

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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Gary Gregory,  
*Appellant-Respondent,*

v.

Joan Gregory,  
*Appellee-Petitioner.*

September 21, 2021

Court of Appeals Case No.  
21A-DN-600

Appeal from the Jasper Superior  
Court

The Honorable Russell D. Bailey,  
Judge

Trial Court Cause No.  
37D01-1812-DN-1163

**Sharpnack, Senior Judge.**

## Statement of the Case

[1] Gary Gregory (Husband) appeals the trial court's order denying his request for reimbursement from Joan Gregory (Wife) for damage to their marital residence.

We affirm.

## Facts and Procedural History

- [2] Husband and Wife were married in December 1968. In December 2018, Wife filed a petition for dissolution. A provisional order was entered in March 2019, which granted temporary possession of the marital residence to Wife. A final hearing was held on June 18, 2019, after which the court took the matter under advisement.
- [3] In September, before the court issued a decree of dissolution, Husband filed an emergency motion to modify the provisional order. In his motion, Husband alleged, among other things, that Wife was engaging in destructive behavior that was causing damage to the marital residence.
- [4] Prior to holding a hearing on Husband's emergency motion, the court issued a decree of dissolution on October 23, 2019, in which it awarded the marital residence to Husband. On February 1, 2021, Husband filed a request for reimbursement for damage, adding to the allegations in his September 2019 emergency motion. Husband alleged that, prior to him taking possession of the marital home in November 2019, Wife had caused extensive damage to the home, and Husband requested that Wife be ordered to reimburse him for such. Following a hearing on the matter on February 11, the court denied Husband's request for reimbursement. Husband now appeals.

## Discussion and Decision

- [5] Husband appeals from a negative judgment. A judgment entered against a party who bore the burden of proof at the trial court is a negative judgment.

*Matter of Est. of Moster*, 158 N.E.3d 775, 780 (Ind. Ct. App. 2020). On appeal, we will not reverse a negative judgment unless it is contrary to law. *Id.* 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. *Id.* A party appealing from a negative judgment has a heavy burden to show that the evidence points unerringly to a conclusion different than that reached by the trial court. *Id.* In our review of a negative judgment, we neither reweigh the evidence nor judge the credibility of witnesses. *RCM Phoenix Partners, LLC v. 2007 E. Meadows, LP*, 118 N.E.3d 756, 760 (Ind. Ct. App. 2019).

[6] At the hearing, Husband and the parties' son testified to the extensive water damage, mold, and animal waste in the house when Husband took possession in November 2019. Husband also presented photographs of the damage and receipts for repair work that had been done to the home. On the other hand, Wife and four witnesses testified to the good condition of the house when she moved out in November. In denying Husband's claim for reimbursement, the court acknowledged the conflicting testimony with which it was faced and stated:

[W]hile the parties that were at the residence on the day of the change of possession, which was November 22<sup>nd</sup>, 2019, it seems that no one had any indication that there was any water problems or anything there. Mr. Gregory's testimony was every time that Mrs. Gregory would take a shower, that it would cause water problems all over, well that would tell me that that's been a – that was existing prior to the time when he was out of the

house. It should have been fixed, but it probably should have been fixed when they both were in the house. And then the – the faucets, the same issue with the faucets. The – it – I find it incredible that you have insurance, you pay for insurance, and yet want to absorb a \$55,000.00 bill because you don't want your insurance rates to go up. And the only – there's only one reason you would do that, is if you think you can get the other party to pay for it. But you have a duty to mitigate the damages and to utilize the insurance that – so the – the mold – and here's the other thing, the mold remediation did not occur for several months after possession of the home. So the timeline is – as far as what damage happened when, and the continuing damage, there's been extensive documentation in the evidence that over time that mold has caused more damage, but how much of – how much was actually present, the, if any, the date of the exchange, which was November 22<sup>nd</sup>, 2019, I'm unclear on. . . . Now, the, so I guess the challenge for me is as far as the damage that's been done, based on what I have in front of me, I can't, I can't determine what the timeline is as far as when what damage occurred. I accept the fact, based on the evidence, that there was damage that occurred in this house. But whether it predated this date of exchange or not is, I don't believe, I don't believe I can say that. The – and then there was a new well that was supposedly a consequence of the, of the mold, but I already explained that the mold was, if was, if it was a persistent problem, how much of that goes to the failure to remediate in a timely manner, because the remediation happened September of 2020. So from November 22<sup>nd</sup>, 2019 to September of 2020 before AmeriClean came in to do their job. That's an extraordinarily long time. So as far as the, as far as the damages, I'm going to deny that claim for damages.

Tr. Vol. 2, pp. 148-49.

- [7] Husband argues the trial court's decision "is against the weight of the evidence," but on appeal we cannot reweigh the evidence or judge the

credibility of the witnesses. Appellant's Br. p. 12; *RCM Phoenix Partners*, 118 N.E.3d at 760. As we must do, we considered the evidence together with all the reasonable inferences therefrom in the light most favorable to Wife, and we cannot say the evidence points unerringly to a conclusion different than that reached by the trial court in this case.

## Conclusion

- [8] For the reasons stated, we conclude the trial court did not err in denying Husband's request for reimbursement from Wife for damage to their marital residence.
- [9] Affirmed.

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