

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Anthony Lefevers,
Appellant-Plaintiff,

v.

SGC Properties, LLC,
Appellee-Defendant.



March 1, 2024

Court of Appeals Case No.
23A-PL-909

Appeal from the
Harrison Circuit Court

The Honorable
Larry W. Medlock, Special Judge

Trial Court Cause No.
31C01-2011-PL-19

Memorandum Decision by Senior Judge Robb
Judges Mathias and Crone concur.

Robb, Senior Judge.

Statement of the Case

[1] Anthony Lefevers (“Lefevers”) filed a complaint against SGC Properties, LLC (“SGC”), a company that engaged in residential rehab services, alleging that when SGC developed its property that lay near Lefevers’ property, SGC severed Lefevers’ water and sewer lines. A bench trial was held. At the close of Lefevers’ case in chief, SGC moved for judgment on the evidence, which the trial court treated as a motion for the involuntary dismissal of Lefevers’ case. The trial court took the matter under advisement and completed the trial. Approximately one week later, the trial court issued an order granting SGC’s motion for the involuntary dismissal of Lefevers’ case, indicating that it had dismissed the case because Lefevers failed to present sufficient evidence to support his claim against SGC.

[2] Lefevers appeals the trial court’s order, raising two issues for our review, which we restate as: (1) whether the trial court failed to issue findings of fact and conclusions of law as part of its final order; and (2) whether the trial court erred when it dismissed Lefevers’ case because sufficient evidence existed to support his claim against SGC. Concluding that the trial court did not fail to issue findings and conclusions and that the evidence supports the trial court’s

conclusion that Lefevers failed to present sufficient evidence to prove his claim against SGC, we affirm.

Facts and Procedural History

- [3] Lefevers and SGC both own property in Corydon, Indiana. Lefevers' property ("the Lefevers Real Estate") lies east of property owned by SGC ("the SGC Real Estate"). The properties are separated only by an alley. The Lefevers Real Estate's front yard faces the backyard of the SGC Real Estate.
- [4] Lefevers purchased the Lefevers Real Estate in December 2015, through a sheriff's sale.¹ On January 12, 2016, Lefevers opened an account with the Town of Corydon ("the Town") for water and sewer service. The Town provided water and sewer service to the account until the service was interrupted in 2019 and then permanently terminated.
- [5] SGC, which is co-owned by Michael Lancia, purchased the SGC Real Estate in August 2016. The SGC Real Estate consists of two lots, Lot 7 and Lot 8.² Before closing on the SGC Real Estate, SGC had a title search performed. The search did not reveal any recorded easements for a water line. However, property records did reveal that in 1956, when Lots 7 and 8 were separately

¹ Lefevers is a co-owner of the Lefevers Real Estate, as he purchased it together with his father and grandmother. Lefevers' father and grandmother are not parties to the underlying action.

² Lots 7 and 8 had been separately owned, at least since 1956, by a succession of different owners. However, Nolan and Margaret Hottell acquired Lot 8 in 1960, and Lot 7 in 1969. In 2006, the Hottells, by the personal representative of their estate, transferred the lots to Thomas and Ginger Barton. The Bartons sold the lots to SGC on August 18, 2016.

owned, an easement was recorded for a sewer line. The easement provided that the owner of Lot 8 conveyed to the owner of Lot 7 a “strip of land three (3) feet in width, on the north line of Lot number eight (8)” to “construct, operate, control, maintain, re-construct and remove a sewer pipe line to be used for the transmission of sewerage along and across the . . . described real property[.]” Index of Exhibits at 33.

- [6] When SGC purchased the SGC Real Estate, the property contained a house on Lot 7 and a garage on Lot 8. The garage was connected to the house by a breezeway. However, the house had been “burned considerably” by a fire. Transcript of Evidence, Volume 2 at 73. In 2019, after utility crews had marked the locations of the underground utility lines on the SGC Real Estate, SGC hired a company to demolish the damaged house. After the demolition, the land was leveled, but no excavation work occurred on the property at that time.
- [7] In February 2019, the pipes inside Lefevers’ house burst. Lefevers hired a plumber to fix the pipes, but he no longer had water service to his house. Lefevers first contacted the Town’s water and sewer department about his lost service but was unsuccessful in having the service restored.
- [8] On July 24, 2019, SGC began constructing a duplex on the SGC Real Estate. Before construction began, SGC had secured a building permit and, again, arranged to have the underground utility lines marked. The duplex was to be built on the center of the property, across the two lots, and within the footprint

of the previous house. SGC provided the Town with the plans showing where the duplex would be located on the SGC Real Estate.

[9] SGC hired a concrete company to pour the foundation for the duplex. While working on the foundation, the crew “unearthed several old pipes, probably five or six” and found “abandoned gas lines, abandoned water lines, [and] other things from the original structure of the house [that had been demolished].” *Id.* at 77. After verifying that each line was “dormant[,]” “unused,” and “abandoned,” Lancia authorized the crew to sever the lines and complete the foundation. *Id.* To determine whether an active sewer line existed on the SGC Real Estate, SGC used a shovel to dig three feet into the ground where “the sewer line was supposed to exist[,]” but no sewer line was found. *Id.* at 81.

[10] During the construction of the duplex, raw sewage began to run from the Lefevers Real Estate onto the SGC Real Estate. SGC contacted the local health department, and Lefevers was cited for the exposed sewage in his yard. Lefevers had previously received a citation for this problem. To solve the problem, Lefevers capped the sewer line. However, after the sewer line was capped, sewage continued to appear in the backyard of the SGC Real Estate.

[11] Lefevers observed the construction taking place on the SGC Real Estate and claimed that he saw “building crews breaking [his] pipes.” *Id.* at 17. In August 2019, Lefevers spoke with Lancia and asked him if he could “pay to reconnect [his] lines back to the meter” located on the SGC Real Estate. *Id.* at 18. Lancia

told Lefevers that the SGC Real Estate was SGC's property, and SGC could "do whatever [it] wanted with it." *Id.*

[12] Lefevers accused SGC of severing his water lines. Lancia "thought that unlikely" but "nonetheless . . . checked [the] deeds" for a record of a water line easement. *Id.* at 78. Lancia found "no easements of any kind[.]" *Id.* at 79.

[13] A Town employee came out to the SGC Real Estate to investigate whether any active utility lines had been severed. When the employee arrived, Lancia told the employee about Lefevers' accusation. SGC then "started digging behind the house to locate one of the pipes that had been severed." *Id.* at 80. A severed pipe was unearthed, and Lancia asked the Town employee if it was "likely . . . that [it] was a water pipe[.]" *Id.* The employee said that "it very well could've been." *Id.*

[14] The Town later installed a six-inch sewer riser at the sidewalk located at the front of the SGC Real Estate so that SGC could connect the duplex's sewer lines to the Town's sewer system. The Town also replaced a valve, "relocated the meter[.]" and "reset everything." *Id.* at 82. While performing the work, the Town found "another sewer pipe" in the front yard of the SGC Real Estate, near the original boundary that had existed between Lots 7 and 8. *Id.* The Town determined that the pipe was "vacant" and not connected to anything. *Id.* The Town capped the sewer pipe because it "did not want to leave an open sewer pipe underground." *Id.* The Town also marked the two water meters that had been found on the SGC Real Estate and, after determining that one of

the meters was no longer being used, permitted SGC to use both meters for the duplex.

- [15] Lefevers continued to live in his house, without water or sewer service, until March 2020. During that time, he purchased bottled water to meet his water needs. Lefevers moved out of his house in March 2020 and lived with a friend for approximately one year. Lefevers later moved to a hotel.
- [16] Lefevers filed a complaint against SGC on November 20, 2020, alleging that SGC severed his water and sewer lines when it built the duplex across its property. Lefevers sought a money judgment and treble damages for the “wrongful destruction of his water and sewer lines.” Appellant’s Appendix, Volume 2 at 14. SGC filed its answer. On September 14, 2021, SGC requested that the trial court issue findings of fact and conclusions of law after the hearing was held on Lefevers’ claim.
- [17] In October 2021, Lefevers moved for partial summary judgment, and a hearing was held on the motion on June 17, 2022. On August 2, the trial court issued an order, denying Lefevers’ partial summary judgment motion. On January 26, 2023, SGC filed a second request for the court to issue findings and conclusions once it had decided the case.
- [18] On April 5, 2023, the trial court held a bench trial on Lefevers’ claim against SGC. At the start of the trial, SGC renewed its request for findings and conclusions. The trial court granted SGC’s request.

[19] At the close of Lefevers' case in chief, SGC moved for judgment on the evidence. SGC argued that Lefevers was unable to carry his burden of proof for his claim against SGC because (1) Lefevers failed to show that he had either a water line or an easement for a water line that ran across the SGC Real Estate; and (2) no evidence was introduced to show that a sewer line "actually existed across [the SGC Real Estate]." Tr. of Evid., Vol. 2 at 68. The trial court informed the parties that it would treat SGC's motion as a Trial Rule 41(B) motion for involuntary dismissal but that it would take the motion under advisement and complete the trial before making a decision.³

[20] On April 11, 2023, the trial court issued an Order on Bench Trial, granting SGC's motion for the involuntary dismissal of Lefevers' case. The trial court's order reads:

[T]he Court having held [a] Bench Trial and having heard arguments on [the] Motion for Involuntary Dismissal and being duly advised now finds and orders:

1. That the Defendant's SGC Properties, LLC's oral Motion for Involuntary Dismissal is GRANTED based upon the weight of the evidence and the law.
2. The Court finds that the Plaintiff did not present sufficient convincing evidence to overcome the 41B motion.

³ Indiana Trial Rule 41(B) permits the involuntary dismissal of an action where "the weight of the evidence and the law" show no entitlement to relief.

Appellant's App., Vol. 2 at 11. This appeal followed.

Discussion and Decision

I. Standard of Review

[21] The grant or denial of a motion to dismiss pursuant to Indiana Trial Rule 41(B) is reviewed under the clearly erroneous standard. *Thornton–Tomasetti Eng'rs v. Indianapolis-Marion Cnty. Pub. Libr.*, 851 N.E.2d 1269, 1277 (Ind. Ct. App. 2006). In our review of a motion for involuntary dismissal, we do not reweigh the evidence or judge the credibility of the witnesses. *Id.* We will only reverse if the evidence is not conflicting and points unerringly to a conclusion different from the one reached by the trial court. *Id.*

[22] Trial Rule 41(B) states:

After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. *If the court renders judgment on the merits against the plaintiff or party with the burden of proof, the court when requested at the time of the motion by either party shall make findings if, and as required by [Trial] Rule 52(A).* Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication upon the merits.

(Emphasis added). Under Trial Rule 41(B), the trial court may weigh evidence, determine the credibility of witnesses, and decide “whether the party with the burden of proof has established a right to relief[.]” *Barger v. Pate*, 831 N.E.2d 758, 761 (Ind. Ct. App. 2005). Under Indiana Trial Rule 52(A), “[u]pon its own motion, or the written request of any party filed with the court prior to the admission of evidence, the court in all actions tried upon the facts without a jury or with an advisory jury . . . shall find the facts specially and state its conclusions thereon.”

[23] When we review the grant of a motion under Trial Rule 41(B), we must determine whether the court’s judgment is clearly erroneous. *Barger*, 831 N.E.2d at 761-62. When the court enters findings and conclusions under Trial Rule 52(A), we first determine whether the evidence supports the findings, and then determine whether the findings support the judgment. *Id.* at 762. We will not set aside the findings or judgment unless either is clearly erroneous. *Id.* Findings are clearly erroneous if “the record lacks any evidence or reasonable inferences to support them[.]” while a judgment is clearly erroneous if “unsupported by the findings of fact and the conclusions relying on those findings.” *Id.*

II. Analysis

[24] Lefevers contends that the trial court’s grant of the involuntary dismissal of his case was clearly erroneous because (1) the trial court failed to include findings

and conclusions in its final order, and (2) the evidence of record was sufficient to support his claim against SGC. We address each argument in turn.

II.A. Findings of Fact and Conclusions of Law

[25] We first consider Lefevers' claim that the trial court failed to issue findings of fact and conclusions of law in its order. A court is required to enter findings when granting a motion for involuntary dismissal under Trial Rule 41(B) only upon request at the time of the motion by either party. *See* Ind. Trial Rule 41(B). In the instant case, neither party requested findings at the time the Trial Rule 41(B) motion was made. However, SGC did file two written requests with the trial court before the start of the trial, asking that the court issue findings and conclusions in its final ruling, and SGC renewed its request orally at the start of the trial. Thus, SGC's request was preserved, and no subsequent request was needed at the time the Trial Rule 41(B) motion was made. *See In re M.D.*, 906 N.E.2d 931, 933 (Ind. Ct. App. 2009) (“[W]e believe that the best practice and policy is for a trial court to issue findings supporting its decision to dismiss when requested to do so prior to a fact-finding hearing even when no subsequent request is made at the time of a motion under Trial Rule 41(B).”), *trans. denied*.

[26] Turning to the trial court's final order, we note that the purpose of Trial Rule 52(A) is “to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that the right of review for error may be effectively preserved.” *Carmichael v. Siegel*, 670 N.E.2d 890, 891 (Ind. 1996). Therefore, whether the findings are adequate depends upon whether

they are sufficient to disclose a valid basis under the issues for the legal result reached. *Ind. Dep't of Corr. v. Ind. Civil Rights Com'n*, 486 N.E.2d 612, 615 (Ind. Ct. App. 1985).

[27] In the instant case, the trial court granted SGC's motion for involuntary dismissal of Lefevers' case because Lefevers "did not present sufficient convincing evidence to overcome the 41B motion." Appellant's App., Vol. 2 at 11. Thus, we know that the trial court dismissed Lefevers' case on grounds that upon the weight of the evidence and the law, he failed to show that he had a right to relief on his claim against SGC for the wrongful destruction of his water and sewer lines. Also, the court's order references the 41(B) motion, which alleged (1) Lefevers failed to show that he had either a water line or an easement for a water line that ran across the SGC Real Estate; and (2) no evidence was introduced to show that a sewer line "actually existed across [the SGC Real Estate]." Tr. of Evid., Vol. 2 at 68. Therefore, in finding that Lefevers had failed to present sufficient convincing evidence to overcome the 41B motion, we are adequately informed about the theory upon which the trial judge decided the case. While the trial court's finding in the case before us is far from extensive or detailed, and the better practice is to provide detailed findings, under the facts and circumstances of this case, we conclude that the trial court's finding was sufficient to provide the basis for its ruling and the theory upon which it decided the case.

II.B. Sufficiency of the Evidence

- [28] Lefevers next contends that the trial court erred by dismissing his case. He argues that he presented sufficient evidence to support his claim against SGC for the wrongful destruction of his water and sewer lines.
- [29] In reviewing a motion for involuntary dismissal, we do not reweigh the evidence or judge the credibility of the witnesses; rather, we only consider the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *Chem. Waste Mgmt. of Ind., L.L.C. v. City of New Haven*, 755 N.E.2d 624, 635 (Ind. Ct. App. 2001). We will reverse the trial court only if the trial court’s judgment is clearly erroneous. *TMC Transp., Inc. v. Maslanka*, 744 N.E.2d 1052, 1054 (Ind. Ct. App. 2001), *trans. denied*. “A judgment is clearly erroneous when it is unsupported by the findings of fact and the conclusions relying on those findings.” *Id.* at 1055. Moreover, “[a] judgment is clearly erroneous if it applies the wrong legal standard to properly found facts.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). “In order to determine that a finding or conclusion is clearly erroneous, an appellate court’s review of the evidence must leave it with the firm conviction that a mistake has been made.” *Id.*
- [30] Here, the evidence shows that the only easement that had existed on the SGC Real Estate was recorded in 1956 when the two lots that comprised the property were separately owned. Lefevers introduced evidence that he, at one time, had water and sewer service on his property. And he testified that after his pipes froze, he lost his water service and was unsuccessful in having the service

restored. However, Lefevers did not introduce any evidence to show that when he purchased the Lefevers Real Estate in 2015, he acquired easements for water and/or sewer lines that ran from his property through the SGC Real Estate.

[31] Indeed, the evidence of record establishes that when SGC purchased the SGC Real Estate in 2016, it performed a title search and ordered a survey for the property, and the search did not reveal any recorded easements for a water line. Lancia testified that when SGC began constructing the duplex in 2019, SGC had the utility lines marked on the property and that “every step of the way we had these [utility] people come out . . . to verify that there was [sic] no other . . . utilities on the property.” Tr. of Evid., Vol. 2 at 76. Lancia told the trial court that the only utility line that was “flagged” was a gas line that was eventually “pinch[ed] off and secure[d].” *Id.*

[32] SGC presented additional evidence showing that the company hired to pour the foundation for the duplex had unearthed old pipes and abandoned gas and water lines on the SGC Real Estate. Lancia testified, however, that prior to authorizing the company to sever the lines, he verified that each line was “dormant[,]” and he determined that what he “assume[d] to be an old water line was – they were all dry, not even any moisture in them, so, we . . . went ahead and continued” with pouring the foundation. *Id.* at 77. Lancia offered testimony that SGC had dug three feet into the ground on its property where the “sewer line was supposed to exist[,]” and SGC found nothing “[e]xcept for the remnants of something black and green.” *Id.* at 81.

[33] SGC also presented evidence demonstrating that after Lefevers confronted Lancia and accused SGC of severing his water and sewer lines, Lancia, again, checked the SGC Real Estate property records to determine if an easement for a water line existed. Lancia testified that he found “no easements of any kind.” *Id.* at 79. Lancia also testified that when the Town installed sewer equipment along the sidewalk in front of the SGC Real Estate, it found a sewer pipe in the property’s front yard—near the original boundary between Lots 7 and 8—but determined that the pipe was “vacant” and not connected to anything. *Id.* at 82.

[34] While we sympathize with Lefevers’ plight of losing water and sewer service to his home, we find that he has failed to carry his burden of proof regarding his claim against SGC. The evidence of record supports the trial court’s conclusion that Lefevers failed to present sufficient evidence to support his claim against SGC for the wrongful destruction of his water and sewer lines. Therefore, the trial court did not err in granting SGC’s motion for the involuntary dismissal of Lefevers’ case.

Conclusion

[35] We conclude that the trial court’s finding in its final order was sufficient to provide the basis for its decision to grant SGC’s motion for the involuntary dismissal of Lefevers’ case, and Lefevers failed to present sufficient evidence to support his claim against SGC. Accordingly, the judgment of the trial court is affirmed.

[36] Affirmed.

Mathias, J., and Crone, J., concur.

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