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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 22, 2023 Session

MEREDITH GARRETT v. HIDDEN VALLEY HOMES, LLC ET AL.

Appeal from the Chancery Court for Williamson County
No. 16CV-45799 James G. Martin, III, Judge

No. M2022-01531-COA-R3-CV

In this breach of implied warranty of good workmanship and materials case, the trial court awarded Appellee $77,494.36 in damages. Although the parties agree that the proper measure of damages is the cost to repair the defects, the parties dispute the method of repair and its cost. In determining Appellee's damages, the trial court relied on testimony from Appellee's expert contractor. Discerning no error, we affirm the trial court's order. The parties' respective requests for appellate attorney's fees are denied.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

KENNY ARMSTRONG, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and CARMA DENNIS MCGEE, JJ., joined.

Gregory L. Cashion and Brenden T. Holbrook, Nashville, Tennessee, for the appellants, Hidden Valley Homes, LLC, James Spangler, and Trina Spangler.

Philip L. Robertson, Nashville, Tennessee, for the appellee, Meredith Garrett.

OPINION

I. Background

In 2012, Hidden Valley Homes, LLC ("Hidden Valley") constructed a residence at 698 Brass Lantern Place, Brentwood, Tennessee. Hidden Valley is a Tennessee limited liability company whose members are Trina and James Spangler (together with Hidden

Valley, "Appellants").[1] The Spanglers resided in the residence before selling it to Appellee Meredith Garrett for $2,750,000.00 in March 2016. In July 2016, shortly after moving into the residence, Appellee noticed a few problems with the property. The central issue in this appeal concerns the defects in the flooring of the home's foyer and the cost to remediate those defects.

On December 12, 2016, Appellee filed a complaint against Appellants in the Chancery Court of Williamson County ("trial court").[2] Appellee alleged: (1) breach of implied warranty of workmanlike construction, merchantability, fitness for a particular purpose, and habitability; (2) negligence and a breach of duty of care; (3) breach of the Tennessee Consumer Protection Act ("TCPA"); (4) breach of seller's duty to disclose material facts; (5) misrepresentation/fraud; and (6) civil conspiracy/piercing the corporate veil. On January 23, 2017, the Spanglers filed an answer to the complaint. Also, on January 23, 2017, Hidden Valley filed a motion to dismiss. On March 17, 2020, Appellants filed a motion for summary judgment. On April 15, 2021, the trial court denied Appellants' motion for summary judgment.[3]

The trial court heard the case on February 10, 2022 and March 4, 2022. Concerning the defects in the flooring, the trial court heard proof from the following witnesses: (1) Jeremy Walker, Appellee's expert contractor; (2) Keith Garman, Appellee's expert engineer; and (3) Mark Buchanan, P.E., Appellants' expert engineer.[4] On June 10, 2022, the trial court entered its Memorandum and Order, wherein it concluded that Appellants breached the implied warranty of workmanlike construction because the foyer and adjoining hall were not constructed in a workmanlike manner. The trial court also concluded that Appellee was successful in her negligence claim against Hidden Valley. Specifically, the trial court concluded that Hidden Valley: (1) owed Appellee a duty of reasonable care in constructing the residence; (2) breached that duty; and (3) caused Appellee to sustain damages. The trial court also concluded that: (1) Appellee submitted sufficient proof on her duty to disclose/fraudulent concealment claim; (2) the Spanglers were liable to Appellee for intentional misrepresentation; and (3) it was appropriate to

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[1] At the time of trial, both Mr. and Mrs. Spangler were members of Hidden Valley. However, when the Spanglers filed an answer to Appellee's amended complaint, Ms. Spangler was the sole member of the LLC.

[2] For completeness, Appellee filed an amended complaint on January 16, 2018, adding a real estate agent and realty group as additional defendants. In October 2020, an Agreed Order of Compromise and Dismissal was entered concerning those defendants, and Appellee's claims against them were dismissed with prejudice. Accordingly, those defendants are not parties to this appeal.

[3] Hidden Valley never filed an answer to Appellee's complaint, and it does not appear that the trial court ever heard Hidden Valley's motion to dismiss. As the trial court noted in its Memorandum and Opinion, Appellee did not raise Hidden Valley's failure to file an answer and proceeded to trial against the LLC. As such, the trial court concluded that Appellee waived the opportunity to pursue a default judgment against Hidden Valley.

[4] Messrs. Garman and Buchanan did not testify at the final trial, but the parties stipulated to the admission of their respective depositions.

pierce the corporate veil and hold the Spanglers jointly and severally liable with Hidden Valley.[5] The trial court held that Appellee could not recover under her civil conspiracy claim. Concerning Appellee's damages, the trial court relied on Mr. Walker's testimony when it found Appellee's damages to be $77,494.36. The trial court also held:

> Ms. Garrett has asked for an award of attorney's fees. The Purchase and Sale Agreement provides, in relevant part, that:
>
> > In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover all costs of such enforcement, including reasonable attorney's fees.
>
> Tr. Ex. 15, § 13, I. 363-365. Ms. Garrett has been successful on several of her claims and is thus the prevailing party. Ms. Garrett is entitled to an award of attorney's fees.

On October 4, 2022, the trial court entered its Final Order and Judgment, wherein it awarded Appellee attorney's fees totaling $47,758.02 against Appellants. The trial court also awarded Appellee discretionary costs totaling $6,160.77. In sum, the trial court entered judgment against Appellants, jointly and severally, totaling $131,413.15 (damages award of $77,494.36, attorney's fees of $47,758.02, and discretionary fees of $6,160.77). Appellants filed a timely appeal.

II. Issues

Appellants raise two issues for this Court's review, as stated in their brief:

1. Whether it was an abuse of discretion of the court to shift the burden of proof from Plaintiff to Defendants for providing evidence of the cost of remediation using the methodology of the Plaintiff's expert engineer.

2. Whether it was an abuse of discretion to accept the Plaintiff's contractor expert's engineering analysis over the Plaintiff's expert engineer.

III. Standard of Review

We review a non-jury case "*de novo* upon the record with a presumption of correctness as to the findings of fact, unless the preponderance of the evidence is

[5] On March 16, 2020, Appellee dismissed, without prejudice, her TCPA claim against Appellants.

otherwise." ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn. 2000) (citing Tenn. R. App. P. 13(d)). The trial court's conclusions of law are reviewed *de novo* and "are accorded no presumption of correctness." ***Brunswick Acceptance Co., LLC v. MEJ, LLC***, 292 S.W.3d 638, 642 (Tenn. 2008).

As discussed below, the trial court made a certain credibility finding. We note that, because "trial courts are able to observe witnesses as they testify and to assess their demeanor, . . . trial judges [are best suited] to evaluate witness credibility." ***Wells v. Tennessee Bd. of Regents***, 9 S.W.3d 779, 783 (Tenn. 1999) (citing ***State v. Pruett***, 788 S.W.2d 559, 561 (Tenn. 1990); ***Bowman v. Bowman***, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991)); *see also* ***Richards v. Liberty Mut. Ins. Co.***, 70 S.W.3d 729, 733 (Tenn. 2002) ("As this Court has repeatedly emphasized, a reviewing court must give 'considerable deference' to the trial judge with regard to oral, in-court testimony as it is the trial judge who has viewed the witnesses and heard the testimony."). To this end, "appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary." ***Wells***, 9 S.W.3d at 783 (internal citations omitted). With the foregoing law in mind, we turn to our analysis.

IV. Procedural Deficiencies

Before turning to the substantive issues, we first address the procedural deficiencies in the parties' briefs that have complicated this Court's review. The contents of appellate briefs are governed by Rule 27 of the Tennessee Rules of Appellate Procedure. According to the rule, the appellant's initial brief shall contain "[a] statement of the issues presented for review . . . ." Tenn. R. App. P. 27(a)(4). The statement of the issues is vitally important to the appeal as it provides this Court with the questions that we are asked to answer on review. The statement is also significant because our "[a]ppellate review is generally limited" to those issues listed in it. ***Hodge v. Craig***, 382 S.W.3d 325, 334 (Tenn. 2012) (citing Tenn. R. App. P. 13(b)). Indeed, "[c]ourts have consistently held that . . . [a]n issue not included [in the statement of the issues] is not properly before the Court of Appeals." ***Hawkins v. Hart***, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001). Accordingly, appellants should endeavor to frame each issue "as specifically as the nature of the error will permit," ***Hodge***, 382 S.W.3d at 335 (citing ***Fahey v. Eldridge***, 46 S.W.3d 138, 143-44 (Tenn. 2001); ***State v. Williams***, 914 S.W.2d 940, 948 (Tenn. Crim. App. 1995)), as this Court is not required to "search[] for hidden questions" in appellants' briefs. ***Hodge***, 382 S.W.3d at 334 (citing Bryan A. Garner, *Garner on Language and Writing* 115 (2009); Robert L. Stern, *Appellate Practice in the United States* § 10.9, at 263 (2d ed.1989)).

As listed in their statement of the issues presented for review, Appellants' first issue is whether the trial court "abuse[d its] discretion [when it] shift[ed] the burden of proof from Plaintiff to Defendants for providing evidence of the cost of remediation using the methodology of the Plaintiff's expert engineer." Appellants' second issue for review is whether the trial court "abuse[d its] discretion [when it] accept[ed] the Plaintiff's contractor

expert's engineering analysis over the Plaintiff's expert engineer." Accordingly, the two issues on appeal concern: (1) whether the trial court shifted the burden of proof from Appellee (as Plaintiff) to Appellants (as Defendants) to prove the cost of remediation; and (2) whether the trial court abused its discretion when it accepted an expert contractor's opinion over an expert engineer's opinion.

Despite limiting their issues to the foregoing, in the argument portion of their initial brief, Appellants also argue that: (1) Appellee is not entitled to recover for damages incurred in the master suite; (2) the trial court abused its discretion when it found Appellants liable for their failure to disclose the defect in the foyer; and (3) Appellants are entitled to attorney's fees as the prevailing party. These three additional issues are wholly separate questions from the two issues that Appellants have designated for this Court's review. In her brief, Appellee notes Appellants' omission of these three issues and asks this Court to deem them waived.

Appellants filed a reply brief in this matter. As the name implies, a reply brief may be filed by an appellant "in reply to the brief of the appellee." Tenn. R. App. P. 27(c). Reply briefs "are generally not a vehicle to correct deficiencies in initial briefs." ***Augustin v. Bradley Cnty. Sheriff's Off.***, 598 S.W.3d 220, 227 (Tenn. Ct. App. 2019) (citing ***Fichtel v. Fichtel***, No. M2018-01634-COA-R3-CV, 2019 WL 3027010, at *19 (Tenn. Ct. App. July 10, 2019) (citing ***Kanski v. Kanski***, No. M2017-01913-COA-R3-CV, 2018 WL 5435402, at *6 (Tenn. Ct. App. Oct. 29, 2018) (citing ***Ingram v. Ingram***, No. W2017-00640-COA-R3-CV, 2018 WL 2749633, at *11 n.4 (Tenn. Ct. App. June 7, 2018)))). Despite this well-established admonition, in their reply brief, Appellants clearly attempt to rectify the omission of some of the issues argued in their opening brief. While only two issues are specifically set out in their initial brief, *see supra*, Appellants' reply brief lists four issues under "Statement of the Issues in the Reply Brief," to wit:

1. The trial court abused its discretion in accepting Mr. Walker's method of repair over the methodology offered by the parties' engineers.

2. It was an abuse of discretion for the trial court to shift the burden of proof from plaintiff to defendants to provide evidence of the cost of remediation using the plaintiff's expert engineer's repair methodology.

3. The trial court's award for Ms. Garrett's claim against the Appellants for their failure to disclose was the value of Mr. Walker's estimate.

4. Appellants are entitled to their attorney's fees from November 3, 2021 through this appeal.

On this Court's review, although worded differently and presented in the opposite order,

the first two issues listed in Appellants' reply brief correspond to the only two issues listed for review in Appellants' initial brief. The third "issue" listed in the reply brief, *i.e.*, that "[t]he trial court's award for Ms. Garrett's claim against the Appellants for their failure to disclose was the value of Mr. Walker's estimate" is not so much an issue as it is a statement. Nevertheless, as discussed, *supra*, Appellants failed to list this as an issue for review in their initial brief. Similarly, in their initial brief, Appellants failed to list the fourth issue, *i.e.*, that "Appellants are entitled to their attorney's fees from November 3, 2021 through this appeal." Longstanding precedent provides that "an issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with [Tennessee Rule of Appellate Procedure] 27(a)(4)," ***Hodge***, 382 S.W.3d at 335, and we decline to part from that precedent here. Having failed to include as an issue: (1) whether the trial court erred when it awarded Appellee damages incurred in the master suite; (2) whether the trial court erred when it found Appellants liable for their failure to disclose the defect in the foyer; and (3) whether Appellants are entitled to attorney's fees, Appellants have waived these issues.

We also note a procedural deficiency in Appellee's brief. Appellee does not include a statement of the issues presented for review in her brief. However, in the conclusion of her appellate brief, Appellee requests an award of appellate attorney's fees associated with this appeal. This Court has explained that where an appellee fails to raise a request for appellate attorney's fees as a specific issue for review, that issue is waived:

> Tennessee Rule of Appellate Procedure 27(b) provides that if an appellee requests relief from this Court, "the brief of the appellee *shall* contain the issues and arguments involved in his request for relief ...." Tenn. R. App. P. 27(b). Because "[a]n award of attorney's fees generated in pursuing [an] appeal is a form of relief," our rules require that such a request be stated as an issue on appeal. ***Killingsworth v. Ted Russell Ford, Inc.***, 205 S.W.3d 406, 411 (Tenn. 2006). Any issue not included in the statement of issues presented for review as required by Tennessee Rule of Appellate Procedure 27(b), is not properly before the Court of Appeals. ***Hawkins***[, 86 S.W.3d at 531].

In re Est. of Stokes, No. W2021-00249-COA-R3-CV, 2022 WL 484565, at *6 (Tenn. Ct. App. Feb. 17, 2022). Because Appellee failed to designate her request for appellate attorney's fee as an issue on appeal, she has waived it. Having clarified the issues that are properly before us, we turn to our analysis.

V. Analysis

As an initial matter, it is important to recognize that the trial court concluded, *inter alia*, that Appellants, as homebuilders, owed Appellee, as purchaser, an implied warranty of good workmanship and materials. Such implied warranty sounds in contract law and

was established by the Tennessee Supreme Court in ***Dixon v. Mountain City Construction Company***, 632 S.W.2d 538, 541 (Tenn. 1982), to-wit:

> [T]he home buying public has a legitimate expectation that the workmanship and materials used by the builder-vendor in the construction of a dwelling will meet the standard of the trade for homes in comparable locations and price range and that such a warranty is implicit in the contract and survives the passing of title to the real estate and the taking of possession[.]

Id. As discussed further, *infra*, the trial court relied on Mr. Walker's testimony in concluding that Appellants breached the implied warranty of good workmanship and materials. Appellants do not appeal this conclusion, and they rely on contract law as the basis for the appropriate measure of damages in this case. As Appellants state in their brief, "[t]he parties in this case do not dispute that the proper measure of damages is the cost of repairing the defects in the foyer." This Court has explained that, "[a]s a general rule, the measure of damages for defects and omissions in the performance of a construction contract is the reasonable cost of the required repairs." ***GSB Contractors, Inc. v. Hess***, 179 S.W.3d 535, 543 (Tenn. Ct. App. 2005) (quoting ***Nutzell v. Godwin***, No. 33, 1989 WL 76306, at *1 (Tenn. Ct. App. July 13, 1989)) (internal citations omitted); *see* ***Wilhite v. Brownsville Concrete Co.***, 798 S.W.2d 772, 775 (Tenn. Ct. App. 1990) (citing 22 Am. Jur. 2d Damages § 68) ("If the defects in workmanship are so substantial that the performance of the contract made by the defendant is worthless, the contractor must pay the other party the cost of having the job redone."). We note that, although Appellee was successful in her other claims, *i.e.*, negligence, failure to disclose, and fraudulent and/or negligent misrepresentation, which measure damages differently, because the parties agree that the proper measure of damages is the cost of repairing the defects, we will proceed accordingly.[6] While the parties agree as to the proper measure of damages, they dispute the *method* of repair and its cost.

An overview of the alleged defects in flooring, the proposed methods of repair, and the evidence presented concerning same is helpful. From the record, there were four issues with the flooring: (1) hairline cracks in the marble tile floor; (2) a one-inch tall hump in the foyer floor; (3) a one-inch slope from the front door to four feet behind the front door; and

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[6] *See* ***Waggoner Motors, Inc. v. Waverly Church of Christ***, 159 S.W.3d 42, 57 (Tenn. Ct. App. 2004) (internal citations omitted) ("While there is no mathematical formula for calculating damages in negligence cases, the proof of damages must be as certain as the nature of the case permits and must enable the trier of fact to make a fair and reasonable assessment of the claimed damages."); ***Dixon v. Chrisco***, No. M2018-00132-COA-R3CV, 2018 WL 4275535, at *7 (Tenn. Ct. App. Sept. 7, 2018) (internal citations omitted) (explaining that in failure to disclose material facts and misrepresentation cases, the proper measure of damages is the benefit of the bargain rule, which "allows recovery of 'the difference between the actual value of the property received at the time of the making of the contract and the value that the property would have possessed if the defendants' representations had been true.'"); *see also* ***Haynes v. Cumberland Builders, Inc.***, 546 S.W.2d 228, 233 (Tenn. Ct. App. 1976).

(4) a noticeable bounce in the foyer floor. As noted above, Messrs. Garman and Buchanan, the engineering experts, testified by deposition. Both engineers created expert reports, which were designated as exhibits and entered into evidence at trial. Mr. Walker testified in-person at the final trial and did not submit an expert report.

In his expert report,[7] Mr. Garman, Appellee's expert engineer, opined that the floor system in the foyer was comprised of a series of I-joists, spanning about 19 feet, spaced at 19.2 inches on-center. According to the report, the I-joists were "over-spanned," *i.e.*, had too much weight on them for the amount of load that would result from the marble stone tile. Mr. Garman testified concerning the "bounce" in the foyer and opined that it was a "frequent homeowner complaint in a variety of houses" and a common problem with the I-joist placement. Despite these issues, Mr. Garman testified that the placement of the I-joists in Appellee's floor met code requirements, it simply resulted in the "bounce" in the floor. Similarly, Mr. Garman testified that the marble stone floor was laid in compliance with local code requirements, but it was not laid in a manner recommended by the Marble Institute of America, to-wit:

> It's not a structural defect related to concerns of a collapse hazard or breaking the floor framing or something catastrophic. It could be referred to as installation defect in that the materials used to finish the floor weren't installed consistent with what would have been the recommendations of the supplier or manufacturer of the material.

Mr. Garman further opined that

> [t]he hump at the rear end of the foyer is from a floor joist with two extra support piers. The added support piers appear to have been installed to support columns at the edges of the Juliet balcony. There are no columns bearing on the piers. The hump and the slope away from the front door are from sag of the floor joists along their spans with the greatest sag of about 1/2-inch near the center of the joist span. The joist with the two extra supports has a shorter span and much less deflection compared to the other joists. Similarly, the framing over the front foundation wall is very rigid and does not deflect at the center of the room like the adjacent joists deflect over their span.

To "make the floor more level and compliant with recommendations for the support of [the marble] stone tile," Mr. Garman proposed: (1) installing a front-to-rear drop beam beneath the foyer joists near mid-span; (2) placing an additional beam between structural piers; (3)

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[7] Mr. Garman testified that he performed two inspections of Appellee's house, the first on July 11, 2016, the second on April 2, 2018, and that he wrote corresponding reports for each visit. These reports are similar and both were entered into evidence at trial.

removing the blocking over the two added piers supporting the joist at the location of the hump; and (4) installing I-joist squash blocks between the I-joists over the new drop beam. Mr. Garman testified that this type of repair could be accomplished by working underneath the house in the crawl space, but he also acknowledged that it would be "hard snaking that beam underneath the house[.]" Mr. Garman did not testify as to the cost of the suggested repairs.

In his report, Mr. Buchanan, Appellants' expert engineer, described the hairline cracks in the marble tile. Concerning the foyer, Mr. Buchanan's report agreed with Mr. Garman's report that, although the floor did not conform to the criteria recommended by the Marble Institute of America, it did conform with the local residential code. Accordingly, in his report, Mr. Buchanan opined that "[t]he recommendations in the Garman report would not adversely affect the overall performance of the floor; however, they are not required according to the minimum standards of the [local code]." Although Mr. Buchanan's report did not include recommendations for fixing the alleged defects, Mr. Buchanan testified that the hump could be lessened or removed if the two piers were removed. He testified that this would create a flatter surface but "could also create some more cracking patterns with the existing stone." Mr. Buchanan further testified that he did not have an opinion as to the cost to carry out any of the repairs he suggested and that, while he had "reviewed construction estimates on other projects," he did not generate those estimates himself, and he had not been asked to give any cost-to-repair analysis in this case. Mr. Buchanan did not address the slope or the bounce in the flooring.

Mr. Walker was tendered as Appellee's expert in residential construction in Brentwood, Tennessee, with his testimony being limited to whether the construction was performed in a workmanlike manner and the estimated cost of repairing the floor. We note that the trial was held at Appellee's home so the trial court could see the alleged defects in the flooring first-hand. Mr. Walker demonstrated to the trial court how the floor "slop[ed] from one side of the foyer to the other side of the foyer[.]" Mr. Walker also testified that he could feel a "bounce" on the floor as he walked on it and that such bounce caused the tile flooring to crack. Mr. Walker opined that, although the house itself was built on a solid foundation and was stable, the weight of the marble stone tile caused the tile to fall through the floor joists, which caused the sagging in the flooring. According to Mr. Walker, the floor simply could not withstand the weight of the marble stone tile as the marble stone tile required extra support beneath the flooring. In light of the foregoing, Mr. Walker testified that the flooring was not constructed in a workmanlike manner and was "unacceptable" in a $100,000.00 house, let alone a $2,750,000.00 house. Mr. Walker testified that he did not "believe it [was] going to get any worse," but that the I-joists in the flooring caused the tile to break and deflect, *i.e.*, sink in the middle, and needed to be replaced. Although Mr. Walker acknowledged that the framing passed the minimum requirements of code inspection, he testified that "[t]he codes inspector would not inspect what material is being put on top of that framing material. He was in to inspect the framing, but they are not aware of the materials being put on top of that framing." Thus, according to Mr. Walker,

although the framing passed inspection, the placing of the heavy marble stone on the framing was not completed in a workmanlike manner because, as installed, it could not support the heavy marble stone tile. Mr. Walker testified that if hardwood floors or a lighter tile had been installed on the flooring, this problem likely would not have occurred.

Concerning the necessary repairs, Mr. Walker testified that, because the home's crawl space was very low, the repairs would have to be completed from above, in the foyer, as opposed to going in underneath, in the home's crawl space. To accomplish the repairs, Mr. Walker opined that: (1) both the tile and subflooring would need to removed; (2) concrete piers would need to be installed; (3) girder beams would need to be installed to support the floor; (4) the floor framing and subfloor would need to be reinstalled; and (5) the tile would need to be relayed. Thereafter, the baseboards and interior trim that were damaged during the process would need to be repaired and painted. Mr. Walker estimated the total cost of the foregoing to be $77,494.36.[8] Mr. Walker testified that his estimate was completed in 2018 and was based on the cost of materials and goods at the time, that it included profit and overhead, all of the materials, labor, demolition, and hauling-off of the old flooring. He further testified that since his estimate in 2018, the price of materials and labor had increased.

Turning to the trial court's order, concerning Mr. Garman's testimony, the trial court found:

> In general, Mr. Garman found a bounce in the middle of the foyer floor. That is a common problem when manufactured lumber joists are placed on 19.2" centers. Such construction complies with the [local code], which is a minimum standard. Mr. Garman looked to the recommendation of the Marble Institute of America concerning the needed support for a natural stone tile floor, which is twice the amount required by the building code. Mr. Garman acknowledged that the floor as installed is not a structural defect in the sense that it creates a collapse hazard or the likelihood of breakage, but it could be considered an installation defect because materials used to finish the floor were not installed consistent with the recommendation of the supplier. To remediate the problem, Mr. Garman recommended the installation of a new beam below the floor. The rise in the floor was created during the original construction and would have formed within the first year after construction as the frame adjusted to the movement of the house. To perform the remediation recommended by Mr. Garman, the work would be done from under the house. However, it would be difficult to snake the beam under the house and then set it while working in that space.

Concerning Mr. Buchanan's testimony, the trial court found:

[8] Mr. Walker created an estimate to repair the flooring, which was entered as exhibit 11 at trial.

He did not take issue with the finding that there was a rise in the foyer resulting from the fact that there are two additional piers located underneath a single truss joint, making it a very stiff element with the rest of the truss joints spanning a longer distance thereby creating a natural deflection of those joints. Mr. Buchanan had no idea why the piers were installed creating the support of that particular joint. Mr. Buchanan agrees that the rise in the foyer floor was not the result of underlayment to support the natural stone tiles.[9] Mr. Buchanan had no opinion as to the cost to implement the repairs suggested in his report.

The trial court made several findings regarding Mr. Walker's testimony. As an initial matter, the trial court established Mr. Walker's credentials as an experienced contractor in residential construction in Brentwood, Tennessee. The trial court also found:

> During Mr. Walker's on-site demonstration, he not only illustrated to the [c]ourt the location, nature and extent of the rise in the foyer floor, he also explained to the [c]ourt the bounce he detected as he walked across the floor. He identified cracks in the marble tile. Mr. Walker described the location of I-joists supporting the floor and prepared drawings of the I-joists' locations at the [c]ourt's request. [(internal citations omitted)]. While it is undisputed that the 16'-18' span of the I-joist complies with the [local code], the building code creates a minimum standard. I-joists spanning that distance would likely support the weight of a wood floor or ceramic tile floor. However, due to the weight of the travertine marble tiles, the floor deflects and sags.
>
> Mr. Walker also identified a rise in the floor running down the hall from the foyer to the powder room. The deflection occurs between the floor joists, which creates cracks in the marble tile. Contrary to the opinions of the engineers who inspected the floor, Mr. Garman and Mr. Mark Buchanan (Mr. Buchanan), Mr. Walker believes that there are structural issues with the floor.[10] The I-joists will not support the load of the marble tile. He does not anticipate that the condition will worsen, but it is possible that additional cracking in the tile will occur. He concurs with Mr. Garman's and Mr. Buchanan's opinions that the floor joists will not break. However, they are definitely deflecting. The same is true with the hall floor running from the

[9] This was the reason Ms. Spangler originally provided to Appellee for the rise in the floor.

[10] Taken in context, we deduce that Mr. Walker and the trial court used the term "structural issues" in the same manner that Mr. Garman used the term "installation defect," *i.e.*, to describe how the floor was constructed in a manner that led to the defects of which Appellee now complains. As Mr. Walker testified, the floor and house were framed in accordance with the residential code, and Mr. Walker testified that he did not believe the floor would "get any worse."

> foyer to the powder room area. To address the issue, Mr. Walker proposed the installation of supports to break up the distance spanned by the I-joists to prevent them from deflecting.

The trial court found Mr. Walker's testimony credible and relied on it when it concluded that the work necessary to correct the defects in the floor would cost $77,494.36.

On appeal, Appellants allege that the trial court erred when it relied on Mr. Walker's method of repair rather than the engineers' method of repair. Appellants also allege that the trial court shifted the burden of proof from Appellee to Appellants to prove the cost of remediation. In making these arguments, Appellants confuse the issue. As discussed, *supra*, the trial court concluded that Appellants breached the implied warranty of good workmanship and materials, and Appellants argue that the proper measure of damages for this breach is the cost to repair the defects in the flooring. Thus, the damages awarded must cover the cost to repair the defects in the flooring so that the flooring "meet[s] the standard of the trade for homes in comparable locations and price range[.]" ***Dixon***, 632 S.W.2d at 541. We recall that Mr. Walker was tendered as an expert in residential construction and that his testimony was limited to this exact issue, *i.e.*, whether the construction was performed in a workmanlike manner and the estimated cost of repair. Accordingly, the trial court was correct to rely on Mr. Walker's testimony.[11] Similarly, the trial court was correct to rely on Mr. Walker's calculations concerning the cost to repair the floor. Importantly, as discussed above, the repairs would need to cure the unworkmanlike quality of Appellee's floor as it existed. In short, the repairs would need to correct the overall problems of: (1) the cracks in the marble tile floor; (2) the one-inch tall hump in the foyer floor; (3) the one-inch slope from the front door to four feet behind the front door; and (4) the bounce in the foyer floor. Mr. Walker's suggested repairs were the only repairs that corrected all four of these defects. Indeed, Messrs. Garman and Buchanan did not suggest replacing the cracked marble tile floors in their proposed repairs, and Mr. Buchanan admitted that his suggested repair may result in further cracking of the tile. As the party seeking damages, at trial, Appellee bore the burden of proving her damages, *i.e.*, the cost to repair the defects. *See* ***Buttrey v. Holloway's, Inc.***, No. M2011-01335-COA-R3-CV, 2012 WL 6451802, at *7 (Tenn. Ct. App. Dec. 12, 2012); *see also* ***Waggoner Motors, Inc.***, 159 S.W.3d at 57; ***Haynes***, 546 S.W.2d at 233. On this Court's review, Appellee proved her damages through Mr. Walker's expert testimony, on which the trial court properly relied.

VI. Conclusion

For the foregoing reasons, we affirm the trial court's order. The parties' respective motions for appellate attorney's fees are denied, and the case is remanded for such further

[11] We note that both engineers also testified that the marble tile was not installed consistent with the recommendations of the supplier or manufacturer of the material.

proceedings as are necessary and consistent with this opinion. Costs of the appeal are assessed to the Appellants, Hidden Valley Homes, LLC, James Spangler, and Trina Spangler, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE