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STATE OF MICHIGAN

COURT OF APPEALS

WOODWARD MANCHESTER COMPANY, LLC, and WOODWARD HIGHLAND PARK, LLC, Plaintiffs/Counterdefendants-Appellees,	UNPUBLISHED October 23, 2026 9:06 AM
v	No. 375455 Wayne Circuit Court
CITY OF HIGHLAND PARK, Defendant/Counterplaintiff-Appellant,	LC No. 23-008291-CZ
and OAKLAND PROPERTIES 2, LLC, Counterdefendant.	

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

In this interlocutory appeal, the city of Highland Park appeals by leave granted[1] the trial court's order denying the city's motion for summary disposition under MCR 2.116(C)(10) and denying the city's motion to strike plaintiffs' expert witnesses. We reverse in part, affirm in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

This suit is one of many lawsuits challenging the city's municipal utility charges. The city operates a combined sewer system, meaning that both the stormwater runoff and sanitary sewage are transported in the same pipe. There are three main components of the city's sewer flow: (1)

[1] *Woodward Manchester Co LLC v Highland Park*, unpublished order of the Court of Appeals, entered July 31, 2025 (Docket No. 375455).

sanitary sewage; (2) stormwater, i.e., water that enters the sewer system after rain or snow events; and (3) dry weather inflow and infiltration (DWII), i.e., groundwater or treated water that enters the sewer system through cracks and poor joints in the pipes or manhole covers. The combined sewage is transported from the city sewer system to a regional wastewater treatment facility owned by nonparty Great Lakes Water Authority (GLWA). The city is billed for the cost of treatment based on the estimated wastewater volume sent to GLWA.

The city charges individual property owners a stormwater charge under the city's Stormwater Ordinance enacted in 2016, which reads, in relevant part:

> City of Highland Park parcel owners and governmental agencies with right-of-way jurisdiction within the city shall be assessed monthly charges on the monthly water and sewer bills from the City of Highland Park Water and Sewer Department. The public right-of-way rate shall be determined by the City of Highland Park Water Director. . . .
>
> Industrial, commercial, and residential-exempt property owners shall be assessed a stormwater charge based on the size of the parcel and the amounts of the pavement, building, and vegetive cover which includes grass, shrubs, trees, and other general landscaping, referred to as the properties [sic] percentage of imperviousness. [Highland Park Municipal Ordinance, § 1045.06.]

The city's calculation of the stormwater charge was intended to correspond to the amount of runoff each individual parcel contributes to the sewer flow. Each parcel's runoff was calculated by determining the parcel's acreage that is "impervious," meaning that the area contains a building or nonporous surface that prevents precipitation or stormwater runoff from entering the soil. Stormwater that falls on impervious surfaces, such as asphalt or concrete, generally enters the combined sewer system where it mixes with sewage and must be treated by the GLWA. In contrast, pervious areas, which include natural vegetation, grass, and landscaping, allow stormwater to infiltrate the soil, nourish the plants, and remain a part of the ecosystem. Because properties that have a high percentage of impervious surfaces contribute more to the overall sewer flow, owners of these parcels are assessed higher stormwater charges under the city's rate formula.

In addition to the stormwater charges discussed above, the Highland Park Water Department also assesses two additional fees relevant to the present appeal. The first is a readiness-to-serve charge, which is imposed to recover certain fixed costs incurred by the city in making the water and sewer systems available. Additionally, the city imposes an industrial waste control charge to pass through certain charges from GLWA.

Plaintiffs are the owners of approximately 82 acres of commercial real estate located within the city. The city began billing plaintiffs for the stormwater charge after the enactment of the stormwater ordinance in 2016. In 2019, plaintiffs filed a lawsuit challenging the legality of the stormwater charge under the Headlee Amendment, Const 1963, art 9, §§ 25 to 34, and challenging the reasonableness of the charge because the charge was not "tethered to any reasonable rate-making practice." The parties ultimately agreed to settle the 2019 litigation in October 2019, and the parties released all claims arising out of the city's imposition of the stormwater charge through June 30, 2020.

Following the 2019 litigation, the city alleged that plaintiffs did not pay the stormwater charge. Plaintiffs filed the instant suit in June 2023, broadly claiming that the stormwater charge was an unlawful tax imposed in violation of the Headlee Amendment and challenging all stormwater charges imposed after the settlement of the 2019 litigation. The city moved for summary disposition in lieu of an answer under MCR 2.116(C)(7) and (C)(8). The trial court granted the city's motion to the extent that the complaint challenged the stormwater charges imposed before June 28, 2022, on the basis of the one-year statute of limitations.

Following the court's decision, plaintiffs amended their complaint. In the amended complaint, plaintiffs challenged the lawfulness of the stormwater charges imposed after June 28, 2022, under the Headlee Amendment (Count I), and plaintiff added claims for unjust enrichment under MCL 141.91 (Count II), unjust enrichment on the basis of the unreasonable rate-making formula used to assess the stormwater charge (Count III), and unjust enrichment under the city's charter (Count IV). Plaintiffs also sought declaratory judgment regarding any liens imposed by operation of law because of unpaid stormwater charges (Count V).

The city once again moved for partial summary disposition in lieu of an answer, this time under MCR 2.116(C)(8) and (C)(10), arguing that plaintiffs added the three claims for unjust enrichment (Counts II through IV) in an attempt to circumvent the one-year statute of limitations and that the city had not been unjustly enriched as a matter of law. The trial court ultimately granted the city's motion for summary disposition and dismissed Count III in its entirety. The court also granted the motion for summary disposition of Counts II (unjust enrichment under MCL 141.91) and IV (unjust enrichment under the city's charter) only to the extent that plaintiffs sought injunctive relief. The court denied the motion in all other respects.

While the city's second motion for summary disposition was pending, the city filed a counterclaim against plaintiffs and Oakland Properties 2, LLC (collectively, counterdefendants).[2] The counterclaim alleged that counterdefendants failed to pay the stormwater charges that were due under the city's stormwater ordinance (Count I) and that counterdefendants failed to pay utility charges for water and sanitary sewer services in violation of the city's water and sewer ordinance (Count II).

In September 2024, the city moved for summary disposition a third time. The city pointed to the presumption under Michigan law that municipal utility charges are reasonable and argued that plaintiffs bore a heavy burden of rebutting the presumption by showing that improper expenses were included in the charges and that the charges, viewed as a whole, were excessive in relation to the service provided. Because plaintiffs had not retained an expert or conducted a comprehensive analysis comparing the charges to the cost of services, plaintiffs could not meet this burden. In support of their motion, the city presented an expert report authored by Mark Beauchamp, the president of Utility Financial Solutions, which concluded that the city's stormwater changes were not enough to cover the cost of services provided. In other words, the city's stormwater charges should have been significantly higher than they were. The city also

[2] We believe that Oakland Properties 2, LLC, is more accurately described as a third-party defendant but we use the labels used by the parties in the lower court proceedings.

argued that it was entitled to summary disposition in its favor of the counterclaims because counterdefendants had been receiving the benefits of the city's services without paying for them.

Plaintiffs opposed the motion. They argued that the stormwater charges were illegal because they were improper taxes imposed in violation of the Headlee Amendment and MCL 141.91, and that even if the charges were not taxes, they were still unreasonable and therefore illegal. Plaintiffs contended that the stormwater charge was grossly overstated because the city sought to improperly recover DWII costs through the stormwater charges. Plaintiffs also argued that the city's stormwater charge was not reasonable because the city did not charge itself for the stormwater attributable to the city's streets and roads even though the city's ordinances required the city to do so. Finally, the stormwater charge was inflated because the city had not been paying GLWA the full amount billed.

Importantly, plaintiffs relied on the expert report and findings of John Damico, a consultant with Environmental Rate Consultants, Inc. Damico concluded that the stormwater charges imposed by the city were arbitrary, capricious, and unreasonable because the city included the costs necessary to treat and dispose of DWII flows in the stormwater charge. Additionally, plaintiffs presented the affidavit of Michael D. Pakter, of Gould & Pakter Associates, LLC, which purported to determine the amount the city had overcharged plaintiffs for the stormwater charge. The city challenged the admissibility of plaintiffs' experts in its reply and also separately moved to strike Pakter and Damico as witnesses because they were not timely disclosed.

The court heard oral argument regarding the city's motion for summary disposition on two separate dates. At the second hearing, the court denied the city's motion to strike plaintiffs' expert witnesses because the experts needed methodology documents that were not timely provided by the city to be able to give their opinions. The court also denied the city's motion for summary disposition, holding that "the question of reasonableness would go to the jury." This appeal followed.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is warranted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*. If the moving party meets its initial burden, "[t]he burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). When the nonmoving party has the burden of proof at trial, it must submit evidence that demonstrates a genuine issue of material fact exists and may not rest on mere allegations or denials in the pleadings. *Id*. at 362-363. "If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Id*. at 363. In other words, "[i]f no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, whether

summary disposition is proper is a question of law for the Court." *Miller Estate v Angels' Place, Inc*, 334 Mich App 325, 330; 964 NW2d 839 (2020).

Additionally, "[t]his Court . . . reviews de novo the proper interpretation of statutes and ordinances, and the legal question of whether a municipal utility charge constitutes an unlawful exaction under § 31 of the Headlee Amendment." *Youmans v Bloomfield Charter Twp*, 336 Mich App 161, 211; 969 NW2d 570 (2021) (cleaned up).

Finally, we review a trial court's decision to sanction a party for a discovery violation for an abuse of discretion. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 301; 14 NW3d 472 (2023). See also *Kalaj v Khan*, 295 Mich App 420, 425; 820 NW2d 223 (2012) (noting that this Court reviews a trial court's decision regarding a motion to strike for an abuse of discretion). A trial court abuses its discretion when its decision falls outside of the range of reasonable or principled outcomes. *Tolas*, 347 Mich App at 301.

III. STORMWATER CHARGE

The city argues that the trial court erred by declining to decide the issue of whether the stormwater charge is an unlawful tax under the Headlee Amendment and whether the charge is unreasonable as a matter of law, instead holding that a jury would decide this issue. Because we agree that plaintiffs failed to present sufficient evidence to overcome the presumptions of reasonableness and legality, we agree that the trial court erred by denying the city's motion for summary disposition.

A. HEADLEE AMENDMENT

The Headlee Amendment was adopted by referendum effective in 1978 as part of a nationwide " 'taxpayer revolt' in which taxpayers were attempting to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and the state level." *Youmans*, 366 Mich App at 225 (cleaned up). Consequently, the Headlee Amendment "imposes on state and local government a fairly complex system of revenue and tax limits." *Id*. (cleaned up).

At issue here is § 31 of the Headlee Amendment, which provides, in pertinent part:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const 1963, art 9, § 31.]

This provision "prohibits units of local government from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit's electorate." *Youmans*, 336 Mich App at 225-226 (cleaned up). Although a new tax would violate the Headlee Amendment unless it receives the electorate's approval, "a charge that constitutes a user fee does not, and the party challenging a given municipal utility charge under § 31 bears the burden of establishing the unconstitutionality of the charge at issue." *Id*. at 226 (cleaned up).

There is no "bright-line test for distinguishing between a valid user fee and a tax that violates the Headlee Amendment." *Bolt v Lansing*, 459 Mich 152, 160; 587 NW2d 264 (1998). However, under *Bolt*, courts apply three key criteria to distinguish between a tax and a user fee:

> (1) a user fee must serve a regulatory purpose rather than a revenue-raising purpose; (2) user fees must be proportionate to the necessary costs of the service; and (3) a user fee is voluntary in that users are able to refuse or limit their use of the commodity or service. [*Shaw v Dearborn*, 329 Mich App 640, 653; 944 NW2d 153 (2019) (cleaned up).]

These criteria must not be considered in isolation but instead evaluated in their totality "such that a weakness in one area would not necessarily mandate a finding that the charge is not a fee." *Id*. (cleaned up).

As a preliminary matter, the parties have identified the correct legal standard, i.e., the *Bolt* criteria, that must be used to distinguish between a tax and a user fee under the Headlee Amendment. The trial court, however, did not meaningfully engage with these criteria or make findings as to how the criteria applied to the stormwater charge at issue in this case. Instead, the trial court determined that the issue should be decided by the jury. This determination is problematic for two reasons. First, the trial court did not correctly identify that the issue of whether the stormwater charge is a tax or a user fee is a question of law. See *Platt Convenience, Inc v Ann Arbor*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 359013); slip op at 10. Second, the trial court failed to recognize that there is no right to a jury trial for plaintiffs' Headlee Amendment claim. *Telford v Michigan*, 327 Mich App 195, 201; 933 NW2d 347 (2019).

In general, "remand is proper when a trial court applies an incorrect standard or when the record is insufficient to allow meaningful appellate review[.]" *Lehman Investment Co, LLC v Clarkston*, 347 Mich App 736, 754; 16 NW3d 584 (2023). Here, the trial court did not address the *Bolt* factors, and it did not meaningfully engage with the evidence put forth by the parties to determine whether plaintiffs presented sufficient evidence to overcome the presumption that the stormwater charge is reasonable and lawful. However, because we review the issue de novo, remand is not necessary because we may examine the issue without any deference to the trial court's determination of the issue (or lack thereof). See *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019) ("De novo review means that we review the legal issue independently, without required deference to the courts below.").

1. REGULATORY PURPOSE

First, the city argues that plaintiffs failed to demonstrate that the stormwater charges at issue had a revenue-raising purpose rather than a regulatory purpose under *Bolt*. In general, a regulatory fee seeks to defray the costs associated with a regulatory activity. *Bolt*, 459 Mich at 163-164. If, however, the charge is instead designed to fund public improvements unrelated to the direct and indirect costs of the regulatory activity, it constitutes a tax. *Id*. at 164.

"Generally speaking, it is beyond dispute that water and sewer rates serve the regulatory purpose of providing water and sewer services to ratepayers." *Platt*, ___ Mich App at ___; slip op at 14-15 (cleaned up). Indeed, "[t]he drainage of a city in the interest of the public health and

welfare is one of the most important purposes for which the police power can be exercised." *Drain Comm'r of Oakland Co v Royal Oak*, 306 Mich 124, 141; 10 NW2d 435 (1943) (cleaned up). In addition to drainage fees directly related to wastewater treatment, a user fee may also generate funds to pay for the maintenance and operation of the system without transforming the fee into a tax. *Shaw*, 329 Mich App at 666. "While a fee must serve a primary regulatory purpose, it can also raise money as long as it is in support of the underlying regulatory purpose." *Id*. (cleaned up). "Categorically, obligations arising out of administrative-agency regulations serve a regulatory purpose." *Youmans*, 336 Mich App at 228-229. Under *Bolt*, the court must analyze whether the disputed rates, as a whole, serve a valid regulatory purpose. *Id*. at 229. Importantly,

> it is not this Court's role to determine whether a municipal government has chosen the best, wisest, most efficient, or most fair system for funding a municipal improvement or service. This Court's role, rather, is to determine whether a particular charge imposed by a municipal government is a true user fee or a disguised tax. [*Shaw*, 329 Mich App at 668.]

Plaintiffs first contend that because the city is imposing the stormwater charge on ratepayers despite the fact that the city has not paid GLWA for the underlying wastewater treatment services the charges were designed to defray, the purpose of the charges is not regulatory, but revenue-raising. In support of their position, Pakter analyzed the purported overcharges to the city's ratepayers for the fiscal years 2021 and 2022 on the basis of two GLWA charges: (1) the full GLWA wholesale charge to the city and (2) the amount actually paid by the city to GLWA according to GLWA's records. Notably, the expert's analysis included many assumptions about the city's indirect costs, i.e., the non-GLWA costs:

> It is my understanding and I have assumed that the City's non-GLWA Retail Revenue Requirement expenses were not included in the City's Stormwater Charge Revenue requirement for FY [fiscal year] 2021 through 2024. However, for FY 2025, the City included $76,112.50 per month ($913,350 per year) in non-GLWA Retail Revenue Requirement expenses in the Stormwater Charge Revenue Requirement. I included this dollar amount of non-GLWA charges in my calculations for FY 2021 through FY 2024. Attributing 23% of the "non-GLWA Retail Revenue Requirement expenses["] sewer expenses to stormwater results in an annual cost of $210,071 in addition to the GLWA wholesale charges to bring the total maximum Stormwater Charge Revenue Requirement to $1,155,293.

However, this Court has observed that a plaintiff challenging a municipal utility charge under the Headlee Amendment bears the burden of overcoming two distinct presumptions: (1) the presumption of constitutionality, and (2) the presumption of reasonableness. *Platt*, ___ Mich App at ___; slip op at 18. Here, plaintiffs have failed to present sufficient evidence to overcome the first presumption, i.e., constitutionality, because they have failed to demonstrate that the city collected or seeks to collect revenue in excess of the actual costs of stormwater treatment, stormwater system maintenance and operation, or related revenue reserve funds. *Trahey v Inkster*, 311 Mich App 582, 597; 876 NW2d 582 (2015) (holding that a utility fee must be reasonably proportionate to the direct *and indirect costs* of providing the service). Plaintiffs rely on assumptions about the city's allowable indirect costs during the relevant time periods, and they extrapolate on the basis of data from the 2025 fiscal year, applying it to earlier periods. Plaintiffs'

reliance on GLWA's data and extrapolation fails to meet their burden under *Youmans* to provide "a comprehensive rate study—or some similar evidence demonstrating that the disputed rates excessively compensated the [city] for the related utility services" because plaintiffs are, at best, speculating about what the direct and indirect costs of those services were during the relevant time periods. *Youmans*, 336 Mich App at 220. Consequently, plaintiffs' arguments regarding third-party data and extrapolation are insufficient to meet their burden of demonstrating that the rates are designed to raise revenue and not defray the legitimate costs of stormwater treatment for the city's ratepayers.

Plaintiffs' arguments regarding DWII fail for the same reason. Specifically, plaintiffs allege that "GLWA has determined that total flows from the City to GLWA were about 20-23% stormwater." Additionally, plaintiffs rely on the data in a sewer volume summary that the city prepared for an earlier lawsuit in which the city estimated that DWII accounted for 50% of total sewer volume in 2019. Jarion Bradley, a senior project manager at Metro Consulting Associates who assists the city in setting water, sewer, and stormwater rates, testified the DWII estimate relied upon by plaintiffs "was only created for a specific case at the time" and that it was no longer used. However, plaintiffs' expert relies on this figure to conclude that "[t]he Revenue Requirement for Stormwater Charges imposed by the City is arbitrary, capricious and unreasonable because it includes amounts the City incurs to dispose and treat DWII flows." Again, plaintiffs bear the burden of overcoming the presumption of constitutionality, and they seek to demonstrate that the stormwater charge at issue has an improper, revenue-raising purpose. Under *Youmans*, plaintiffs may meet this burden with a comprehensive rate study or comparable evidence demonstrating that the disputed rates were excessive in light of the direct and indirect costs associated with stormwater treatment services. *Id*. Here, plaintiffs cannot meet this burden because they have not produced a cost study or similar evidence that would allow this Court to determine the indirect and direct costs of providing the services at issue. Accordingly, plaintiffs' argument regarding the inclusion of DWII costs is unpersuasive.

Finally, plaintiffs argue that the specific methodology employed by the city to calculate the stormwater charge lacks a significant element of regulation because it does not take into account several characteristics that plaintiffs believe should be considered. Specifically, the stormwater charges do not take into consideration the presence of pollutants on each parcel that contaminate the stormwater runoff, the difference in specific types of impervious surfaces, and whether the impervious areas connect to the drainage system, among other things. However, as this Court has observed, "[c]ourts typically afford great deference to municipal-ratemaking authorities." *Shaw*, 329 Mich App at 654. A municipal utility fee is "presumed reasonable unless it is facially or evidently so wholly out of proportion to the expense involved that it must be held to be a mere guise or subterfuge to obtain the increased revenue." *Id*. (cleaned up). The relative merits of the complex and technical components of the specific rate at issue are "better left to the discretion of the governmental body authorized to set rates," and courts will not intrude upon this legislative function absent clear evidence of illegal or improper expenses included in a municipal utility's rates. *Id*. (cleaned up). Here, plaintiffs ask the Court to envision a better rate methodology that takes into consideration additional factors, but "whether a municipality has chosen the best, wisest, most efficient, or most fair system for funding a municipal improvement or service" is not determinative of whether the charge is designed as regulatory in nature. *Id*. at 668. Plaintiffs' opinions that there are better or more accurate methods to measure how much stormwater runoff

a property contributes to the wastewater flows are therefore insufficient to demonstrate that the stormwater charges do not have a regulatory purpose.

In sum, on the basis of the evidence presented, plaintiffs failed to demonstrate that there was a material issue of fact that would have prevented the trial court from concluding as a matter of law that the stormwater charges at issue had a regulatory purpose rather than a revenue-raising purpose under *Bolt*.

2. PROPORTIONALITY

Next, the city contends that plaintiffs failed to meet their burden of demonstrating that the stormwater charge was not proportionate to the cost of service. If the charge is proportionate to the necessary cost of the service provided, it is more likely that the charge at issue is a user fee and not a tax. *Mackinaw Area Tourist Bureau, Inc v Mackinaw City*, 351 Mich App 413, 445; 35 NW3d 693 (2024).

As already discussed, municipal utility rates are presumed reasonable, and "the presumption of reasonableness regarding municipal utility rates is a 'pertinent' consideration when considering the second *Bolt* factor." *Youmans*, 336 Mich App at 226-227. However, the presumption "can be overcome by a proper showing of evidence." *Mackinaw Area Tourist Bureau*, 351 Mich App at 445 (cleaned up). "The proportionality of a charge is not a question of mathematic precision." *Id*. Rather, the presumption of reasonableness can be overcome if the fee "is facially or evidently so wholly out of proportion to the expense involved that it must be held to be a mere guise or subterfuge to obtain the increased revenue." *Shaw*, 329 Mich App at 654 (cleaned up).

Here, plaintiffs largely rely on the same evidence and arguments regarding the second *Bolt* criterion as they did in their arguments regarding the first *Bolt* criterion. Namely, they argue that the stormwater charges do not reflect the actual costs of use because the city impermissibly includes DWII costs in its stormwater costs and the city includes the GLWA wholesale charges in the cost requirement even though the city has only partially paid the wholesale charge during the relevant period. However, without a comprehensive rate study that would determine whether the disputed rates were proportional to the underlying costs, these arguments are speculative and cannot defeat the presumption of reasonableness. See *Youmans*, 336 Mich App at 220.

Plaintiffs also argue that the fact the city does not charge itself for stormwater runoff for its own rights-of-way as it is required by ordinance to do is evidence that the rate is not proportionate because the ratepayers must bear a disproportionate burden in paying the stormwater charge. Plaintiffs point to the city's stormwater ordinance, which provides:

> City of Highland Park parcel owners and governmental agencies with right-of-way jurisdiction within the city shall be assessed monthly charges on the monthly water and sewer bills from the City of Highland Park Water and Sewer Department. The public right-of-way rate shall be determined by the City of Highland Park Water Director. [Highland Park Municipal Ordinance, § 1045.06.]

Under this provision, the city requires that the state of Michigan and Wayne County pay stormwater charges for their rights-of-way located within the city. However, the city does not pay stormwater charges associated with its own rights-of-way.

In the lower court, the city maintained that it is not a governmental agency under the terms of the ordinance because it is a municipal corporation, unlike the Michigan Department of Transportation and the Wayne County Road Commission, which are governmental agencies and therefore subject to the charges. It does not appear that the term "governmental agency" is defined in the city stormwater ordinance. Highland Park Municipal Ordinance, § 1045.01. However, other provisions in the stormwater ordinance do not seem to limit the imposition of stormwater charges for public rights-of-way to governmental agencies. For example, each public right-of-way is required to have a stormwater assessment to determine the stormwater charge:

> As zoned by the City of Highland Park Water Department, *each public right-of-way* or industrial, commercial or residential-exempt2 parcel within the jurisdiction of the City of Highland Park shall have a stormwater assessment and exhibit completed for the purpose of determining a stormwater charge. [Highland Park Municipal Ordinance, § 1045.02 (emphasis added).]

Additionally, the ordinance that applies to a change of ownership of a public right-of-way is not limited to governmental agencies:

> Upon a change of ownership of *a public right-of-way holder* or industrial, commercial, residential and residential-exempt parcel owner, each new owner of *the public right-of-way* or industrial, commercial, residential and residential-exempt parcel, or any part thereof, shall comply with the drainage or stormwater assessment in place, until such time, the Water Director approves a revised or modification of the assessment. [Highland Park Municipal Ordinance, § 1045.05 (emphasis added).]

In general, "[w]hen interpreting an ordinance, courts are to give some deference to a municipality's interpretation." *Midwest Valve & Fitting Co v Detroit*, 347 Mich App 237, 256; 14 NW3d 826 (2023), aff'd on other grounds 516 Mich 909 (2024). Specifically, when an ordinance is ambiguous or capable or more than one reasonable interpretation, the fact that the municipal body or officer charged with administering the ordinance has consistently applied one interpretation over an extended period of time means that the court should give the interpretation considerable weight. *Macenas v Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989). But when an ordinance is clear and unambiguous, it must be enforced as written. *Kalinoff v Columbus Twp*, 214 Mich App 7, 11; 542 NW2d 276 (1995).

Here, the city's stormwater ordinance is ambiguous as to whether the city itself, a municipal corporation, is a governmental agency with right-of-way jurisdiction that must pay the stormwater charges assessed to the other governmental agencies. Bradley testified that the city has not assessed stormwater charges for its own streets and roads since at least July 2020. He further testified that the stormwater drainage cost associated with the city's streets and roads was "always assumed to be a shared cost among all users." This echoes the reasoning in *Platt*, in which this Court recently concluded that a plaintiff failed to demonstrate that Ann Arbor's stormwater

charges were disproportionate to the underlying costs of the services offered even though the city did not assess a stormwater charge against itself for its public streets and roads because of the benefits provided to the overall stormwater system. *Platt*, ___ Mich App at ___; slip op at 3, 21.

In sum, plaintiffs' arguments about the city's failure to pay stormwater charges for its own streets and roads are insufficient to overcome the presumption that the charges are reasonable when the city reasonably interprets its own ordinance to not require that it pay a stormwater charge for its roads. The city's stormwater ordinance is ambiguous as to whether the city is required to pay stormwater charges for its own streets and roads, and the city's interpretation of the ordinance is reasonable. Under Michigan Supreme Court precedent, we may give deference to a city's reasonable interpretation of its own ambiguous ordinance. *Macenas*, 433 Mich at 398.

Finally, plaintiffs argue that the stormwater charge is not proportionate because the ratepayers do not receive a particularized benefit that does not extend to people who do not pay the fee. In *Bolt*, the Supreme Court held that the stormwater service charge failed to satisfy the first and second criteria because, among other things, "the lack of correspondence between the charges and the benefit conferred demonstrates that the city has failed to differentiate any particularized benefits to property owners from the general benefits conferred on the public." *Bolt*, 459 Mich at 166. This Court later expounded on the "particularized benefit" analysis when it observed that "[a] true fee confers a benefit upon the particular person on whom it is imposed, whereas a tax confers a benefit on the general public." *Jackson Co v City of Jackson*, 302 Mich App 90, 108; 836 NW2d 903 (2013). However, the Court clarified that

> a regulatory fee may confer a benefit on both the general public and the particular individuals who pay the fee and still maintain its regulatory character, [but] a charge is not a regulatory fee in the first instance unless it is designed to confer a particularized benefit on the property owners who must pay the fee. [*Id*.]

Plaintiffs' argument regarding the lack of a particularized benefit was considered and rejected by this Court in *Mackinaw Area Tourist Bureau*, 351 Mich App at 444. There, the ratepayers argued that the increase in water and sewer rates that was designed to fund infrastructure improvements

> must serve a revenue-raising purpose because high-volume users in the tiered (or ascending) rate structure do not receive a greater corresponding benefit. High-volume users, plaintiffs say, will generate most of the new revenue under the increased water and sewer rates but "will not realize any greater benefit from the infrastructure improvements than any other member of the general public[.]" [*Id*.]

However, this Court rejected the argument because high-volume water and sewer system users burdened the system more, and therefore they would receive a greater benefit from the infrastructure improvements to the water and sewer systems than the general public. *Id*.

The same is true in this case. The city has established a rate structure that is designed to "equitably calculate runoff for each property owner contributing runoff to the combined sewer system and to fairly distribute charges accordingly for treatment of wastewater and the general maintenance and repair of the combined sewer system." Consequently, ratepayers with a greater

portion of impervious acreage, like plaintiffs, burden the system more and receive a greater benefit from the removal of more stormwater runoff from their properties, whereas ratepayers with a higher portion of pervious acreage rely on the stormwater removal system less because the stormwater on their properties is able to infiltrate the soil and recharge the groundwater. Plaintiffs do receive a particularized benefit from the stormwater charge because their stormwater removal needs are more acute than other members of the public. In the end, plaintiffs have not demonstrated that the rate methodology established by the city does not confer a particularized benefit on the users of the stormwater removal system with high amounts of impervious acreage who contribute higher volumes of wastewater to the system and thereby benefit more from its removal. Plaintiffs failed to demonstrate that there was a material issue of fact that would have prevented the trial court from concluding as a matter of law that the stormwater charges at issue were proportionate under *Bolt*.

3. VOLUNTARINESS

Finally, the third criterion in *Bolt* is the voluntariness of the charge. "One of the distinguishing factors of a tax is that it is compulsory by law, whereas payments of user fees are only compulsory for those who use the service, have the ability to choose how much of the service to use, and whether to use it at all." *Bolt*, 459 Mich at 167 (cleaned up). Here, the city concedes that the stormwater charge is effectively involuntary. However, "the lack of volition does not render a charge a tax, particularly where the other criteria indicate the challenged charge is a user fee and not a tax." *Wheeler v Shelby Charter Twp*, 265 Mich App 657, 666; 697 NW2d 180 (2005). When viewing the *Bolt* criteria as a whole, because the analysis regarding the first two criteria strongly indicates that the stormwater charge is a fee, the fact that the charge is not voluntary does not outweigh the countervailing factors and render the charge a tax. Consequently, even though this factor favors plaintiffs' argument that the stormwater charge is a tax, it was still insufficient to create a genuine issue of material fact that would have prevented the trial court from deciding, as a matter of law, that the stormwater charge was a fee and not a tax under the Headlee Amendment.

In sum, plaintiffs did not meet their burden of establishing that a genuine issue of material fact prevented the trial court from deciding, as a matter of law, that the stormwater charge is a fee and not a tax. Reversal is warranted.

B. REASONABLENESS

Plaintiffs argue that even if the stormwater charges are not taxes under the Headlee Amendment, the charges are still unlawful because they are unreasonable and therefore violate the city's charter and the common law. The city contends that the trial court erred by denying the city's motion for summary disposition because plaintiffs failed to present sufficient evidence to establish a genuine issue of material fact as to whether the city's stormwater charge is reasonable. We agree with the city.

In general, there is a presumption that the utility rates charged by a municipality are reasonable. *Youmans*, 336 Mich App at 214, 216. A ratepayer who seeks to challenge the reasonableness of a utility rate bears the burden of rebutting the presumption of reasonableness. *Id*. at 216. "[W]hile a utility fee must be reasonably proportionate to the direct and indirect costs

of providing the service for which the fee is charged, mathematic precision is not required." *Trahey*, 311 Mich App at 597. When a ratepayer fails to present sufficient evidence to rebut the presumption of reasonableness, summary disposition is warranted. *Platt*, ___ Mich App at ___; slip op at 18.

There are many recent examples of ratepayers challenging the reasonableness of municipal utility rates using several legal frameworks. For example, in *Trahey*, the plaintiff challenged the city of Inkster's water and sewer rates under the Inkster Charter and under a theory of unjust enrichment. *Trahey*, 311 Mich App at 588. The city charter provided that the city council had the power to fix "just and reasonable rates," but it did not provide any standards for determining whether the rates were just and reasonable. *Id*. at 594. This Court held that the determination of "reasonableness" is generally considered to be a question of fact. *Id*. Further, "Michigan courts have long recognized the principle that municipal utility rates are presumptively reasonable." *Id*.

> This presumption exists because "[c]ourts of law are ill-equipped to deal with the complex, technical processes required to evaluate the various cost factors and various methods of weighing those factors required in rate-making." However, the presumption of reasonableness may be overcome by a proper showing of evidence. The burden of proof is on the plaintiff to show that any given rate or ratemaking practice is unreasonable. [*Id*. (citations omitted; alteration in original).]

This Court further opined that "[a]bsent clear evidence of illegal or improper expenses included in a municipal utility's rates, a court has no authority to disregard the presumption that the rate is reasonable." *Id*. at 595.

This Court expounded on the *Trahey* decision in *Youmans* when it evaluated the reasonableness of a municipal utility charge within the framework of an equitable claim for assumpsit, which this Court held was a subset of the modern theory of unjust enrichment. *Youmans*, 336 Mich App at 213-214. The plaintiff in *Youman*s argued that if a ratepayer presents clear evidence of either illegal or improper expenses included in a municipal utility rate, "the presumption of reasonableness is no longer a relevant consideration—that is, the plaintiff need not also demonstrate that the rates, viewed as a whole, are unreasonable." *Id*. at 218. This Court, however, disagreed and held that even if a specific expense within a municipal utility rate is illegal or improper, the plaintiff must still rebut the presumption of reasonableness by proving that the rate is unreasonable when viewed as a whole. *Id*. Because the plaintiff in *Youmans* had not performed a comprehensive rate study or provided similar evidence demonstrating that the disputed rates excessively compensated the township for the disputed utility services, any conclusion about whether the disputed rates were proportional to the underlying costs would be unduly speculative. *Id*. at 220.

Here, plaintiffs argue that the city included illegal and improper expenses and cost components in the city's stormwater rates which have made these rates excessive as a whole. More specifically, plaintiffs argue that the illegal and improper expenses include (a) charging for the GLWA wholesale services charge despite the fact that the city did not pay the wholesale charge, (b) incorporating the entire cost of DWII into the stormwater charge, and (c) failing to assess the stormwater charge to the city's streets and roads as required by the city charter. These arguments are unpersuasive for the reasons discussed above.

Crucially, however, even if plaintiffs were able to demonstrate that the stormwater charges included an illegal or improper component, plaintiffs still bear the burden of demonstrating that the stormwater charge is excessive *as a whole*. *Id*. at 218. Plaintiffs have not provided a comprehensive cost of service study, but they argue that Pakter's analysis, which is based on the city's stormwater methodology and GLWA's cost of service studies, is sufficient to meet this burden. However, the GLWA cost of service studies "only [address] the wholesale service costs of service (revenue requirements) that are GLWA'S direct responsibility . . . ." There are presumably other costs, borne by the city alone, which would not be included in GLWA's cost studies. Pakter's analysis apparently attempts to account for these expenses by estimating the city's non-GLWA retail revenue requirements for the 2021–2024 fiscal years by extrapolating certain expenses from the 2025 fiscal year without performing an independent analysis of the city's non-GLWA revenue requirements. Consequently, Pakter's analysis is necessarily incomplete and cannot substitute for a comprehensive rate study that takes into account the city's actual direct and indirect costs of providing stormwater disposal. *Platt*, ___ Mich App at ___; slip op at 21. Without this comprehensive study, "one can at best speculate about whether the disputed rates were proportional to the underlying costs." *Id*. (cleaned up). Speculation is insufficient to establish a genuine issue of material fact that would prevent summary disposition under MCR 2.116(C)(10). *Id*.

Plaintiffs' argument that the city's stormwater charges are unlawful under the city's charter fails for the same reason. Section 14.2 of the Highland Park city charter requires that the city's municipal utility charges be "just and reasonable." Highland Park City Charter, § 14-2(a). The charter further provides that the rates shall be fixed by the city council "on a basis at least adequate to compensate the City for the cost of such service and to make reasonable provision for the extension thereof according to needs." Highland Park City Charter, § 14-2(b). However, like the city charter at issue in *Trahey*, the city's charter does not include any objective standards for determining whether the rates set by the city council are just and reasonable. *Trahey*, 311 Mich App at 594. The city's charter does not change the presumption that municipal utility rates are reasonable, and to overcome the presumption, plaintiffs must have a "proper showing of evidence." *Id*. Here, without a comprehensive study, plaintiffs have not met their burden of demonstrating that the city's stormwater rates are unreasonable under the city charter.

Plaintiffs bear the burden of overcoming the presumption that the city's stormwater charge is reasonable as a whole. The opinions of plaintiffs' experts, which were not based on a comprehensive cost of service study, were insufficient to overcome this presumption. Accordingly, the trial court erred by denying the city's motion for summary disposition because plaintiffs failed to present sufficient evidence to establish a genuine issue of material fact as to the reasonableness of the stormwater charge.

IV. READINESS-TO-SERVE AND INDUSTRIAL WASTE CONTROL CHARGES

The city alleges that the trial court erred by denying the city's motion for summary disposition of its counterclaim related to plaintiffs' nonpayment of readiness-to-serve and industrial waste control charges because plaintiffs failed to rebut the presumption of reasonableness as to these two charges. We agree.

As an initial matter, the city's counterclaim, as it relates to the readiness-to-serve and industrial wastewater control charges, alleged:

> 16. Counter-Defendants have not been billed, or paid, for water and sanitary sewage treatment utility services provided by Highland Park during [the] six year period preceding the filing of this Counterclaim because the meter installed on the 10" water line that serves Counter-Defendants' property has been inoperable during that period.
>
> * * *
>
> **COUNT II—VIOLATION OF THE WATER ORDINANCE AND SEWER ORDINANCE**
>
> 20. Highland Park incorporates by reference and realleges the preceding allegations of this Counterclaim as if fully restated herein.
>
> 21. Counter-Defendants have failed to pay utility charges for water and sanitary sewer services provided by Highland Park as required by, and in violation of, the Water Ordinance and Sewer Ordinance.

The counterclaim does not specifically mention the readiness-to-serve charges or the industrial waste control charges. But when the city moved for summary disposition of its counterclaim, it presented the affidavit of Jacqueline Palmer, a Metro Consulting Associates project manager who oversees the Highland Park Water Department's billing system, which averred that plaintiffs owed $390,104.47 in readiness-to-serve and industrial waste control charges as of August 30, 2024. The city argued that there was no genuine issue of material fact that plaintiffs failed to pay these charges, and so summary disposition was warranted.

Plaintiffs' response made no mention of the industrial waste control charge. Rather, plaintiffs' discussion of the city's counterclaim was limited to an argument regarding water usage charges. The industrial waste control charge, however, is a passthrough charge from the GLWA that is unrelated to plaintiffs' water usage. Instead, the industrial waste control charge is based on the size of plaintiffs' water supply line. Plaintiffs did not argue in their response to the city's motion for summary disposition that the industrial waste control charge was unreasonable. Consequently, as to the industrial waste control charge, plaintiffs failed to establish that a genuine issue of material fact existed that would have prevented summary disposition. Because plaintiffs failed to rebut the presumption that the fee was reasonable or otherwise demonstrate that a genuine issue of material fact existed that would make summary disposition inappropriate, the city was entitled to summary disposition on this issue.

Although plaintiffs' response did address the readiness-to-serve charge, plaintiffs did not provide sufficient evidence to overcome the presumption of reasonableness that applies to this charge. Again, plaintiffs argued that the water usage charges were unreasonable because there was negligible water usage for the 10-inch meter at issue. However, like the industrial waste control charge, the readiness-to-serve charge is not assessed on the basis of plaintiffs' water usage because the fee is tied to the size of the water supply line.

Plaintiffs also argued that the water usage charges were excessive in light of the fact that the city had not paid GLWA for water usage since at least 2014. It is unclear from plaintiffs' response whether this argument related to the readiness-to-serve charge, the industrial waste control charge, or both charges. However, plaintiffs' experts did not evaluate the readiness-to-serve charges or the industrial waste control charges. Nor did plaintiff provide a comprehensive rate study that would demonstrate that the charges were unreasonable as a whole. Without this comprehensive study, "one can at best speculate about whether the disputed rates were proportional to the underlying costs." *Platt*, ___ Mich App at ___; slip op at 21 (cleaned up). Speculation is insufficient to establish a genuine issue of material fact that would prevent summary disposition under MCR 2.116(C)(10). *Id*.

Plaintiffs further argued that the sharp increase in the city's readiness-to-serve charge for a 10-inch meter was "punitively designed" because plaintiffs were the only ratepayers in the city with a 10-inch meter. It is true that the readiness-to-serve charge for a 10-inch meter went from $3,142.13 to $8,154.97 in 2024—a 160% increase. However, the readiness-to-serve charge for an 8-inch meter went from $2,094.75 to $5,436.65, which is also a 160% increase. Likewise, the charge for a 12-inch meter rose by the same percentage—160%—when it went from $3,965.06 to $10,290.79. Consequently, plaintiffs' argument that they were targeted by the city when the city sharply raised the readiness-to-serve charge for plaintiffs alone does not appear to be supported by the record.

In the trial court, plaintiffs argued that the city's counterclaim was frivolous the water usage charges were disproportionate to the negligible water use for the 10-inch meter. However, when arguing the motion before the trial court, and now in their appeal, plaintiffs appear to take the opposite position. Namely, the readiness-to-serve charge is *not* based on water usage, and so it is not included within plaintiffs' counterclaim. This argument is without merit. The city's counterclaim alleged that counterdefendants "failed to pay utility charges for water and sanitary sewer services provided by Highland Park" in violation of the city's water and sewer ordinance. The claim, on its face, is not limited to water usage charges. Consequently, plaintiffs' argument that summary disposition of the city's claim regarding the readiness-to-serve and industrial waste control charges was not warranted on this basis is not persuasive.

Finally, plaintiffs argue that the city was not entitled to summary disposition of its counterclaim because the readiness-to-serve charge is unlawful under the City's ordinances quoted in the counterclaim. Specifically, plaintiffs argue that the city's water ordinance only permits the city to charge for water supplied by the city according to the amount actually used as registered by the meter. Because the readiness-to-serve charge is unrelated to plaintiffs' actual water usage, it is therefore illegal. But plaintiffs did not raise this argument in the trial court. "Although an appellee need not file a cross-appeal to argue alternative reasons to support a judgment, the reasons must have been presented to the lower court." *Riverview v Sibley Limestone*, 270 Mich App 627, 633 n 4; 716 NW2d 615 (2006) (citations omitted). The issue is therefore waived, and we will not consider it for the first time on appeal. *Green v Ziegelman*, 282 Mich App 292, 300; 767 NW2d 660 (2009). See also *Tolas*, 347 Mich App at 289 ("If a [civil] litigant does not raise an issue in the trial court, this Court has no obligation to consider the issue.").

In the end, plaintiffs failed to meet their burden of rebutting the presumption that the readiness-to-serve and industrial waste control charges at issue in the city's counterclaim were

reasonable. Consequently, the city was entitled to summary disposition of its claim related to these two charges.

V. MOTION TO STRIKE

The city argues that the trial court erred by declining to strike plaintiffs' experts because they were not timely disclosed. We disagree.[3]

A. DISCOVERY SANCTIONS

Trial courts have the inherent authority to impose sanctions on litigants and their attorneys. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). When a party fails to provide information or identify a witness as required by the court rules, "the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." MCR 2.313(C)(1). In addition to or instead of the exclusion of the evidence, the court may order the payment of reasonable expenses caused by the failure, inform the jury of the failure, or impose any other appropriate sanction. MCR 2.313(C)(1)(a)-(c). Additionally, if the court finds that a party has not supplemented its disclosures or responses as required by the court rules, "the court may enter an order as is just, including" an order that prohibits a noncompliant party from supporting or opposing designated claims or defenses or prohibiting a party from introducing evidence. MCR 2.302(E).

While it is within the trial court's inherent authority to bar expert witnesses or dismiss an action because of a discovery violation, the exercise of that authority is "discretionary rather than mandatory [and] necessitates a consideration of the circumstances of each case to determine if such a drastic sanction is appropriate." *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571

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[3] As an initial matter, the city argues that if we agree with its arguments on the merits, the arguments regarding the exclusion of plaintiffs' experts are moot because summary disposition in the city's favor was warranted even if the trial court considered plaintiffs' expert evidence. This assumes that if the trial court granted the city's motion for summary disposition, the order would have resolved the entire case so there would have been no further use for the expert testimony. Indeed, the city asks this Court to "remand this case to the Trial Court with instructions to enter summary disposition in favor of Highland Park on *all counts* of Woodward Manchester's First Amended Complaint" as well as all counts in the city's counterclaim. (Emphasis added.) However, the trial court's earlier summary disposition order dismissed Counts II (Unjust Enrichment—Violation of MCL 141.91) and IV (Unjust Enrichment—Charter Violation) of the amended complaint "only to the extent that Plaintiffs seek injunctive relief, because the proper remedy for unjust enrichment is restitution." This is in contrast with the court's order regarding Count III (Unjust Enrichment—Unreasonable Sewer Rates), which the court dismissed in its entirety. Counts II and IV sought disgorgement of any amounts by which the city has been unjustly enriched. Consequently, it appears to this Court that Counts II and IV, to the extent plaintiffs seek disgorgement, are still in the case. Because the city did not move for summary disposition of these claims, our reversal would not dispose of the entire case, and the issue of expert witnesses would potentially be relevant to the resolution of Counts II and IV.

(1990). The mere fact that a witness was not timely disclosed "does not, in and of itself, justify the imposition of such a sanction." *Id*.

When the trial court is considering a sanction that would bar an expert witness and result in the dismissal of the suit, the court's discretion should be exercised cautiously. *Id*. Specifically, the court should consider the following nonexhaustive list of factors before determining that the sanction is warranted:

> (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [*Id*. at 32-33 (citations omitted).]

Before the trial court orders the dismissal of an action because of a discovery violation or imposes a sanction that is functionally equivalent to a dismissal, the court *must* consider the *Dean* factors. *Tolas*, 347 Mich App at 315. See also *Duray Dev, LLC v Perrin*, 288 Mich App 143, 162; 792 NW2d 749 (2010) (holding that the trial court abused its discretion when it failed to consider the *Dean* factors before barring a party from calling witnesses at trial because the party did not provide a witness list before trial). If the court imposes a sanction that is less drastic, such as ordering that a party pay costs attributable to the party's noncompliance, the court does not need to make specific findings under each *Dean* factor. See *Tolas*, 347 Mich App at 307, 312. Rather, the court must simply consider the "totality of the circumstances." *Id*. at 312. See also *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995) (observing that the trial court must consider the *Dean* factors "before imposing the sanction of dismissal").

A trial court "is in the best position to know the severity of the discovery abuses . . . ." *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 88; 618 NW2d 66 (2000). "However, because default is a severe sanction, it is imperative that the trial court balance the factors and explain its reasons for imposing such a grave sanction in order to allow for meaningful appellate review." *Id*.

B. ANALYSIS

As a preliminary matter, the city alleges that the trial court erred by failing to analyze the *Dean* factors before denying the city's motion to strike plaintiffs' expert witnesses. This argument is without merit because it assumes that the trial court had an obligation to consider the *Dean* factors before *declining* to impose sanctions. The caselaw makes clear that the *Dean* factors serve as a final check before the trial court imposes a drastic sanction such as dismissal, default, or another sanction that is functionally equivalent to a dismissal or default, like prohibiting a party from calling any witnesses at trial. *Vicencio*, 211 Mich App at 507. Here, the trial court did not impose such a grave sanction. In fact, the trial court apparently believed that no sanction was warranted and gave the parties additional time to conduct expert discovery. Consequently, the trial court was not required to analyze the *Dean* factors.

However, the trial court was still required to analyze the alleged discovery violation and fashion an appropriate remedy based on the totality of the circumstances. *Tolas*, 347 Mich App at 312. When a party fails to supplement its disclosures, the trial court is authorized to fashion a just remedy under MCR 2.302(E), and the remedy may include the exclusion of any untimely evidence "unless the failure was substantially justified . . . ." MCR 2.302(E)(2); MCR 2.313(C)(1). Here, the trial court specifically found that plaintiffs' failure to timely produce its expert reports was justified because the city failed to disclose documents related to the rate methodology before the close of discovery. A trial court "is in the best position to know the severity of the discovery abuses . . . ." *Kalamazoo Oil*, 242 Mich App at 88. Based on the record, the trial court's determination that plaintiffs' failure to comply with the expert discovery deadlines was justified was within the range of reasonable and principled outcomes. *Tolas*, 347 Mich App at 301. Consequently, the city has not demonstrated that the trial court abused its discretion, and it is not entitled to relief on this basis.

VI. CONCLUSION

The trial court erred by denying the city's motion for summary disposition because plaintiffs failed to present sufficient evidence to overcome the presumption that the stormwater charges, the readiness-to-serve charges, and the industrial waste control charges were reasonable and constitutional. However, the trial court did not err by denying the city's motion to strike plaintiffs' expert witnesses.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett