agreement with the city of North Olmsted regarding the collection of connection fees from users in the Service Area because the North Olmsted sanitary sewer system provides sanitary sewer services to the Service Area of District 14. * * *
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> * * *
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> Here, Cook paid connection fees to North Olmsted because The Arbors is located in the Service Area of District 14, which is governed by the Sewer Service Agreement between Cuyahoga County and North Olmsted. Under Section 2.02 of this agreement, the Board has agreed that North Olmsted will collect connection fees from users in the Service Area "as the agent of the County prior to the issuance of a permit in accordance with subsection 2.01." * * *
>
> Under the Sewer Service Agreement, the Board is not entitled to collect sewer connection fees from users in the Service Area because North Olmsted collects the fees "as the agent of the County." Having already paid the required sewer connection fees, in the amount of $260,180 to North Olmsted as the agent for the county, the county's taking of an additional $254,380.29 is arbitrary and unreasonable. Accordingly, we find the $254,380.29 that Cook paid to Cuyahoga County for connection fees was an unconstitutional taking of its property.

{¶11} On December 16, 2011, after this court issued its decision in *Cook*, appellees filed a complaint for declaratory judgment against the Cuyahoga County Executive, to challenge the county's sewer connection/tap-in fees. In their amended complaint for relief, appellees asserted that the county's demand for additional payment constituted an unlawful taking of property in violation of their constitutional rights, and they prayed for restitution of the fees paid to the county as well as reasonable attorney fees and other "sanctions."

{¶12} The parties filed motions for summary judgment. Appellees maintained that they are entitled to judgment as a matter of law pursuant to the decision in *Cook.* In opposition, the county asserted that the fee paid to North Olmsted is based upon that city's costs in expanding its sewage treatment plant, and the fee charged by the county is for the sewer. According to the county, "the sewer crossing the plaintiff's property frontage was constructed as part of the Cook Rd./Stearns Rd. and Mackenzie Road Sanitary Sewer Extension projects and was constructed entirely by Cuyahoga County." The county further asserted that "North Olmsted has no maintenance responsibility and did not contribute to the sewers installation." The county also argued that the *Cook* decision is not applicable because in that case, the sewers were not installed by the county and the sewers were connected directly to the North Olmsted system and not to a county sewer, whereas in this matter, appellee connected to a sewer owned by the county. The county further argued that the charges bear a direct relationship to the land use, are calculated based upon the county's actual capital costs, and are proper pursuant to R.C. Chapter 6117.

{¶13} On April 5, 2013, the trial court denied the county's motion for summary judgment and granted appellees' motion for summary judgment. In a decision explaining its rationale, the court wrote:

> The court, having considered all the evidence and having construed the evidence most strongly in favor of the non-moving party, determines that reasonable minds can come to but one conclusion, that there are no genuine issues of material fact, and that plaintiffs are entitled to judgment as a matter of law. Plaintiffs' motion for summary judgment (filed 12/19/2012) is granted. Pursuant to the Eighth District's holding in [*Cook Rd. Invest., L.L.C.*], 194 Ohio App 3d 562, 2011-Ohio-2151 (8th Dist.), this Court finds that: 1. Plaintiffs are entitled to recover from defendant the full amount of the sewer tap-in/connection fees paid by the plaintiffs to the defendant; that 2. Plaintiffs are entitled to either the cancellation or return to them of the "tap-in fee cognovit [promissory] note" they were forced to make payable to defendant; and that 3. Defendant is hereby ordered to file with the fiscal officer the appropriate release of the "tap-in fee mortgage" that the plaintiffs conveyed to defendant. Plaintiffs move the court for payment of interest on both the tap-in fees paid and the economic value of the amount encumbered by the tap-in fee cognovit [promissory] note. Plaintiffs also move for reimbursement of the attorney fees incurred by them in the defense of this action. The court sets a hearing date on plaintiffs' requests. Hearing set for 04/25/2013 at 02:15 pm. The court encourages the parties to resolve any outstanding issues prior to the hearing.

{¶14} The trial court ordered the parties to submit briefs on the issue of attorney fees. In a written opinion filed on July 1, 2014, the trial court noted that the parties had "waived a hearing on these issues, requesting that the Court render its decision on the briefs alone." The court then

awarded appellees damages, attorney fees, and other costs pursuant to R.C. 2323.51, the frivolous conduct statute, and Civ.R. 11. The court set forth its award as follows:

> Final judgment is entered for plaintiffs and against defendant in the principal judgment amount of $77,439.32, plus prejudgment interest in the amount of $7,055.28 through 10/31/2013, including an additional $6.36 for each day beginning on 11/01/2013 and ending on the date of this order, plus postjudgment interest at the statutory rate from the date of this order.
>
> The court also awards plaintiffs real estate tax payments they made on the promissory note in the amount of $6,122.16. The court further awards plaintiffs their attorney fees in the amount of $29,555.05. Court costs to be paid by defendant.

{¶15} The county now appeals and assigns the following errors for our review:

Assignment of Error One

> The court erred in ordering a refund as the fees charged were constitutionally permitted connection fees.

Assignment of Error Two

> The trial court erred as the Appellees voluntarily paid the fees and received a benefit and therefore did not properly pay the fees under protest.

Assignment of Error Three

> The trial court erred in granting prejudgment interest and attorney fees without conducting a hearing and not finding that the motion is untimely filed.

Standard of Review

{¶16} A reviewing court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241; *Mitnaul v. Fairmount Presbyterian Church*, 149 Ohio App.3d 769, 2002-Ohio-5833, 778 N.E.2d 1093 (8th Dist.). Therefore, this court applies the same standard as the trial court, viewing the facts in the

case in the light most favorable to the nonmoving party and resolving any doubt in favor of the nonmoving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 467 N.E.2d 1378 (6th Dist.1983).

{¶17} Pursuant to Civ.R. 56(C), summary judgment is proper if:

> (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

{¶18} Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), the nonmoving party must set forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 1996-Ohio-211, 663 N.E.2d 639.

Sewer Connection Fees

{¶19} In its first assignment of error, the county asserts that the trial court erred in failing to recognize that the charges set forth in Resolution No. 0522209 are reasonable sewer connection charges are proper under R.C. Chapter 6117.

{¶20} Connection fees for sewer installations are governed by R.C. 6117.01 et seq. R.C. 6117.02 provides:

> (A) The board of county commissioners shall fix reasonable rates, including penalties for late payments, for the use, or the availability for use, of the sanitary facilities of a sewer district to be paid by every person and public agency whose premises are served, or capable of being served, by a connection directly or indirectly to those facilities when those facilities are owned or operated by the county and may change the rates from time to time as it considers advisable. When the sanitary facilities to be used by the county are owned by another public

> agency or person, the schedule of rates to be charged by the public agency or person for the use of the facilities by the county, or the formula or other procedure for their determination, shall be approved by the board at the time it enters into a contract for that use.
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> * * *
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> (D) The board may fix reasonable rates and charges, including connection charges and penalties for late payments, to be paid by any person or public agency owning or having possession or control of any properties that are connected with, capable of being served by, or otherwise served directly or indirectly by, drainage facilities owned or operated by or under the jurisdiction of the county, including, but not limited to, properties requiring, or lying within an area of the district requiring, in the judgment of the board, the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the district, and may change those rates and charges from time to time as it considers advisable.

{¶21} In *Cook*, this court held that the sewer connection fees demanded by the county, after the property owner had already paid sewer connection fees to the city of North Olmsted, could be required under R.C. Chapter 6117, because that chapter "authorizes counties to allocate the cost of a sewer system among all residents of the district even if some of those residents do not directly benefit from the system." *Id*. at ¶ 17, citing to *Huber v. Denger*, 38 Ohio St.3d 162, 165, 527 N.E.2d 802 (1988) (holding that pursuant to R.C. 6117.02, a county may assess a ratepayer for a treatment plant servicing another part of the district). This court concluded, however, that under Section 2.02 of the service agreement, the Board has agreed that North Olmsted will collect connection fees from users in the service area "as the agent of the County prior to the issuance of a permit in accordance with subsection 2.01." Therefore, the county's additional sewer connection fee was arbitrary and unreasonable, and constituted an

unconstitutional taking because the property owner had already paid the required sewer connection fees to North Olmsted as the agent for the county.

{¶22} The county insists that *Cook* is distinguishable from this matter because the sewers at issue in the *Cook* case were not installed by the county, were installed at the property owner's cost, and were connected directly to the North Olmsted system and not the county system. The county also notes that "the only limitation on this power was that the charges must be fair and reasonable and bear a substantial relationship to the per unit cost of providing the sewer service," citing *Amherst Builders Assn. v. Amherst*, 61 Ohio St.2d 345, 350, 402 N.E.2d 1181 (1980). We conclude that the contrasts offered by the county are distinctions without a difference. The salient fact in *Cook* is that "the property owner had already paid the required sewer connection fees to North Olmsted as the agent for the county," therefore, the county's requirement of additional fees was "arbitrary and unreasonable" and did not bear a reasonable relationship to the to the public health, safety, morals, or general welfare. *Id*. at ¶ 23. Having already paid the fee to an agent of the county, the property owners cannot be required to again pay sewer connection fees directly to the county. Moreover, the county's reliance upon *State ex rel. Stoeckle v. Jones*, 161 Ohio St. 391, 119 N.E.2d 834 (1954), is also unavailing because that case involved the landowner's payment of a special assessment for construction of a sewer system and a $300 connection/tap-in charge for subsequently improved property. It did not involve a duplication of charges for sewer connection.

{¶23} The first assignment of error lacks merit under the clear language of *Cook.*

Fees Paid Under Protest

{¶24} For its second assignment of error, the county asserts that appellees did not follow the procedure set forth in R.C. 2723.03 for paying the sewer connection charge under protest.

{¶25} In *Cook*, this court rejected this same argument and stated:

The Board argues that Cook failed to follow the proper procedure set forth in R.C. 2723.03 for paying fees "under protest," and that such failure results in forfeiture of those fees. We disagree.

First, the Board asserts that connection fees are assessments. In order to maintain an action for the recovery of taxes or assessments, R.C. 2723.03 requires a plaintiff to allege and prove that he filed a written protest and notice of intention to sue at the time of paying the tax or assessment. The Ohio Supreme Court has held that these requirements are mandatory. *Ryan v. Tracy*, [6 Ohio St.3d 363, 365, 453 N.E.2d 661 (1983)]. The failure to comply with these requirements bars a later lawsuit by a taxpayer. *Id.* at 365.

However, the Ohio Supreme Court has determined that connection fees, also called "tap-in fees," charged for the privilege of connecting to a sanitary sewer district are not assessments. [*Amherst*, 61 Ohio St.2d 345, 350, 402 N.E.2d 1181 (1980)]. The *Amherst* Court explained:

"The court below determined that the tap-in charge was an 'assessment' as that term is used in R.C. 2723.03, so that appellant's failure to file a written protest with its payment of the fees precluded recovery of the fees, even if it had prevailed in having the ordinance invalidated. This conclusion disregards the fact that an assessment is normally levied against all property in the service area, unimproved as well as improved, while this fee is only imposed when a new user desires to connect to the sewer system.

In *State ex rel. Stoeckle* [*v. Jones*], 161 Ohio St. 391, 119 N.E.2d 834), at page 393, 119 N.E.2d at page 836, this court recognized this distinction, stating that 'the charge is not in fact a second assessment but * * * is a charge for permission to connect with the sewer * * *.' *See also State ex rel. Gordon v. Taylor* (1948), 149 Ohio St. 427, 434, 79 N.E.2d 127, declaring that " * * * it is well established that charges for sewer services * * * are neither taxes nor assessments.' Thus we find the provisions of R.C. 2723.03 to be inapplicable to this action."

Here, users in District 14 are charged connection fees when they apply to connect to the sanitary sewer system. Those in the district who have already paid connection fees are not charged. Only users connecting to the system are charged at the time of connection. Following *Amherst*, we find that the connection fees at issue here are neither taxes nor assessments and that the strict procedural

> requirements of R.C. 2723.03 for paying fees "under protest" do not apply. Having determined that the county's requiring additional connection fees in the amount of $254,380.29 was an unconstitutional taking, Cook is entitled to a refund of those fees.

Id. at ¶ 26-27.

{¶26} By application of the same reasoning set forth in *Cook*, we find that the connection fees at issue here are neither taxes nor assessments, and therefore, the strict procedural requirements of R.C. 2723.03 for paying fees "under protest" do not apply to this matter. In any event, appellees clearly "advised the county of their protest of the fees, at the time of paying such taxes or assessments, filed a written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof, together with notice of his intention to sue," all as required within R.C. 2723.03. These documents were appended to the original and amended complaint. Accordingly, appellees clearly preserved their rights herein.

{¶27} The second assignment of error therefore lacks merit.

Prejudgment Interest and Attorney Fees

{¶28} Appellant next asserts that the trial court erred in granting the motion for prejudgment interest and attorney fees because the trial court did not hold a hearing and the motion was untimely.

{¶29} With regard to the trial court's failure to hold a hearing, we note that in *Pruszynski v. Reeves*, 117 Ohio St.3d 92, 95, 2008-Ohio-510, 881 N.E.2d 1230, ¶ 12-13, the Ohio Supreme Court held that a trial court has discretion to determine the type of hearing to hold in connection with a motion for prejudgment interest. The court stated:

> Although the court may rely in part on its own participation during the pretrial and trial proceedings to aid in its ruling on the motion, *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 34, 2000-Ohio-7, 734 N.E.2d 782, the parties have the right to a date certain for an evidentiary hearing. The trial court, however, has the discretion to determine the nature of the evidentiary hearing to be held, as it is in the best position to select the kind of evidence necessary to make the findings required by R.C. 1343.03(C) and determine whether an award of prejudgment interest is proper.
>
> Having conducted case-management conferences, pretrials, settlement conferences, and the trial, a court in some instances may decide that presentation of evidence by affidavits, depositions, and other documents is sufficient; at other times, the trial court may decide that an oral evidentiary hearing is more appropriate.

{¶30} In this matter, the trial court's written opinion, filed on July 1, 2014, clearly indicates that the parties consented to a hearing on briefs because it states:

> The Court is aware of the mandate that it conduct a hearing with respect to attorneys fees. However, it is noted that during the hearing held on November 26, 2013, the parties waived a hearing on these issues, requesting that the Court render its Decision on the Briefs alone.

{¶31} The county now disputes that waiver, but there is no evidence of any objection below when the court cancelled the hearing, and requested briefs on this issue. In journal entries filed prior to the court's final ruling, the court requested additional information concerning the parties' "evidence," see May 5, 2014 entry in which the court ordered:

> Upon review of Plaintiffs' evidence, the court notes that there is a discrepancy as to the Amount of payment (paid December 16, 2010). This discrepancy affects all interest Calculations based upon it. Plaintiffs shall provide the court with a

corrected version by 05/09/2014. The court will not consider increased attorney fees resulting from these corrections.

{¶32} Likewise on May 27, 2014, the court issued an entry that ordered:

The court has twice ordered Plaintiffs to provide the court with a corrected version of the interest calculations for payment if the court does not receive plaintiffs' recalculated numbers by 06/13/2014, the court will not consider prejudgment interest on this payment.

{¶33} In accordance with the foregoing, the trial court plainly advised the parties, without objection, that the matter would be considered on briefs, and there was no objection when the court issued its decision on July 1, 2014. *Accord Pruszynski*, 117 Ohio St.3d 92, 95, 2008-Ohio-510, 881 N.E.2d 1230; *Clifford v. Aleshire*, 5th Dist. Licking No. 2012-CA-76, 2013-Ohio-2591, ¶14 (trial court had authority to either set a date certain for the submission of evidentiary materials or an oral evidentiary hearing on appellants' motion for prejudgment interest).

{¶34} As to the untimeliness claim, the county insists that the motion for prejudgment interest was not filed within seven days of the court's award of judgment. The current version of R.C. 1343.03 does not contain this deadline. In any event, the court's April 5, 2013 order awarding appellees summary judgment indicates that the motion for prejudgment interest was timely because it provides:

Plaintiffs move the court for payment of interest on both the tap-in fees paid and the economic value of the amount encumbered by the tap-in fee cognovit [promissory] note. Plaintiffs also move for reimbursement of the attorney fees incurred by them in the defense of this action. The court sets a hearing date on

plaintiffs' requests. Hearing set for 04/25/2013 at 2:15 p.m. The court encourages the parties to resolve any outstanding issues prior to the hearing. Court cost assessed to the defendant(s). Notice issued.

{¶35} In accordance with the foregoing, there is no basis upon which to conclude that the request for prejudgment interest was untimely.

{¶36} The third assignment of error lacks merit.

{¶37} Affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR