MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Keith Junk and Carpenter Ranch Custom Home,

Appellants-Defendants,

v.

Jesse Rayburn and Amber Rayburn,

Appellees-Plaintiffs.

December 1, 2021

Court of Appeals Case No. 21A-CT-806

Appeal from the Jasper Superior Court

The Honorable Russell D. Bailey, Judge

The Honorable Jeryl F. Leach, Special Judge

Trial Court Cause No. 37D01-1901-CT-4

Altice, Judge.

Case Summary

[1] Jesse and Amber Rayburn filed suit against Keith Junk d/b/a Carpenter Ranch Custom Home (Junk) for damages related to a botched remodeling job on their

home and for release of a mechanics lien filed by Junk. Following a bench trial, the trial court entered judgment in favor of the Rayburns and ordered Junk to pay damages in the amount of $28,702.01. On appeal, Junk challenges the amount of the damages award as an abuse of the trial court's discretion.

[2] We affirm.

Facts & Procedural History

[3] In 2017, the Rayburns contracted with Junk to perform substantial remodeling of their farmhouse in Rensselaer, Indiana. The parties entered into an initial agreement in July for a cost of $99,450 to remodel the home. The Rayburns, however, were unable to obtain a construction loan for that amount through their bank, Alliance Bank (the Bank). The parties then entered into another written agreement, dated October 15, 2017, in the amount of $86,950, which was approved by the Bank. Junk and the Rayburns entered into this subsequent contract with the understanding that certain work listed in the initial contract would be completed by Junk and paid for out of pocket by the Rayburns outside of the construction loan. Additionally, the Rayburns agreed to do some of the needed painting and tiling to save money to put toward other items.

[4] Junk began working on the home in December 2017. Amber was pregnant at the time, and the Rayburns informed Junk of their desire to move back into the home before their baby's birth in the summer. Junk originally indicated that the project would be done by May 2018. However, the home was still unlivable on July 31, 2018, when the baby was born.

[5] While working on the remodeling project, Junk requested and received draws on the construction loan in December, February, April, and May, totaling $69,560. The Rayburns, through a family member, had also paid Junk approximately $14,000. While Junk had received about $80,000 as of July 2018, the home, even according to Junk, still had a "fair amount" of work to be done. *Transcript* at 121. In fact, the kitchen remained gutted and the bathrooms and a bedroom were unfinished. And there were issues with the quality of some of the work performed by Junk. Jesse expressed his concerns to Junk in June and July, especially concerning the lack of progress.

[6] On or about July 24, 2018, Jesse notified Junk that he was being let go. Junk then requested a meeting at the Bank and indicated that he wanted to "make things right." *Id*. at 63, 68. At the meeting, the Bank refused to distribute any additional money to Junk. Clarissa Cobb, the loan originator at the Bank, believed that "there was no way that [Junk] could finish what was needed with that last draw." *Id*. at 29. Cobb explained that by the last draw on a construction loan, the contractor "should pretty much be completely finished with everything," yet Junk "still had a whole kitchen that needed to be completed at that time." *Id*. at 39. The meeting eventually became heated, and Junk was asked to leave the Bank's premises, which he did. Cobb and the Rayburns immediately went to the home to secure it and take pictures.

[7] On July 26, 2018, Junk filed a mechanics lien against the property. This resulted in the Rayburns being unable to obtain the remaining funds under the construction loan to hire another contractor. It also prevented them from

converting the construction loan into a mortgage loan to obtain a substantially reduced interest rate.

[8] On August 24, 2018, the Rayburns, by counsel, sent Junk a demand letter to release the mechanics lien. Around this time, they also hired Bruce Sayler, a home contractor with over forty years of experience, to survey the condition of the home and to prepare estimates for repairing certain work done by Junk – primarily improperly installed floors in the dining room – and for the labor needed to complete the unfinished work. Sayler's estimates of $4,987 and $20,625, respectively, were provided to the Rayburns on November 8, 2018. The following day, the Rayburns sent another demand letter to Junk to release the mechanic's lien.

[9] When Junk did not release the mechanic's lien, the Rayburns filed suit against him on January 2, 2019. In the meantime, they worked to make their home habitable with the help of various family members who provided labor. This also required Amber's parents to obtain a loan to pay for needed materials. The Rayburns were not able to move into their home until late 2020, nearly three years after Junk started the remodeling project. They have been unable to repay Amber's parents.

[10] After several delays, a bench trial was held on January 8, 2021. The Rayburns called Sayler as an expert witness. Sayler testified that Junk had improperly installed certain flooring in the home and estimated that the cost to remedy this issue would be $4,987. Sayler also opined that the labor cost to complete the

remodeling project would be $20,625. In addition to Sayler, the Rayburns called Cobb, Junk, and Jesse as witnesses. Exhibit 9 was admitted into evidence during Jesse's testimony and set out the additional materials costs, totaling $11,381.08, incurred to make the home livable after Junk was fired. On his behalf, Junk presented his own testimony and called his wife, who was also his employee.

[11] At the conclusion of the hearing, the trial court ordered the Recorder of Jasper County to immediately release the mechanic's lien previously filed by Junk against the Rayburns' property. The trial court took the remaining issues under advisement and then issued an order on damages on April 5, 2021, which provided in part:

> The Court, having considered the evidence, now finds that the Plaintiffs have carried their burden of proof with regard to the following:
>
> 1. Damages/buckled floor - $4,987.00;
>
> 2. Unfinished labor - $20,625.00;
>
> 3. Shortage in material - $11,381.08;
>
> The above damages total $36,993.08. The Plaintiffs still have $11,541.07 left in the bank to cover the cost of the house they bargained for. Therefore, after subtracting this credit, Plaintiffs have been damaged by Defendant in the amount of $25,452.01.

Appendix Vol. 3 at 13. The trial court also awarded the Rayburns liquidated damages under the mechanic's lien statute in the amount of $3,250.00, resulting in a total damages award of $28,702.01. Junk now appeals, claiming that the trial court abused its discretion in awarding damages.

Standard of Review

[12] A trial court's award of damages is subject to review for an abuse of discretion. *Roche Diagnostics Operations, Inc. v. Marsh Supermarkets, LLC*, 987 N.E.2d 72, 89 (Ind. Ct. App. 2013), *trans. denied*. "When the specific issue on review relates to questions of inadequate or excessive damages, we should not reverse a damage award if the award is within the scope of the evidence before the trial court, and we may not reweigh the evidence or judge the credibility of the witnesses." *Randles v. Ind. Patient's Comp. Fund*, 860 N.E.2d 1212, 1230 (Ind. Ct. App. 2007), *trans. denied*; *see also Renner v. Shepard-Bazant*, 172 N.E.3d 1208, 1212 (Ind. 2021) ("An award of damages must not be reversed so long as the damages fall within the scope of the evidence.") (internal quotations omitted).

[13] "A damage award must be supported by probative evidence and cannot be based on speculation, conjecture, or surmise." *Indiana Bureau of Motor Vehicles v. Ash, Inc.*, 895 N.E.2d 359, 368 (Ind. Ct. App. 2008). Further, damages in a breach of contract case should be for the loss actually suffered as a result of the breach, and the non-breaching party is not entitled to be placed in a better position than it would have been had the breach not occurred. *Roche Diagnostics*, 987 N.E.2d at 89.

Discussion & Decision

[14] On appeal, Junk asserts that no damages should have been awarded because the Rayburns did not allow him to finish the remodeling project as he requested. He further claims that the trial court ordered him to reimburse the Rayburns for damages that were not included in their agreement.

[15] We begin by observing that Junk's brief falls far short of the standards established by the Indiana Appellate Rules. For example, his statement of facts section has provided no assistance to us on review, as it leaves out nearly all of the relevant facts and ignores the standard of review. *See* Ind. Appellate Rule 46(A)(6) (requiring this section to "describe the facts relevant to the issues presented for review" and "be stated in accordance with the standard of review appropriate to the judgment or order being appealed"). In addition, Junk fails to support his contentions on appeal with "cogent reasoning," as required by App. R. 46(A)(8)(a), or a discussion of the "substantive facts necessary for consideration of the issues presented on appeal," as required by App. R. 46(A)(8)(b).

[16] As we have long stated, "An appellant's brief is required to be prepared so that each judge, considering the brief alone and independently from the record, can intelligently consider each question presented." *Anderson v. Ind. State Emps.' Appeals Comm'n*, 360 N.E.2d 1040, 1043 (1977); *see also Ramsey v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 789 N.E.2d 486, 488 (Ind. Ct. App. 2003). And mere conclusory arguments do not discharge an appellant's burden of establishing

reversible error. *See DSG Lake, LLC v. Petalas*, 156 N.E.3d 677, 688 (Ind. Ct. App. 2020), *trans. denied* (2021). Without becoming an advocate for Junk or searching the record and briefing the case for him, we will briefly address his arguments.

[17] First, though outside the issue he stated on appeal or the discussion in his summary of the argument, Junk makes a very brief challenge to the admission of evidence. He asserts that Sayler should not have been permitted to testify and that an exhibit – unidentified by Junk but apparently Exhibit 2, a three-page list of work that purportedly needed to be finished and upon which Sayler based his labor quote – should not have been admitted into evidence. Junk cites no case law, standard of review, or evidence rule, nor does he direct us to any objection to this evidence below. He simply asserts that this evidence "contained hearsay and irrelevant information" and should have been rejected by the trial court. *Appellant's Brief* at 6. We find that Junk has waived any challenge to the admission of this evidence by failing to support his assertions with cogent argument.

[18] Regarding damages, Junk first challenges the award of $4,987 for the damaged/buckling floor. He claims that his remodeling contract with the Rayburns did not include an agreement to fix the floor and that Sayler testified that the floor could not be fixed due to age. The evidence, however, established that Junk had installed laminate flooring in the dining room, which began "buckling" from improper installation. *Transcript* at 22. Sayler estimated that it would cost $4,987 to remedy the flooring issue, which included the cost of new

materials because there was a "good chance" that the buckled flooring would be stretched and unable to be reused following disassembly. *Id.* at 19. This portion of the damages award, therefore, was supported by the evidence.

[19] Next, Junk challenges the award of $20,625 for damages for unfinished labor. This amount is precisely the estimate provided by Sayler to complete the remodeling project, which he provided shortly after Junk was terminated. Sayler testified regarding the estimate, and his written estimate – Exhibit 1 – was admitted into evidence without objection. On appeal, Junk states, "when comparing the 'unfinished labor' with the agreement there are several items that were not included in the October 15, 2017 contract." *Appellant's Brief* at 7. He does not, however, set out any of the alleged inconsistencies. Further, Junk suggests that there were no actual damages here because Sayler never completed any work related to his estimate. But he provides no authority in support of this claim, so we find it waived.

[20] Junk also asserts that the Rayburns failed to mitigate their damages by not allowing him to come back onto the property and finish the job, which he claims "was in the final stages of completion." *Appellant's Brief* at 7. The evidence favorable to the judgment establishes that the remodeling project was far from the final stages of completion at the time Junk was fired. Indeed, the home remained unlivable with a gutted kitchen and unfinished bathrooms, as well as other issues. In Cobb's opinion, based on her experience with construction loans, there was "no way" that Junk could finish the project with the last draw on the construction loan. *Transcript* at 29. Junk has directed us to

no authority indicating that the Rayburns were required to continue working with him after his neglect both in workmanship and progress, and we are aware of no such requirement.

[21] Finally, Junk challenges the $11,381.08 award for shortage in material. This was the amount represented in Exhibit 9, which was admitted into evidence during Jesse's testimony. Jesse testified that this exhibit, which was ten pages and included an itemized list and receipts, outlined the total materials and costs that were incurred to finish the remodeling project.

[22] Junk challenges the inclusion of certain items listed in Exhibit 9, directing us to expenses for a refrigerator and stove and materials for shiplap, a bookcase, and a barn door. He claims that he never agreed to provide any of these items under the written contract. Although his written contract with the Rayburns did not specifically list any of these items, it did include an allotment for built-in allowances, and it is undisputed that the Rayburns had side agreements with Junk and paid out of pocket for additional work. Further, Jesse testified that his agreement with Junk included some appliances, which he had discussed and picked out with Junk, and Junk acknowledged that he placed special orders for doors and appliances for the home. We reject Junk's invitation to reweigh the evidence and conclude that the trial court did not abuse its discretion by awarding as damages for materials in the amount listed in Exhibit 9.

[23] In sum, Junk has provided cursory arguments on appeal and failed to establish reversible error. The components of the damage award challenged by Junk are

within the scope of the evidence before the trial court, and we may not reweigh the evidence.

[24] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.