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IN THE COURT OF APPEALS OF INDIANA

Don Morris and Randy Coakes,
Appellants-Plaintiffs,
v.
Brad Crain
Appellee-Defendant.

July 29, 2022

Court of Appeals Case No. 21A-PL-2538

Appeal from the Marion Superior Court

The Honorable Heather A. Welch, Judge

Trial Court Cause No. 49D01-1705-PL-21216

Tavitas, Judge.

Case Summary

[1] Don Morris and Randy Coakes ("Plaintiffs") appeal the trial court's judgment in favor of Brad Crain. Finding that Plaintiffs have waived their arguments by

presenting arguments not made to the trial court and by failing to present cogent arguments, we affirm.

Issue

[2] Plaintiffs purport to raise five issues, which we consolidate and restate as whether the trial court's judgment is clearly erroneous.

Facts

[3] This litigation concerns the formation of BioSafe Engineering, LLC ("BioSafe"). This is the fourth appeal in this litigation. In 2010, Plaintiffs filed their complaint against defendants BioSafe, Crain, and Richard Redpath. Plaintiffs then filed a First Amended Complaint,[1] which purported to raise claims of breach of contract, unjust enrichment, and estoppel. In 2011, BioSafe filed a motion for summary judgment on Plaintiffs' claims, which the trial court granted. On appeal, this Court found that "[s]ummary judgment was improvidently granted." *Morris v. Crain*, 969 N.E.2d 119, 125 (Ind. Ct. App. 2012). On remand, BioSafe filed a second motion for summary judgment on Plaintiffs' claims, which the trial court granted. Plaintiffs appealed, and this Court affirmed the summary judgment in favor of BioSafe. *See Morris v. BioSafe Eng'g, Inc.*, 9 N.E.3d 195, 202 (Ind. Ct. App. 2014), *trans. denied*.

[4] Crain and Redpath then filed a motion for summary judgment on Plaintiffs' claims. Plaintiffs filed a Second Amended Complaint against Crain and

[1] The First Amended Complaint added claims against Steve Bieseeker, Tyler Johnson, Brandon Ross, and Chris Sollars, who were later dismissed from the litigation by the trial court.

Redpath, which raised claims for conversion, breach of fiduciary duty, and breach of contract. Crain and Redpath filed a "renewed motion for summary judgment" on all of Plaintiffs' claims, and the trial court granted Crain's and Redpath's motion for summary judgment. *Morris v. Crain*, 71 N.E.3d 871, 877 (Ind. Ct. App. 2017). On appeal, this Court concluded that the trial court erred by granting the motion for summary judgment and reversed. *Id.* at 881.

[5] On remand, the trial court conducted a bench trial on Plaintiffs' Second Amended Complaint against Crain.[2] The trial court entered findings of fact and conclusions thereon and ordered judgment in favor of Crain on claims of breach of contract, conversion, and breach of fiduciary duty. Plaintiffs now appeal.

Analysis

[6] Plaintiffs challenge the trial court's judgment in favor of Crain. The trial court issued findings of fact and conclusions thereon pursuant to a request under Indiana Trial Rule 52(A). Accordingly, we apply a two-tiered review. *Wysocki v. Johnson*, 18 N.E.3d 600, 603 (Ind. 2014). We "affirm when the evidence supports the findings, and when the findings support the judgment." *Id.* We do not "set aside the findings or judgment unless [they are] clearly erroneous," and we must give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* (citing Ind. Trial Rule 52(A)). "Findings of

[2] Redpath died in either 2015 or 2018. The record is unclear as to the exact date of his death.

fact are clearly erroneous only when they have no factual support in the record." *Id.* "[A] judgment is clearly erroneous if it applies the wrong legal standard to properly found facts." *Id.* at 604. We review the trial court's legal conclusions de novo. *Gittings v. Deal*, 109 N.E.3d 963, 970 (Ind. 2018).

[7] On appeal, Plaintiffs argue that "Crain and Redpath were guilty of fraud and the Court should apply the doctrine of partnership by estoppel . . . ." Appellants' Br. p. 14. Crain, however, notes that Plaintiffs did not raise claims of fraud or partnership by estoppel to the trial court. In their reply brief, Plaintiffs do not respond to Crain's waiver arguments.

[8] The trial court addressed claims of conversion, breach of contract, and breach of fiduciary duty, and Plaintiffs do not argue that the trial court was also presented with claims of fraud and partnership by estoppel. Our review of the record reveals that Plaintiffs did not mention fraud or partnership by estoppel during the bench trial. Plaintiffs did not mention partnership by estoppel in their proposed findings of fact and conclusions thereon and only briefly mention the word fraud in their proposed findings. It is well settled that "[i]ssues not raised at the trial court are waived on appeal." *Cavens v. Zaberdac*, 849 N.E.2d 526, 533 (Ind. 2006). Because Plaintiffs did not raise those claims to the trial court, the arguments on appeal are waived.

[9] Furthermore, Plaintiffs do not argue that any of the trial court's findings of fact or conclusions thereon are clearly erroneous. Plaintiffs, thus, have failed to present cogent arguments and to comply with our appellate rules. *See* Ind.

Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief shall be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal); *Loomis v. Ameritech Corp*., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (failure to present cogent argument waives issue for appellate review), *trans. denied*. Accordingly, we affirm the trial court's judgment.

Conclusion

[10] Plaintiffs have failed to demonstrate that the trial court's findings of fact and conclusions thereon are clearly erroneous. Accordingly, we affirm.

[11] Affirmed.

Riley, J., and May, J., concur.