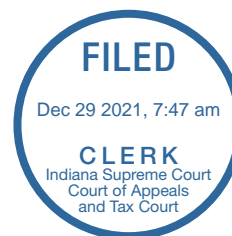


MEMORANDUM DECISION

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

Ronald Filson and Michelle
Filson,
Appellant-Defendants,

v.

Austin M. Bierman, John
Pullins, and Jacqueline
Debshaw,
Appellee-Plaintiffs.

December 29, 2021

Court of Appeals Case No.
21A-PL-656

Appeal from the Jasper Superior
Court

The Honorable Russell D. Bailey,
Judge

Trial Court Cause No.
37D01-1905-PL-464

Mathias, Judge.

- [1] Ronald and Michelle Filson (“the Filsons”) appeal the Jasper Superior Court’s judgment in favor of Austin Bierman, John Pullins, and Jacqueline Debshaw. The issues in these proceedings arise from Bierman’s sale of property, which he

inherited from his grandparents, to John Pullins and Jacqueline Debshaw (the “Buyers”). The Filsons raise three issues, which we reorder and restate as:

I. Whether the trial court abused its discretion when it found that the Filsons sold or disposed of personal property that Bierman inherited from his grandmother’s trust;

II. Whether the trial court abused its discretion in its valuation of that personal property;

III. Whether the trial court erred when it determined that the Filsons failed to prove their claim of unjust enrichment against the Buyers and Bierman; and,

IV. Whether the trial court abused its discretion when it ordered the Filsons to pay the Buyers’ attorney fees.

[2] Concluding that the Filsons have not established any reversible error, we affirm.

Facts and Procedural History

[3] The issues in this case surround the sale of two parcels of land totaling 71.06 acres in Jasper County. The land was previously owned by the James L. Eldridge Trust and the Mary G. Eldridge Revocable Trust as an undivided one-half interest in each respective trust. After his grandparents died and the entire property was transferred to the Mary Eldridge Trust, Austin Bierman, the Eldridges’ grandson, was the sole beneficiary awarded the property under the terms of the Trust. However, the property was held in trust until December 2018 when the Mary Eldridge Trust was closed.

[4] Bierman grew up on the property and lived there with his mother, Michelle Filson and stepfather, Ronald Filson, for approximately twenty years. There

was a two-story home on the property. The Filsons knew that Bierman would inherit the property under the terms of the Mary Eldridge Trust but made several improvements to the property and treated the land as their own. The Filsons did not pay rent to live on the property. The Trust paid the property taxes until 2016. The Filsons paid the property taxes beginning in 2017. Based on conversations the Filsons had with Bierman while he was a minor, the Filsons believed that Bierman would eventually sell the property to them.

[5] During the twenty years the Filsons lived on the property, they cared for the land and livestock. They entered into a crop-share agreement with Kent Kohlhagen allowing Kohlhagen to farm a portion of the land. The Filsons built a pole barn and a hog barn. They also built a structure to enclose a hot tub. These improvements cost approximately \$335,000. The buildings were constructed while Bierman was a teenager and while the property was still owned by the Mary Eldridge Trust.

[6] In April 2019, approximately five months after the Mary Eldridge Trust was closed and the property was transferred to Bierman, he agreed to sell the property to the Buyers, who are siblings, for \$80,000. They executed a written purchase agreement, and, on April 3, 2019, Bierman received earnest money from the Buyers. Shortly thereafter, Bierman entered a verbal agreement to sell the property to the Filsons for \$50,000. The Filsons and Bierman met with an attorney for the purpose of drafting a purchase agreement. During the meeting, Bierman and the Filsons argued and a written purchase agreement was not executed.

- [7] Bierman sold the property to the Buyers on May 20, 2019. The Filsons refused to vacate the premises, and Bierman pursued eviction proceedings against them in Jasper Circuit Court. The court determined that the property belonged to the Buyers and ordered the Filsons to vacate the property by July 9, 2019.
- [8] The Buyers filed a complaint against Bierman simultaneous to the eviction proceedings seeking specific performance of the purchase agreement. On June 6, 2019, before they were evicted from the property, the Filsons filed a motion to intervene and a third-complaint against the Buyers and Bierman alleging breach of contract, negligence, and unjust enrichment. In response, the Buyers filed a counterclaim and amended complaint alleging that the Filsons' claim was groundless and seeking attorney fees and court costs.
- [9] After the Filsons were evicted from the property, the trial court dismissed the Buyers' complaint against Bierman. But the Filsons' and Buyers' counterclaims remained pending. Also, on August 29, 2019, Bierman filed a counterclaim against the Filsons alleging that he was owed back rent and treble damages for his loss of personal property that was distributed to him from the Mary Eldridge Trust but sold or disposed of by the Filsons.
- [10] A bench trial commenced on February 27, 2020. On January 15, 2021, the trial court issued a remarkably thorough order adjudicating the parties' claims.
- [11] First, the trial court concluded that Bierman was not entitled to back rent from the Filsons because there was no evidence that a rental agreement existed between either the Filsons and the Trustee of the Mary Eldridge Trust or the

Filsons and Bierman, after the property was transferred to him in 2018. And neither the Trustee nor Bierman ever notified the Filsons that they owed rent for the house or the land. However, the trial court found that Bierman should have received certain personal property he inherited from the Mary Eldridge Trust and that the Filsons had either sold that personal property to Kohlhagen or disposed of without Bierman's consent. The trial court ordered the Filsons to pay Bierman \$31,250 as a result, but it denied Bierman's request for attorney fees and treble damages.

[12] The trial court also entered a judgment against the Filsons on their claims against Bierman. The trial court concluded that the Filsons made improvements to the property with the knowledge that Bierman eventually would be sole owner of the property under the terms of Mary Eldridge's Trust. And the improvements were completed while Bierman was a minor. Therefore, Bierman did not have the requisite capacity to enter into an agreement to sell the property to the Filsons before they constructed the barns and made other improvements to the property. The court found that "there was not any promise for which the Filsons could reasonably rely upon to take this property out of the operation of the Statute of Frauds based on promissory estoppel." Appellant's App. Vol 3 p. 12.

[13] Finally, the trial court also concluded that the Filsons' claims against the Buyers were frivolous and groundless. Therefore, the trial court entered a

judgment in favor of the Buyers and ordered the Filsons to pay the Buyers' attorney fees in the amount of \$8,125.00.¹

[14] The Filsons now appeal.

Standard of Review

[15] The trial court issued findings of fact and conclusions of law. We will not set aside the findings or judgment unless they are clearly erroneous. *State v. Int'l Bus.s Machs. Corp.*, 51 N.E.3d 150, 158 (Ind. 2016).

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.

Id. (internal quotations and citations omitted).

¹ The Filsons filed a motion to reconsider, which the trial court appropriately treated as a motion to correct error. The Appellees challenged the timeliness of the Filsons' appeal and filed a motion to dismiss the appeal, which was considered by our motions panel. The motions panel denied the motion to dismiss via written order which correctly explains the reasons that the Filsons' appeal was timely filed.

The Personal Property Damage Award to Bierman

[16] The trial court awarded Bierman damages for personal property he should have received under the terms of the Mary Eldridge Trust but that the Filsons either sold or disposed of. The Filsons argue that the trial court erred in concluding that certain personal property belonged to the Mary Eldridge Trust. The Filsons also claim that the trial court abused its discretion when it considered Bierman's opinion of the value of the personal property in calculating the damage award.

[17] The trial court issued the following findings and conclusions pertinent to this issue:

Under the Fourth Amended and Restated Mary G. Eldridge Revocable Trust Dated November 5, 2004, Austin Bierman was to receive “. . . all of the farm machinery, farm equipment, tools and items of personal property and which are directly used in the farming operation conducted on said real estate.” [] The Court finds that the evidence of both parties on the issue of personal property to be given to Bierman and its value was disorganized and difficult to follow such that the determination of the value and disposition of the property is extremely difficult. The items that were to be received by Bierman from his grandmother's trust were as follows:

1. Ford Blue and White Tractor
2. John Deere 4 row planter
3. Red Massey Ferguson 2 row planter
4. 2 rock graders
5. 2 bush hog mowers
6. Hog Roaster on goose neck trailer

7. Harley Davidson Golf Cart trailer
8. 2 hay wagons
9. Small Lincoln welder on a two-wheel cart and a torch set
10. 4 cows.

The above items were never received by Bierman and were owned by the trust for his benefit. It is alleged that the above items were sold by the Filsons to Kent Kohlhagen. Kohlhagen bought the property believing that it was owned by the Filsons. The Filsons sold the 2 hay wagons, Ford Tractor, 2 bush hog mowers, 4 row planter, Red Massey Ferguson 2 row planter to Kent Kohlhagen for the package price of \$70,000.00, with other unidentified equipment. . . .

The fact that these items, except for the hog roaster, do not have a title means that it is one party's word against the other as to whether the specific assets were owned by [the Filsons] or w[ere] taken from the property and should have been given to Bierman. . . . Since the hay wagons were made by the Filsons and the costs of the majority of care for the four cows was paid for by the Filsons, the Court would find that the Filsons owned these items and they were not part of the trust assets. . . . Ronald Filson testified that the two rock graders were left on the farm. As it has only been established that the two rock graders were not transferred to Bierman, and they may have been left on the property, this Court cannot award Bierman for their loss as it has not been determined by the testimony that Filsons sold them and they may still be on the property. Thus, this Court cannot award damages on such an uncertainty.

The only values of property given was the document testified to by Bierman that was derived by him and he testified that the list of handwritten values and scratched out assets was his writing. See Plaintiff Exhibit 12.

Appellant's App. Vol. 3 pp. 6–7.

- [18] The Filsons argue that the intent of the trust was to provide Bierman with the property needed specifically for farming, and the Harley Davidson golf cart trailer, hog roaster on a goose neck trailer, two bush hog mowers, and welder are not farm equipment. Therefore, they claim that Bierman did not inherit those items under the terms of the Mary Eldridge Trust.
- [19] Bierman testified that when Mary Eldridge died in 2016, the Trustee gave him a list of farming equipment and personal property bequeathed to him in Mary's estate. Tr. pp. 36–37, 161. Bierman was still a minor and living on the property with the Filsons when his grandmother died.² The items on the list were located on the property. The list was admitted into evidence as Exhibit 11 and included the golf cart trailer, hog roaster, mowers, and welder.
- [20] In addition to his testimony, Bierman possessed the title to the hog roaster, which was admitted into evidence. The title was given to him after Mary Eldridge died. Tr. p. 160; Ex. 16.
- [21] With regard to the golf cart trailer, mowers, and welder, the trial court reasonably inferred from the evidence presented that this equipment and personal property belonged to the Trust, and the items were therefore inherited

² Bierman was not able to return to the property to remove the equipment after he sold the property to the Buyers because Ronald Filson was living on the property. Filson had a no-contact order against Bierman. Tr. pp. 41–42. When Bierman returned to the property after the Filsons were evicted, the equipment was gone. *Id.* at 41.

by Bierman. Moreover, it was reasonable for the trial court to conclude that the Filsons either disposed of those items or still retained possession of them.

[22] Michelle Filson testified that they own the welder and that it is still in their possession. Tr. pp. 113, 120. Bierman's sister testified that the golf cart trailer was given to her "Uncle Frank."³ Tr. p. 67. Kohlhagen testified that he took a new bush hog mower from the property and that he purchased it from the Filsons. Tr. pp. 76, 87, 92. Ronald Filson testified that he purchased the mower Kohlhagen bought and that he does not know what happened to the two bush hog mowers on Bierman's list. Tr. pp. 120, 138. This testimony conflicts with evidence presented by Bierman that he owned the listed equipment and that the items were located on the property before the Filsons were evicted. It was within the trial court's discretion to weigh this conflicting evidence, and we will not second guess the court's decision on appeal.

[23] Next, we consider the Filsons' claim that the trial court should not have admitted Exhibits 11 and 12 and considered them in its valuation of the equipment and personal property at issue. The admission or exclusion of evidence falls within the sound discretion of the trial court and is reviewed only

³ The Filsons' testimony contradicted their daughter's testimony. The Filsons both testified that the trailer was left on the property. Tr. pp. 113, 140. But Kohlhagen, who purchased many of these items and helped the Filsons remove their belongings from the property, testified that he did not see a golf cart trailer on the property. Tr. p. 76.

for abuse of discretion. *Litherland v. McDonnell*, 796 N.E.2d 1237, 1240 (Ind. Ct. App. 2003), *trans. denied*.

[24] Exhibit 11 is a neatly typewritten exhibit that lists each piece of property and assigns a value to each item. Exhibit 11 was only admitted as evidence of the personal property Bierman claimed that he inherited from the Trust. Tr. p. 38. Exhibit 12 includes the same list of property, but also lists items that are scratched out. The exhibit contains Bierman’s handwritten notes and values for each piece of equipment. The Filsons objected to the admission of these exhibits as evidence of the value of the equipment and argued that the exhibits contained inadmissible hearsay.

[25] The exhibits were prepared by Bierman and do not contain inadmissible hearsay.⁴ See [Ind. Evidence Rule 810\(d\)\(2\)](#) (explaining that a statement of a party opponent is not hearsay). Also, “[a]n owner may testify as to the value of property.” *Court View Centre, L.L.C. v. Witt*, 753 N.E.2d 75, 82 (Ind. Ct. App. 2001). But “there must be a basis for that valuation.” *Id.* (citing [Ind. Evidence Rule 701](#)). Moreover, a trial court’s award of damages is subject to review for an abuse of discretion. *Roche Diagnostics Operations, Inc. v. Marsh Supermarkets, LLC*, 987 N.E.2d 72, 89 (Ind. Ct. App. 2013), *trans. denied*. “When the specific issue on review relates to questions of inadequate or excessive damages, we should not reverse a damage award if the award is within the scope of the

⁴ The Trustee assisted in the preparation of Exhibit 12. And the Filsons objected on the grounds that a foundation had not been laid, but they do not raise that argument in this appeal.

evidence before the trial court, and we may not reweigh the evidence or judge the credibility of the witnesses.” *Randles v. Ind. Patient’s Comp. Fund*, 860 N.E.2d 1212, 1230 (Ind. Ct. App. 2007), *trans. denied*.

[26] The only evidence presented to establish the value of the equipment at issue was Bierman’s testimony and the challenged exhibits. The Filsons challenged Bierman’s ownership of the property at issue but did not present any evidence to challenge Bierman’s opinion of the value of each item. Bierman formed his opinion by consulting with an auction house and a farm equipment retailer. Bierman also lived on the farm for twenty years, and the trial court could reasonably infer that Bierman was familiar with the equipment and personal property. For all of these reasons, we conclude that the trial court did not abuse its discretion in its valuation of the farm equipment and personal property when it calculated the damage award in favor of Bierman.

Unjust Enrichment

[27] The Filsons also argue that the trial court erred when it concluded that they were not entitled to relief on their unjust enrichment claims. Unjust enrichment requires a party who has been unjustly enriched at another’s expense to make restitution to the aggrieved party. *Neibert v. Perdomo*, 54 N.E.3d 1046, 1051 (Ind. Ct. App. 2016). To recover, the plaintiffs must show that (1) they rendered a measurable benefit to the defendant at the defendant’s express or implied request; (2) they expected payment from the defendant; and (3) allowing the defendant to retain the benefit without restitution would be unjust. *Id.*

- [28] The Filsons claim that the Buyers were unjustly enriched because Bierman allowed them to purchase the property for less than the 2018 appraised value and the Buyers should have to compensate the Filsons for the improvements they made to the property. The Filsons' claim fails because the Buyers did not ask the Filsons to make the improvements to the property that neither party owned.
- [29] The Filsons also contend that Bierman was unjustly enriched because he sold the property without compensating them for the improvements they made to the property. The Filsons constructed the barns and the hot tub building on the property while the property was still held in trust and while Bierman was a minor. The Filsons made the improvements knowing that the property would eventually be distributed to Bierman under the terms of Mary Eldridge's Trust.
- [30] When they made the improvements, the Filsons expected that Bierman would either allow them to continue to reside on the property or would sell it to them. But Bierman did not ask the Filsons to construct the buildings, either expressly or impliedly. The Filsons did so of their own accord and enjoyed the benefit of those improvements for several years.⁵ And the Filsons lived on the property for approximately twenty years without paying rent to the Trust or to Bierman. Finally, as the trial court found, the improvements were undertaken years

⁵ The Filsons' improvements most certainly added value to the property. However, the farmhouse on the property, which the Filsons resided in for approximately twenty years, was in such deplorable condition that it had to be torn down. In 2018, the property appraised for \$220,000, but Bierman sold the property for \$85,000. The Buyers bore the expense of tearing down the farmhouse.

before the 2019 discussions between the Filsons and Bierman concerning a possible sale of the property to the Filsons.

[31] For all of these reasons, the Filsons failed to prove their claim of unjust enrichment.

Attorney Fee Award to the Buyers

[32] The Filsons' final claim is that the trial court abused its discretion when it awarded attorney fees to the Buyers. Indiana follows the "American Rule," whereby parties are required to pay their own attorney fees absent an agreement between the parties, statutory authority, or other rule to the contrary. *Town of Georgetown v. Edwards Cmty. Inc.*, 885 N.E.2d 722, 726 (Ind. Ct. App. 2008). The trial court ordered the Filsons to pay the Buyers' attorney fees pursuant to [Indiana Code section 34-52-1-1](#).

[33] "Appellate review of the trial court's award of attorney fees pursuant to [Indiana Code section 34-52-1-1](#) proceeds in three steps." *Smyth v. Hester*, 901 N.E.2d 25, 33 (Ind. Ct. App. 2009), *trans. denied*. First, we review the trial court's findings of fact under a clearly erroneous standard, and next, we review de novo the trial court's legal conclusions. *Id.* "Finally, the statute 'vests discretion in the trial court to award fees on finding one or more of the acts described in subsection (b).'" *Id.* (quoting *Mitchell v. Mitchell*, 695 N.E.2d 920, 925 (Ind. 1998)). Therefore, the final step of our appellate review is "to review the trial court's decision to award fees and the amount thereof under an abuse of discretion

standard.” *Id.* at 33–34 (quoting *Davidson v. Boone Cnty.*, 745 N.E.2d 895, 899-900 (Ind. Ct. App. 2001)).

[34] Indiana Code section 34-52-1-1 allows

a court “[i]n any civil action” to award attorney’s fees “as part of the cost to the prevailing party” if another party “(1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless; (2) continued to litigate the action or defense after the party’s claim or defense became frivolous, unreasonable, or groundless; or (3) litigated the action in bad faith.” I.C. § 34-52-1-1(b). The statute balances an attorney’s duty to zealously advocate with the goal of deterring unnecessary and unjustified litigation. The General Recovery Rule is strictly construed because it “is in derogation of the American Rule observed under the common law.”

River Ridge Dev. Auth. v. Outfront Media, LLC, 146 N.E.3d 906, 913 (Ind. 2020) (citations omitted).

[35] A frivolous claim is one taken primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action. *Branham Corp. v. Newland Res., LLC*, 17 N.E.3d 979, 992 n.12 (Ind. Ct. App. 2014). A claim is “unreasonable” if, based on the totality of the circumstances, including the law and the facts known at the time of filing, no reasonable attorney would consider that the claim was worthy of litigation. *Id.* A claim is “groundless” if there are no facts to support the legal claim presented by the losing party. *Id.* “Bad faith is demonstrated where the party presenting the claim is affirmatively operating with furtive design or ill will.” *GEICO Gen. Ins. Co. v. Coyne*, 7 N.E.3d 300, 305 (Ind. Ct. App. 2014), *trans. denied*. A claim

is not groundless or frivolous merely because the party loses on the merits.

Smyth v. Hester, 901 N.E.2d 25, 33 (Ind. Ct. App. 2009), *trans. denied*.

[36] The Filsons' claims against the Buyers were frivolous, unreasonable, and groundless. The Filsons did not own the property at issue in this case and made improvements to that property knowing that Bierman would eventually own the property once it was distributed from Mary Eldridge's Trust. The Buyers entered into a written purchase agreement to buy the property from Bierman. A few days later, Bierman told the Filsons he was willing to sell the property to them but they never executed a written purchase agreement.

[37] The Filsons' complaint against the Buyers alleged breach of contract, negligence, and unjust enrichment. Importantly, the Buyers were bona fide purchasers of the property. Appellants' App. Vol. 3 p. 10. There was never any agreement, oral or written, between the Filsons and Buyers concerning the real estate at issue.⁶ And the Filsons failed to allege any facts from which a reasonable trier of fact could conclude that the Buyers owed the Filsons a duty, a required element of a negligence claim. *See Pfennig v. Lineman*, 947 N.E.2d 392, 403 (Ind. 2011) (listing the elements a plaintiff must prove to establish negligence).

⁶ The Statute of Frauds provides in pertinent part that “[a] person may not bring [an action involving any contract for the sale of land] unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought[.]” *Ind. Code § 32-21-1-1*.

[38] In their brief, the Filsons focus on their unjust enrichment claim and argue that they spent nearly \$335,000 improving the property but were not reimbursed for those improvements. Appellants' Br. at 14. But the Filsons did not render a measurable benefit to the Buyers at their express or implied request. *See Neibert, 54 N.E.3d at 1051*. The Filsons did not make improvements to the property at any person's request but for their own benefit, and the barns were constructed years before the Buyers purchased the property from Bierman.

[39] For all of these reasons, we agree with the trial court's conclusion that the Filsons' claims against the Buyers were groundless, unreasonable, and frivolous. We therefore affirm the award of attorney fees to the Buyers as allowed by [Indiana Code section 34-52-1-1](#).

Conclusion

[40] The Filsons have not established any reversible error in the trial court's judgment. Affirmed.

Tavitas, J., and Weissmann, J., concur.