

Stephen Engel appeals the trial court's denial of his motion to correct error. Engel raises one issue, which we revise and restate as whether the trial court abused its discretion by denying in part Engel's motion to correct error. We affirm.

The relevant facts follow. Engel owned two different airplanes, and he leased two spaces in hangars at the Plymouth Airport from the City of Plymouth (the "City"). Paragraph 1 of the lease agreements stated that the leases would "continue in effect from month to month, being automatically renewed after each month unless thirty (30) days notice is given by either party that the agreement should not be renewed." Defendant's Exhibits A and B. Paragraph 8 of the lease agreements stated:

8) TERMINATION: This agreement may be terminated by either party upon 30 days written notice of nonrenewal as provided for in Paragraph 1 above. In addition, [the City] may terminate this agreement during the course of a monthly term upon the occurrence of any of the following which shall constitute a breach of this lease agreement by [Engel]:

Rent is not paid within 30 days of billing.

[Engel] has failed to comply with any condition of this lease and has not reasonably corrected the deficiency upon notice by [the City].

In the event of each breach, [the City] shall notify [Engel] of termination in writing. [Engel] shall have three (3) days to remove his/her aircraft from the hangar, after which [the City] is hereby specifically authorized to remove the aircraft, without further obligation to [Engel] or liability for aircraft removed.

Id.

In August 2004, the City sent Engel a bill seeking to collect fifty dollars in “Bookkeeping Fees.”¹ Plaintiff’s Exhibit 1. Engel did not pay the City the fifty dollars.

On June 17, 2005, the City filed a claim in Marshall County Superior Court No. 2 Small Claims Division (the “small claims court”) for service rendered and requested fifty dollars in “Bookkeeping Fees.” Appellant’s Appendix at 19. On December 27, 2005, Engel filed a counterclaim and demanded judgment against the City “for compensatory damages, punitive damages, and attorney fees, as a result of the [City] litigating this matter in bad faith and pursuing this frivolous, unreasonable and groundless claim.” Id. at 21. Engel requested “a judgment in his favor in the amount of \$6,000, and for all other just and proper relief in the premises.” Id.

On December 14, 2005, the Secretary of the Plymouth Board of Aviation Commissioners sent Engel a letter on the City’s letterhead which stated:

The Plymouth Board of Aviation Commissioners has directed me to inform you that if all late fees or rebilling fees for which you have been billed by the City of Plymouth have not been paid on or before Friday, December 16, 2005, I am to give notice of termination of your two hangar leases with the City of Plymouth effective February 1, 2006.

Id. at 29.

On December 19, 2005, the Secretary of the Plymouth Board of Aviation Commissioners sent Engel another letter on the City’s letterhead which stated:

You are hereby notified by the Plymouth Board of Aviation Commissioners that both of your hangar leases with the City of Plymouth are terminated

¹ Toni Hutchings, the Clerk-Treasurer of the City testified that “[t]he bills are mailed out around the 30th of each month, they are due the 15th, if they are not paid by the 25th, then there’s a bookkeeping fee of \$25.00 added to the following bill.” June 29, 2009 Transcript at 6.

effective February 1, 2006. Please make arrangements to remove your airplanes from the hangars at the Plymouth Municipal Airport by said date. If you have any other equipment or paraphernalia with your airplanes, those items should also be removed by said date.

Id. at 30.

On January 27, 2006, Engel's counsel sent a letter to the President of the Plymouth Board of Aviation, the Secretary of the Plymouth Board of Aviation, and the Office of the Clerk-Treasurer of the City. The letter stated in part:

I am in receipt of various letters from [the Secretary of the Plymouth Board of Aviation Commissioners] in which he expresses his plans to evict Mr. Engel from Mr. Engel's hangar at the Plymouth Airport due to his non-payment of late fees, which he claims are owed. As I am sure you are aware, Mr. Engel has a lease with the City of Plymouth, which does not require that he pay any late fees.

* * * * *

I trust that the Board of Aviation does not have any plans to undertake some sort of self-help eviction of Mr. Engel from the airport, as this would likely damage the disassembled, fabric aircraft he has in the hangar. I anticipate that the City of Plymouth and the Board of Aviation would be subject to liability for any damage that would be caused.

Id. at 31-32.

At some point, Engel removed one of his airplanes from the airport. The Aviation Board then ordered Ron Ritter, the manager of the Plymouth Airport, to remove Engel's remaining airplane from the open hangar. Ritter removed Engel's airplane from the hangar and "placed it on the ramp," and later moved Engel's airplane and "tied" it down behind the hangar. June 29, 2009 Transcript at 22, 24.

In February 2006, Engel filed a Motion for Temporary Restraining Order and Preliminary Injunction with Notice, which attached the previously mentioned letters as exhibits, in the small claims court. Engel alleged that one of his airplanes was moved out of the hangar and onto the tarmac sometime between February 10 and February 15, 2006. Engel alleged that “[t]he Board’s decision to resort to self-help ejectment of Engel’s property from his hangar, seems to be an attempt to circumvent this lawsuit, which was filed by the City on its behalf.” Appellant’s Appendix at 24. Engel argued that he would “suffer irreparable harm if the Board is allowed to eject him prior to the resolution of this lawsuit,” and “[t]he City will not lose anything if the Court allows Engel’s airplanes to remain in his hangars while he pays rent.” Id. at 25. Engel requested that the court “enter a temporary restraining order requiring the [City] to restore his access to his hangars at the Plymouth Municipal Airport until a hearing on a preliminary injunction granting the same relief during the course of this lawsuit can be had.” Id.

In February 2006, Engel filed a Motion for Change of Venue in the small claims court and argued that the small claims court did not have jurisdiction because the relief sought was equitable in nature. On February 27, 2006, the small claims court transferred the cause of action to the Marshall County Superior Court, Plenary Division (the “trial court”).

After a hearing, the trial court denied Engel’s motion for preliminary injunction on March 7, 2006. The order provided in part:

PRELIMINARY INJUNCTION RULING

* * * * *

[Engel] leased two hangars from the airport, one of each type, and both leases were terminated by the Board during December 2005. The Board then removed [Engel's] plane from one of the hangars and tied it down on the tarmac for storage. This action is the subject matter of [Engel's] motion.

FINDINGS OF FACT

- 1.) [Engel] negotiated two month-to-month leases for airplane hangars with the City, and each lease contained a provision for either party to terminate the lease, for any reason, with thirty (30) days notice.
- 2.) The City gave [Engel] thirty days notice in December 2005, and properly terminated each lease effective February 1, 2006.
- 3.) [Engel] received this notice in December 2005, thus satisfying the notice requirement.
- 4.) The City engaged in a "self-help" remedy by removing [Engel's] airplane.
- 5.) [Engel's] airplane has been tied down on the tarmac for over one month.
- 6.) [Engel] made no allegations of damage to the plane during that one-month period of time.
- 7.) [Engel] has not attempted to locate alternate storage facilities for either his working plane or his airplane parts.

CONCLUSIONS

* * * * *

In the current action, we have one party engaged in a self-help remedy. Generally, courts disapprove of self-help in evictions. However, in the current case [Engel] was given proper notice of the termination of the leases by the City. He made no effort at all to comply with the termination of the leases, and the court is persuaded by testimony that self-help was an appropriate remedy in this instance.

Further, any damage [Engel] suffers as a result of the self-help is best addressed by an action for damages, not a preliminary injunction. [Engel] has alleged no damage has occurred, merely stating that the City's

action exposes his airplane to the weather. Since the airplane was stored in a hangar without a front or back wall or door, merely with a roof over the plane, it was exposed to weather all along. Wind, snow, ice, and other particles were all potentially in contact with the plane. The court is not persuaded that the City's action exposes [Engel] to the type of harm contemplated by the irreparable harm standard. As a result, the court will not grant [Engel]'s motion.

* * * * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Engel] has five (5) business days from today's date to remove any and all additional property located in either airplane hangar. Should [Engel] fail to comply with the court's order, the [City] shall take possession of the property for safekeeping, pending final resolution by the court.

Id. at 37-40.

On May 30, 2007, the City filed an amended notice of claim. The City requested "administrative fees, for late payment of hanger [sic] rental, and tie-out fees from April 2006 to June 2007." Id. at 41. The City requested \$425 plus court costs. On January 14, 2009, the City filed an amended complaint in the trial court which requested recovery of \$850 from Engel for "tie down fees accumulating at the rate of Twenty-five dollars (\$25) per month since April, 2006" until the date of final judgment. Id. at 44.

On June 29, 2009, the trial court held a hearing on the City's complaint and Engel's counterclaim. After the hearing, the City filed Proposed Findings of Fact and Conclusions on July 16, 2009, which included the following proposed finding of fact:

7. The Court notes that a previous hearing was held on March 6, 2006 on Engel's Motion for Temporary Restraining Order and Preliminary Injunction. In its ruling of March 7, 2006, the Court found that the "Defendant's airplane has been tied down on the tarmac for over one month" and the "Defendant has not attempted to locate alternate storage

facilities. . . .” Remarkably, on the date of trial the same facts remain true, although the Defendant’s airplane has been tied down, not on the tarmac itself, but on the grassy area between two hangars for a period in excess of three years since the Court’s order to remove all of the Defendant’s property.

Id. at 48. The City’s proposed Findings of Fact and Conclusions also included the following proposed conclusions:

6. The Plaintiff is entitled to judgment against the Defendant in the sum of \$1050. In addition to all other enforcement remedies available to the Plaintiff, this judgment shall become a lien against the Defendant’s aircraft currently in the possession of the Plaintiff. Furthermore, the judgment amount shall increase \$25 for each month the Defendant’s aircraft remains in the possession of the Plaintiff after the date of entry.

7. Should the Defendant fail to pay the judgment in full within thirty (30) days of entry, the Plaintiff shall be entitled to take possession of the Defendant’s aircraft and initiate lien and foreclosure proceedings in accordance with law.

Id. at 50.

On August 20, 2009, the trial court entered an order that denied the City’s request for bookkeeping fees and tie down fees because the contract between the City and Engel “is clear as to the remedy available in the event of a delinquency in rent, namely a termination in the month-to-month lease agreement between the two parties.” Id. at 12. The court noted that “[t]he contract makes no mention of additional bookkeeping fees or tie down fees.” Id. The court also denied Engel’s counterclaim based on the allegation that the lawsuit was frivolous and without merits. The court’s order also stated:

The Court ordered Engel to remove his airplane from the Plymouth Municipal Airport, and by doing this, the Court terminated the lease agreements between the [City] and Engel.

* * * * *

[T]he Court Order on March 7, 2006, was akin to an ejectment agreement between a landlord and tenant, wherein the Court ordered the defendant to vacate the leased property. If the City intended to assess additional fees outside of the scope of the contract, the City should have notified the defendant and therefore, the defendant is not liable for the tie down fees.

* * * * *

IT IS THEREFORE, ORDERED, ADJUGDED AND DECREED that [Engel] has 15 days from the date of this judgment to remove any property remaining at the Plymouth Municipal Airport. His failure to do so will constitute abandonment of the property and forfeiture to the City of Plymouth to be sold under supervision of this Court in satisfaction of this judgment.

Id. at 12-14.

On September 4, 2009, Engel filed a motion to correct error alleging that the trial court erred in ordering him to remove his property from the hangars within fifteen days because the City “never requested in its pleadings that Engel be required to remove all of his property from the Plymouth Municipal Airport.” Id. at 68. Engel also argued that “[r]equiring that the airplane be removed from the Airport within 15 days is impractical.”

Id.

At the hearing on Engel’s motion on September 10, 2009, the trial court stated:

I think the whole intent of this whole lawsuit all along is to have Mr. Engel out of the property of the Plymouth Municipal Airport and that’s where the City has gone with this lawsuit and it’s the Court’s understanding and I’ve treated this much like any other landlord – tenant case as it was in this particular case

* * * * *

[T]he Court's opinion is that it has been and it remains that the whole crust [sic] of this case was to get Mr. Engel off the property. I resolved the issue with regards to your objection to the late fees and to the tie-down fees, I think appropriately in the Court's opinion obviously that's the way it came down and another part of the aspect of this lawsuit as I always understood it to be was the City wanted him off the property, asked him to get off the property, that's what my order is.

September 10, 2009 Transcript at 5-6. The trial court denied Engel's motion regarding whether Engel was required to remove the airplane but granted Engel's motion in part by ordering that Engel "remove his airplane from the property of the [City] within thirty (30) days from today's date or the City can file petition to liquidate property." Appellant's Appendix at 9.

The issue is whether the trial court abused its discretion by denying in part Engel's motion to correct error.² We review the trial court's decision to grant or deny a motion to correct error for abuse of discretion. Paragon Family Rest. v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before it or if the trial court misapplied the law. Walker v. Kelley, 819 N.E.2d 832, 836 (Ind. Ct. App. 2004). By denying in part Engel's motion to correct error, the trial court did not revise its order that Engel remove his airplane from the City's property. Thus, in determining whether the trial court abused its discretion in denying in part Engel's motion to correct error, we must also address

² On appeal, Engel does not challenge the trial court's denial of his motion for preliminary injunction or the trial court's order concluding that his leases were terminated.

Engel's argument that the trial court erred in ordering Engel to remove his airplane from the City's property.

The trial court apparently entered *sua sponte* findings of fact and conclusions thereon. In general, *sua sponte* findings control only as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. Id. When a court has made special findings of fact, we review sufficiency of the evidence using a two-step process. Id. First, we must determine whether the evidence supports the trial court's findings of fact. Id. Second, we must determine whether those findings support the trial court's conclusions of law and judgment. Id. Findings will be set aside only if they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id.

Engel argues only that it was error for the trial court to order him to remove his airplane because the trial court injected issues and remedies not sought by the parties. In support of his argument, Engel cites Lepper v. Lepper, 509 N.E.2d 818 (Ind. 1987); Squibb v. State ex rel. Davis, 860 N.E.2d 904 (Ind. Ct. App. 2007); Cavazzi v. Cavazzi, 597 N.E.2d 1289 (Ind. Ct. App. 1992); and Gielsdorf-Aliah v. Aliah, 560 N.E.2d 1275 (Ind. Ct. App. 1990). Those cases involve situations where neither party sought a change

or remedy, yet the trial court raised the issue *sua sponte*. See Lepper, 509 N.E.2d at 820-821; Squibb, 860 N.E.2d at 907; Cavazzi, 597 N.E.2d at 1291; Gielsdorf-Aliah, 560 N.E.2d at 1276.

Here, the record reveals that the removal of the airplane was at issue and was properly addressed by the trial court. Specifically, the record reveals that the Secretary of the Plymouth Board of Aviation Commissioners sent Engel two letters in December 2005 regarding the termination of Engel's two hangar leases, and the second letter also requested Engel to make arrangements to remove his airplanes and any other equipment or paraphernalia. In January 2006, Engel's attorney sent a letter to the Plymouth Board of Aviation regarding the eviction of Engel from the airport.

In February 2006, Engel filed a Motion for Temporary Restraining Order and Preliminary Injunction with Notice, which requested that the trial court "enter a temporary restraining order requiring the [City] to restore his access to his hangars at the Plymouth Municipal Airport until a hearing on a preliminary injunction granting the same relief during the course of this lawsuit can be had." Appellant's Appendix at 25. At the hearing on Engel's motion in March 2006, Engel's attorney mentioned the eviction and argued that "[t]he purpose of our preliminary injunction, request for preliminary injunction is to get that airplane moved back into the hangar while the case is going on." March 6, 2006 Transcript at 4. On cross examination, Engel testified that he received notice that his lease was being terminated on February 1, 2006, and the following exchange occurred:

Q Why did you not make arrangements to move your plane and the parts that you had in your hangar after you received that notice?

A Well because we disputed the late fees and as a consequence we didn't feel it was necessary for us to move.

Id. at 18. In denying Engel's motion for preliminary injunction, the trial court held that the City's eviction was the appropriate remedy and ordered Engel to remove his property from the hangar within five days.

During the June 2009 hearing, Ritter, the manager of the Plymouth Airport, testified that he had removed Engel's airplane from the hangar and placed it on the ramp and later moved the airplane and tied it down behind a hangar. During closing argument, the City's attorney stated:

We would like that \$50.00, the \$965.00 we believe is a fair tie-down rate of \$25.00 a month since this Court ordered us, actually Mr. Engel to get his airplane out of there and so what did he do is read the fine line of the Court's order and got it out of the hangar but he didn't get it out of the premises and so we were ordered for safe keeping and it's been sitting there for, whatever, two – three years and we think \$25.00 bucks month safekeeping tie-down is a fair amount.

June 29, 2009 Transcript at 41.

At the September 10, 2009 hearing on Engel's motion to correct error, the trial court stated that "the whole intent of this whole lawsuit all along is to have Mr. Engel out of the property of the Plymouth Municipal Airport and that's where the City has gone with this lawsuit," and "the whole crust [sic] of this case was to get Mr. Engel off the property." September 10, 2009 Transcript at 5-6.

Based upon the record, we conclude that the removal of the airplane was at issue and was properly addressed by the trial court. See Smyrniotis v. Marshall, 744 N.E.2d 532, 535 (Ind. Ct. App. 2001) (rejecting the defendant's claim that the trial court erred in ordering him to vacate the premises because the plaintiff had noted in the facts section of her memorandum that she was entitled to possession), reh'g denied, trans. denied; Clark v. Clark, 726 N.E.2d 854, 857 (Ind. Ct. App. 2000) (rejecting mother's argument that the trial court erroneously injected issues and remedies not sought by the parties and holding that the legal custody of the children was at issue and was properly addressed by the trial court), reh'g denied, trans. denied. Thus, we cannot say that the trial court abused its discretion by denying in part Engel's motion to correct error.

For the foregoing reasons, we affirm the trial court's denial of Engel's motion to correct error.

Affirmed.

MATHIAS, J., and BARNES, J., concur.