MEMORANDUM DECISION

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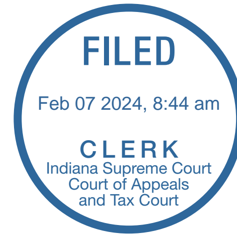

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IN THE

COURT OF APPEALS OF INDIANA

Amanda and Michael Percifield,

Appellants/Defendants/Counterclaim Plaintiffs,

v.

Morgan County Plan Commission,

Appellee/Plaintiff/Crossclaim Defendant.

February 7, 2024

Court of Appeals Case No. 23A-MI-2039

Appeal from the Morgan Superior Court

The Honorable Matthew G. Hanson, Judge

Trial Court Cause No. 55C01-2205-MI-744

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] Beginning in late 2021, a bright light located on property owned by Amanda and Michael Percifield was directed at the neighboring property of Amy and Myron Harris, illuminating their buildings and depriving them of the enjoyment of their pond after dark. The Harrises reported the light to the Morgan County Planning Commission, and after attempts at abatement failed, the Planning Commission brought suit against the Percifields seeking a nuisance abatement and requesting the imposition of fines. Following a hearing at which Amy testified that the light was still offensive, the trial court found that the Percifields were creating a nuisance on the Harrises' property and imposed a fine of $2000.00, suspended subject to abatement. The Percifields contend that the Planning Commission presented insufficient evidence to sustain a nuisance finding and that they were denied procedural due process. We affirm.

Facts and Procedural History

[2] The Percifields live in rural Morgan County, and their next-door neighbors are the Harrises, with whom they have a strained relationship. In late October or early November of 2021, Michael installed a 10,000-lumen barn light 436 feet from the Harrises' house. The light shone into the Harrises' bedroom and interfered with the use of their pond, which they had previously enjoyed visiting at night. According to Amy, the light was shining into her bedroom; was "blinding us when we went outside[;]" and illuminated the entire back and side of her house, the front barn, and her husband's truck such that "it was like being out next to Walmart." Tr. Vol. II p. 103. As for how it affected the pond

and their use of it, Amy indicated that she and Myron "used to go up there and spend a lot of time up there at night" but that "[w]hen the light got put up the frogs disappeared and the crickets quit cricken and it was so bright it would blind you." Tr. Vol. II p. 115.

[3] On November 5, 2021, the Harrises reported the light as a nuisance to the Planning Commission, and, on November 23, 2021, Morgan County Planning Director Laura Parker sent a notice of violation to Amanda, indicating that the lighting fixture on her property was "unshielded and the glare is bleeding onto the [Harrises'] property resulting in a public nuisance." Ex. 3. The notice included some suggestions regarding how the violation could be corrected and informed Amanda that a failure to do so could result in fines being levied for each day that it was not. After dark on December 20, 2021, Parker and Morgan County Sheriff's Lieutenant Christoper Lawson visited the Harrises' property and observed "significant illumination" that, in Parker's opinion, "any reasonable person would describe [] as offensive[.]" Tr. Vol. II pp. 47, 49. In January, February, and March of 2022, Parker attempted to send three certified letters regarding the light to Amanda, one of which was returned for insufficient postage and two of which were returned after being unclaimed. An April 9, 2022, letter from the Planning Commission's attorney was also returned.

[4] On May 14, 2022, the Planning Commission filed a complaint against Amanda (to which Michael was later joined) for abatement of a nuisance and requesting the imposition of fines. By May 19, 2022, an additional light had been installed on a trampoline on the Percifields' property "up against [the Harrises'] property

line." Tr. Vol. II p. 114. By May 24, 2022, even more lights had been added to the barn on the Percifields' property, causing the light cast onto the Harrises' to be even brighter than it had been before. On April 20, 2023, the Percifields filed a counterclaim for costs and attorney's fees in the event that they successfully defended the Planning Commission's claim. At hearings on July 31 and August 22, 2023, Amy testified that, while the trampoline light had been removed, two lights on the barn were still shining on her property and described them as "like somebody giving you the finger every day." Tr. Vol. II p. 127.

[5] Also on August 22, 2023, the trial court issued its order, in which it found that the light on the barn was offensive to the senses and an obstruction to the free use of the Harrises' property and had been so since December of 2021. The trial court imposed a fine of $2000.00 to be suspended for thirty days to allow the Percifields the opportunity to bring their lights into compliance and ordered that they pay approximately $8500.00 in costs and attorney' fees.

Discussion and Decision

[6] When, as here, no written request was filed by either party prior to the admission of evidence in accordance with Trial Rule 52, on appeal the reviewing court reviews the special findings and conclusions as if they were issued *sua sponte* by the trial court. When a court has made special findings, the reviewing court employs a two-step standard of review. *Missi v. CCC Custom Kitchens, Inc.*, 731 N.E.2d 1037, 1039 (Ind. Ct. App. 2000). The reviewing court first determines whether the evidence supports the findings and then whether the findings support the judgment. *Smith v. Brown*, 778 N.E.2d 490, 494 (Ind.

Ct. App. 2002). The reviewing court is to consider only the evidence most favorable to the judgment and all reasonable inferences to be drawn therefrom. *Id*. The reviewing court does not reweigh the evidence or assess the credibility of the witnesses. *Id*. When the trial court enters findings *sua sponte*, the specific findings control only as to the issues they cover. *Id*. at 495. A general judgment standard applies to any issue upon which the trial court has not made a finding. *Id*. A general judgment may be affirmed upon any legal theory supported by the evidence. *Id*.; *see also Humphries v. Ables*, 789 N.E.2d 1025, 1029–30 (Ind. Ct. App. 2003).

[7] Morgan County Code of Ordinances Section 94.21 provides, in part, that

> [w]hatever is:
> (1) Injurious to health;
> (2) Indecent;
> (3) Offensive to the senses; *or*
> (4) An obstruction to the free use of property; so as to essentially interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. (I.C. § 32-30-6-6).

(Emphasis added).

[8] The Percifields first argue that the record cannot sustain a finding that the lights were still a nuisance at the time of the evidentiary hearing, drawing our attention to Parker's testimony that the lights had been abated when she had visited the Harrises' property in May and July of 2023. For one thing, the trial court was under no obligation to credit this testimony, and, apparently, did not. Moreover, Amy testified at the hearing that the issues with the lighting were "still going on currently" and the lighting was still offensive, "like somebody

giving you the finger every day." Tr. Vol. II p. 127. The Percifields' argument in this regard is nothing more than an invitation to reweigh the evidence, which we will not do.

[9] The Percifields also argue that the trial court erroneously failed to find that the lights were causing the Harrises physical discomfort or lack of sleep. As mentioned, the relevant ordinance defines "nuisance" as, *inter alia*, whatever is "[o]ffensive to the senses; or [a]n obstruction to the free use of property[] so as to essentially interfere with the comfortable enjoyment of life or property[.]" Morgan Cnty., Ind., Code of Ordinances § 94.21. To get straight to the point, the plain language of the governing ordinance contains no requirement that something needs to cause physical discomfort or deprive any person of sleep before it can be found to be a nuisance. While such a showing would be more than sufficient to establish a nuisance, it is by no means necessary. At the very least, Amy testified that the lights were offensive and deprived her and Myron of the enjoyment of their property in general and their lake in particular. This is sufficient. As with their previous argument, the Percifields' argument in this regard is an invitation to reweigh the evidence, which we will not do.

II. Whether the Percifields Were Denied Procedural Due Process

[10] The Percifields contend that they were denied procedural due process because the Planning Commission did not follow all of the procedures outlined in the Morgan County nuisance ordinance, including requirements that a code-enforcement official file an inspection report and that a copy of the violation be

posted prominently on the property on which the nuisance is located. The Percifields, however, are making this argument for the first time on appeal and have therefore waived it for appellate review. *See, e.g.*, *Sedona Dev. Grp. Inc., v. Merrillville Rd. Ltd. P'ship*, 801 N.E.2d 1274, 1280 (Ind. Ct. App. 2004) ("[A] party may not present an argument or issue to an appellate court unless the party raised that argument or issue to the trial court."); *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003) (noting that a party's failure to raise constitutional due process challenge below waives the issue for appellate review).

[11] We affirm the judgment of the trial court.

Altice, C.J., and Felix, J., concur.