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NO. COA12-244  
NORTH CAROLINA COURT OF APPEALS

Filed: 21 August 2012

WILLIAM MCCALL and HELENA MCCALL,  
Plaintiffs,

v.

Transylvania County  
No. 09-CvD-22

HENRY NORMAN and SHEILA NORMAN,  
Defendants,

Appeal by plaintiffs from order entered 8 December 2011 by Judge Athena Brooks in Transylvania County District Court. Heard in the Court of Appeals 5 June 2012.

*Donald H. Barton, P.C., by Donald H. Barton, for Plaintiff-Appellants.*

*Pisgah Legal Services, by M. Mae Creadick, and Legal Aid of North Carolina, Inc., by Andrew Cogdell, for Defendant-Appellees.*

ERVIN, Judge.

Plaintiffs William and Helena McCall appeal from a trial court order dismissing their claims for past-due rent and damages, awarding Defendants Henry and Shelia Norman \$1,600.00 for breach of the implied warranty of habitability and \$9,367.50 for damage to personal property, and taxing the costs to Plaintiffs. On appeal, Plaintiffs contend that the trial court

erred by (1) holding them liable despite the fact that they did not have a reasonable opportunity to remediate the condition upon which Defendants relied in asserting claims for breach of the implied warranty of habitability and property damage; (2) failing to require the presentation of expert testimony concerning the extent to which mold existed in the home that Defendants had rented from Plaintiffs and the cause of any mold that was present in that location; (3) failing to make factual findings concerning the actions that Plaintiffs allegedly did or did not take that resulted in the existence of the alleged mold problem; (4) finding that Defendants' claim for damage to personal property had been proven despite the absence of evidence that Plaintiffs had damaged Defendants' property; (5) finding that Defendants' claim for breach of the implied warranty of habitability had been proven by the greater weight of the evidence; (6) entering a rent abatement judgment against Plaintiffs despite the absence of evidentiary or legal support for such a determination; (7) entering judgment and awarding Defendants monetary compensation for damage to property despite the absence of any evidentiary support for such an award; and (8) making numerous findings of fact which lacked adequate evidentiary support. After careful consideration of Plaintiffs' challenges to the trial court's order in light of the record and

the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

On 27 February 2007, Defendants entered into a written agreement to lease a house owned by Plaintiffs. After the original lease term expired, the parties extended the lease term for an additional year. According to the terms of the lease, Defendants were required to pay \$800 per month in rent.

At some point during the spring of 2008, Plaintiffs had the home pressure washed. Shortly thereafter, Defendants claimed that they began experiencing problems with moisture and mold inside the premises. In June 2008, Defendants noticed increased amounts of mold throughout the home. During an attempt to clean and remove the mold, Defendants discovered massive amounts of mold growth. In July, Defendants' children began experiencing allergic reactions, including rashes and respiratory problems that required medical assistance, due to the mold inside the house.

Defendants testified that they provided verbal notice concerning the existence of the mold problem to Plaintiffs on multiple occasions. On 20 August 2008, Defendants gave Plaintiffs a written notice expressing their concerns about the extent of the mold problem. Plaintiffs personally inspected the

rental premises on 27 August 2008 and claimed that they did not observe any mold. On the same date, Defendants began sleeping in a room located above Mrs. Norman's beauty salon.

On 1 September 2008, Plaintiffs issued an eviction notice directing Defendants to vacate the house. On 8 October 2008, prior to completely vacating the home, Defendants hired a licensed home inspector to inspect the premises. During his inspection, the inspector observed evidence of (1) negative grading outside the house; (2) "efflorescence[,]" or an indication of an ongoing problem with water seeping through the foundation; (3) the presence of "wood destroying fungi" throughout the crawlspaces; and (4) extensive evidence of excessive moisture in the foundation, crawlspaces, and basement. Defendants claimed that they had to dispose of a significant amount of personal property due to mold damage.

On 2 December 2008, Plaintiffs filed a complaint in the small claims division of the Transylvania County District Court for the purpose of seeking to recover damages for past due rent and damage to the rental premises. At the conclusion of the small claims proceeding, the Magistrate entered judgment in favor of the Plaintiffs in the amount of \$1,207.54. Defendants noted an appeal to the Transylvania County District Court for a trial *de novo* and filed a counterclaim seeking compensatory

damages for injury to personal property, breach of the implied warranty of habitability, breach of the covenant of quiet enjoyment, breach of contract, unfair and deceptive trade practices, negligence, violation of the Tenant Security Deposit Act, and punitive damages. On 26 May 2009, Defendants voluntarily dismissed their claims for unfair and deceptive trade practices and punitive damages.

The issues between the parties came on for hearing before the trial court, sitting without a jury, at the 15 March 2010 session of Transylvania County District Court. On 7 July 2010, the trial court entered an order in which it concluded that Plaintiffs had failed to establish their claims for past-due rent and damage to the premises and that Defendants had established their claims for damage to personal property, negligence, and breach of the implied warranty of habitability and were entitled to recover \$12,427.00 in damages from Defendants. *McCall v. Norman*, \_\_ N.C. App. \_\_, 714 S.E.2d 531, 2011 N.C. App. LEXIS 1679, \*2-3 (2011) (unpublished). The Plaintiffs noted an appeal to this Court from the trial court's judgment. *Id.* at \*3. On 11 May 2011, this Court filed an opinion holding that the trial court had failed to make sufficient findings of fact and conclusions of law to permit meaningful appellate review. *Id.* at \*9-10. As a result, we

vacated the trial court's order and remanded this case to the Transylvania County District Court for entry of an order containing adequate findings of fact and conclusions of law. *Id.* at \*10. On 8 December 2011, the trial court entered a revised order in which it (1) made findings of fact consistent with the factual summary set out above; (2) dismissed Plaintiffs' claims for past-due rent and damages with prejudice; (3) awarded Defendants \$1,600.00 for breach of the implied warranty of habitability; and (4) awarded Defendants \$9,367.50 in compensatory damages relating to the mold-damaged items of personal property. Plaintiffs noted an appeal to this Court from the trial court's order on remand.

## II. Legal Analysis

### A. Standard of Review

"When the trial court sits without a jury, as it did in this case, 'the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts.'" *Shepard v. Bonita Vista Properties, L.P.*, 191 N.C. App. 614, 616, 664 S.E.2d 388, 390 (2008) (quoting *Shear v. Stevens Bldg. Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992)), *aff'd*, 363 N.C. 252, 675 S.E.2d 332 (2009). "Even if there is evidence to the contrary, it is the ultimate decision

of the court to determine the weight and credibility of conflicting evidence when different inferences may be drawn from the evidence." *L & S Water, Inc. v. Piedmont Water Authority*, \_\_ N.C. App. \_\_, \_\_, 712 S.E.2d 146, 152 (2011) (citation omitted), *disc. review allowed*, \_\_ N.C. \_\_, 724 S.E.2d 518 (2012). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.'" *Young & McQueen Grading Co. v. Mar-Comm & Assoc.*, \_\_ N.C. App. \_\_, \_\_, \_\_ S.E.2d \_\_, \_\_, 2012 WL 1987932, \*2, 2012 N.C. App. LEXIS 723, \*4-5 (Jun. 5, 2012) (quoting *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991)). We review a trial court's legal conclusions *de novo*. *Shepard*, 191 N.C. App. at 616, 664 S.E.2d at 390.<sup>1</sup>

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<sup>1</sup>Although Plaintiffs included multiple argument headings at the beginning of their brief, their challenge to the trial court's order ultimately resolves itself into contentions that the trial court committed prejudicial error with respect to the issue of whether Plaintiffs were afforded a reasonable opportunity to remedy the mold problem in the rental house (with this argument discussed in at least two different ways), the issue of whether expert testimony was required to show that the injuries that Defendants allegedly sustained resulted from the presence of mold in the rental house, and the issue of whether the trial court was obligated to take additional evidence before entering an order on remand. As a result, we will focus our discussion of Plaintiffs' challenges to the trial court's order on these issues rather than upon the manner in which Defendants listed the issues that it wished to raise at the beginning of its brief.

B. Substantive Legal Analysis

1. Reasonable Opportunity to Repair

As an initial matter, Plaintiffs contend that the trial court erred by awarding damages to Defendants given that Plaintiffs had "no reasonable opportunity to repair the alleged conditions and/or defects which the Defendant[s] contended rendered the premises unfit and uninhabitable and damaged . . . Defendant[s'] personal property." More specifically, Plaintiffs argue that the evidence adduced at trial indicated that they were given no more than one day's actual notice of the alleged mold problems at the rental premises; that, at the time that they received this notice, Defendants had already abandoned the property; and that this notice-related deficiency deprived them of a reasonable opportunity to address the mold problem. Plaintiffs' argument lacks merit.

N.C. Gen. Stat. §§ 42-42(a)(1) and (2) provide, in pertinent part, that a residential landlord must "[c]omply with . . . current applicable building and housing codes . . ." and "[m]ake all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition." A tenant's "obligation to pay rent under the rental agreement [is dependent upon] the landlord's [satisfaction of his] obligation to comply with [N.C. Gen. Stat. §] 42-42(a) [by keeping the premises in a



fit and habitable condition] . . . .” N.C. Gen. Stat. § 42-41. Although a tenant is not required to provide written notice of the existence of any conditions that render a particular rental property uninhabitable, a landlord must be provided with sufficient notice to afford a reasonable opportunity to remedy the defective condition. *Surratt v. Newton*, 99 N.C. App. 396, 405-06, 393 S.E.2d 554, 559 (1990).

The crux of Plaintiffs’ argument is that *Surratt* requires that a landlord have a “reasonable opportunity to repair the conditions and/or defects” and that Defendants’ decision to abandon the premises on the day of Plaintiffs’ inspection of the home deprived Plaintiffs of a reasonable opportunity to remedy the mold problem. The fundamental problem with Plaintiffs’ argument is that the record evidence, as reflected in the trial court’s findings of fact, shows that Defendants provided Plaintiffs with multiple verbal and written notices relating to the mold-related problems that existed at the rental house and that, after personally inspecting the home approximately one month after initially receiving notice of the mold problem, Plaintiffs claimed that there was no mold problem and made no efforts to remediate the problem.

As the record clearly reflects, Defendants gave Plaintiffs verbal notice of their concerns about the presence of mold in

the rental house on multiple occasions in July 2008. After receiving no response, Defendants provided Plaintiffs with written notice of the mold problem on 20 August 2008. On 27 August 2008, Plaintiffs inspected the premises, at which time they claimed to have seen no evidence of mold-related problems and blamed the odors and other deficiencies which they claimed to have observed on cleanliness-related factors. The trial court's order found Plaintiff's contentions that no mold problems existed in the rental house to be devoid of credibility, and we have no authority to disturb this finding given that it has ample evidentiary support. *L & S Water*, \_\_\_ N.C. App. at \_\_\_, 712 S.E.2d at 152. Plaintiffs made no effort to have the premises inspected by a licensed inspector, did not appear at an inspection of the premises performed by a licensed home inspector at Defendants' request despite having been invited to do so, and refused to repair any moisture or mold-related conditions that existed in the house because they claimed that such conditions simply did not exist. Four days after Plaintiffs personally inspected the premises, they issued an eviction notice to Defendants. According to Mr. McCall, Defendants did not completely vacate the premises until 10 October 2008. Thus, the evidentiary record, as reflected in the trial court's findings, established that Plaintiffs did, in

fact, have a reasonable opportunity to remedy the mold-related problem at the premises and failed do so. As a result, Plaintiffs are not entitled to any relief on appeal based upon their contention that they were deprived of an opportunity to address the mold-related problems that led to the injuries which Defendants sustained.

## 2. Expert Testimony and Causation

Secondly, Plaintiffs contend that the trial court erred by (1) failing to require the presentation of expert testimony concerning the existence and cause of the alleged mold problem at the rental premises and (2) failing to make factual findings to the effect that any action taken by Plaintiffs caused the mold problem. More specifically, Plaintiffs argue that there was no competent evidence to support the trial court's finding of liability given that "[t]he trial court . . . did not receive evidence of, nor did it make any findings, as to the causation of, or the conditions that led to, the alleged mold problem, nor did the expert witness . . . make any statements as to the causation of any mold problem as he was not qualified to do so." Once again, we conclude that Plaintiffs' argument lacks merit.

N.C. Gen. Stat. § 8C-1, Rule 701, provides, in pertinent part, that if a witness "is not testifying as an expert, his testimony in the form of opinions or inferences is limited to

those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue."

"There are many instances in . . . which the facts in evidence are such that any layman of average intelligence and experience would know what caused the injuries complained of . . . . Where, however, the subject matter . . . is so far removed from the usual and ordinary experience of the average man that expert knowledge is essential to the formation of an intelligent opinion, only an expert can competently give opinion evidence as to the cause of . . . [the] condition."

*Davis v. City of Mebane*, 132 N.C. App. 500, 504, 512 S.E.2d 450, 453 (1999) (quoting *Gillikin v. Burbage*, 263 N.C. 317, 325, 139 S.E.2d 753, 760 (1964) (citations and quotation marks omitted)), *disc. review improvidently allowed*, 351 N.C. 329, 524 S.E.2d 569 (2000). Thus, expert opinion testimony is not always required for the purpose of establishing the existence of a cause-and-effect relationship.

The record reflects that the trial court heard extensive testimony concerning the existence and cause of the mold problem that existed at the rental home and made findings of fact consistent with this testimony. More specifically, the trial court found, consistent with Defendants' testimony, that, after Plaintiffs had the home power-washed, moisture and mold appeared

inside the rental home and Defendants' children began to experience allergic reactions to mold. Defendants and the owner of a trash disposal business testified that two dump truck loads of Defendants' personal property had been removed from the rental home and disposed of due to mold-related damage. Photographs of the mold damage to Defendants' personal property were introduced into evidence without objection. The trial court determined, without any objection from Plaintiffs, that John Lampert was qualified as an expert in "home inspections, more specifically water penetration and damage [and] presence . . . ." Mr. Lampert testified about his inspection of the home, during which he observed "negative grading," in which the surrounding soil sloped back towards the rental house, and "efflorescence," which indicated that water was seeping through the home's foundation. According to Mr. Lampert, "negative grading" allowed "surface water to flow against the foundation and seep into the crawlspace and basement." Photographs depicting negative grading, efflorescence, and the presence of wood-destroying fungi inside the rental home were introduced into evidence during Mr. Lampert's testimony. Thus, the record contains extensive evidence addressing the issue of whether mold permeated the rental house, the reason that this mold infestation occurred, and the impact of this mold-related

problem on Defendants and their property. Based upon this evidence, the trial court found as a fact that a "negative grading issue" existed at the premises which, in turn, caused surface water to seep into the premises and that, after Plaintiffs power-washed the premises, Defendants began to experience mold and moisture-related problems. These findings, assuming the presence of adequate evidentiary support, are more than sufficient to support the trial court's determination that Defendants were entitled to recover damages from Plaintiffs.

In light of Mr. Lampert's testimony, we are unable to agree with Plaintiffs' contention that the record did not contain expert testimony concerning the existence and cause of the mold problem in the rental home. In addition, we believe that the present case involves a situation in which "any layman of average intelligence and experience," *Davis*, 132 N.C. App. at 504, 512 S.E.2d at 453 (quoting *Gillikin*, 263 N.C. at 325, 139 S.E.2d at 760), had the ability to express an opinion concerning the reasons that Defendants suffered the injuries that underlay the trial court's damage award. Put another way, we believe that, given the circumstances present here, a lay person could properly form an opinion that excessive moisture entering the home caused the formation of mold which, in turn, rendered the premises uninhabitable and damaged Defendants' personal

property. As a result, after carefully considering the record as a whole, we conclude that Plaintiffs' challenge to the the trial court's treatment of the causation issue lacks merit.<sup>2</sup>

3. Adequacy of the Trial Court's Findings and Conclusions

Thirdly, Plaintiffs contend that the trial court erred by (1) concluding that Defendants had proven their claims for breach of the implied warranty of habitability and damage to personal property and (2) awarding Defendants damages for breach of the implied warranty of habitability and damage to personal property on the grounds that these conclusions and awards were not supported by the evidence, contrary to law, and an abuse of discretion. Plaintiffs' arguments lack merit.

Although Plaintiffs advance several contentions in support of their claim that the trial court erred by finding them liable and awarding damages, this aspect of Plaintiffs' argument appears to rest upon a contention that "there [was] no competent evidence to support any finding that the Plaintiff[s] . . . had prior notice . . . [and] they certainly had no reasonable opportunity to repair the premises as required by *Surratt* . . . ." As an initial matter, we note that Plaintiffs appear

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<sup>2</sup>Plaintiffs also appear to contend that the trial court erred by failing to find that they engaged in any particular activity that caused the injury that Defendants sustained. However, Plaintiffs have cited no authority for the proposition that such a finding is required in order to support a damage award of the type at issue here and we know of none.

to believe that, because Defendants physically left the rental home on 27 August 2008 while leaving most of their personal property there, they were effectively storing their personal property at that location rather than inhabiting the property. However, the trial court's finding that Defendants did not completely vacate the residence until 10 October 2008 was adequately supported by Mr. McCall's testimony that Defendants moved out on 10 October 2008 and owed Plaintiffs rent for "September and the ten days in October" at that time. In addition, the effect of accepting Plaintiffs' contention would be to impose a requirement that Defendants physically remain in a home which had been rendered unfit and uninhabitable by mold in order to maintain a claim against Plaintiffs. Finally, as we have previously discussed, the record contains ample evidence tending to support the trial court's determination that Plaintiffs were given adequate notice of the existence of the mold problem and an opportunity to rectify the problem. As a result, this aspect of Plaintiffs' challenge to the trial court's order lacks merit.<sup>3</sup>

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<sup>3</sup>Although they have repeatedly asserted in their argument headings that the trial court's damage calculation lacked adequate evidentiary support, Plaintiffs have failed to advance any detailed argument to this effect in their brief. As a result, Plaintiffs are not entitled to appellate relief based upon this contention. *Dunton v. Ayscue*, 203 N.C. App. 356, 360, 690 S.E.2d 752, 755 (2010) (holding that the plaintiff's



4. Challenges to Findings of Fact and Conclusions of Law

Finally, Plaintiffs argue that the vast majority of the trial court's findings of fact and conclusions of law are infected with error. However, Plaintiffs have failed to advance any argument as to why the challenged findings of fact are unsupported or the challenged conclusions embody any error of law. As a result, Plaintiffs have abandoned any such challenges to those findings and conclusions. N.C. R. App. P. 28(b)(6) (stating, among other things, that "[i]ssues . . . in support of which no reason or argument is stated, will be taken as abandoned"). Instead, Plaintiffs' principal objection to the

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arguments were deemed "abandoned" given his failure to cite any authority in support of his position). Moreover, any argument that Plaintiff might have advanced in support of this contention would not have been persuasive. "[A] tenant may recover damages in the form of a rent abatement . . . plus any special or consequential damages alleged and proved[.]" *Miller v. C.W. Myers Trading Post, Inc.*, 85 N.C. App. 362, 371, 355 S.E.2d 189, 194 (1987), with there being no obstacle "preclude[ing] a tenant from recovering damages [for the breach of the covenant of habitability] where [he or] she has withheld rent. . . ." *Surratt*, 99 N.C. App. at 407, 292 S.E.2d at 560. In its order, the trial court awarded a \$1,600.00 rent abatement relating to the months in which Defendants occupied the rental house following the development of the mold problem and \$9,367.50 for mold-related property damage, with this amount resting upon Defendants' testimony concerning the value of the damaged property. *Eley v. Mid/East Acceptance Corp. of N.C.*, 171 N.C. App. 368, 376, 614 S.E.2d 555, 562 (2005) (stating that "it is well-settled in this state that 'the opinion of a property owner is competent evidence as to the value of such property'") (quoting *Compton v. Kirby*, 157 N.C. App. 1, 18, 577 S.E.2d 905, 916 (2003)) (emphasis omitted). As a result, we are unable to discern any error in the trial court's damages calculation.

trial court's findings and conclusions appears to be that the trial court failed to conduct a new trial or hear any new evidence on remand. We do not find this argument persuasive.

In overturning the trial court's previous order, we did not order a new trial. Instead, we remanded this case to the trial court "[f]or [the] purpose[] of making sufficient findings of fact . . ." and conclusions of law to permit meaningful appellate review. *McCall*, 2012 N.C. App. LEXIS 1679, at \*10. As a result, it was "le[ft] . . . to the trial court's discretion to decide whether to hear additional evidence prior to making new findings of fact." *Lamond v. Mahoney*, 159 N.C. App. 400, 408, 583 S.E.2d 656, 661 (2003). Plaintiffs did not request a new trial or seek to introduce additional evidence on remand. Therefore, Plaintiffs' final challenge to the trial court's order is without merit.

### III. Conclusion

Thus, for the reasons set forth above, we conclude that Plaintiffs have failed to demonstrate that they are entitled to any relief from the trial court's order. As a result, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

JUDGES MCGEE AND STEELMAN concur.

Report per Rule 30(e).