

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William E. May, Sherry L. May,
and Bill May Trucking, Inc.,
Appellants-Defendants,

v.

Jeronimo Lucio and Daisy
Lucio,
Appellees-Plaintiffs

June 26, 2023

Court of Appeals Case No.
22A-PL-2328

Appeal from the Clark Circuit
Court

The Honorable Bradley B. Jacobs,
Judge

The Honorable William A.
Dawkins, Magistrate

Trial Court Cause No.
10C02-2011-PL-113

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] William E. May, Sherry L. May, and Bill May Trucking, Inc. (collectively, “the Mays”) appeal the trial court’s denial of their motion to correct error following judgment entered for Jeronimo Lucio and Daisy Lucio on the Lucios’ complaint. The Mays present three issues for our review, which we consolidate and restate as one dispositive issue, namely, whether the trial court erred when it did not consider three affirmative defenses allegedly proffered by the Mays at trial. We affirm.

Facts and Procedural History

[2] The Mays live in Charlestown and share a property line with their neighbors, the Lucios. The Mays operate a trucking company and, with permission from Charlestown City Building Commissioner Tony Jackson, they have been parking dump trucks on their property, every night, since 2017.

[3] In 2020, Jackson issued a permit to the Mays for the construction of a pole barn. During that construction, the Lucios contacted Jackson to express concerns about the barn, but Jackson assured them that it did not violate any applicable ordinances.¹ However, after the pole barn was completed, the Lucios “lodge[d] a formal written complaint [with the Charlestown City Council alleging] that the Mays were in violation of the zoning ordinances[.]” Appellant’s App. Vol. 3, p. 185. In particular, the Lucios alleged that the Mays were prohibited from operating their trucking business on their property, which

¹ The Mays had previously been denied a zoning variance to build a much larger pole barn.

is zoned for agricultural use, and that the pole barn's size exceeded that permitted by the applicable ordinance.

[4] When the Lucios got no response from the City Council, they filed a complaint in the trial court against the Mays as well as the City of Charlestown, the Charlestown Common Council, the Charlestown Plan Commission, and Tony Jackson (in his capacity as Charlestown Building Commissioner). The Lucios alleged that the Mays' operation of their trucking company and erection of the pole barn constituted a nuisance. The Lucios also sought declaratory relief, a writ of mandamus, and preliminary and permanent injunctive relief. In their answer, the Mays asserted in relevant part two affirmative defenses, namely, unclean hands and estoppel. The Mays also moved to dismiss the Lucios' complaint under [Trial Rule 12\(B\)\(6\)](#).

[5] During a bench trial in March 2022, the Mays argued that the Lucios' complaint should be dismissed under [Trial Rule 12\(B\)\(6\)](#), but they did not make any argument relevant to the affirmative defenses of estoppel, unclean hands, or laches. At the conclusion of trial, the court asked the parties to submit proposed findings and conclusions. In their proposed findings and conclusions, the Mays made no reference to the affirmative defenses of estoppel, unclean hands, or laches.

[6] On July 7, the trial court entered judgment for the Lucios. In particular, the trial court found that the Mays were impermissibly operating the trucking company on their property and that the pole barn's size exceeded that permissible under

the applicable ordinance. Accordingly, the trial court ordered Charlestown to “enforce [its] zoning ordinance” with respect to the pole barn; and it permanently enjoined the Mays from “parking, operating, and dispatching their vehicles, including dump trucks,” on the property without obtaining the “appropriate zoning approvals (rezoning, use variance, etc.).” Appellant’s App. Vol. 3, pp. 194-96. The trial court did not award monetary damages to the Lucios.

- [7] The Mays filed a motion to correct error alleging, in relevant part, that the trial court had erred when it did not consider the affirmative defenses of estoppel, unclean hands, and laches. Following a hearing, the trial court denied that motion. In particular, the court found that the Mays had not raised those affirmative defenses at trial and the issues were waived. The trial court also clarified that it was denying the Mays’ motion to dismiss under Trial Rule 12(B)(6). This appeal ensued.

Discussion and Decision

- [8] The Mays contend that the trial court erred when it denied their motion to correct error. Our standard of review is well settled. We review the denial of a motion to correct error for an abuse of discretion. *Kobold v. Kobold*, 121 N.E.3d 564, 570 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the judgment is clearly against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.*

- [9] The Mays do not deny that they made no argument to the trial court regarding the three affirmative defenses and included no references to the affirmative defenses in their proposed findings and conclusions.² Rather, the Mays’ sole argument on appeal is that the trial court erred “by not recognizing that the Mays had successfully presented *evidence* of estoppel, unclean hands, and laches throughout the entirety of the case.” Appellants’ Br. at 12 (emphasis added). They maintain that the issues were “properly raised” at trial merely by the presentation of evidence relevant to the affirmative defenses. *Id.* at 14.
- [10] But the Mays do not direct us to any legal authority to support their contention that a presentation of evidence that could support a defense, without specifically raising that defense, is sufficient to put the issue before the trial court.³ See [Ind. Appellate Rule 46\(8\)\(a\)](#). Indeed, it would be unreasonable for a trial court to have to infer from the evidence what defense theories a party might be proffering at trial. Accordingly, we hold that the trial court did not abuse its

² We note that the Mays’ statement of the issues does not track with the argument section of their brief. We address only the issues set out in the argument section of their brief. We also note that the Mays do not challenge any of the trial court’s specific findings of fact or conclusions of law in the court’s judgment underlying their motion to correct error.

³ For the first time in their reply brief, the Mays argue that the affirmative defenses were “tried by the implied consent of the parties as evidence in support of these defenses was admitted and [the Lucios] did not object.” Reply Br. at 4. In support, they cite [Trial Rule 15\(B\)](#), which governs issues “not raised by the pleadings” but tried by express or implied consent, and relevant case law. However, it is well settled that an issue may not be raised for the first time in a reply brief, and we do not consider it. See [Ind. Appellate Rule 46\(C\)](#). Waiver notwithstanding, there is no support in the record for the Mays’ contention that the affirmative defenses were tried by implication.

discretion when it found that the Mays had waived the issues of estoppel, unclean hands, and laches and denied the Mays' motion to correct error.

[11] Affirmed.

Vaidik, J., and Pyle, J., concur.