MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ashton L. Geimer,
Appellant,

v.

Donald Braun, et al.,
Appellees.

April 19, 2023

Court of Appeals Case No. 22A-CC-2680

Appeal from the Adams Circuit Court

The Honorable Chad E. Kukelhan, Judge

Trial Court Cause No. 01C01-2108-CC-168

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Donald and Linda Braun brought a complaint for breach of a lease against Ashton Geimer and her former co-tenant, Mackenzie Ripley. The Brauns obtained a judgment of $53,048.37. As a result of an appeal brought by Ripley, we reversed the award of damages and remanded the matter for further proceedings.[1] Now, in her separate appeal, Geimer articulates challenges to the damages award, but the relief she seeks has been granted. However, Geimer individually filed a counterclaim against the Brauns for trespass to personal property, and now appeals the negative judgment entered on that counterclaim. With respect to the judgment upon the counterclaim, we affirm.

Issues

[2] In light of the foregoing, we address only the arguments concerning the denial of Geimer's counterclaim. Geimer presents a single dispositive issue for our review: whether the judgment is clearly erroneous.

[3] The Brauns present a single issue on cross-appeal: whether they are entitled to appellate attorney's fees pursuant to a provision of a lease between the parties.

Facts and Procedural History

[1] *See Ripley v. Braun*, No. 22A-CC-2603 (Ind. Ct. App. Mar. __ 2023).

[4] In October of 2019, Geimer and Ripley (at times referred to collectively as "tenants") leased from the Brauns a property located on Fifth Street in Decatur, Indiana (hereinafter, "the Property"). The tenants tendered a security deposit of $600.00 and paid monthly rent of $600.00, up to and including the month of August 2021. The couple kept three dogs on the Property, although they had no written permission to do so as required under the lease. In the summer of 2021, Geimer and Ripley ended their relationship and Ripley moved out of the Property.

[5] On July 18, 2021, Linda and her grandson, Cesar Roggero, were driving in the neighborhood surrounding the Property when Linda noticed that the yard was overgrown. She asked Roggero to stop the vehicle so that they could do some yard work, and she then sent Roggero to find a lawn tool. Roggero stepped onto the porch and noticed a broken window. Through the window, he could see numerous piles of dog feces inside the residence. Linda summoned Donald, who entered the residence through the broken window.

[6] Once inside, Donald discovered an active water leak in the bathroom where a washing machine had previously been connected. Water had saturated the subflooring, and the living room carpet was also wet. Dog excrement and urine were present throughout the Property. Donald padlocked the premises and contacted Geimer's parents. Geimer surrendered her key to Donald. In order to gain access to the garage, Donald had Geimer's vehicle towed away.

[7] On August 20, 2021, the Brauns filed a "Verified Complaint for Breach of Lease and Damages," (App. Vol. I, pg. 24.), to which Geimer timely filed an answer. Geimer also filed a counterclaim for trespass to personal property. As amended on November 4, 2021, the Brauns' complaint alleged that the tenants had breached their lease by abandoning the Property, allowing damages to the Property, and maintaining a common nuisance by using illegal drugs inside the Property. On August 16, 2022, the trial court conducted a bench trial. Donald testified that he believed, based upon the condition of the Property, that it had been abandoned. He testified that he had Geimer's vehicle towed to a property that he owned, and that she could have retrieved it at any time upon request. Geimer testified and denied that she intended to abandon the Property or her vehicle.

[8] At the conclusion of the presentation of evidence and argument, the trial court requested that the parties submit proposed findings of fact and conclusions thereon. On October 12, 2022, the trial court issued its Findings of Fact, Conclusions of Law, and Judgment awarding the Brauns a judgment of $53,048.37, consisting of $1,200.00 in rent, $22,828.53 in attorney's fees accrued through trial, $3,569.38 in post-trial attorney's fees, and damages of $25,450.46. The trial court concluded that Geimer had abandoned her vehicle; her counterclaim was denied in full. This appeal ensued.

Discussion and Decision

Trespass to Personal Property Counterclaim

Standard of Review

[9] Here, the trial court entered specific findings of fact and conclusions thereon without a written request pursuant to Indiana Trial Rule 52(A).

> When a trial court issues specific findings sua sponte, the findings control our review and the judgment as to the issues those findings cover; for all other issues, we apply a general judgment standard. … We apply a two-tiered standard of review, determining first whether the evidence supports the findings and then whether the findings support the judgment. … We review the findings for clear error and will reverse when our review of the record leaves us with a firm conviction that a mistake has been made. … We neither reweigh evidence nor reassess witness credibility. … While we defer substantially to findings of fact, we do not do so to conclusions of law.

Todd v. Coleman, 119 N.E.3d 1137, 1139-40 (Ind. Ct. App. 2019) (internal citations omitted.)

[10] And, because Geimer did not prevail at trial on her counterclaim, she appeals from a negative judgment.

> A judgment entered against a party who bore the burden of proof at trial is a negative judgment. *Garling v. Ind. Dep't of Natural Res.*, 766 N.E.2d 409, 411 (Ind. Ct. App. 2002). On appeal, we will not reverse a negative judgment unless it is contrary to law. *Mominee v. King*, 629 N.E.2d 1280, 1282 (Ind. Ct. App. 1994). To determine whether a judgment is contrary to law, we consider the evidence in the light most favorable to the appellee, together with all the reasonable inferences to be drawn therefrom. *J.W. v. Hendricks Cnty. Office of Family & Children*, 697 N.E.2d 480, 482

> (Ind. Ct. App. 1998). A party appealing from a negative judgment must show that the evidence points unerringly to a conclusion different than that reached by the trial court. *Mominee*, 629 N.E.2d at 1282.

Smith v. Dermatology Associates of Fort Wayne, P.C., 977 N.E.2d 1, 4 (Ind. Ct. App.2012).

Analysis

[11] Geimer alleged that the Brauns took possession of a vehicle belonging to Geimer and her mother, in violation of Indiana Code Section 32-31-5-5. This statute provides that, subject to some statutory exceptions,

> a landlord may not:
>
> (1) take possession of;
>
> (2) remove from a tenant's dwelling unit;
>
> (3) deny a tenant access to; or
>
> (4) dispose of;
>
> a tenant's personal property in order to enforce an obligation of the tenant to the landlord under a rental agreement.

Ind. Code § 32-31-5-5(a). In relevant part, Indiana Code Section 32-31-4-2 provides:

> (a) A landlord has no liability for loss or damage to a tenant's personal property if the tenant's personal property has been abandoned by the tenant.
>
> (b) For purposes of this section, a tenant's personal property is considered abandoned if a reasonable person would conclude that the tenant has vacated the premises and has surrendered possession of the personal property.

[12] With regard to Geimer's counterclaim, the trial court made the following finding of facts:

> The vehicle was missing a tire, the window was left open to the elements and [it] appeared to be abandoned.
>
> To regain access to the garage, Mr. Braun retrieved his tow truck that he owns and operates from his business and moved the vehicle to the street. Officer Hunter advised that he should store it somewhere else, so he moved it to his business shop and notified Geimer where it would be stored and could be retrieved.

(Appealed Order at 5.) These findings have evidentiary support. That is, Donald testified: "with the volume of feces and water on the floor, at that point in time, it was obvious that somebody's not living here." (Tr. Vol. I, pg. 144.) He described Geimer's vehicle as "not operable" and suitable for "salvage." (*Id.* at 156.) He authenticated photographs depicting the interior and exterior of Geimer's vehicle. A tire had been removed and placed on top of the vehicle; one of the windows was down. As to the disposition of the vehicle, Donald testified:

> I hooked the wrecker up to the car and wanted to remove the car from its location because it was blocking the overhead door into the garage because my intentions was [sic] to start cleaning up immediately. I had removed the car across the street. It was still attached to my wrecker when the Defendants were there. The police officer was there. The mother was there. The step-father was there. And I offered that, we can do what you want with that car. (inaudible) to call State Line Auto Parts to come get it, I'll drop it right there. The police officer said I don't think they want you to drop it there so that was the last it was discussed so after we were done completing everything else that day, I went ahead and took the car to my garage facility and parked it out back.

(*Id.* at 155.) There is evidence from which the trial court could have reasonably determined that the vehicle had been abandoned. Too, the testimony suggests that Donald took control of the property for a purpose other than "to enforce an obligation of the tenant to the landlord under a rental agreement." I.C. § 32-31-5-5(a). Geimer has not shown that the evidence points unerringly to a conclusion opposite that reached by the trial court. The judgment denying Geimer's counterclaim is not contrary to law.

Attorney's Fees

[13] The Brauns request additional attorney's fees related to this appeal. In general, each party to a lawsuit must pay his or her own attorney's fees. *Marion-Adams Sch. Corp. v. Boone*, 840 N.E.2d 462, 467 (Ind. Ct. App. 2006). However, an award of attorney's fees may be authorized by contract, rule, statute, or agreement. *Id.* Here, the Brauns contend that Geimer is liable for appellate attorney's fees pursuant to a lease provision. In the companion case, we

remanded for a determination of reasonable attorney's fees attributable to the breach of the lease, taking into account the amount involved and results obtained. In this appeal, we have limited our consideration to the counterclaim for trespass, independent of the lease. The attorney's fees provision of the lease concerns a breach by a tenant and is inapplicable to a claim of trespass. The Brauns have not shown entitlement to additional appellate attorney's fees on account of this appeal.

Conclusion

[14] The judgment denying Geimer's counterclaim is not clearly erroneous and will not be reversed. We decline to award additional appellate attorney's fees.

[15] Affirmed.

Brown, J., and Weissmann, J., concur.