MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mackenzie R. Ripley
Appellant,

v.

Donald L. Braun, et al.,
Appellees.

April 19, 2023

Court of Appeals Case No. 22A-CC-2603

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] Mackenzie Ripley appeals a judgment of $53,048.37 awarded to Donald and Linda Braun upon their complaint for breach of lease and damages.[1] We affirm in part, reverse in part, and remand for a determination of damages consistent with this opinion.

Issues

[2] Ripley presents the following consolidated and restated issues:

I. Whether he demonstrated entitlement to involuntary dismissal of the complaint;

II. Whether the trial court abused its discretion in evidentiary rulings; and

III. Whether the judgment for damages is clearly erroneous.

Facts and Procedural History

[3] In October of 2019, Ripley and his girlfriend, Ashton Geimer, (at times referred to collectively as "tenants"), leased from the Brauns a property located on Fifth Street in Decatur, Indiana (hereinafter, "the Property"). The Property was partially furnished; the draperies, rugs, carpet, and kitchen linoleum had last been updated by Donald's mother approximately thirty years earlier. Ripley

[1] The Brauns were also awarded judgment against Ashton Geimer, who has separately appealed.

and Geimer 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 by the lease.

[4] In the summer of 2021, Ripley and Geimer split up and Ripley moved out of the Property. Emmett Saylor, a pipefitter, disconnected the plumbing connection to a washer that had been located in a bathroom. He noticed that the valve was "extremely corroded," and he was concerned that "water could bleed through" the valve. (Tr. Vol. II, pg. 63.) He shut off the valve and hung the washer hose facing upwards. Neither Saylor nor the tenants notified the Brauns of the corrosion or potential for a water leak. The Brauns did not conduct routine inspections 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 Cesar to stop the vehicle so that they could do some yard work, and she then sent Cesar to find a lawn tool. Cesar stepped onto the porch and noticed a broken window; through the window, he could see numerous piles of dog feces inside the residence. They summoned Donald, who entered the residence through the broken window.

[6] Once inside, Donald discovered dog urine on the draperies, kitchen floor, and on the walls up to three feet high. He also 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. Donald stopped the water flow by turning off a valve. Marijuana residue and a smoking device were found on the upstairs level, as well as more dog feces. Donald called for assistance and Officer Nathan Hunter responded. Officer Hunter observed "numerous piles" of dog excrement. (Tr. Vol. I, pg. 20.)

[7] Donald padlocked the premises and attempted to contact Geimer and Ripley. Initially, the calls went unanswered, but after Donald contacted Geimer's parents, Geimer appeared at the Property, indicated that she had been gone to a music festival for a few days, and surrendered her key. Geimer's and Ripley's parents were permitted to return to the Property to remove furniture and other personal property. The Brauns did not pursue formal eviction proceedings.

[8] On August 20, 2021, the Brauns filed a "Verified Complaint for Breach of Lease and Damages." (App. Vol. II, pg. 4.) As amended, the complaint alleged that "[Tenants] breached the Lease, including but not limited to failing to care for the Residence and allowing damages to it, abandonment of the Residence prior to the termination of the lease term, and maintaining a common nuisance by use of illegal drugs in the Residence." (Appellee's App. Vol. II, pg. 6.)

[9] Geimer timely answered the complaint. On December 22, 2021, the Brauns moved for a default judgment against Ripley. Ripley then appeared by counsel and was granted an extension of time in which to file an Answer. In his Answer, Ripley raised as an affirmative defense his contention that the Brauns

had not complied with their statutory obligation to provide Ripley with a detailed notice of claimed damages, pursuant to Indiana Code Section 32-31-3-12. Prior to trial, the parties entered into a joint stipulation of facts relative to the affirmative defense.

[10] On August 16, 2022, the trial court conducted a bench trial. The Brauns called as witnesses several workmen who had provided damage estimates to the Brauns. Ripley unsuccessfully moved to exclude their testimony on the ground that they had not been disclosed in pretrial discovery as expert witnesses. He also challenged the scope of their testimony because the workmen had not, for the most part, performed any services at the Property.

[11] Donald testified that he had been instructed in heat remediation and he had personally performed the majority of the restoration work. He also testified that he had used some "salvage" materials from his "whole building full of materials" that he had "on hand." (Tr. Vol. I, pgs. 210, 213.) The Brauns proffered an exhibit, which was admitted for demonstrative purposes, indicating that paint, new flooring materials, and miscellaneous supplies had been purchased, and several individuals had been paid for labor by cash or check. Joseph Pederson testified that he had been paid $50.00 to tear out carpet and had subsequently purchased the Property pursuant to a contract with the Brauns, for the purchase price of $100,000.00.

[12] Additionally, Donald testified that he and Linda had received an insurance settlement due to the water leak, and the trial court then admonished the parties

not to refer to insurance proceeds.[2] Ultimately, Donald testified that he was seeking to recover the "value" of work performed to bring the Property up to the point where it was "100% usable like when [the tenants] moved in." (*Id.* at 181.) Donald testified that he and Linda were seeking a judgment of $43,772.75 in damages and attorney's fees "not asking for [Donald's] time." (*Id.* at 171.) Relative to attorney's fees, which were not itemized but were referenced in Exhibit 16, a Summary of Invoices, Donald acknowledged that he had "a summary of all fees" paid or due to "justify this dollar amount [$22,828.53]." (*Id.* at 174.)

[13] Geimer and Ripley each testified, as did their parents. The tenants admitted to having kept dogs on the Property without written authorization, and that the dogs had defecated in the house. However, they argued that the Brauns would receive a windfall if awarded the entirety of the claimed costs. In closing argument, the Brauns' attorney requested a judgment of $49,478.99 inclusive of attorney's fees accrued through trial.

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[2] Indiana Evidence Rule 411 provides: "Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control."

Accordingly, evidence that a defendant has insurance is not allowed in a personal injury action and its admission is prejudicial. *Rausch v. Reinhold*, 716 N.E.3d 993, 1002 (Ind. Ct. App. 1999), *trans. denied*. The rationale for not allowing evidence regarding insurance is that if the jury becomes aware of the fact that the defendant carries liability insurance and will not bear the brunt of a judgment, the jury may be prejudiced in favor of an excessive verdict. *Rust v. Watson*, 141 Ind. App. 59, 76, 215 N.E.2d 42, 51 (1966). But this potential for prejudice is not present when the plaintiff testifies in a bench trial upon a breach of contract claim as to his damages and his recovery for damages.

[14] At the conclusion of the presentation of evidence and argument, the trial court requested that the parties submit proposed findings 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. Ripley now appeals.

Discussion and Decision

Standard of Review – Sua Sponte Findings and Conclusions

[15] 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).

Involuntary Dismissal – Directed Verdict

[16] The parties entered into a stipulation of facts surrounding notice of itemization of damages relative to Ripley only:

> The August 17, 2021 Notice of Security Deposit Forfeiture letter was sent to Mackenzie Ripley at 25200 In-23 South Bend, Indiana on August 17 of 2021 by Certified Mail. Prior to the appearance of Counsel, Mackenzie Ripley did not provide his forwarding address in writing to the landlord. The August 17, 2021 letter was returned with "Return to Sender, Refused, Unable to Forward." Plaintiffs have no evidence that Mackenzie Ripley received the August 17, 2021 letter. There were no additional attempts to send Mackenzie Ripley the August 17, 2021 letter.
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> On March 23, 2022 Plaintiff's Attorney sent all potential trial exhibits to Counsel for Ripley and Geimer in anticipation of the then scheduled April 8, 2022 trial. The August 17, 2021 letter was included in those exhibits. The Brauns have no evidence that Mackenzie Ripley, or his counsel, received the August 17, 2021 letter from the Brauns, or their counsel, before March 23, 2022.

Appealed Order at 9-10.

[17] At the close of the Brauns' case-in-chief, Ripley moved for a "directed verdict" under Indiana Trial Rule 50(A),[3] contending that this joint stipulation of facts

[3] Rule 50(A) provides in relevant part: "Where all or some of the issues in a case tried before a jury or an advisory jury are not supported by sufficient evidence or a verdict thereon is clearly erroneous as contrary to the evidence because the evidence is insufficient to support it, the court shall withdraw such issues from the jury and enter judgment thereon or shall enter judgment thereon notwithstanding a verdict."

established that the Brauns had failed to provide requisite statutory notice of claimed damages to Ripley. (Tr. Vol. I, pg. 239.) The trial court took the motion for "a directed verdict" under advisement, and Ripley subsequently testified that he had not received a timely itemization of damages. Post-trial, Ripley filed his motion for involuntary dismissal pursuant to Indiana Trial Rule 41[4] together with his supporting brief. Although the case had not been tried to a jury, the trial court order addressed the issue of entitlement to a "directed verdict." Appealed Order at 9.

[18] We review the grant or denial of a Trial Rule 41(B) motion to dismiss using a clearly erroneous standard. *Neibert v. Perdomo*, 54 N.E.2d 1046, 1050 (Ind. Ct. App. 2016). In conducting this review, we neither reweigh evidence nor judge witness credibility. *Id*. at 1050-51. We reverse only when the evidence is not in conflict and points unerringly to a conclusion different from the one reached by the trial court. *Id*.

[19] In either motion, the gravamen is the allegation of statutory non-compliance. According to Ripley, the Brauns were required to do more than simply mail notice – they had an affirmative duty to secure delivery. According to the

[4] Rule 41(B) provides in relevant part: "After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence."

Brauns, the United States Post Office had noted refusal of the notice and thus Ripley would be estopped from claiming that he had not received notice.

[20] Indiana Code Section 32-31-3-12(a) provides:

> Upon termination of a rental agreement, a landlord shall return to the tenant the security deposit minus any amount applied to:
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> (1) the payment of accrued rent;
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> (2) the amount of damages that the landlord has suffered or will reasonably suffer by reason of the tenant's noncompliance with law or the rental agreement; and
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> (3) unpaid utility or sewer charges that the tenant is obligated to pay under the rental agreement;
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> all as itemized by the landlord with the amount due in a written notice that is *delivered* to the tenant not more than forty-five (45) days after termination of the rental agreement and delivery of possession. The landlord is not liable under this chapter until the tenant supplies the landlord in writing with a mailing address to which to deliver the notice and amount prescribed by this subsection. Unless otherwise agreed, a tenant is not entitled to apply a security deposit to rent.
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> (b) If a landlord fails to comply with subsection (a), a tenant may recover all of the security deposit due the tenant and reasonable attorney's fees.
>
> (c) This section does not preclude the landlord or tenant from recovering other damages to which either is entitled.

> (d) The owner of the dwelling unit at the time of the termination of the rental agreement is bound by this section.

(emphasis added.)

[21] Indiana Code Section 32-31-3-14 provides:

> Not more than forty-five (45) days after the termination of occupancy, a landlord shall *mail* to a tenant an itemized list of damages claimed for which the security deposit may be used under section 13 of this chapter. The list must set forth:
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> (1) the estimated cost of repair for each damaged item; and
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> (2) the amounts and lease on which the landlord intends to assess the tenant.
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> The landlord shall include with the list a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord.

(emphasis added.)

[22] Indiana Code Section 32-31-3-15 provides:

> Failure by a landlord to *provide* notice of damages under section 14 of this chapter constitutes agreement by the landlord that no damages are due, and the landlord must remit to the tenant immediately the full security deposit.

(emphasis added.)

[23] The foregoing statutes utilize varying language to describe a landlord's obligation; that is, Indiana Code Section 32-31-3-12 says notice is to be "delivered," while Indiana Code Section 32-31-3-14 says notice is to be "mailed," and Indiana Code Section 32-31-3-15 refers to failure to "provide" notice. The Brauns have contended that, even if a heightened standard beyond mailing is required, their notice to Ripley was refused.

[24] The landlord-tenant statutes do not directly address refusal by the intended recipient. Although it is not directly applicable, we are guided by the rationale of Indiana Trial Rule 4.16(A), which provides in relevant part:

> It shall be the duty of every person being served under these rules to cooperate, accept service, comply with the provisions of these rules, and, when service is made upon him personally, acknowledge receipt of the papers in writing over his signature. . .
>
> A person who has refused to accept the offer or tender of the papers being served thereafter may not challenge the service of those papers.

[25] Ripley denied that he received service. But the trial court as factfinder observed that the notice mailed to Ripley was returned with a notation of "refused." Appealed Order at 10. Given Ripley's failure to propound the proper motion at trial, and our limited review of a Trial Rule 41(B) motion whereby we cannot assess witness credibility, we find no clear error here.

Evidentiary Rulings

[26] Ripley contends that the trial court abused its discretion by allowing pest control services provider John Long, restoration services provider Kevin Reynolds, and flooring installer Bill Weiss to testify as expert witnesses. He argues that the Brauns circumvented the discovery requirements of Indiana Trial Rule 2(B)(4) because they did not list those persons as expert witnesses and contemporaneously provide the substance of their anticipated expert opinions. Alternatively, Ripley argues that several witnesses were allowed as "skilled witnesses" to "testify outside their purview." Appellant's Brief at 34.

[27] Indiana Evidence Rule 702(a), pertaining to testimony by expert witnesses, provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

[28] Indiana Evidence Rule 701, pertaining to opinion testimony by lay witnesses, provides:

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
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> (a) Rationally based on the witness's perception; and
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> (b) Helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue.

[29] In ruling upon Ripley's motion to exclude witnesses, the trial court did not consider any of the Brauns' witnesses to be expert witnesses triggering a heightened disclosure in discovery.

> Trial courts have broad discretion to admit or exclude evidence, and our review is limited to whether the trial court abused that discretion. . . . We consider all the facts and circumstances surrounding the trial court's decision to determine whether it is "clearly against the logic and effect" of what those facts and circumstances dictate. . . .
>
> Helpful opinions are not exclusive to experts or skilled witnesses. Any witness "not testifying as an expert"—whether an ordinary lay witness or a skilled witness—may testify "in the form of an opinion" if it is "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or determination of a fact in issue." Ind. Evidence Rule 701.

Satterfield v. State, 33 N.E.3d 344, 352 (Ind. 2015).

[30] Ripley suggests that, had Long, Reynolds, and Weiss been listed as expert witnesses, he may have deposed them. However, these witnesses did not testify about complex issues, and Ripley has not developed any argument regarding the substance of what he may have uncovered in a pretrial deposition. Ripley has not shown an abuse of the discovery process or persuaded us that the trial court should have, as a discovery sanction, excluded the witnesses. Rather, Ripley's argument distills to whether these "skilled" or lay witnesses and others were permitted, over Ripley's continuing objections, to provide irrelevant and speculative testimony.

[31] More specifically, Ripley contends that an abuse of discretion occurred when witnesses were permitted to testify about estimates for work that they did not perform and did not anticipate performing, as if this were probative of actual costs. For example, John Long testified that he would have charged $1,500.00 for heat remediation but did not do the work. Kevin Reynolds provided a work estimate of $15,357.44 for removal of items, painting, and new carpet; again, he did not perform the work. Bill Weiss provided an estimate to repair sub-flooring; he did not perform work commensurate with the estimate although he replaced linoleum flooring and carpeting for a lesser amount. He testified that he did not recall damage to the linoleum but replaced it because "he was paid to [do so]." (Tr. Vol. I, pg. 60.) As we discuss more fully below, we agree with Ripley that various opinion witnesses provided irrelevant and speculative testimony.

[32] As our Indiana Supreme Court observed in *Satterfield*, the purpose of opinion testimony from a lay or skilled witness is to enhance the factfinder's understanding of "a fact in issue." 33 N.E.3d at 352. Here, the relevant "determination of [facts] in issue" was whether the tenants breached the lease and caused damages to the property and, if so, whether the Brauns incurred unreimbursed costs to repair those damages.

[33] The Brauns' First Amended Complaint alleged that the tenants breached the lease by allowing damages, abandoning the premises, and maintaining a common nuisance. Pursuant to Paragraph 8 of the lease at issue, tenants were responsible for *costs* of re-renting, cleaning, and repairing the premises. (Ex. 9.)

(emphasis added.) A court construes a lease in the same manner as any other contract. *Sisters of St. Francis Hospital Servs., Inc. v. EON Properties, LLC*, 968 N.E.2d 305, 311 (Ind. Ct. App. 2012). "The essential elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages." *Fowler v. Campbell*, 612 N.E.2d 596, 600 (Ind. Ct. App. 1993).

[34] "In a breach of contract case, the measure of damages is the loss actually suffered by the breach." *Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494, 507 (Ind. Ct. App. 2007). The non-breaching party is not entitled to be placed in a better position than he would have been if the contract had not been broken. *Id.* Donald testified that he and Linda had received insurance proceeds for the water damage to the property. In these circumstances, at best the Brauns' insurer might have a right of subrogation against the tenants for damages. However, the instant case involves making the Brauns, rather than the insurer, whole. The Brauns, having received insurance proceeds, are not entitled to a windfall.

[35] Over Ripley's continuing objections, multiple witnesses offered testimony well beyond the scope of the Brauns' costs attributable to the tenants, and expanding to include charges for maintenance work, sums that had not been incurred, costs that had been reimbursed by an insurance provider, and costs to prepare the property for marketability. Donald testified that, when he and Linda viewed the property in its filthy state, they decided it would not be re-rented but would be offered for sale. Testimony from Donald and several other witnesses indicates that the ensuing work was intended to bring the property up from its

neglected condition to a marketable condition – all chargeable to the tenants, without delineation between the condition of the property at the beginning of the tenancy and the applicable damages attributed to or caused by the tenants, and with no credit for insurance proceeds accepted by Donald.

[36] Various witnesses testified to what they would have charged had they been hired to do certain work, and these estimates formed the basis of several items in the Brauns' Exhibit 11, which was a compilation admitted only as a demonstrative exhibit. But Exhibit 11 made no distinction between maintenance or repair of damages. For example, Richard Miller testified that he "did everything needed done throughout the house." (Tr. Vol. I, pg. 74.) This included "fixing electrical." (*Id.* at 72.) He also re-stained cabinets appearing as "just old" and "getting dull in spots." (*Id.* at 77.) He summarized his work as "anything else to prepare for sale." (*Id.* at 82.) Dave Delong testified that he had been paid to replace two "bent" storm doors that were "not fitting right" and had not had any seals replaced, which he considered necessary maintenance "once in the lifetime of the door." (*Id.* at 36.)

[37] Donald testified that he expected to recover costs to "bring [the Property] up to 100% useable like when they moved in." (*Id.* at 181.) However, he acknowledged that there had been multiple prior tenants and he had not repainted or remodeled between leases. He had replaced the approximately thirty-year old carpet and linoleum entirely with new flooring and had been reimbursed for items considered water damaged by his insurer. He denied that he was requesting payment for his time but insisted that his time had value;

ultimately, that assigned value appeared to be consistent with the afore-mentioned labor estimates. In sum, the record reveals that the trial court admitted a plethora of evidence not relevant to making the injured parties whole. Such constitutes an abuse of the trial court's discretion in the admission of evidence. The testimony and exhibit entries not probative of costs are to be disregarded in the recalculation of damages upon remand.

Judgment of Damages

[38] Our review of a damages award is limited. *Four Seasons Mfg., Inc.*, 870 N.E.2d at 507. That is, we do not reweigh the evidence or judge the credibility of witnesses, and we will reverse an award only when it is not within the scope of the evidence before the finder of fact. *Id.* Nonetheless, "[t]he damage award cannot be based on speculation, conjecture, or surmise, and must be supported by probative evidence." *Whitaker v. Brunner*, 814 N.E.2d 288, 296 (Ind. Ct. App. 2004). To avoid placing an injured party in a better position than he or she would have enjoyed if the breach had not occurred, "a damage award must reference some fairly defined standard, such as cost of repair, market value, established experience, rental value, loss of use, loss of profits, or direct inference from known circumstances." *Id.*[5]

[5] Both parties have cited *General Outdoor Advertising Co. v. LaSalle Realty Corp.*, 218 N.E.2d 141 (Ind. Ct. App. 1966) as authority for the proper measure of damages. However, that case involved the tort of injury to real estate. The instant case is a breach of contract case. The contract here provides for costs of re-renting, cleaning, and repair. (Ex. 9.)

[39] We have previously stated that, as to the issues covered by the findings, we first determine whether the evidence supports the findings and then whether the findings support the judgment. *Todd*, 119 N.E.3d at 1139. Here, the trial court's order includes sixty-two paragraphs – substantially adopted from the Brauns' proposed submissions – denominated as "findings of fact." However, these paragraphs are almost entirely recitations that a witness "testified" to something, "clarified" something, "described" something, "said" something, or "explained" something. Appealed Order at 1-7. Our Indiana Supreme Court has previously held that statements of this kind are "not findings of basic fact in the spirit of the requirement." *Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 33 (Ind. 1981). A court does not find something to be a fact by reciting that a witness testified to something; rather, a finding of fact must reveal an analysis of the evidence. *Id.*

[40] In addition to the recitations that are inadequate to constitute findings of fact, the incorporation of the jointly stipulated facts regarding service of the damages letter, and some findings of fact related to removal of Geimer's vehicle (which is not a subject of this appeal), the trial court entered the following findings:

> The Court notes [sic] finds that, had Mr. Braun not entered he [sic] premises, the damage may have been far worse.
>
> The Court finds that the valve was not faulty, but that the tenants were negligent for not turning the valve all the way off upon removal of their appliances.

> One of the individuals working on the home's repair offered to purchase the property on contract and the Brauns agreed.
>
> [Tenant's parents] simply performed generic cleaning.
>
> The Court further finds that the parents of Ripley and Geimer did what they could to mitigate the damage caused by the animals and the water that the tenants ignored.
>
> Ripley was still on the lease [after moveout].
>
> Further the Court finds that Geimer and Ripley were careless youths who didn't help with the cleanup. Their parents did.

Appealed Order at 4-6. The parties have not disputed the existence of a valid lease. There is sufficient evidence of record to support the findings that the tenants permitted damage from animals and ignored a water leak or threatened water leak after disconnection of a washing machine. These findings in turn support the trial court's conclusion that the tenants breached the lease.

[41] As for the element of damages, the trial court made no valid findings of fact. The order recited that Donald had testified to incurring $43,772.75 of damages (inclusive of $22,828.53 of attorney's fees), and having lost rent of $1,200.00. In the portion of the order denominated "conclusions of law," the trial court recited a portion of the lease providing for recovery of reasonable attorney's fees upon breach of the lease. However, the trial court made no finding of fact relative to the reasonableness of the attorney's fees requested.

[42] In these circumstances, we review the damages award as we would a general judgment. *Todd*, 119 N.E.3d at 1139. The damages award here is, at best, only partially and minimally supported by probative evidence. There is evidence that the premises were uninhabitable due to animal feces; thus, the Brauns were unable to re-let the premises for two months of the lease term and are entitled to two months' rent due to the breach. The attorney's fees portion of the award relates to Exhibit 16, a "Summary of Invoices." (Ex. Vol. I, pg. 107.) This summary provides no basis upon which the trial court could determine the reasonableness of the attorney's fees requested to collect $1,200 in rent plus unsubstantiated costs for actual damages attributed to the tenants that were not otherwise paid for by the insurer.

[43] As for costs incurred by the Brauns, they sought all sums commemorated in Exhibit 11. But Ripley objected to the exhibit and the trial court admitted it for demonstrative purposes only. Exhibits 12 (store receipts), 13 (reflecting cash paid to laborers), 14 (Willshire Home Furnishings invoice), and 15 (a second Willshire Home Furnishings invoice) were admitted as substantive evidence. Together with testimony, these exhibits indicate that the Brauns incurred repair expenses. Some documented expenses relate to replacing drywall and painting after animals had urinated on the walls. Some documented expenses relate to replacement of flooring and subflooring that had been flooded.

[44] That said, the Brauns are only entitled to "loss actually suffered." *Four Seasons Mfg., Inc.*, 870 N.E.2d at 507. The incurrence of maintenance costs is not such a loss. Through the last tenancy and four prior tenancies, repainting had not

been performed. Moreover, the Property flooring was, by Donald's most conservative estimate, thirty years old. The Brauns did not suffer a loss equivalent to new flooring throughout the premises. Finally, some or all of the costs were covered by an insurance payout. The insurer might have some right of subrogation against the tenants, but this does not entitle the Brauns to a windfall.

[45] The damages award does not rest upon an ascertainable basis and must be reversed. The Brauns are to recover only that which places them in a position they would have been in absent the breach. The trial court is to credit sums that have reduced the Brauns' losses, such as insurance proceeds. The Brauns have no entitlement to reimbursement of attorney's fees beyond that which is reasonable. "The determination of reasonableness of attorney fees necessitates consideration of all relevant circumstances." *Smith v. Foegley Landscape, Inc.*, 30 N.E.3d 1231, 1240 (Ind. Ct. App. 2015). The factors for consideration includes the amount involved and the results obtained. *Id.* We remand for recalculation of damages and attorney's fees with these directives.

Conclusion

[46] The trial court's ruling upon the motion for a directed verdict is a nullity, as this was not a jury trial. The trial court did not commit reversible error in failing to enter judgment on the evidence when such motion was not timely made and supported, such that the trial court took only the motion for a directed verdict under advisement. The trial court abused its discretion by admitting irrelevant

and speculative testimony as to damages. The damages award is clearly erroneous in that it does not rest upon an ascertainable basis.

[47] Affirmed in part, reversed in part, and remanded.

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