

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Scott F. Bieniek
Bieniek Law, P.C.
Greencastle, Indiana

IN THE COURT OF APPEALS OF INDIANA

Andria Collins and Daniel
Collins,
Appellants-Defendants,

v.

Opportunity Housing, Inc.,
Appellee-Plaintiff

June 2, 2023

Court of Appeals Case No.
23A-MF-279

Appeal from the Putnam Superior
Court

The Honorable Raymond M.
Kirtley, Senior Judge

Trial Court Cause No.
67D01-2210-MF-55

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Andria Collins appeals the Putnam Superior Court’s judgment against her on Opportunity Housing, Inc.’s complaint for foreclosure on a land contract.¹ Andria raises two issues for our review, but we need only consider the following dispositive issue: whether she failed to preserve her argument for appellate review when she raised it for the first time to the trial court in a motion to correct error. We affirm.

Facts and Procedural History

[2] On October 4, 2022, Opportunity Housing filed its “Complaint to Foreclose Real Estate Contract or Cancel Land Sale Contract” against Andria and Daniel Collins. Appellant’s App. Vol. 2, p. 17. In its complaint, Opportunity Housing alleged that, in March 2020, it and the Collinses had entered into a land sale contract for real property in Fillmore, but, since April 2022, the Collinses had failed to make the payments required under that contract. Opportunity Housing requested that “a personal judgment” be entered against the Collinses “in an amount sufficient to compensate” Opportunity Housing for “expenses incurred” due to the breach of contract; that the “contract be foreclosed” on; and that the contract be “cancel[ed]” such that Opportunity Housing “immediately receive[s] the property without judicial sale.” *Id.* at 18-19.

¹ Daniel Collins, Andria’s ex-husband and also a named defendant, did not participate in the proceedings below and does not participate in this appeal.

- [3] Neither Andria nor Daniel responded to Opportunity Housing’s complaint, and Opportunity Housing moved for default judgment against them. The trial court granted Opportunity Housing’s motion and entered a personal judgment against the Collinses and also ordered the contract “canceled” such that Opportunity Housing would “receive immediate possession of the property without judicial sale.” *Id.* at 32. The court then set the matter for a damages hearing in December.
- [4] Andria appeared pro se at the damages hearing. Daniel did not appear. At that hearing, Andria argued only that she was not responsible for the contract with Opportunity Housing pursuant to a decree of dissolution between her and Daniel. The trial court rejected Andria’s argument and entered judgment jointly and severally against her and Daniel in the amount of \$7,652.
- [5] Thereafter, Andria retained counsel. In January 2023, Andria filed, through her counsel, a motion to reconsider in the trial court. In that motion, Andria argued, for the first time, that Opportunity Housing was prohibited under the doctrine of election of damages from seeking both cancelation of the contract and also personal damages for breach of the contract. Andria also argued, again, for the first time, that Opportunity Housing’s request for foreclosure on the land sale contract was not done in accordance with [Trial Rule 69\(C\)](#). Opportunity Housing opposed Andria’s motion to reconsider in part on the ground that Andria’s arguments were not properly raised for the first time in such a motion. The trial court summarily denied Andria’s motion to reconsider, and this appeal ensued.

Discussion and Decision

[6] On appeal, Andria argues that the trial court’s judgment is erroneous because Opportunity Housing is not entitled to both cancelation of the contract and personal damages under the contract. She also argues that the court’s judgment is erroneous because Opportunity Housing’s request for foreclosure was not in accordance with [Trial Rule 69\(C\)](#). Both of Andria’s arguments on appeal were raised to the trial court for the first time in her post-judgment motion to reconsider.

[7] Although Andria styled her motion as a motion to reconsider, “a motion requesting the court to revisit its final judgment must be considered a motion to correct error.” [Hubbard v. Hubbard](#), 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998).² And it is well-settled that issues raised for the first time in a motion to correct error are waived where those issues could have been raised earlier. [Carmichael v. Separators, Inc.](#), 148 N.E.3d 1048, 1058 (Ind. Ct. App. 2020), *trans. denied*; *see also* [O’Bryant v. Adams](#), 123 N.E.3d 689, 694 (Ind. 2019) (stating that an argument is waived where it is presented for the first time in a motion to correct error and had been available during the original proceedings); [Fillmore LLC v. Fillmore Mach. & Tool Co.](#), 783 N.E.2d 1169, 1179 (Ind. Ct. App. 2003) (issue raised for the first time in a motion to correct error waived when it could have been raised earlier), *trans. denied*; [Babinchak v. Town of Chesterton](#), 598

² As the panel for this Court in [Hubbard](#) stated, “motions to reconsider are properly made and ruled upon prior to the entry of final judgment” under [Trial Rule 53.4\(A\)](#). 690 N.E.2d at 1221.

N.E.2d 1099, 1103 (Ind. Ct. App. 1992) (argument not raised or considered before being raised in a motion to correct error was waived).

[8] Here, Andria appeared at the damages hearing in December 2022. However, at that hearing, she argued only that she was not responsible for the land sale contract pursuant to her dissolution decree. She did not argue either of the issues she later presented to the court in her post-judgment motion. Further, she presents no argument in this appeal that those two issues could not have been raised at the damages hearing or earlier. *See* Ind. Appellate Rule 46(A)(8)(a). Accordingly, we conclude that Andria's issues were not properly raised to the trial court and are not available for appellate review. We therefore affirm the trial court's judgment.

[9] Affirmed.

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