MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Develan L. Bland and Vanessa M. Helm,

Appellants-Plaintiffs,

v.

Chapman Heating & Air Conditioning, Inc.,

Appellee-Defendant

July 28, 2023

Court of Appeals Case No. 22A-PL-2584

Appeal from the Marion Superior Court

The Honorable Patrick J. Dietrick, Judge

Trial Court Cause No. 49D12-1905-PL-21580

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Develan L. Bland and Vanessa M. Helm (collectively, "Bland") appeal the trial court's judgment in favor of Chapman Heating & Air Conditioning, Inc. ("Chapman") following a bench trial on Bland's complaint alleging breach of contract. Bland raises several issues on appeal, which we consolidate and restate as two issues:

> 1. Whether the trial court erred when it found that Bland had breached the parties' contract and granted Chapman's counterclaim seeking to foreclose its mechanic's lien against Bland's house.
>
> 2. Whether the trial court erred when it denied Bland's claim for punitive damages.

[2] We affirm.

Facts and Procedural History

[3] Bland owns a home in Indianapolis. In 2018, she solicited bids to replace her water heater and HVAC unit through a loan program run by the Indianapolis Neighborhood Housing Partnership ("INHP"). Bland chose Chapman to be the contractor for the project.

[4] On December 6, 2018, Chapman completed the installation of the water heater and HVAC unit at Bland's residence. Tr. Vol. 2, p. 5, 24. Following the installation, Bland contacted Chapman to report problems with the work it had done. These issues included alleged improper installation and damage to the home, including a hole in a wall and a clogged floor drain. *Id.* at 30-32. The next day, December 7, Chapman sent technicians to Bland's home to

investigate Bland's complaints, and they found that the water heater and HVAC system were functioning properly. Tr. Vol. 3, p. 22-23. But the technicians did not address the alleged damages to the wall and floor drain.

[5] Bland was still unsatisfied and asked Jerry Bullock, Chapman's general manager, to return to her house. During that meeting, Bullock determined that the water heater and HVAC system were functioning properly. *Id.* at 95-96. Bland then contacted INHP to report her concerns. In February 2019, INHP hired an independent home inspector to assess the work Chapman had done, and he confirmed that the water heater and HVAC system were functioning properly. Tr. Vol. 2, p. 177-178.

[6] Bland continued to complain to INHP, and she contacted the Indiana Attorney General's Office, the Better Business Bureau, and Chapman's insurance company to report that the water heater and HVAC system were not functioning and that Chapman had caused damage to the home during the installations. *Id.* at 72. Meanwhile, Bland refused to pay Chapman for the work it had done. Accordingly, Chapman filed a notice of intention to hold a mechanic's lien against Bland's home. Ex. 22.

[7] On May 29, 2019, Bland filed a complaint alleging that Chapman had breached the parties' contract, violated express and implied warranties, and acted negligently in installing the water heater and HVAC system. Appellants' App. Vol. 2, p. 15-20. Bland also sought punitive damages for Chapman's "willful

and wanton conduct." *Id.* at 19. Chapman filed an answer and asserted a counterclaim seeking foreclosure on its mechanic's lien against Bland's house.

[8] Following a two-day bench trial in August 2022, the trial court entered judgment in favor of Chapman and awarded it the contract price of $9,245 and $15,000 in attorney's fees. This appeal ensued.

Discussion and Decision

Standard of Review

[9] Bland appeals the trial court's findings and conclusions following a bench trial. As our Supreme Court has made clear, in such cases

> [w]e may not set aside the findings or judgment unless they are clearly erroneous. In our review, we first consider whether the evidence supports the factual findings. Second, we consider whether the findings support the judgment. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. A judgment is clearly erroneous if it relies on an incorrect legal standard. We give due regard to the trial court's ability to assess the credibility of witnesses. While we defer substantially to findings of fact, we do not defer to conclusions of law. We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment.

State v. Int'l Bus. Machs. Corp., 51 N.E.3d 150, 158 (Ind. 2016) (citations and quotation marks omitted).

Issue One: Mechanic's Lien

[10] Bland contends that the trial court erred when it granted Chapman's counterclaim for foreclosure of its mechanic's lien. As our Supreme Court recently explained,

> [a] mechanic's lien is a statutory tool to help collect payment for labor and materials that improve real property. *Premier Invs. v. Suites of Am., Inc.*, 644 N.E.2d 124, 130 (Ind. 1994). It prevents landowners from enjoying their improved property while those who provided the labor and materials get the shaft. *See id.*

Service Steel Warehouse Co., L.P. v. United States Steel Corp., 182 N.E.3d 840, 842 (Ind. 2022).

[11] At trial, Bland presented testimony and evidence to support her allegations that Chapman had improperly installed the water heater and HVAC system and had caused physical damage to her house. But the trial court did not find her testimony or evidence credible and concluded that Bland had breached the parties' contract when she did not pay Chapman for its services. Accordingly, the trial court granted Chapman's counterclaim for foreclosure of its mechanic's lien.

[12] Bland's argument on appeal is somewhat difficult to discern. First, Bland asserts, without citation to relevant authority, that the trial court erred when it found that Bland had breached the parties' contract when Chapman had not alleged breach of contract in its counterclaim. But inherent in Chapman's counterclaim seeking foreclosure of its mechanic's lien is the allegation that

Bland did not pay for services Chapman had performed. When the trial court found that Bland had breached the parties' contract, the court specifically found that Bland had breached the parties' contract "by not paying for goods and services rendered under the contract." Appellants' App. Vol. 2, p. 13. Bland's contention on this issue is therefore not well taken.

[13] Second, Bland maintains that "Chapman failed to show that its work added any value or improvement to Bland's . . . property as required under the mechanic's lien statute. On the contrary, the evidence shows unerringly that Chapman damaged [her] property." Appellant's Br. at 19. But the evidence supports the trial court's findings that Chapman performed under the contract and did not damage Bland's property. For example, Plaintiffs' Exhibit 6 depicts Helm's signature on a "checklist" stating that the work was completed "per . . . customer expectations." And Defendant's Exhibit A is a "draw request" Chapman submitted to INHP, signed by both Bland and Helm, stating that they accepted the work "completed" by Chapman and requesting that INHP pay Chapman in full.

[14] Third, Bland challenges the trial court's conclusion that, "[i]f Bland . . . had any valid complaints about Chapman's performance under the contract, Bland's . . . refusal to allow Chapman onto [her] premises to assess or cure any valid problems estops [her] from claiming breach." Appellants' App. Vol. 2, p. 13. Bland maintains that her "breach of contract claim against Chapman was not invalidated by [her] refusal to allow Chapman back into [her] home, considering the condition in which [it] left the home at the beginning."

Appellants' Br. at 20-21. But Bland's contention on this issue is without merit. Estoppel aside, the trial court concluded that Chapman had "performed all of its obligations under [the] contract" and that Bland breached the contract when she did not pay for the "goods and services rendered under the contract." Appellants' App. Vol. 2, p. 13. The evidence supports those conclusions, and Bland has not shown error.

[15] Fourth, Bland asserts that Chapman violated certain codes and that the parties' contract is unenforceable because it did not comply with the Home Improvement Contracts Act ("HICA"). But Bland does not support the alleged code violations with citations to the record, and that issue is waived. Ind. Appellate Rule 46(A)(8)(a). And, while Bland asserted HICA violations in her complaint, our review of the transcript reveals that Bland made no argument relevant to those alleged HICA violations to the trial court. Accordingly, that issue is also waived. *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015) (noting rule that an argument presented for the first time on appeal is waived for purposes of appellate review). Waiver notwithstanding, Bland's contentions on these issues are simply more requests that we reweigh the evidence.

[16] In sum, Chapman presented sufficient evidence to support the trial court's conclusion that it performed the work under the parties' contract, Bland refused to pay for that work, and Chapman is entitled to foreclose on its mechanic's lien.

Issue Two: Punitive Damages

[17] Bland also contends that "[t]he record contains clear and convincing evidence that Chapman 'acted with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing . . .' and justified an award of punitive damages for Bland[.]" Appellants' Br. at 23 (citation omitted).

[18] As our Supreme Court has held,

> [t]here is no cause of action for punitive damages. Punitive damages are a remedy, not a separate cause of action. Successful pursuit of a cause of action for compensatory damages is a prerequisite to an award of punitive damages. There is no freestanding claim for punitive damages apart from the underlying cause of action.

Crabtree ex rel. Kemp v. Est. of Crabtree, 837 N.E.2d 135, 137-38 (Ind. 2005) (internal citation and quotation omitted). Furthermore, punitive damages are generally "not allowed in a breach of contract action." *Miller Brewing Co. v. Best Beers of Bloomington, Inc.*, 608 N.E.2d 975, 981 (Ind. 1993). "In order to recover punitive damages in a lawsuit founded upon a breach of contract, the plaintiff must plead and prove the existence of an independent tort of the kind for which Indiana law recognizes that punitive damages may be awarded." *Id.* at 984.

[19] Here, the trial court found that Bland was not entitled to compensatory damages, so it follows that she cannot recover punitive damages. *See id.*

Further, Bland has not shown that she pleaded and proved the existence of an independent tort that would support a punitive damages award. *See id.* And, to the extent she contends that the evidence shows conduct by Chapman to support punitive damages, she once again asks that we reweigh the evidence, which we will not do. The trial court did not err when it denied Bland's punitive damages claim.

Conclusion

[20] Bland's arguments on appeal are nothing more than requests that we reweigh the evidence and reassess the credibility of witnesses. Our standard of review precludes us from doing that. Bland has not shown reversible error, and the trial court's judgment for Chapman is affirmed.

[21] Affirmed.

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