MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Crystal Herring and Louis Herring,
Appellants-Plaintiffs,

v.

Sebestyen & Williams, Inc.
Appellee-Defendant.

July 14, 2021

Court of Appeals Case No. 20A-PL-2009

Appeal from the Grant Superior Court

The Honorable Jeffrey D. Todd, Judge

Trial Court Cause No. 27D01-1406-PL-32

Mathias, Judge.

[1] Crystal and Louis Herring (the "Herrings") sued the builder of their family home, Sebestyen & Williams, Inc. (the "Builder"), in Grant Superior Court. The Herrings alleged that the Builder constructed portions of the home defectively and thereby breached the parties' contractual warranty. The trial

court disagreed, concluding after a bench trial that there was no breach. On appeal, the Herrings argue that by analyzing their claim under the parties' express, written warranty rather than under our state's implied warranty of habitability, the trial court erroneously applied an incorrect legal standard.

[2] Concluding that the court did not err, we affirm.

Facts and Procedural History

[3] The Herrings purchased a nine-acre plot of wooded land in Grant County, Indiana, for the purpose of building a family home. In November 2012, the Herrings hired the Builder to help construct the home. The parties discussed the details of the project before executing a contract that required certain portions of the construction to be completed by the Builder and left other tasks for completion by the Herrings.

[4] Specifically, the Herrings were responsible for excavating and laying the foundation, completing the plumbing and decorating the floor coverings, and taking care of the exterior concrete and masonry, the crawlspace, the closets and interior trim, and the final clean up. Appellant's App. p. 25. By contrast, the Builder's tasks included framing, roofing, hanging drywall and insulation, and installing windows, doors, siding, gutters, cabinets, and vanities, as well as tackling the electrical work, the heating, and the air conditioning. *Id.* at 25–26. The contract further required that all work be performed in a workmanlike manner according to standard practices. *Id.*

[5] While the parties' relationship started off amicably, their interactions became tense over the course of the construction process. Tr. Vol. II, p. 36. As time went on, there was "more friction and more friction and more friction" between the Herrings and the Builder. *Id.* at 192–93. Nevertheless, the Builder completed its portion of the construction, along with additional projects—"add-ons"—requested by the Herrings, during the summer of 2013. Appellant's App. p. 27. The Herrings took possession of the property and moved into the home in July 2013.

[6] A few months later, in November, the Builder provided the Herrings a one-year express, written warranty, according to which the Builder warranted "that the material and workmanship of the Work will be free of certain defects." Appellant's App. p. 28. But the express warranty did not cover certain things, such as "defects in appliances and equipment that are covered by manufacturer's warranties" or "damage due to ordinary wear and tear." *Id*. The express warranty further provided that, to obtain the benefits of the warranty, the Herrings "must make a written request to Builder and either deliver or mail it to Builder's address." *Id*.

[7] The parties' soured relationship came to a head in June 2014 when the Herrings filed a complaint against the Builder. Even though the express warranty period was not set to end for another five months, the Herrings' complaint alleged:

> 8. That while the home was being constructed several areas of faulty construction were discovered. The construction job was

> not done in conformance with professional standards, and have left the home of HERRING subject to structural failure.
>
> 9. The Defendants have breached the contractual warranty whereby they were to perform the contracted services in a workmanlike manner according to standard practices, and as such, the plaintiffs will have to contract to have all of the faulty construction repaired or redone.

Id. at 54. In response, the Builder lodged a counterclaim against the Herrings, alleging that they owed $2,221.42 for the additional "add-ons" the Builder completed at their request. *Id*. at 57.

[8] The court held a bench trial six years later, on August 5, 2020, at which it heard testimony as to alleged defects in the HVAC system, window casings, roof, kitchen cabinets and countertops, and the flooring and crawlspace. On September 29, the court entered findings of fact and conclusions of law. The court found that the Herrings failed to provide notice of the alleged defects, failed to present evidence that the Builder did not perform in a workmanlike manner, failed to present evidence that the Builder caused their alleged damages, and failed to present evidence of their damages. *Id*. at 41. In turn, the court concluded that the Herrings failed to prove the Builder breached the express warranty and that the Herrings are not entitled to recover damages for any of the alleged defects. The court ultimately entered judgment against the Herrings on their breach of warranty claim and in favor of the Builder on its counterclaim.

[9] The Herrings now appeal.

Discussion and Decision

[10] In cases where the trial court enters findings of fact and conclusions of law, our standard of review is well settled:

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

Thalheimer v. Halum, 973 N.E.2d 1145, 1149–50 (Ind. Ct. App. 2012).

[11] Here, the Herrings do not challenge the trial court's findings of fact. Appellant's Br. at 6. When factual findings are unchallenged, we accept the findings as true. *Centennial Park, LLC v. Highland Park Ests., LLC*, 151 N.E.3d 1230, 1236 (Ind. Ct. App. 2020). Accordingly, we do not look to the evidence; we look only to the findings to determine whether they support the judgment. *Smith v. Miller Builders, Inc.*, 741 N.E.2d 731, 734 (Ind. Ct. App. 2000).

[12] The Herrings do not attack the court's factual findings because their challenge presents a pure question of law. They argue that the trial court committed "an

error of law" because it "improperly applied Indiana law concerning residential construction warranties." Appellant's Br. at 5–6. More specifically, they contend the court erred by focusing on the parties' express, written warranty rather than our state's implied warranty of habitability. *Id.* at 11. We disagree.

[13] It is well settled that a person who builds a new home provides an implied warranty of habitability—an implicit promise that the home will be free from defects which substantially impair the use and enjoyment of the home. *See Corry v. Jahn*, 972 N.E.2d 907, 913 (Ind. Ct. App. 2012). However, the implied warranty of habitability does not apply to all persons involved in the construction process; it applies only to builder-vendors. *Carroll's Mobile Homes, Inc. v. Hedegard*, 744 N.E.2d 1049, 1051 (Ind. Ct. App. 2001) (citing *Choung v. Iemma*, 708 N.E.2d 7, 12 (Ind. Ct. App. 1999)). To establish a breach of the implied warranty of habitability, a plaintiff must establish that a defect exists, that the defect's causation originated in the builder-vendor, and that the builder-vendor was given both notice of the defect and an opportunity to cure it. *See Dinsmore v. Fleetwood Homes of Tenn., Inc.*, 906 N.E.2d 186, 191 (Ind. Ct. App. 2009).

[14] The trial court concluded that the Herrings were required to give the Builder notice and an opportunity to cure the alleged defects they now complain of and that the Herrings failed to do so. Indeed, just as notice and opportunity to cure must be provided before a party can recover under the implied warranty of habitability, notice was a condition precedent to recovery under the parties' express warranty. Appellant's App. 40. *Id.* Thus, even if the court had applied

the implied warranty instead of the express warranty, the fact that the Herrings failed to provide the Builder notice and an opportunity to cure would remain true. We fail to see how application of the implied warranty would change the outcome of this case.

[15] Moreover, the court found that the Herrings failed to present evidence establishing that the Builder's work was done in an unworkmanlike manner. The court also found that the Herrings failed to present evidence showing that the cause of the alleged defects originated with the Builder. Again, the Herrings do not challenge these findings. And, as with the fact that the Herrings did not provide notice or opportunity to cure, the fact that the Herrings did not prove the Builder caused the alleged defects would stand true whether the court applied the implied warranty of habitability or the express warranty. In short, these unchallenged findings support the court's ultimate conclusion that the Herrings cannot recover under a warranty theory of liability.

Conclusion

[16] For all of these reasons, we conclude that the trial court did not err in entering judgment against the Herrings on their breach of warranty claim.

[17] Affirmed.

Riley, J., and Crone, J., concur.