

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Evansville MHC, LLC,  
*Appellant-Plaintiff,*

v.

K&M Transport, LLC,  
*Appellee-Defendant*

February 21, 2023

Court of Appeals Case No.  
22A-PL-1778

Appeal from the Vanderburgh  
Circuit Court

The Honorable Ryan Reed,  
Magistrate

Trial Court Cause No.  
82C01-1912-PL-6979

**Memorandum Decision by Judge May**  
Judges Crone and Weissmann concur.

**May, Judge.**

[1] Evansville MHC, LLC (“MHC”) appeals following the trial court’s judgment in favor of K&M Transport, LLC (“K&M”) on MHC’s claim for trespass. MHC raises two issues on appeal, which we revise and restate as:

1. Whether the trial court erred in concluding K&M did not commit trespass; and
2. Whether the trial court erred in denying MHC’s request for a permanent injunction that would bar K&M from entering the Grandin Pointe Mobile Home Park (“Grandin Pointe”).

We affirm.

## Facts and Procedural History

[2] MHC owns and operates Grandin Pointe in Evansville, Indiana. On March 29, 2018, Melinda Evans entered into a written Manufactured Home Community Lease (“Lease”) agreement with MHC to lease a lot at Grandin Pointe. The Lease provided Evans could park her mobile home on a lot owned by MHC in exchange for payment of lot rent. Under the terms of the Lease, Evans was also responsible for paying water, sewer, and trash collection charges. MHC attached a water submeter to the bottom of Evans’s trailer, and MHC billed Evans based on her individual water usage. The Lease also provided:

Any mover of the home must be insured for the benefit of the Community to cover any and all damages caused by a mover in vacating or moving into the Community. Any damage caused by the mover to Community property or the home site, shall be

deducted from the security deposit prior to return of same to resident. Any damages not covered by the security deposit or insurance shall remain the obligation of the resident.

(App. Vol. II at 13.)

[3] Evans later sold her mobile home to an unknown third-party. Monarch Property Management, the owner of a mobile home park in Decatur, Illinois, contracted with K&M to transport Evans' former mobile home from Evansville to Decatur, Illinois. At approximately 6:30 p.m. on December 11, 2019, Jerri Johnson, a regional manager for MHC, received a call from a maintenance worker at Grandin Pointe that people were preparing to tow away the mobile home on Evans' lot. Johnson went to the lot and encountered Michael Lockwood, K&M's owner, and two of Lockwood's employees. Johnson explained to Lockwood that it was illegal in Indiana to move a mobile home after dark, and she told him "there was [sic] balances owed on the home and they couldn't pull the home." (Tr. Vol. II at 12.)

[4] Lockwood and his employees left Grandin Pointe, but they returned the next morning. Johnson again informed Lockwood that he could not remove the mobile home. Johnson also called the Vanderburgh County Sheriff's Office. After some discussion, the responding deputy allowed Lockwood to tow the mobile home away from Grandin Pointe. Lockwood did so without removing MHC's water submeter from the bottom of the mobile home. Lockwood also left behind debris, including trash and tires, and created ruts in the grass when he towed the mobile home away from the lot.

- [5] On December 30, 2019, MHC filed suit against K&M and alleged claims for conversion, theft, back lot rent and fees, criminal mischief, and trespass. The suit sought both monetary damages and a permanent injunction prohibiting K&M from entering Grandin Pointe. Prior to trial, MHC filed a motion for written findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, and the trial court granted MHC's motion. The trial court held a bench trial on March 31, 2022, and the parties submitted post-trial briefs. In its post-trial brief, K&M asserted it did not commit trespass because it went onto the property pursuant to the implied invitation of Evans. K&M also argued Evans was responsible for reimbursing MHC for back rent and any damage done to the property when K&M moved the mobile home off the lot.
- [6] On June 27, 2022, the trial court issued an order with findings of fact and conclusions of law. The trial court entered judgment in favor of MHC on its claims for conversion of the water submeter and for criminal mischief. The trial court entered judgment in favor of K&M on MHC's remaining claims for theft, back lot rent and fees, and trespass. The trial court also denied MHC's request for a permanent injunction.

## Discussion and Decision

## 1. Trespass

[7] MHC asserts the trial court erred when it entered judgment on MHC's claim for trespass<sup>1</sup> in favor of K&M. Regarding this issue, the trial court concluded:

8. It is uncontested that MHC possessed the land in Grandin Pointe on December 11 and December 12. The first element of trespass has been established. The second element, entering the land without a legal right to do so, is less straightforward. There was not testimony or other evidence presented by either side as to the ownership of the Home itself. The Court heard testimony that some form of an agreement between K&M and Monarch Properties existed for the hauling of mobile homes. There was not testimony or other evidence presented by either side as to whether Monarch Properties, some other entity, or some other individual actually owned the Home at 6101 Forrest Drive. It would be unreasonable to think that K&M entered Grandin Pointe to expend time, energy and resources to move the Home, without being invited to do so by the owner of the Home at that time. To further complicate matters, the property owned by MHC at Grandin Pointe is comprised of individual lots. The individual lots are either 1) owned by MHC with a mobile home owned by MHC/Grandin Pointe situated on it, with a person leasing both or 2) owned by MHC and a mobile home owned by another individual, just leasing the lot space. This case involves the second scenario. MHC must maintain their right, as the land owner, to exclude trespassers from its property. However, the individual that owns the mobile home situated on MHC's property must maintain their right to possess and control their own property and invite a third party onto the property to exercise that right. The Owner of the Home situated on the land at 6101 Forrest Drive invited K&M onto the property for the

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<sup>1</sup> MHC does not challenge the trial court's entry of judgment in favor of K&M on MHC's asserted claims of theft and recovery of back lot rent and fees.

specific purpose of hauling their property, the Home, away from the Grandin Pointe community. Therefore, the Court holds that the Plaintiff has not proved the second element of trespass as alleged in Count V.

9. In addition to the reasons stated above, there would be a public policy issue with allowing a mobile home community to exclude a business that has been contracted to perform work on an individual's property from the land owned by the mobile home community. For example, a mobile home community could create subdivisions of their business for electrical, painting, plumbing, cleaning, hauling, and every other example of a service industry, and exclude all other outside business from entering their community to perform these services. The community could then charge an astronomical amount of money to provide those services because they would have a monopoly on providing all services. Another example, a mobile home community could arbitrarily allow some businesses to come onto their land to perform work and not allow other businesses. A mobile home owner would have limited freedom to contract with a business of their choosing to perform work on their homes in that community.

(App. Vol. II at 20-22.)

[8] Our standard of review when the trial court has entered findings of fact and conclusions of law pursuant to a written request by the parties is well-settled. We apply a two-tiered standard of review “and affirm when the evidence supports the findings, and when the findings support the judgment.” *Wysocki v. Johnson*, 18 N.E.3d 600, 603 (Ind. 2014). We will not set aside a finding or judgment unless it is clearly erroneous. *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 216 (Ind. 2012). When reviewing factual findings, we do

not reweigh the evidence or judge the credibility of the witnesses. *Id.* “The evidence is viewed in the light most favorable to the judgment, and we will defer to the trial court’s factual findings if they are supported by the evidence and any legitimate inferences therefrom.” *Id.* at 216-17. However, we review a trial court’s legal conclusions de novo. *Id.* at 217.

[9] To succeed on a trespass claim, the plaintiff must establish two elements: “(1) the plaintiff must show that he possessed the land when the alleged trespass occurred, and (2) the plaintiff must demonstrate that the alleged trespasser entered the land without a legal right to do so.” *Holland v. Steele*, 961 N.E.2d 516, 525 (Ind. Ct. App. 2012), *trans. denied*. Here, MHC owned Grandin Pointe, and MHC asserts K&M’s entry into the mobile home park against MHC’s wishes implicates “one of the essential sticks in the bundle of property rights: a landowner’s right to exclude others.” (Appellant’s Br. at 11.) However, Evans also held a possessory interest in her lot by virtue of her Lease.<sup>2</sup> *See* LEASE, Black’s Law Dictionary (11th ed. 2019) (“A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent.”).

[10] In *Aberdeen Apartments v. Cary Campbell Realty Alliance, Inc.*, Campbell Realty, a real estate business, published a free newsletter called the “Renter’s Gazette” and distributed the newsletter to the tenants in several apartment complexes in

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<sup>2</sup> Johnson testified at trial that Evans’s Lease was in effect when K&M towed away the mobile home.

the Indianapolis metropolitan area. 820 N.E.2d 158, 161 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*. Tenants did not subscribe to the publication. *Id.* at 162. Campbell Realty simply left a copy of the newsletter on the doorstep of each apartment unit in each complex. *Id.* Several landlords who operated complexes where Campbell Realty distributed the Renter's Gazette sued seeking a preliminary injunction prohibiting Campbell Realty from entering their properties to distribute the newsletter. *Id.* The landlords asserted a possessory interest in the common areas of the various complexes they operated, and they argued Campbell Realty was trespassing by entering their properties to deliver the newsletter without their permission. *Id.* at 164. We agreed and held "landlords do have a sufficient possessory interest in the common areas of their properties to maintain an action for trespass to those areas." *Id.* at 167. We then reversed the trial court's denial of the landlord's motion for a preliminary injunction. *Id.* at 170.

- [11] MHC analogizes the case before us to *Aberdeen* and contends it was within its rights to exclude K&M from Grandin Pointe. MHC maintains K&M committed a trespass when it entered Grandin Pointe after being told by Johnson not to return. However, in footnote four of *Aberdeen*, we explained:

The trial court seems to compare Campbell Realty's delivery teams to other delivery persons like *Indianapolis Star* carriers, pizza delivery persons, or Federal Express drivers. We believe that this is a faulty comparison. Tenants either expressly or impliedly invite onto an apartment community's grounds *Indianapolis Star* carriers, pizza delivery persons, and Federal Express drivers. There is no indication that a tenant has either



expressly or impliedly invited Campbell Realty's delivery teams onto the grounds of any of the apartment communities involved here.

820 N.E.2d at 167 n.4. Thus, *Aberdeen* distinguishes between a person who enters an apartment building at the invitation of a tenant and a person who enters the building uninvited. As we explained, “tenants must have the right to permit visitors to pass through the common areas in order to enter their apartment[.]” *Id.* at 165. In this vein, K&M's entry in the instant case is easily distinguishable from Campbell Realty's entry in *Aberdeen* because Evans implicitly gave permission to K&M to come onto her mobile home lot to retrieve her mobile home when she sold it. As K&M argued before the trial court, to find that a “transport company commits trespass when it goes into a community to remove a home on behalf of a buyer would be to effectively deny access to the home to the parties in the sale transaction, both seller and buyer.” (App. Vol. II at 41.)

[12] Lockwood testified that, in connection with this sale, Monarch Properties contracted with him to move the mobile home from Evansville to Decatur, Illinois. MHC points out Lockwood did not know who purchased the trailer from Evans, and he never met or communicated with Evans. However, we agree with the trial court that “[i]t would be unreasonable to think that K&M entered Grandin Pointe to expend time, energy and resources to move the Home, without being invited to do so by the owner of the Home at that time.” (*Id.* at 20.) Therefore, the trial court did not err when it entered judgment for

K&M on MHC's claim for trespass because Evans's possessory interest in her lot extended to giving implicit permission to K&M to access her lot in order to facilitate the sale of her mobile home.<sup>3</sup> See *Walls v. State*, 993 N.E.2d 262, 267 (Ind. Ct. App. 2013) (holding "tenants, while not in exclusive control of the common areas, had a sufficient possessory interest in . . . the immediate adjacent areas by which they accessed their leased apartment units, to request that a person leave that specific area and stop persistently banging on their doors"), *trans. denied*.

## 2. Permanent Injunction

[13] MHC also contends the trial court abused its discretion when it ruled MHC was not entitled to a permanent injunction. "The grant or denial of injunctive relief lies within the sound discretion of the trial court and will not be overturned unless it was arbitrary or amounted to an abuse of discretion." *Warriner Inv., LLC v. Dynasty Homeowners Ass'n, Inc.*, 189 N.E.3d 1119, 1126 (Ind. Ct. App. 2022). "A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances or if it misinterprets the law." *Doe 1 v. Boone Cnty. Prosecutor*, 85 N.E.3d 902, 911 (Ind. Ct. App. 2017).

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<sup>3</sup> MHC also asserts it had the right to exclude K&M from Grandin Pointe because K&M did "not provide (or possess) the necessary permit to transport the mobile home" and did "not provide documentation showing proper liability insurance[.]" (Appellant's Br. at 19.) However, MHC was not responsible for policing K&M's compliance with the law. As K&M observed at trial, "[w]e're not talking about whether K&M complied with every single law regarding tax and statutes and whatnot, we're talking about whether they had a right to go on to the property." (Tr. Vol. II at 52.)

[14] Trial courts consider four factors in determining whether to grant injunctive relief:

(1) whether plaintiff's remedies at law are inadequate; (2) whether the plaintiff can demonstrate a reasonable likelihood of success on the merits; (3) whether the threatened injury to the plaintiff outweighs the threatened harm a grant of relief would occasion upon the defendant; and (4) whether the public interest would be disserved by granting relief.

*Ferrell v. Dunescape Beach Club Condo. Phase I, Inc.*, 751 N.E.2d 702, 712 (Ind. Ct. App. 2001). Here, the trial court concluded:

11. When looking at the four factors at issue for a permanent injunction, the Court finds that the Plaintiff has failed to prove the first factor; the Plaintiff has adequate remedies at law. If K&M is contracted by an individual in the future to move a mobile home from property owned by MHC and caused damage to the property by doing so, MHC would have the ability to file a new action to seek to hold K&M liable for that damage. It is equally as likely that K&M is contracted by an individual in the future to move a mobile home from the property owned by MHC and does not cause any damage to the property. Further, as discussed in section nine, it would be against public policy to limit the ability of potential buyers and sellers of mobile homes to have the freedom to contract with a hauler to move their property.

(App. Vol. II at 22-23.)

[15] MHC asserts it is seeking to enjoin the unlawful act of trespass. However, as explained above, K&M did not commit trespass when it entered Grandin Pointe. There is also no evidence K&M intends to enter Grandin Pointe in the

future without either an implicit or explicit invitation to do so, and if it does so, MHC may sue K&M for any damage it causes. Moreover, we disagree with MHC's assertion that a permanent injunction is in the public interest. As K&M observes, the "public interest is that sellers and buyers of mobile homes be able to enter into transactions which in some instances result in a movement of a home from one place to another." (Appellee's Br. at 20.) Therefore, the trial court did not abuse its discretion when it denied MHC's request for a permanent injunction. See *Starzenski v. City of Elkhart*, 659 N.E.2d 1132, 1137 (Ind. Ct. App. 1996) (holding trial court did not err in denying landowner's motion for a preliminary injunction seeking to bar the City from entering her property to remove debris), *trans. denied, cert. denied*, 117 S. Ct. 582 (1996).

## Conclusion

[16] The trial court did not err when it entered judgment for K&M on MHC's claim for trespass because Evans implicitly gave K&M permission to come onto her lot so that the sale transaction involving her mobile home could be completed. Likewise, the trial court did not abuse its discretion when it denied MHC's request for a permanent injunction. Therefore, we affirm the trial court's judgment.

[17] Affirmed.

Crone, J., and Weissmann, J., concur.