WD87236

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

NEIGHBORHOODS UNITED,

Plaintiff / Respondent,

vs.

MONIQUE VAUGHN,

Defendant / Appellant.

On Appeal from the Circuit Court of Jackson County
Honorable Jessica Agnelly, Circuit Judge
Case No. 2216-CV21001

BRIEF OF THE RESPONDENT

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Statement of Facts

A. Overview

Monique Vaughn inherited a piece of real property in Jackson County from her late mother (Tr.2 at 9).[1] She and her father owned the property as tenants in common until he died in 2018 (Tr.2 at 10; D389 pp. 2-3). During that period, the property deteriorated to a dilapidated state (Tr.1 at 10).

The trial court determined the property was abandoned and constituted a nuisance and blight on the surrounding area, and granted Neighborhoods United, a non-profit organization, temporary possession of the property so it could be rehabilitated (D385 p. 3). The rehabilitation concluded in October 2023 and Neighborhoods United sought an administrator's deed for the property (D434 pp. 4-5). Ms. Vaughn also sought to have her possession of the property restored (D408).

At a bench trial, Neighborhoods United presented evidence of the rehabilitation's total cost (Tr.2 at 25-56). Ms. Vaughn also testified she had the financial means to compensate Neighborhoods United for its reasonable expenses (Tr.2 at 13).

After trial, the court entered a judgment restoring Ms. Vaughn's ownership of the property so long as she paid Neighborhoods United $184,969.18 within 60 days to compensate it for the rehabilitation (D485 p. 13).

Ms. Vaughn now appeals (D486).

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[1] This brief cites the two separately paginated transcript volumes in chronological order as "Tr.1" and "Tr.2"

B. Background

1. The Property

The case concerns a piece of real property at 7330 Flora Avenue in Kansas City, Jackson County ("the Property") (D485 p. 2). Monique Vaughn has title to the Property ("Ms. Vaughn") (D485 p. 9).

Ms. Vaughn said she originally inherited the Property from her mother (Tr.2 at 9). Then, in June 2008, she conveyed her interest in the Property to her father, Phillip Vaughn Sr., and Shelby T. Brewington (D390). Three years later, Ms. Brewington returned her one-half interest in the Property to Ms. Vaughn by quitclaim deed (D391). Ms. Vaughn and her father then held the Property as tenants in common until he died in December 2018 (Tr.2 at 10; D389 pp. 2-3). In a case in the Jackson County Circuit Court's Probate Division, Ms. Vaughn was named as the personal representative of her father's estate (D392).

2. Neighborhoods United gains temporary possession

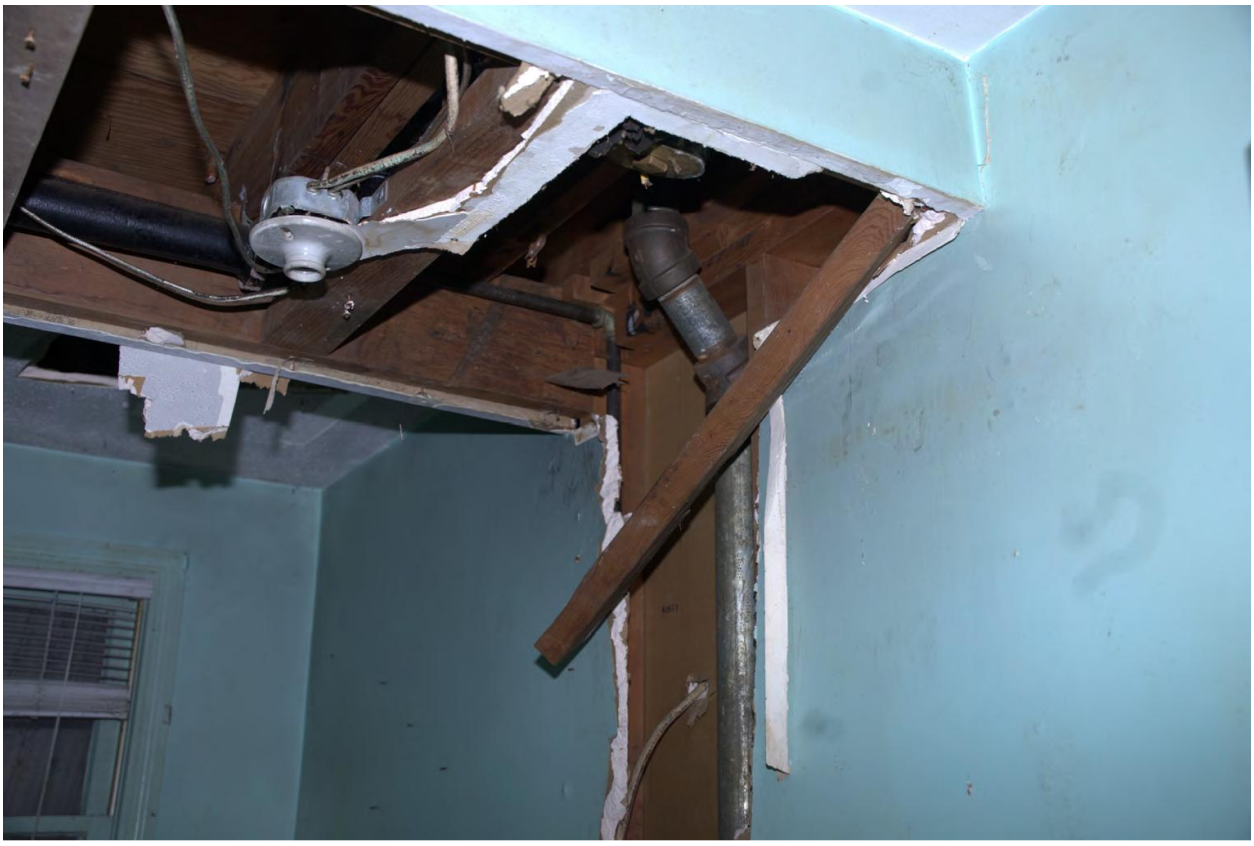
Neighborhoods United is a Missouri non-profit entity (Tr.1 at 5; D485 p. 1). Its purpose is to provide and enhance housing opportunities in Jackson County (Tr.1 at 5; D485 p. 1). George Kimble is its executive director (Tr.1 at 4). He is also a general contractor with a master's degree in real estate (Tr.1 at 5).

Mr. Kimble explained that Neighborhoods United finds homes to rehabilitate when it is contacted either directly by a person or entity in the community or an individual working for Neighborhoods United who happens upon a distressed property (Tr.1 at 19-20). Here, someone in the community notified Neighborhoods United about the Property, but Mr. Kimble could not

recall exactly who (Tr.1 at 19). Research on the Property showed unpaid taxes from 2019 through 2022 as well as a lien from the city for unpaid water bills (Tr.1 at 8-9).

After Neighborhoods United was contacted, Mr. Kimble personally visited the Property, describing it as deteriorated and "desolate" from abandonment (Tr.1 at 10). The exterior and interior required total rehabilitation (Tr.1 at 10). Animals such as raccoons had gotten into the home and "took it over" (Tr.1 at 10). The roof and soffit needed to be replaced because of water damage (Tr.1 at 10). There also was smoke damage inside from fires that homeless people likely made to keep warm (Tr.1 at 11). Insulation had fallen out of the ceiling and copper had been removed from the furnace (Tr.1 at 11-12). The bathrooms were destroyed, and the chimney was coming away from the home (Tr.1 at 12, 22-23).

The following are photographs of the interior and exterior of the Property as they appeared before Neighborhoods United was granted temporary possession and began its rehabilitation, which were admitted at trial (Tr.2 at 26-28):



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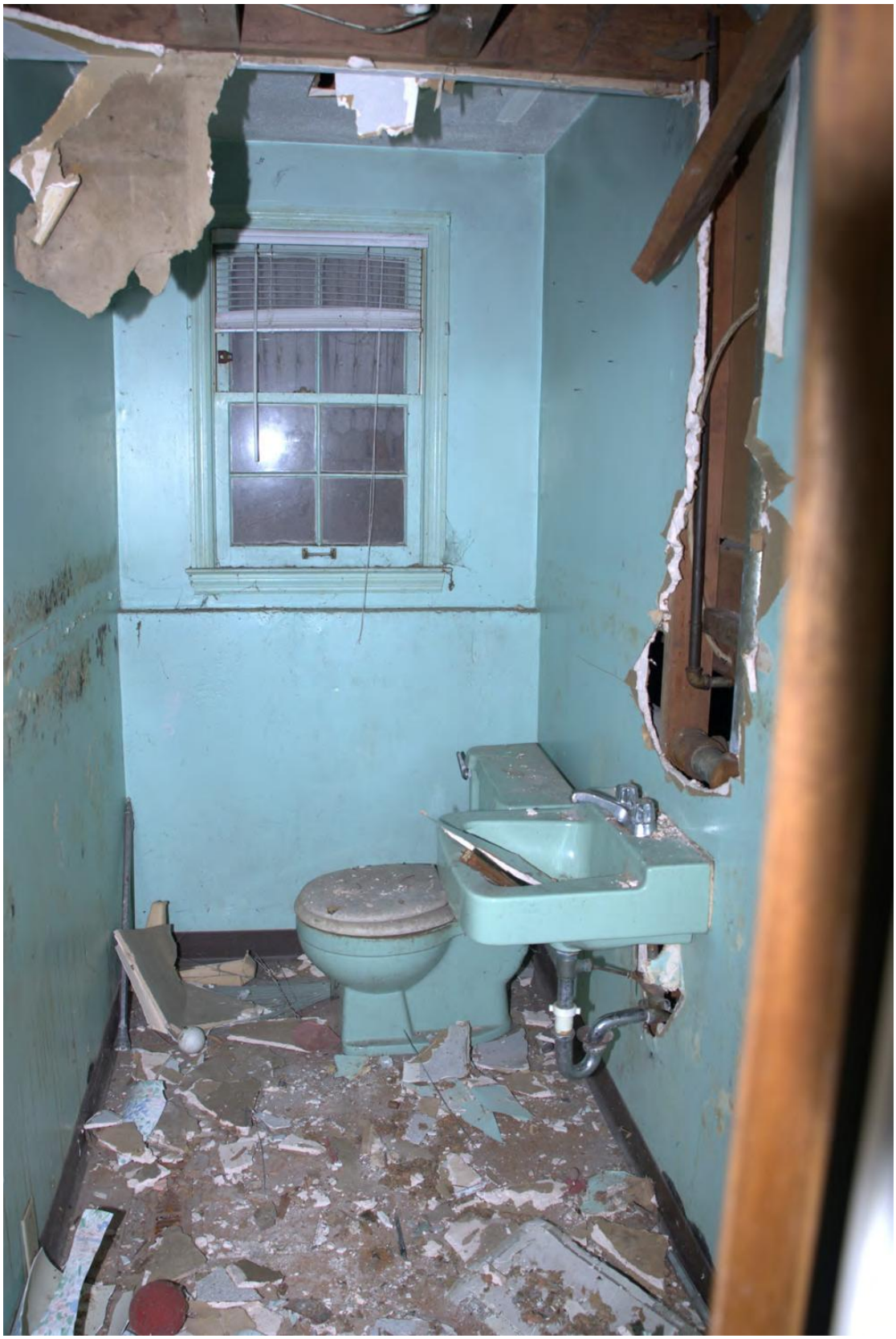

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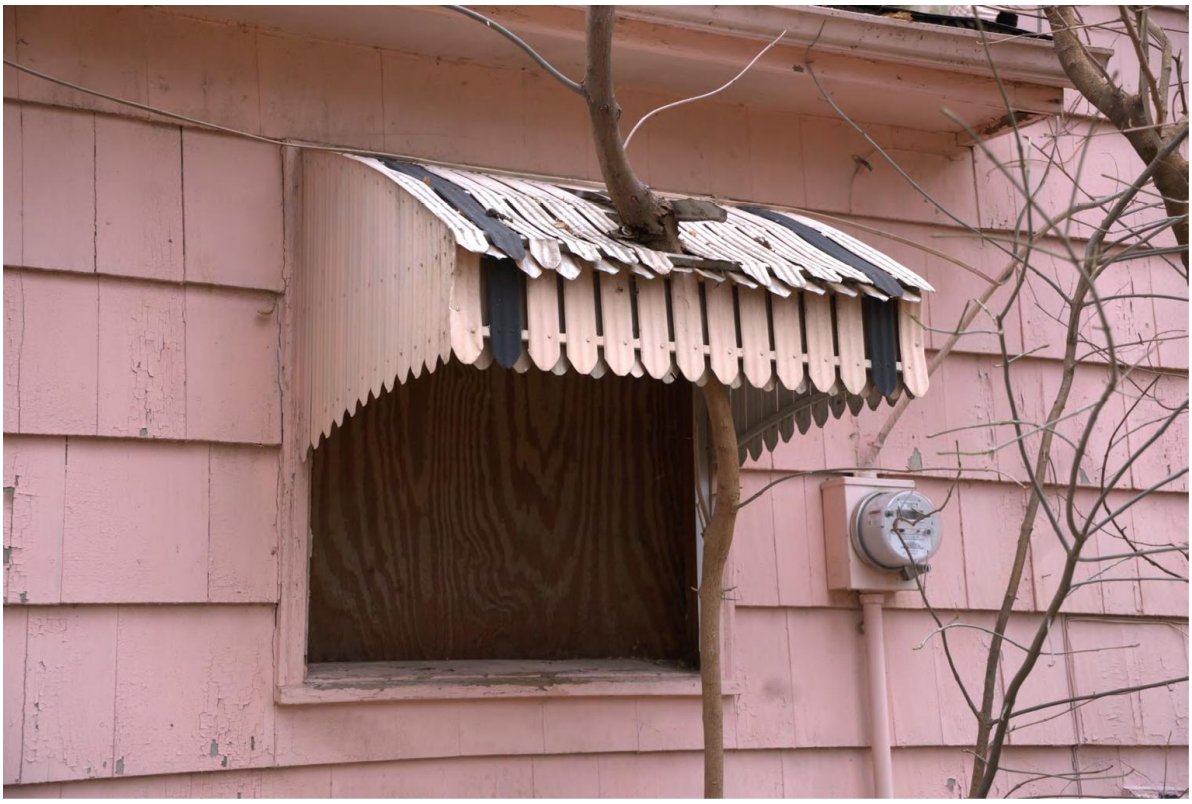

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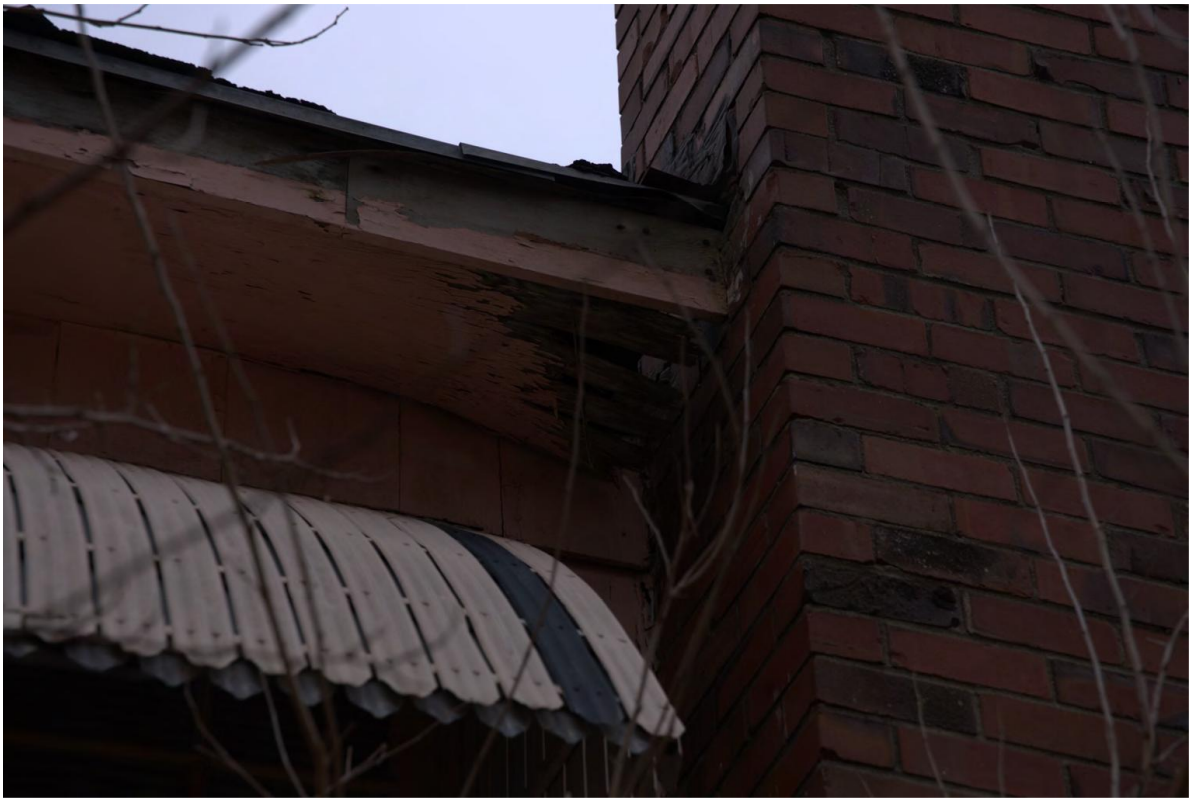

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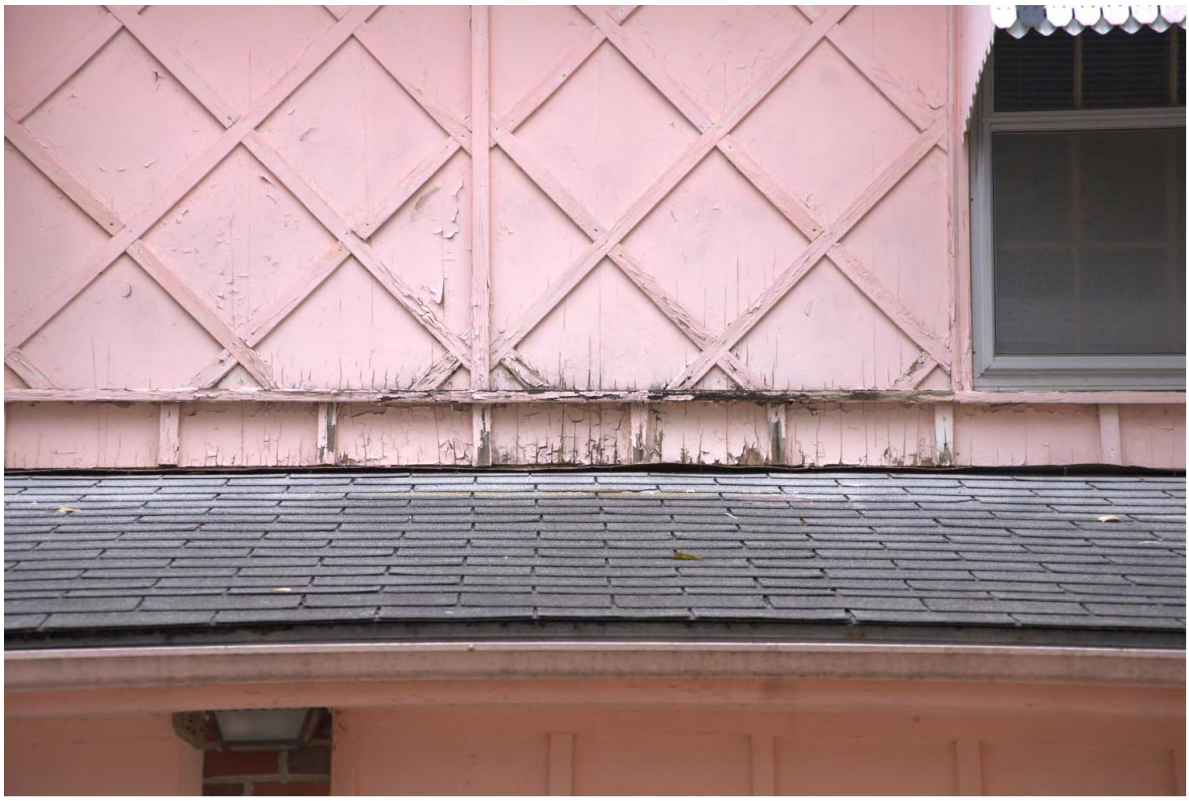

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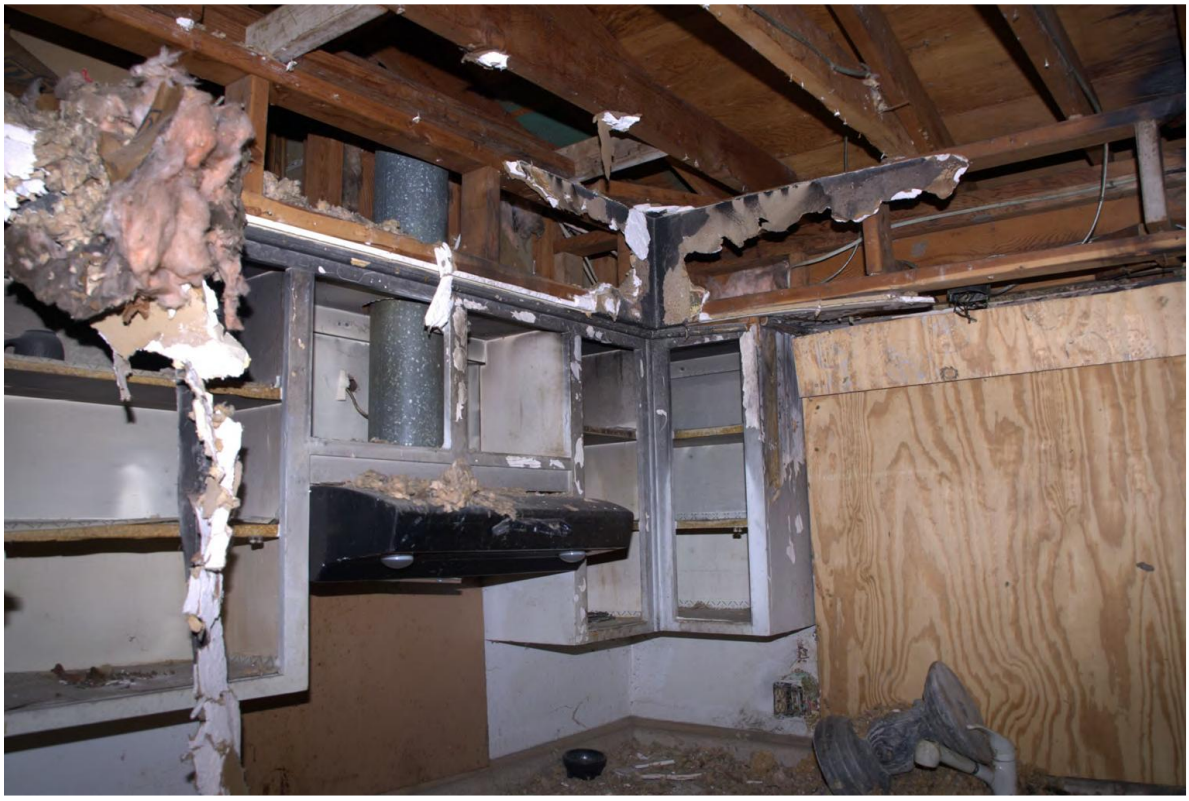

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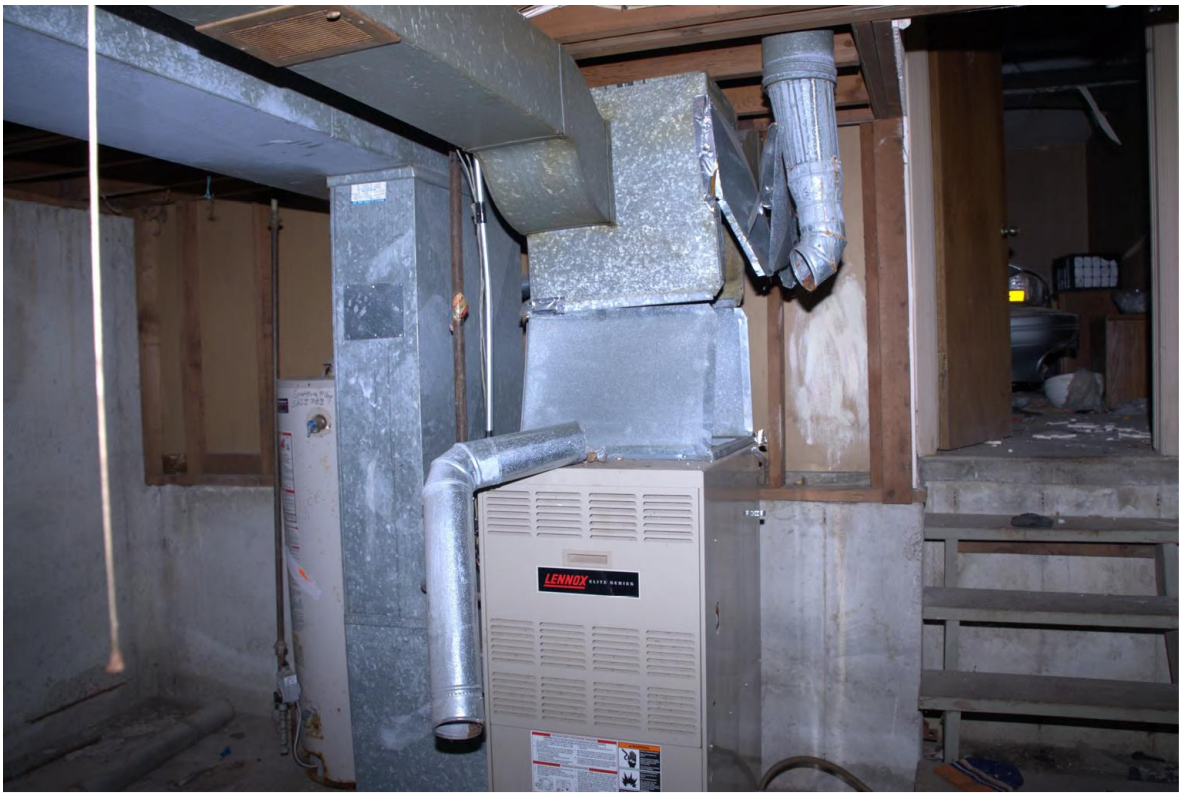

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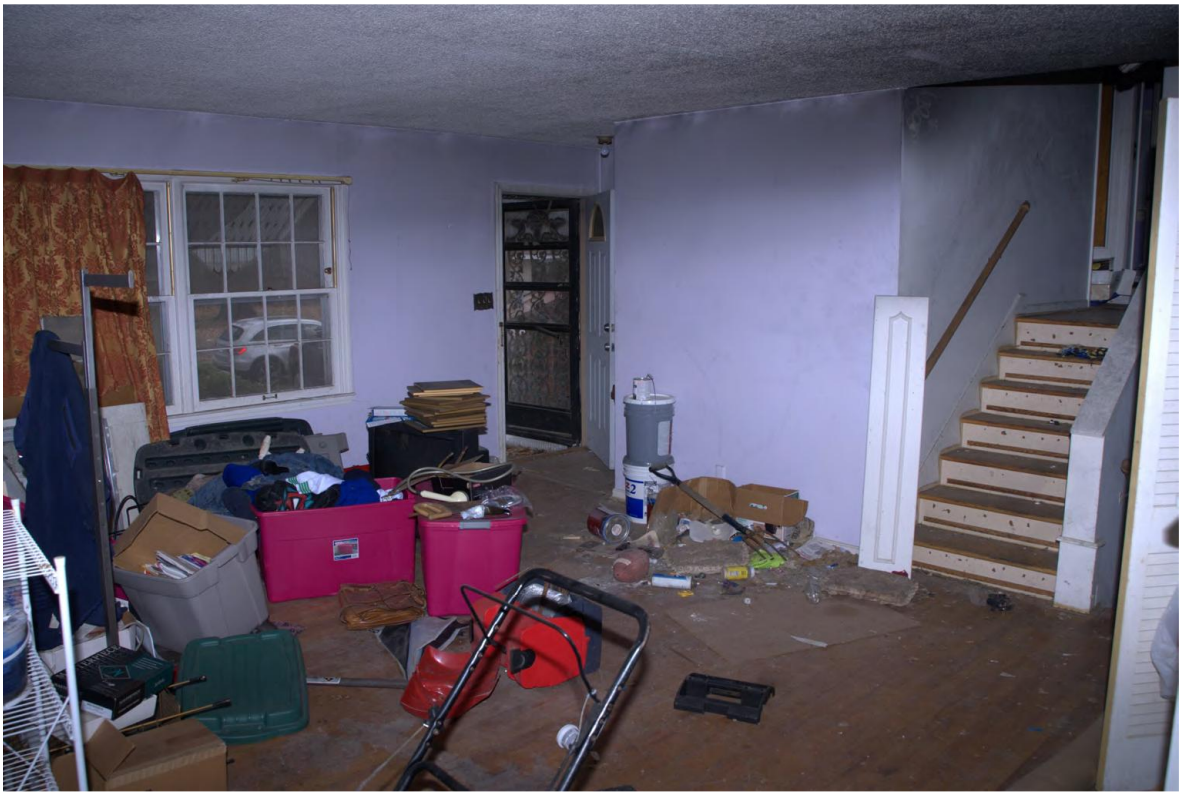

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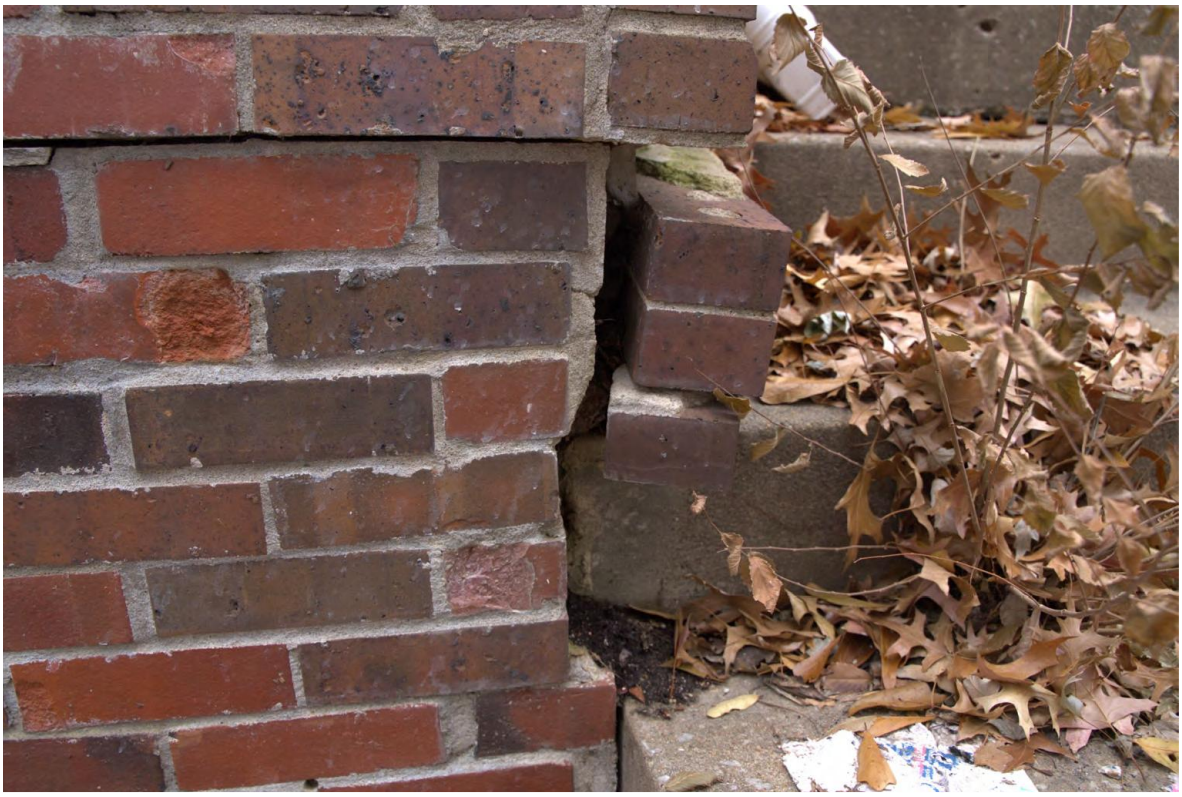

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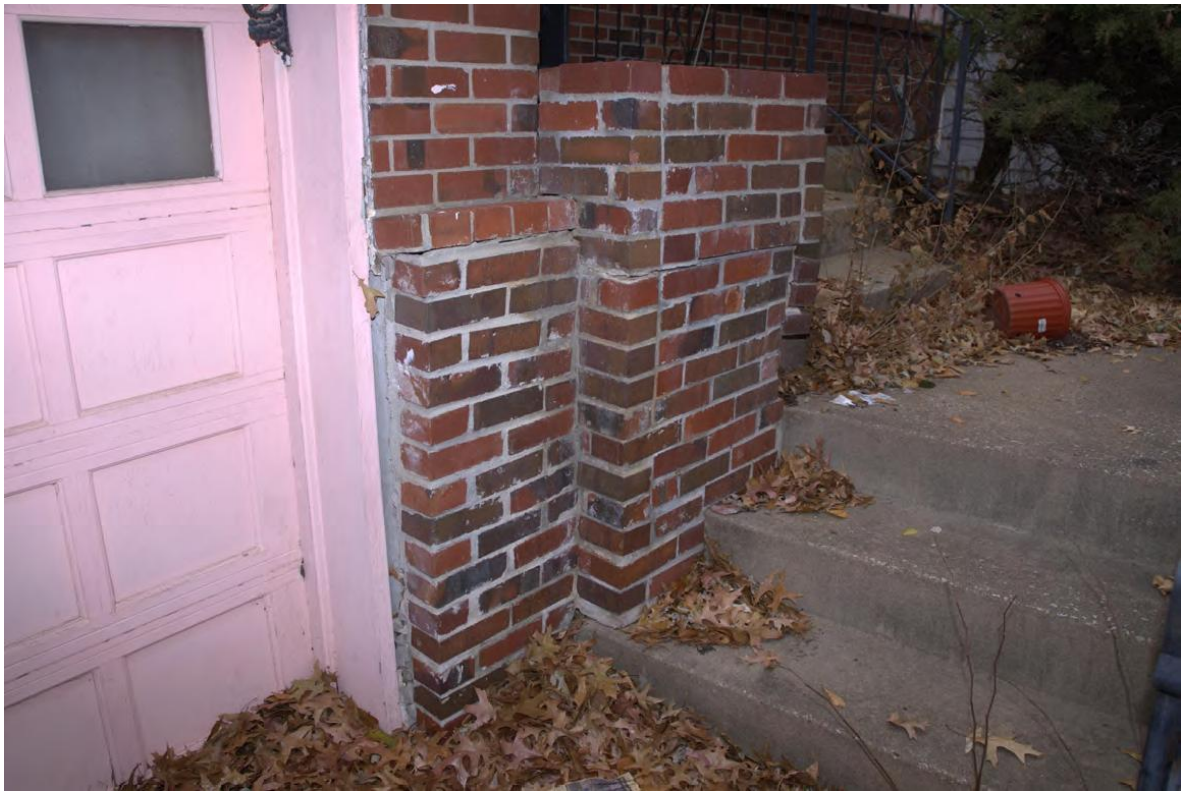

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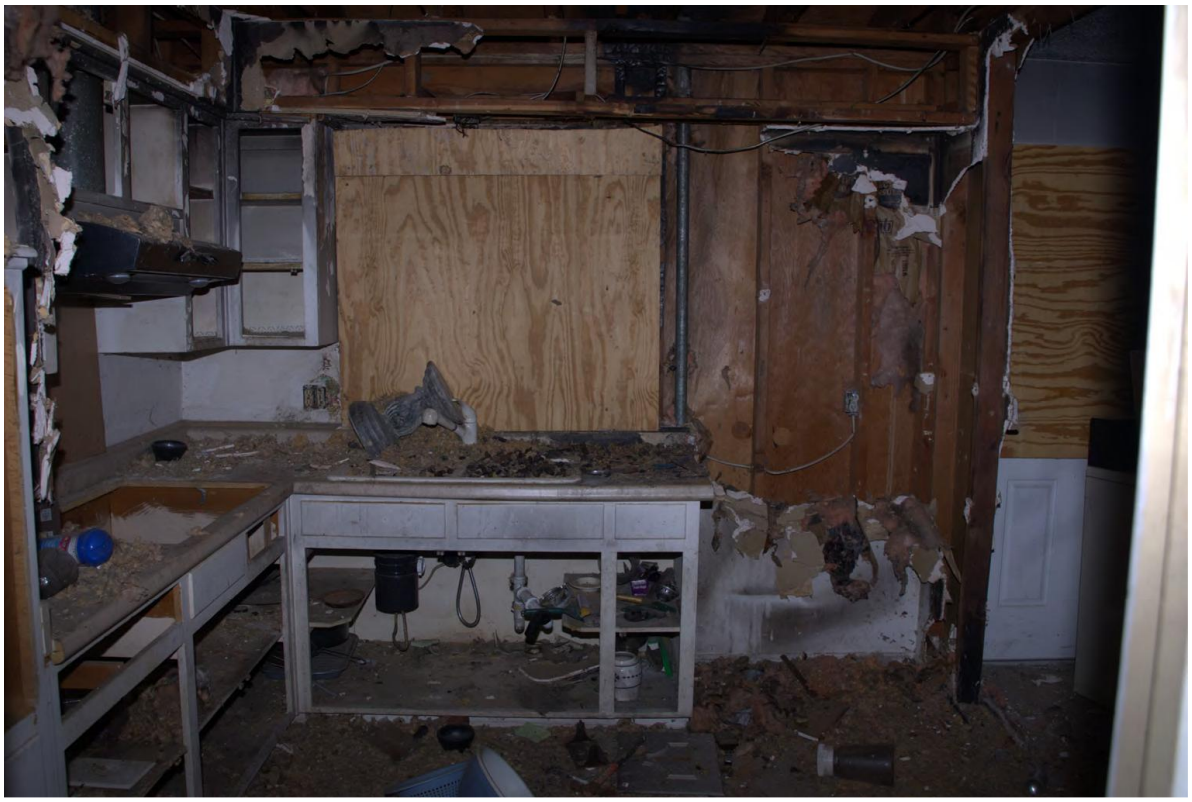

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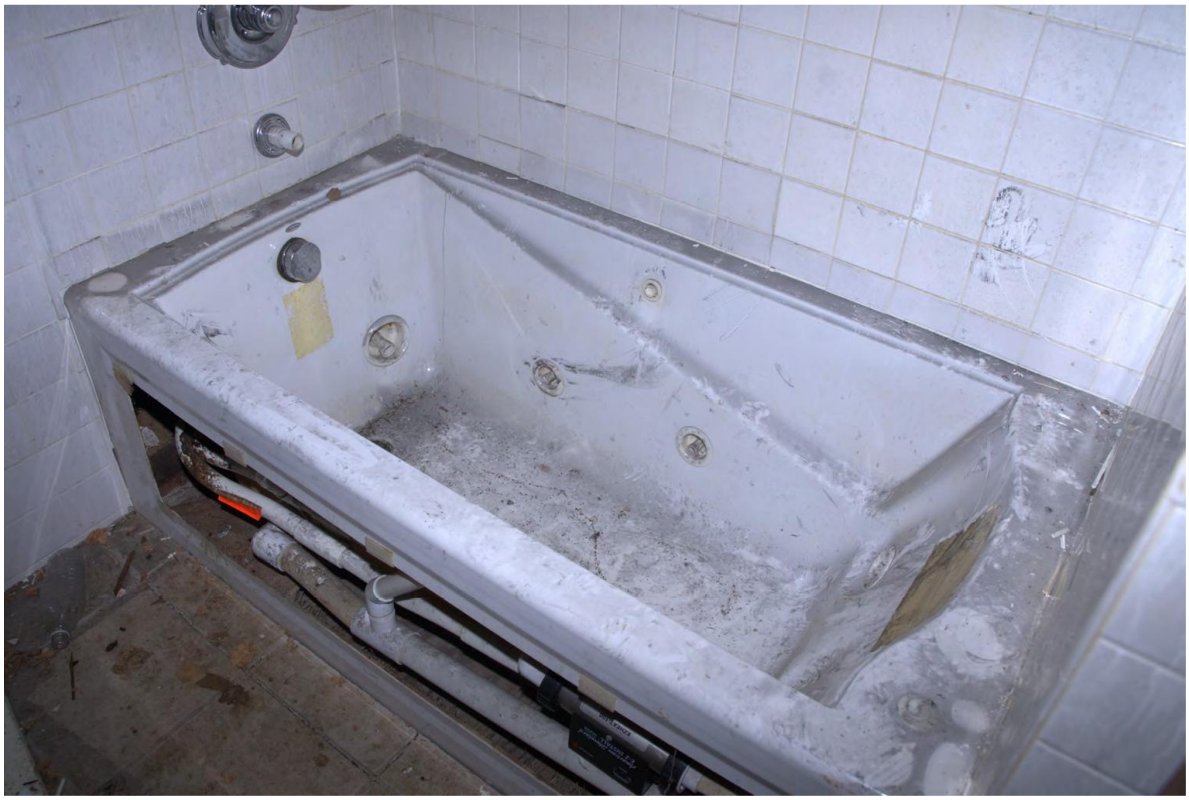

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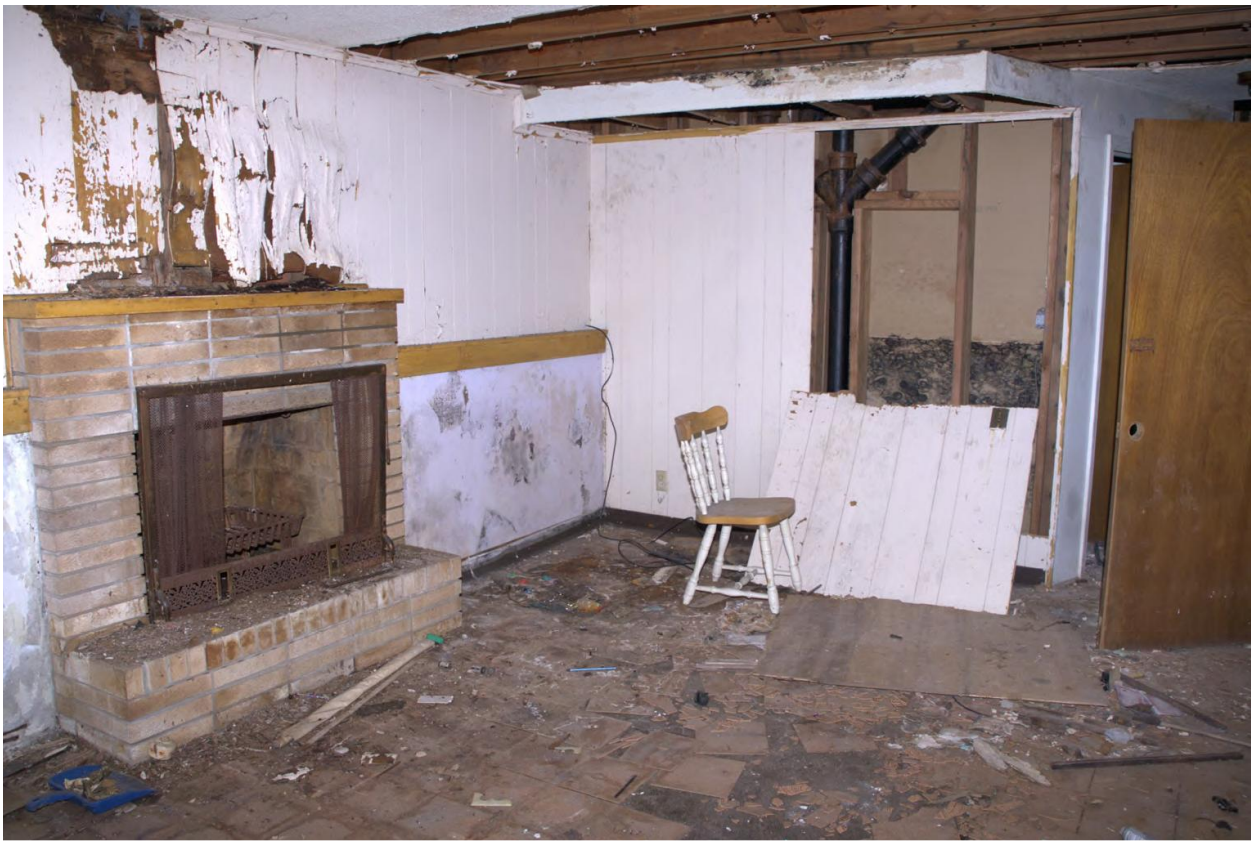


(Plt.Ex. P).

In September 2022, Neighborhoods United petitioned the Circuit Court of Jackson County under § 447.622, R.S.Mo., to declare the Property abandoned and grant it temporary possession so it could rehabilitate the Property (D373 pp. 3-5). It requested the clerk serve Ms. Vaughn by certified mail because her last known address was a post office box in California (D374 p. 1) and asked to serve other unknown parties by publication (D375 pp. 1-2). The court granted both requests, and service was accomplished (D377).

Neighborhoods United then moved the court to grant it temporary possession of the Property so it could enter and develop a plan for the Property's rehabilitation (D379 p. 2). The court set the motion for a hearing on February 1, 2023 (D382). Just before then, counsel for Ms. Vaughn

entered an appearance and requested the court deny Neighborhoods United's petition (D383 p. 3).

At the hearing, Mr. Kimble testified about the condition of the Property, his plan for a total rehabilitation of the home's interior and exterior, and a conservative estimate of what the plan would cost (Tr.1 at 13-16). He said if the plan was approved, his contracting company would be handling the rehabilitation (Tr.1 at 19). He also said the plan included satisfaction of any outstanding taxes and liens on the Property, and it also sought to remedy any code violations within 60-to-90 days of being granted temporary possession (Tr.1 at 17). To fund the project, Neighborhoods United had "[a] little over a hundred thousand" dollars in an account with U.S. Bank (Tr.1 at 17).

Counsel for Ms. Vaughn attended the hearing (Tr.1 at 3). But besides stating he appeared for her (Tr.1 at 3), his only actions were to state he did not object to evidence (Tr.1 at 7, 9, 13, 17) and cross-examine Mr. Kimble (Tr.1 at 18-21, 23-24). He made no argument and offered no evidence, despite the court giving him the opportunity to do so (Tr.1 at 24).

Following the hearing, the court concluded the Property was abandoned and constituted a nuisance and blight on the surrounding area (Tr.1 at 24; D385 p. 3). After reviewing the rehabilitation plan, it granted Neighborhoods United temporary possession of the Property (Tr.1 at 24; D385 p. 3).

C. Proceedings below

1. Ms. Vaughn's first motion to restore possession

A month later, Ms. Vaughn moved to have her possession restored, citing § 447.638, R.S.Mo. (D386). She requested the court schedule a hearing on her motion and vacate Neighborhoods United's temporary possession of the Property (D386 p. 2). Neighborhoods United did not file a response (D372 p. 17). Nothing in the record shows Ms. Vaughn took any further steps to receive a hearing (D372 p. 17).

The court then entered an order denying the motion without a hearing (D372 p. 17; D387). In response, Ms. Vaughn did not request the court reconsider or amend the order (D372 p. 17).

Ms. Vaughn then moved to dismiss the case for failure to join her father's estate to the action (D388 p. 1). Neighborhoods United opposed this, arguing it was unaware of Mr. Vaughn's death when it originally moved for the Property to be declared abandoned, as the estate had not notified the Jackson County taxing authority of its own existence (D397 p. 2). Neighborhoods United argued the estate was properly served by publication, as the notice included the "unknown heirs, executors, administrators, devisees, trustees, creditors, lessees, tenants and assigns of any deceased defendants" (D397 p. 2) (citing D375 pp. 1-2). It argued that as the personal representative of her father's estate, Ms. Vaughn was acting in both her individual capacity and as a personal representative (D397 p. 3). Ms. Vaughn replied, arguing she only answered Neighborhoods United's petition in her personal capacity and not as a personal representative (D400 p. 3).

The court denied Ms. Vaughn's motion to dismiss the case (D403).

2. Ms. Vaughn's second motion to restore possession

Ms. Vaughn then propounded discovery about the rehabilitation plan and its costs (D405; D452 pp. 1-2). Nearly five months after her original request, she then moved for a second time to have the Property restored to her (D408). She alleged she had the resources to complete the rehabilitation but disputed any responsibility for Neighborhoods United's expenditures (D408 p. 4).

Neighborhoods United opposed Ms. Vaughn's motion, arguing that if she was restored possession of the Property, it likely would fall back into disrepair (D421 p. 3). It reported the rehabilitation was approximately 95% complete and the cost was just over $158,000 (D421 pp. 2-3). It attached receipts and an itemized invoice, which Neighborhoods United stated it produced to Ms. Vaughn in discovery (D421 p. 2; D424; D425).

This time, Ms. Vaughn separately moved the court to set the matter for a hearing (D427 p. 3).

3. Rehabilitation

In August 2023, Neighborhoods United filed a report of its rehabilitation of the Property (D428). It stated it intended to seek a Court Administrator's deed under § 447.625(6), R.S.Mo (D428 p. 1). It attached an itemization of its expenditures in the rehabilitation (D428 p. 1; D429). It reported that the cost of labor and materials was $158,965 (D429 p. 4).

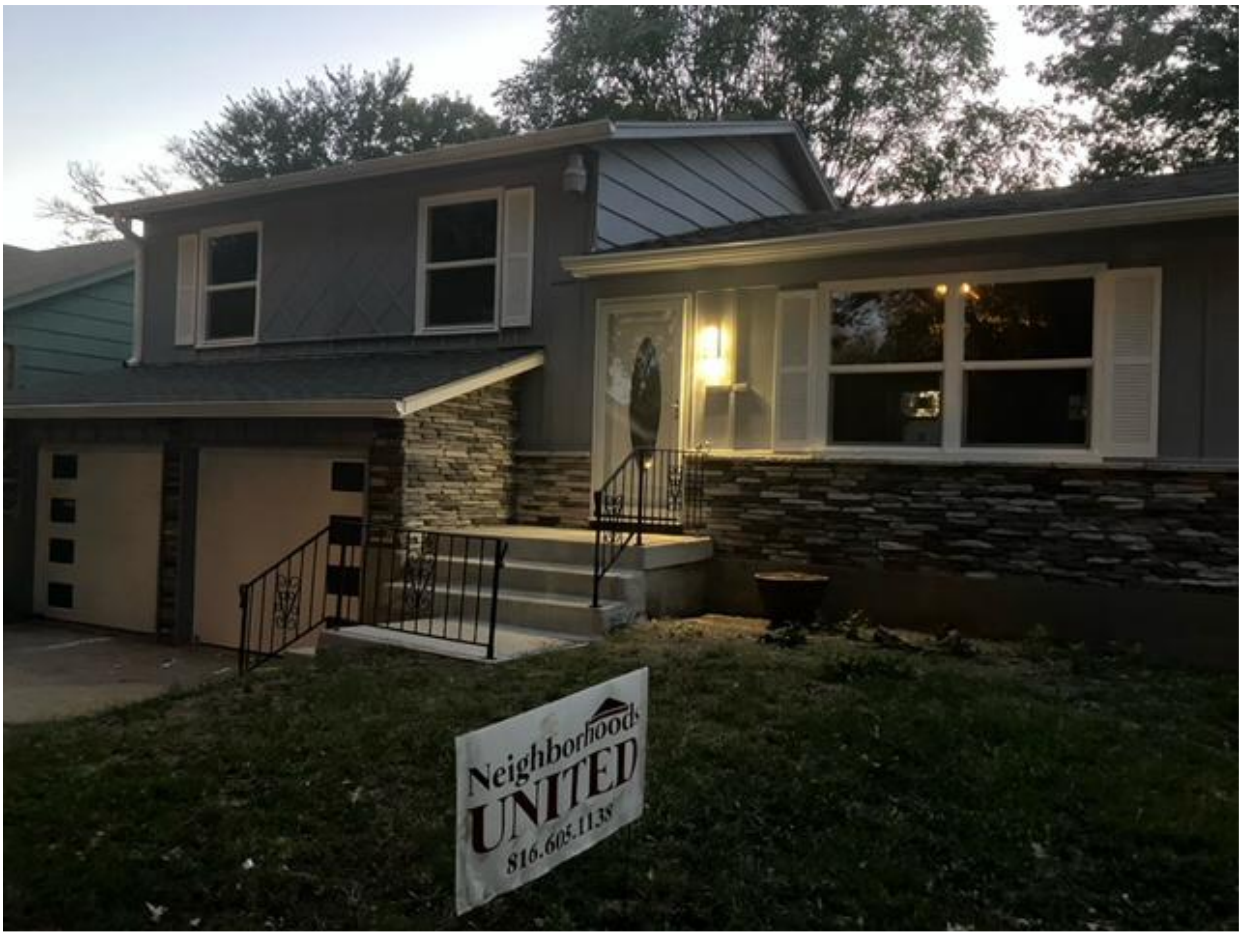
Two months later, Neighborhoods United notified the court it had completed its rehabilitation and sought a judgment granting it an administrator's deed (D434 pp. 4-5). It attached an affidavit from Mr. Kimble stating the Property's delinquent real estate taxes had been paid (D437 p. 2;

D440). He also reported the Property had passed its city inspection and Neighborhoods United had obtained electrical and plumbing permits for the Property (D437 p. 2; D441).

Mr. Kimble said his contracting team had to essentially redo the entire home (Tr.2 at 30), including new stacked stones in front of the house, redoing the chimney, replacing the roof, installing custom garage doors, redoing the floors inside because they were unsalvageable due to animal urine, redoing the kitchen by adding granite countertops and cabinets, adding stainless steel appliances, and installing a new HVAC system and water heater (Tr.2 at 28-32).

Mr. Kimble explained there were situations during the rehabilitation in which his contracting team deviated from Neighborhoods United's original plan (Tr.2 at 32-33), which increased the overall cost of the project (Tr.2 at 32-33). Some of these deviations were unexpected but necessary because "once we got into the house because the house had what we assumed was good bones in it until we kind of started really going into it [*sic*]" (Tr.2 at 30). So, while some of the deviations were made to increase curb appeal, such as putting in stacked stones instead of rehabilitating the original brick or replacing the windows instead of painting the old windows (Tr.2 at 32-33), other deviations were unexpected necessities, such as repairing unknown fire damage in the Property's electrical system (Tr.2 at 30).

The following are photographs of the Property's interior and exterior after Neighborhoods United concluded its rehabilitation, which were admitted at trial (Tr.2 at 28-29):



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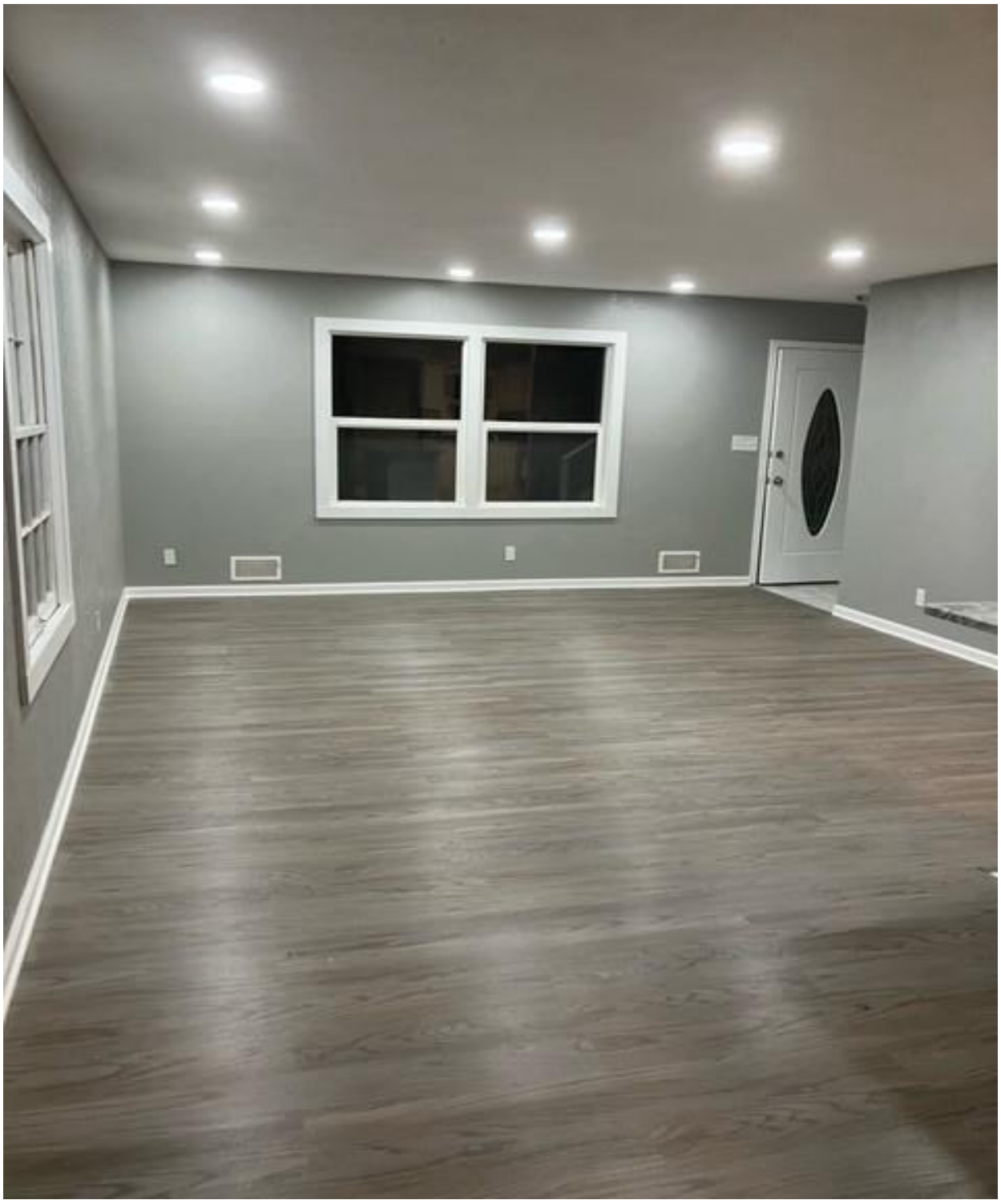

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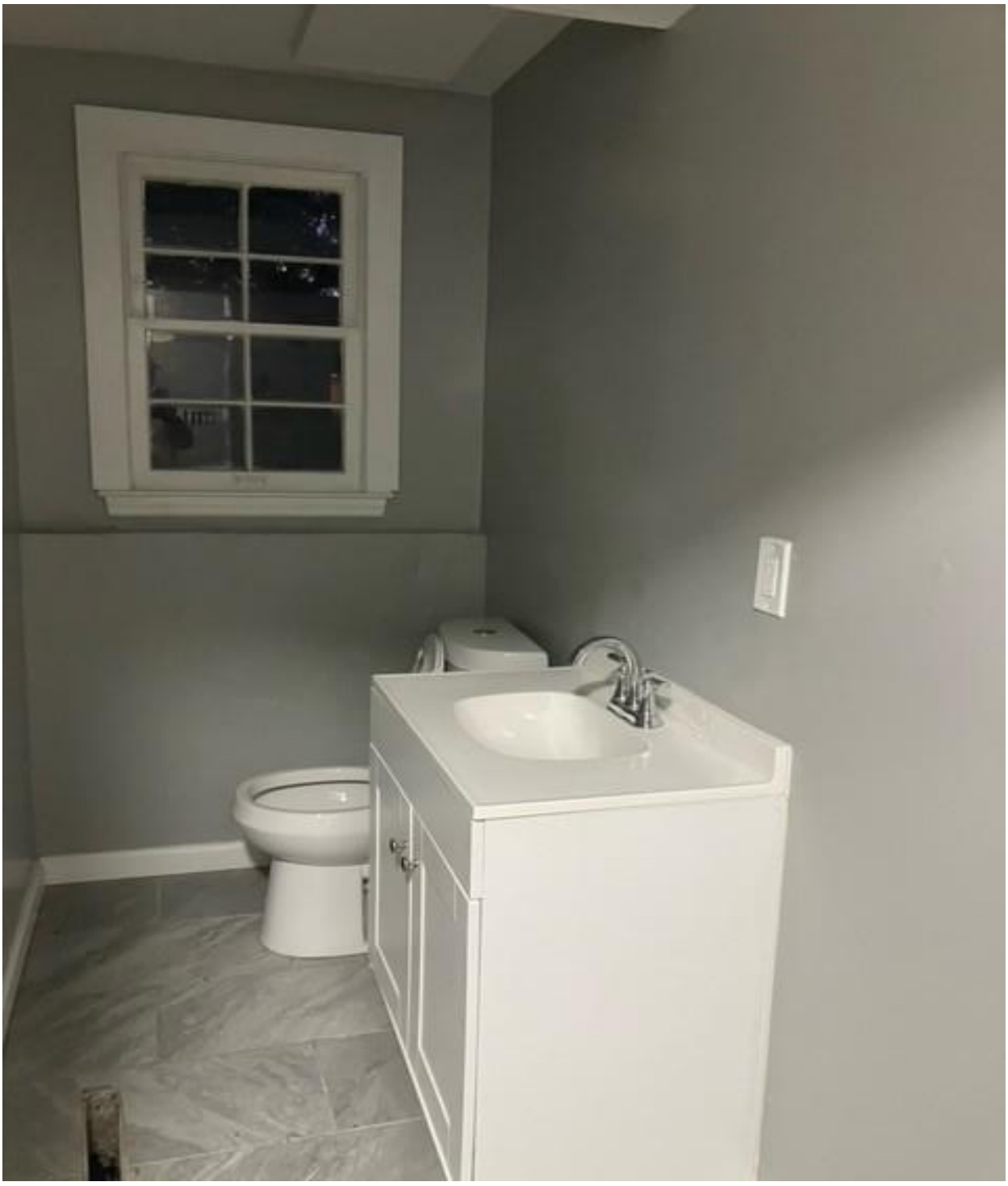

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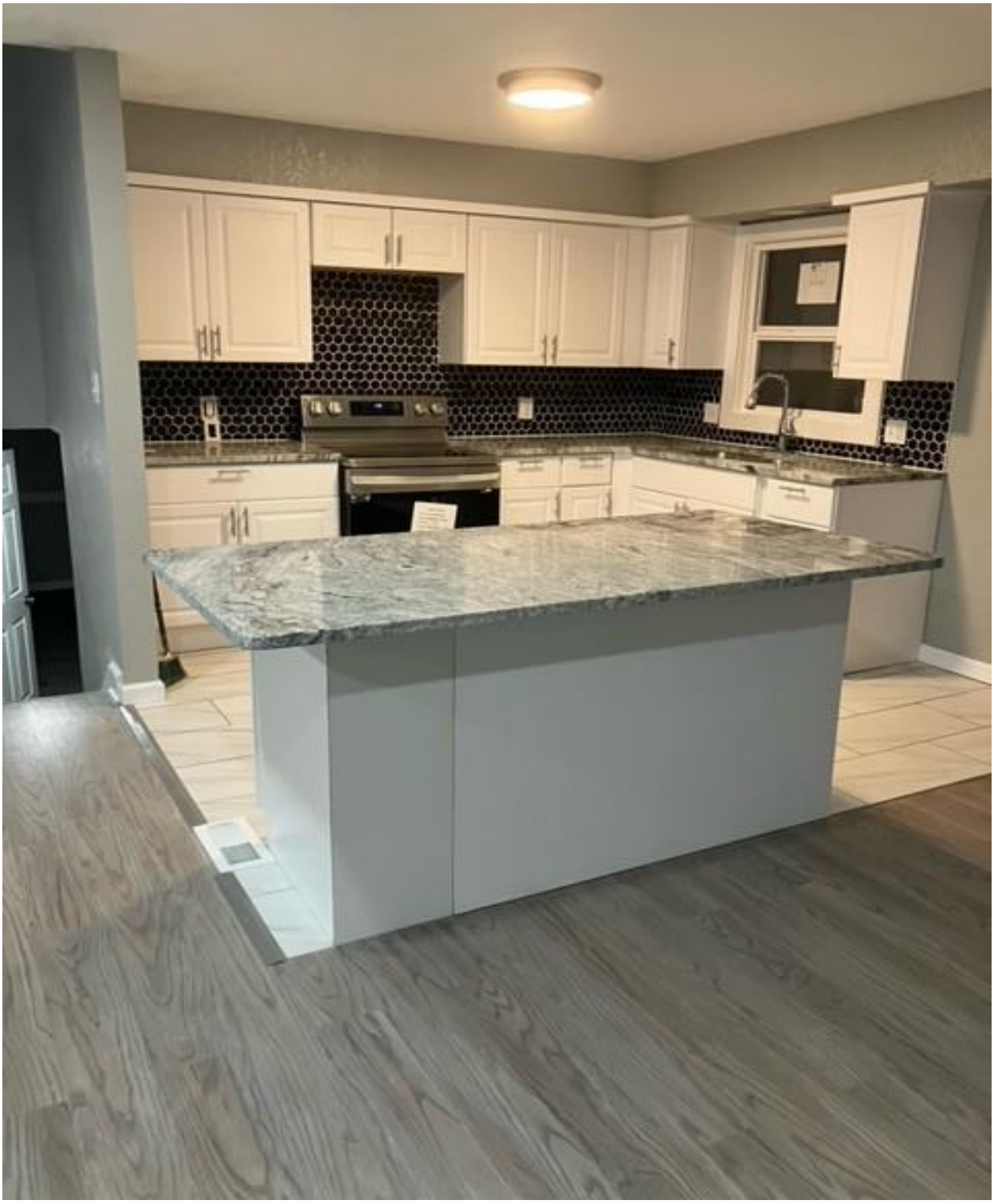

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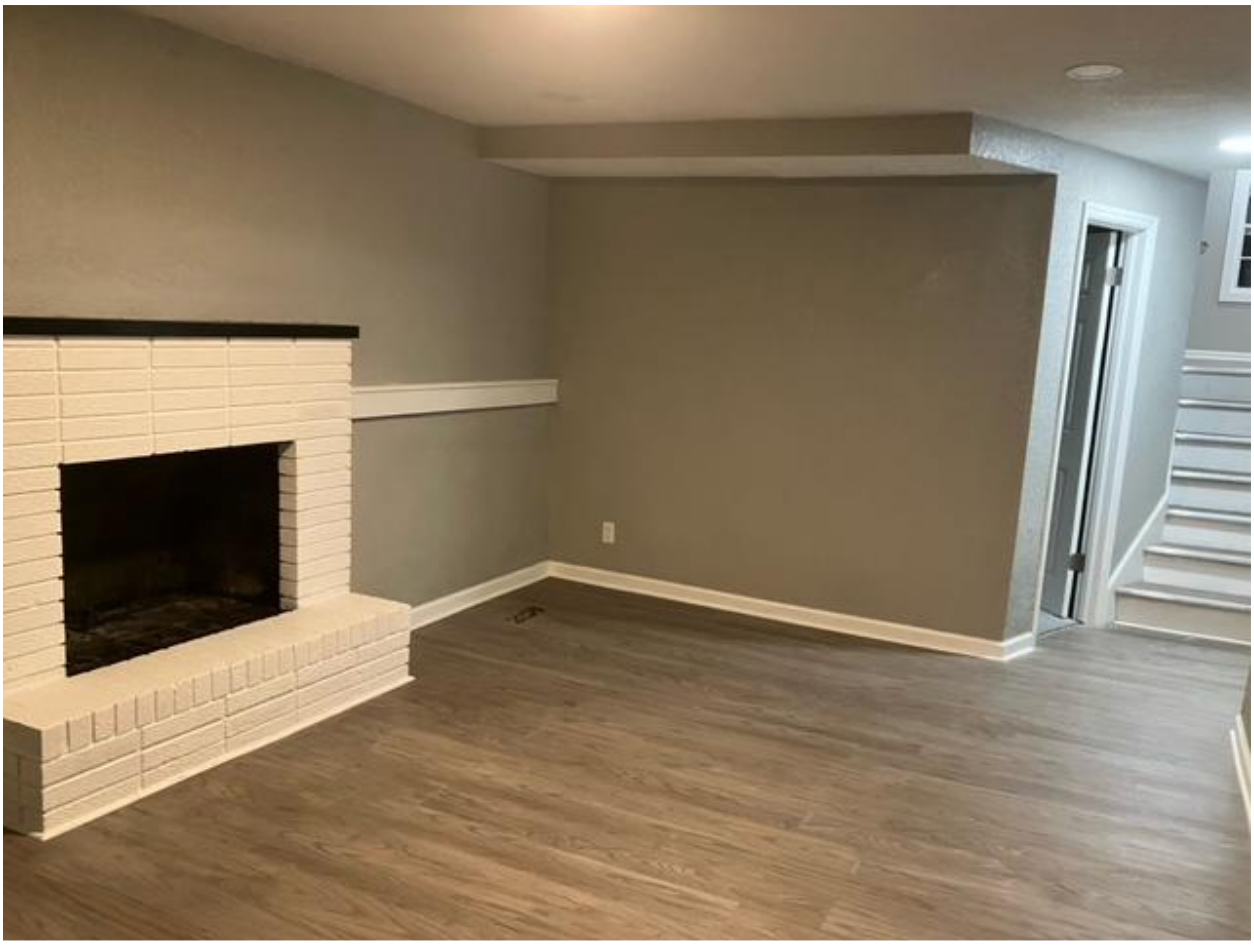

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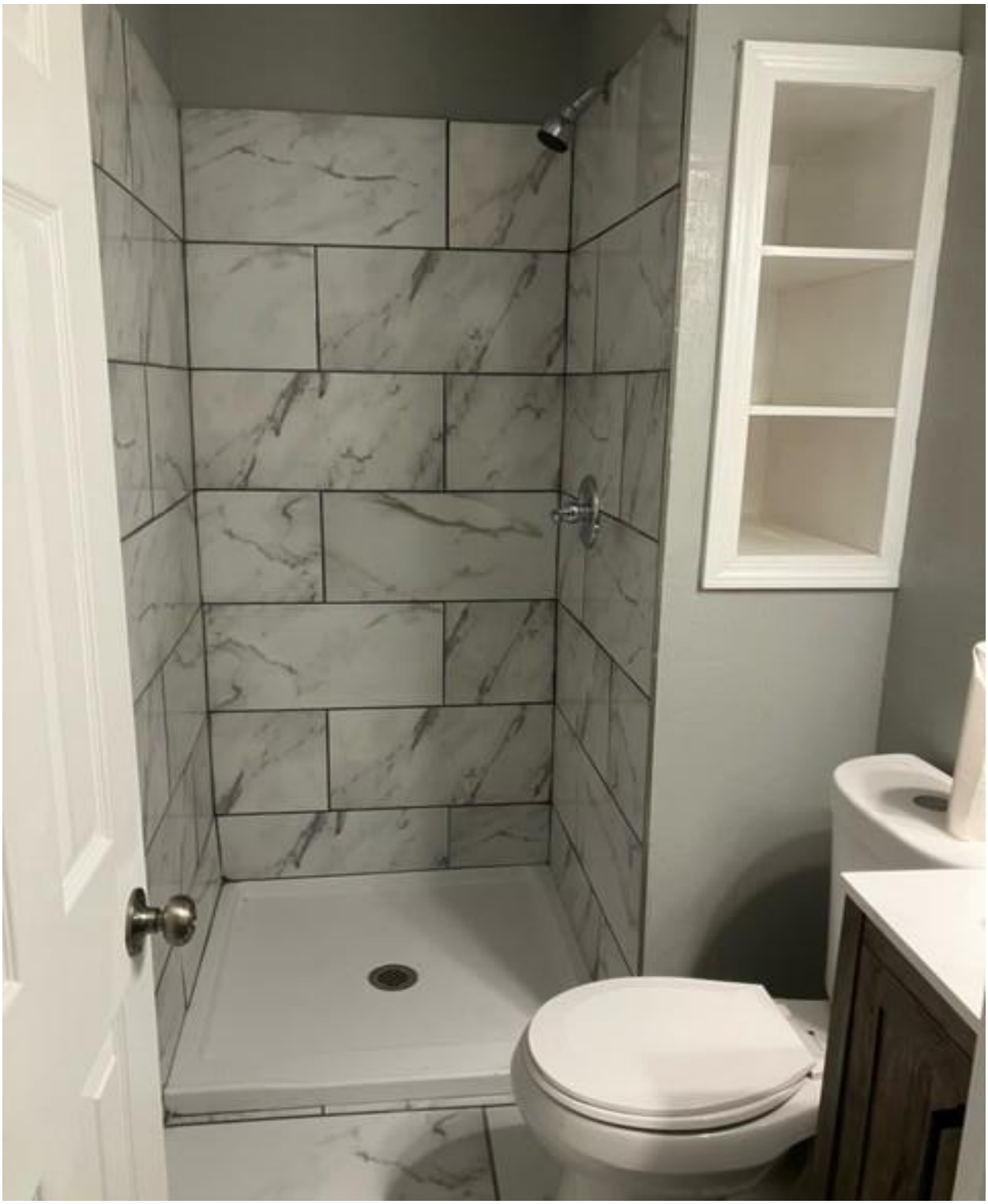

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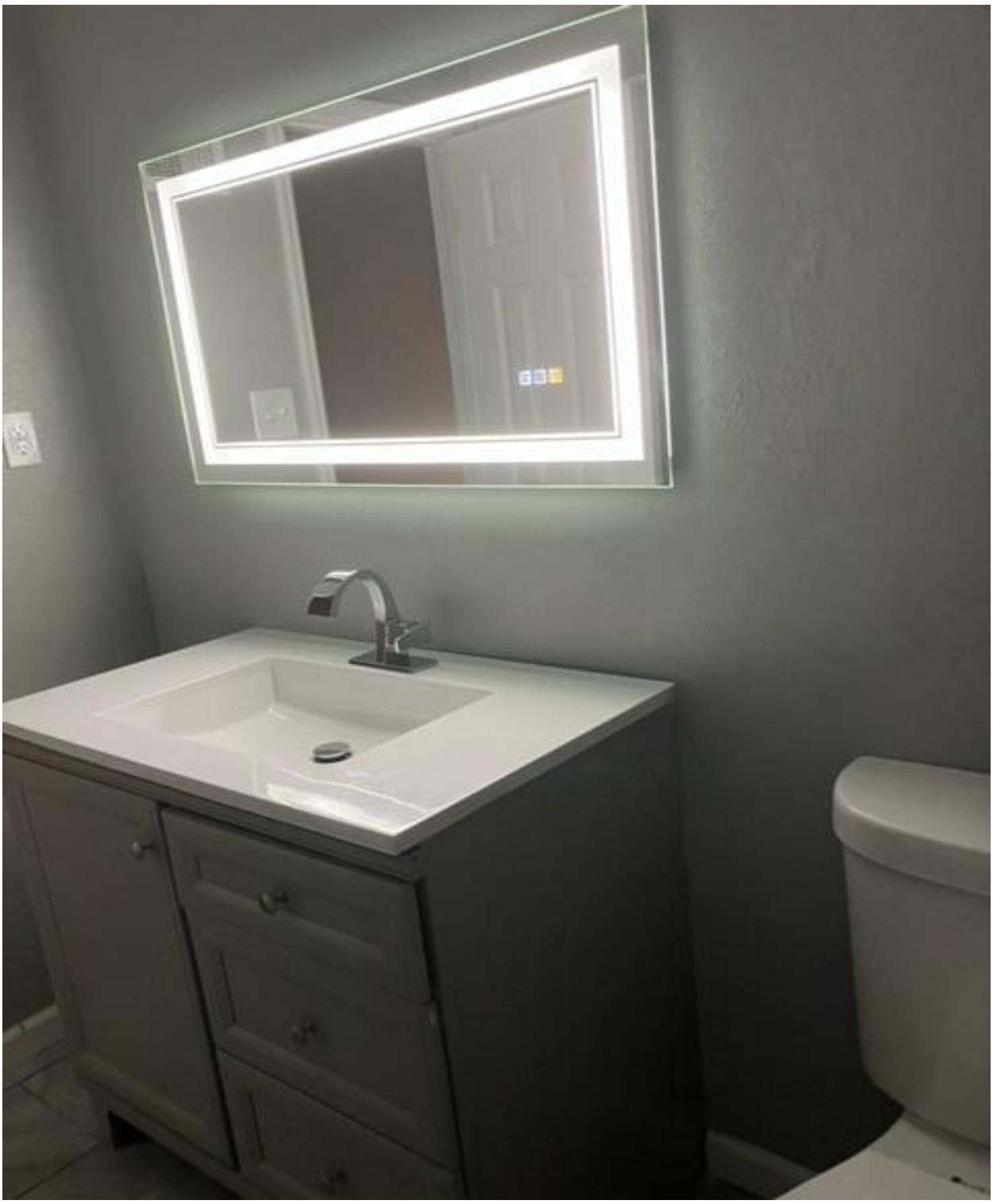

(Plt.Ex. CC).

Mr. Kimble reported the total cost for labor and materials was $186,355 (D442 p. 4). He also requested a 15% project management fee for his

contracting company of $25,953.25 (D442 p. 4). This brought the total cost of the rehabilitation to $214,308.25 (D442 p. 4).

Ms. Vaughn opposed Neighborhoods United's request for an administrative deed (D443 p. 5). She again argued there was no clear title to the Property because her father's estate had not been joined to the action (D443 pp. 2-3). She also argued that "the previously assigned judge" in Division 7 improperly granted Neighborhoods United temporary possession of the Property when her father's probate case was still pending (D443 pp. 3-4). She accused Neighborhoods United of wrongfully disposing of items in the Property that held significant sentimental and monetary value (D443 pp. 3-4). She argued she was still entitled to ownership of the Property (D443 p. 5).

4. Ms. Vaughn's request for compensation

Less than a month before trial, which was originally set in January 2024 (D449 p. 1), Ms. Vaughn moved under § 447.640, R.S.Mo., to be compensated for the loss of her personal property during the rehabilitation process (D467). She sought compensation for the loss of a 1996 Pontiac Bonneville she valued at $3,300, a 1988 Lincoln also valued at $3,300, $290.80 worth of water usage, fees, and penalties and, $5,000 worth of personal property and memorabilia she said the Property contained before rehabilitation (D467 pp. 1-2). In total, she sought $11,949.80 plus 9% post-judgment interest and attorney fees in compensation (D467 p. 2).

Neighborhoods United did not file a response to this request (D372 pp. 23-46).

5. Trial

The trial was continued to March 2024 (D472; D473). Ms. Vaughn then moved under § 447.640, R.S.Mo., to extend the one-year period in which a defendant may object to a plaintiff's petition for a judicial deed to April 15, 2024 (D476). She argued if she did not regain possession by February 2, 2024, one year after Neighborhoods United was granted temporary possession, she could be foreclosed from it (D477 p. 2).

Neighborhoods United opposed this, arguing the one-year provision was irrelevant (D478 p. 3). It argued the provision conflicted with § 447.625(6), R.S.Mo., because in a home-rule city like Kansas City, Neighborhoods United was entitled to seek an administrator's deed at completion of the rehabilitation and it was not required to wait for one year of possession (D478 p. 3). It argued that even if the one-year provision applied, the statute did not allow for any extensions (D478 p. 3).

Just over a month before trial, the court denied Ms. Vaughn's request to extend the one-year provision (D481).

The case proceeded to a one-day bench trial in March 2024 (Tr.2 at 3). It also included arguments on both Neighborhoods United's request for an administrator's deed and Ms. Vaughn's request for restoration of possession of the Property (Tr.2 at 7-90).

Mr. Kimble testified about the rehabilitation, including the renovations and total costs (Tr.2 at 24-56). He said labor and materials were included in the total cost and the labor costs were calculated by hours and complexity of the job worked (Tr.2 at 33). He also included a 15% contracting fee on the invoice (Tr.2 at 33). He said a 20% fee is standard, but as the project was for

a non-profit organization, he lowered the fee to 15% (Tr.2 at 33). He said the Property had passed all its inspections and was live-in ready (Tr.2 at 55-56).

Ms. Vaughn's counsel reviewed receipts from the project with Mr. Kimble (Tr.2 at 39-43). Mr. Kimble conceded there were some duplicate receipts (Tr.2 at 39-43). Ms. Vaughn's counsel asked the court to strike the total of these receipts, $1,572.65 (Tr.2 at 43). The court stated it would evaluate the receipts on taking the case under advisement and would assess the total in its judgment (Tr.2 at 43). Ms. Vaughn's counsel also had Mr. Kimble review three quotes in Neighborhoods United's total expenditures for the rehabilitation (Tr.2 at 45-47). Mr. Kimble agreed the documents were named as "quotes" but said they accurately reflected the sums spent to rehabilitate the Property (Tr.2 at 53).

Ms. Vaughn called two witnesses with backgrounds in construction and real estate (Tr.2 at 57, 74).

The first was Travis Swift, who owned a property management and construction company (Tr.2 at 57). He said he was referred to Ms. Vaughn to make a bid for the Property (Tr.2 at 58). When he inspected the Property in 2022, he estimated the rehabilitation would cost $77,250 (Tr.2 at 61, 64). But he admitted this did not include some steps Neighborhoods United took, including adding the back door, removing walls around the kitchen, remodeling the bathrooms, replacing the furnace, adding appliances, tree removal, custom garage doors, new gutters and downspout, changing the brick to stack stone, and adding a kitchen island and central air (Tr.2 at 67-

72). Mr. Swift said if he were to include those additional improvements, he would have added $16,000.00 to his original bid (Tr.2 at 71, 73).

Ms. Vaughn also called Douglas Harris, a lender and rehabber who has flipped homes and owns rentals in the area (Tr.2 at 74). He said he went to the Property for the first time in 2019 (Tr.2 at 77, 79). He recounted meeting Mr. Swift and receiving a bid for around $70,000.00 to rehabilitate the Property (Tr.2 at 80, 86). He said $70,000.00 in 2019 would be closer to $100,000.00 in 2024 (Tr.2 at 88).

Mr. Harris disagreed with Neighborhoods United's expenditures because he said the money put into the house did not match the market of the neighborhood (Tr.2 at 82). He said if he had been trying to flip the Property, he would not be able to make a profit because he would not be able to sell the house for the standard 30% above the total (Tr.2 at 84-85).

Ms. Vaughn also testified (Tr.2 at 9-24). She said that though she had resided in California for the last eight years, she intended to return to the Property and retire in Kansas City (Tr.2 at 9-10). She testified she had the financial means to regain ownership of the Property because she was approved for a $133,000 loan (Tr.2 at 13-14). She indicated she had applied for this line of credit in 2019 but was not eligible for a loan until her father's probate case concluded (Tr.2 at 16-21). She said she had allowed the taxes on the Property to become delinquent because she did not have the funds to both pay the taxes and rehabilitate the home (Tr.2 at 21).

Ms. Vaughn's counsel did not make any argument about her first motion for restoration being denied without a hearing (Tr.2 at 1-90).

6. Post-trial hearing

Before the court entered a judgment, it set the case for a post-trial hearing on Ms. Vaughn's motion for compensation (D482). Ms. Vaughn appeared virtually and testified about the personal property she claimed she lost in the rehabilitation and its estimated value (Tr.2 at 94-124). Deviating from her motion, Ms. Vaughn lowered the estimated value of the Bonneville and the Lincoln to each be worth $1,000 (Tr.2 at 111). She said the prices for those vehicles had gone down in the meantime (Tr.2 at 124). She also estimated the total value of the alleged memorabilia and furniture disposed to have been $4,675.00 (Tr.2 at 108-111).

Mr. Kimble and Gerryn Dudley testified in person in opposition (Tr.2 at 125-44). As to the Property's contents at the beginning of the rehabilitation process, Mr. Kimble stated:

> There were numerous what I would call junk items. The house was open. The house had been vacant; like I said before, 18 years, a very long time. Vandals had been in the house. Squatters had been in the house. There was nothing of real value in the house.
>
> We are a nonprofit. We work with other nonprofits, where if something was of value – first of all, we always try to give the stuff back to the people if they wanted it. But very seldomly is it of value. But we have other nonprofits that we work with that we would donate to and it was nothing of real value in the house. Nothing of real value.

(Tr.2 at 125).

Mr. Kimble said he worked with Ms. Vaughn and her family to retrieve any items of sentimental or monetary value and that Ms. Vaughn would send people to the house (Tr.2 at 125-26). But Ms. Vaughn was uncooperative and

would schedule but then cancel (Tr.2 at 125-26). He had more success with Ms. Vaughn's friends and family coming to the Property (Tr.2 at 127-29). Ms. Vaughn's boyfriend towed away the Bonneville and other family members came to collect a Ford Mustang (Tr.2 at 127-29). But no one had come to take the Lincoln (Tr.2 at 127-29). The Lincoln had no monetary value because it had four flat tires and the windows had been busted out (Tr.2 at 129-30). Therefore, Mr. Kimble donated it to another non-profit entity (Tr.2 at 130).

Gerryn Dudley, an employee of Neighborhoods United, recalled cleaning out the Property before the rehabilitation (Tr.2 at 139-44). He echoed Mr. Kimble's impression that there was nothing of value there (Tr.2 at 141). There was nothing on the walls and everything in the home was left in piles on the ground (Tr.2 at 143). The vehicles were "trashed out" and the Mustang had piles of raccoon feces inside (Tr.2 at 143-44).

7. Judgment and order

In April 2024, the court issued a judgment determining the Property's ownership and an order on Ms. Vaughn's motion for compensation (D483; D484). It found Ms. Vaughn failed to meet her burden to show she was entitled to compensation for anything Neighborhoods United disposed of (D483 p. 7). It restored the Property to Ms. Vaughn and denied Neighborhoods United's request for an administrator's deed (D484 p. 13). After evaluating the reasonableness of all the stated expenditures, the court ordered Ms. Vaughn to pay Neighborhoods United $184,969.18 for the cost of the rehabilitation before she could resume her possession of the Property (D484 pp. 11-13). This included the 15% management fee that the court

assessed as a contracting fee because Mr. Kimble, as the general contractor, directed subcontractors in the rehabilitation process (D484 p. 12).

The same day, the court amended its judgment to impose a 60-day deadline for Ms. Vaughn to remit the $184,969.18 payment to Neighborhoods United (D485 p. 13). The remainder of the judgment was unchanged (D485). (To this day, Ms. Vaughn has not paid the amount.)

Neither party filed any post-judgment motions (D372 p. 27). Instead, Ms. Vaughn timely appealed to this Court (D486).

Argument

Standard of Review as to All Points

In a judge-tried case, the standard of review from *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976), applies. *In re Marriage of Woodson*, 92 S.W.3d 780, 785 (Mo. banc 2003). The trial court's judgment will be affirmed "unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Murphy*, 536 S.W.2d at 32.

This Court will "view the evidence and the reasonable inferences drawn from the evidence in the light most favorable to the judgment, disregard all evidence and inferences contrary to the judgment, and defer to the trial court's superior position to make credibility determinations." *Houston v. Crider*, 317 S.W.3d 178, 186 (Mo. App. 2010). It must "accept as true the evidence and inferences … favorable to the trial court's decree and disregard all contrary evidence." *Ivie v. Smith*, 439 S.W.3d 189, 200 (Mo. banc 2014) (internal citations and quotations omitted). "Circuit courts are free to believe any, all, or none of the evidence presented at trial." *Id.*

"In reviewing the trial court's decision, this court is primarily concerned with the correctness of the trial court's result, not the route taken by the trial court to reach that result." *Trimble v. Pracna*, 167 S.W.3d 706, 716 (Mo. banc 2005). The judgment below "will be affirmed under any reasonable theory supported by the evidence …." *Id.*

I. This Court should dismiss Ms. Vaughn's appeal because her brief and points violates Rule 84.04 in multiple ways.

(*Response to All Appellant's Points*)

Ms. Vaughn's brief is deficient to such an extent that remedying the deficiencies would require this Court to become her advocate. Therefore, the Court should dismiss her appeal.

First, Ms. Vaughn's statement of facts violates Rule 84.04(c) by failing to give page references to the record and giving incorrect references, and merely presenting a numbered-paragraph procedural history. Second, both of her points relied on violate Rule 84.04(d) by failing to expressly invoke a single *Murphy v. Carron* ground for appellate relief, and by her second point being multifarious, and therefore preserve nothing for appeal.

A. Ms. Vaughn's statement of facts violates Rule 84.04(c).

Every appellant's brief must contain a statement of facts, which must be a "fair and concise statement of the facts relevant to the questions presented for determination without argument" and "shall have specific page references to the relevant portion of the record on appeal[.]" Rule 84.04(c).

"The primary purpose of the statement of facts is to afford an immediate, accurate, complete and unbiased understanding of the facts of the case." *In re Marriage of Smith*, 283 S.W.3d 271, 273 (Mo. App. 2009). "An appellant may not simply recount his or her version of the events, but is required to provide a statement of the evidence in the light most favorable to the judgment." *Id.* "Failure to provide a fair and concise statement of facts that complies with Rule 84.04(c) is a basis for dismissal of the appeal." *Id*. at 274 (collecting cases).

Ms. Vaughn's statement of facts (Brief of the Appellant ["Aplt.Br."] 7-18) violates these principles. Throughout, Ms. Vaughn does not direct the Court to specific page numbers when citing the legal file (Aplt.Br. 7-18). Instead, she merely provides document numbers despite many of the ones she cites containing multiple pages.

For example, Ms. Vaughn cites generally to the trial court's April 2024 Judgment (D484) and its Amended Judgment (D485) when discussing its specific orders for reimbursement and possession of the Property, without stating where in those 13-page documents these orders are located (Aplt.Br. 8). And when she does reference a specific page number, her citations often are incorrect. When discussing some property remaining in the home, she cites pages 116 and 136 of the first transcript volume (Aplt.Br. 9-10). But the first transcript is only 26 pages long. Ms. Vaughn may have meant to cite the other transcript volume. But piecing together her intentions by sorting through the record is not this Court's burden. *Jackson v. Sykes*, 686 S.W.3d 393, 396 (Mo. App. 2024).

Ms. Vaughn's failure to cite specific page references and mis-citing others violates Rule 84.04(c). *Kouadio-Tobey v. Div. of Emp. Sec.*, 651 S.W.3d 839, 842 (Mo. App. 2022). "Specific and relevant cites to the record are 'mandatory and essential for the effective functioning of appellate courts because courts cannot spend time searching the record to determine if factual assertions in the brief are supported by the record." *Sharp v. All-N-One Plumbing*, 612 S.W.3d 240, 245 (Mo. App. 2020) (citation omitted).

The remainder of Ms. Vaughn's statement of facts (Aplt.Br. 8-18) also violates Rule 84.04(c) in multiple ways. First, the section consists of 67 mostly single-sentence, numbered paragraphs, just stating the procedural history below (Aplt.Br. 8-18). But numbered paragraphs are not a proper format for appellate briefs and violate Rule 84.04. *Gan v. Schrock*, 652 S.W.3d 703, 708 (Mo. App. 2002). Ms. Vaughn's recollection creates "[a] statement of facts that consists of nothing more than an abbreviated procedural history" which "fails to provide an understanding of the case and is deficient." *Angle v. Grant*, 997 S.W.2d 133, 134 (Mo. App. 1999)

Second, the statement of facts includes numerous irrelevant issues and argumentative statements. The issues on appeal appear to be (1) whether Ms. Vaughn was entitled to a hearing on her motion for repossession and (2) whether the trial court properly determined the amount to which Neighborhoods United was entitled for the rehabilitation (Aplt.Br. 19-20). But Ms. Vaughn dedicates a portion of her statement of facts to accusing Mr. Kimble of lying about his identity to evade service of a subpoena (Aplt.Br. 11). She also argues he did not show up to a deposition that "was Vaughn's rare opportunity to get clarification as to the discovery provided" (Aplt.Br. 12). But Ms. Vaughn is not appealing a discovery dispute, so this is irrelevant – and full of self-serving opinion to boot. But "[a] statement of facts that is argumentative does not substantially comply with Rule 84.04." *Brown v. Brown*, 645 S.W.3d 75, 83 (Mo. App. 2022) (citation omitted).

Accordingly, Ms. Vaughn's statement of facts violates Rule 84.04(c) because it is not "a fair and concise statement of the facts relevant to the

questions presented for determination." *Gan*, 652 S.W.3d at 708. And "[a] statement of facts which does not comply with Rule 84.04 and which fails to set forth material evidence preserves nothing for review." *Angle*, 997 S.W.2d at 134 (citation omitted).

The Court should decline to reach Ms. Vaughn's argument. Her deficient statement of facts alone is sufficient "grounds for dismissal of [her] appeal." *Washington v. Blackburn*, 286 S.W.3d 818, 820 (Mo. App. 2009).

B. Ms. Vaughn's failure to identify a single *Murphy v. Carron* basis for reversal in either of her points relied on, and the multifarious nature of her second point, renders none of them preserved for appeal.

Ms. Vaughn brings two points on appeal. In her first, she challenges what she says was the trial court's decision to deny her "statutory right for a circuit court hearing" on her first motion for restoration under § 447.638, R.S.Mo. (Aplt.Br. 19). In her second, she asserts there was "a lack of evidence to substantiate the trial court's finding when the judgment is against the weight of admitted evidence and stipulations from both parties" (Aplt.Br. 20). But neither point specifies a single *Murphy v. Carron* ground for reversal. The law of Missouri therefore is that neither point is preserved for review, and this Court should dismiss her appeal.

Under the standard of review from *Murphy v. Carron*, 536 S.W.2d at 32, this Court "can reverse [a] court-tried judgment *only* if [1] no substantial evidence supports it, or [2] it is against the weight of the evidence, or it erroneously [3] declares or [4] applies the law." *Hagan v. Hagan*, 530 S.W.3d 608, 610 (Mo. App. 2017) (emphasis in the original). So, "[t]hese being the *only* reasons to reverse any court tried case, each of [an appellant's] points

[on appeal from a court-tried judgment] should specify some *Murphy v. Carron* basis for relief." *Id.* (emphasis in the original).

Therefore, where an appellant's point does not specify which of Murphy's four bases for reversible error it claims, this Court may "affirm the judgment on this basis alone …" *Id.*; *see Kim v. Mercy Clinic Springfield Cmtys.*, 556 S.W.3d 613, 617 (Mo. App. 2018) (denying point solely for this reason). This is because points relied on "shall identify the challenged actions and 'the legal reasons for the appellant's claim of reversible error,'" which makes it "self-eviden[t] that [the appellant] should identify the specific Murphy claim [she] assert[s] a to each of [her] points …." *Smith v. Great Am. Assur. Co.*, 436 S.W.3d 700, 703 (Mo. App. 2014) (citing Rule 84.04(d)(1)(A) & (B)) (emphasis in the original). This requires "expressly identify[ing] a *Murphy* ground" in the point itself. *Id.*

"Rule 84.04(d) 'requires separate points to challenge separate rulings or actions.'" *Bi-Nat'l Gateway Term., LLC v. City of St. Louis*, 697 S.W.3d 593, 598 (Mo. App. 2024) (quoting *Lexow v. Boeing Co.*, 643 S.W.3d 501, 505-06 (Mo. banc 2022)). This means each point may only identify *one Murphy* ground for relief and separate *Murphy* grounds must be set out in separate points:

> A point relied on should contain only one issue, so multiple contentions about different issues should not be combined into a single point. The reason is each challenge involves a distinct analysis. A not-supported-by-substantial-evidence and an against-the-weight analysis are distinctly different. Each of these, in turn, is different from a claim that the trial court erroneously declared or applied the law. This means each *Murphy* ground is proved differently from the others and is

> subject to different principles and procedures of appellate review. A point that includes multiple issues is multifarious and preserves nothing for appellate review.

Koeller v. Malibu Shores Condo. Ass'n, Inc., 602 S.W.3d 283, 287 (Mo. App. 2020) (citations, quotation marks, and bracket omitted) (dismissing point in part for this reason).

So, "[i]f a point on appeal fails to identify which one of the *Murphy v. Carron* grounds applies, Rule 84.04 directs [this Court] to dismiss the point." *Ebert v. Ebert*, 627 S.W.3d 571, 580, 589 (Mo. App. 2021) (holding an appellant's point deficient under Rule 84.04 because it did not specify the *Murphy* ground she sought to invoke).

Here, neither point identifies one of the four *Murphy* grounds. Point I does not identify any *Murphy* ground at all. Instead, it merely asserts the trial court erred by denying Ms. Vaughn's motion for restoration before conducting a hearing, without stating why (Aplt.Br. 19).

Ms. Vaughn's second point is multifarious. It argues the judgment ordering she reimburse Neighborhoods United lacked substantial evidence in its support *and* the finding was against the weight of the evidence (Aplt.Br. 20). Those are two separate *Murphy* grounds, each requiring its own point relied on. *Koeller*, 602 S.W.3d at 287. But Ms. Vaughn conflates them as the same both in her point and in the argument that follows it (Aplt.Br. 20, 25-34). And if that were not enough, Ms. Vaughn adds a third *Murphy* ground, misapplication of law, when arguing her second point (Aplt.Br. 28, 30).

This deficiency is independently enough to warrant dismissing Ms. Vaughn's appeal. She fails to identify a recognized "legal reason[n] for …

reversible error," as Rule 84.04(d) requires. Accordingly, none of her points is preserved, and this Court should deny them for this reason alone. *Kim*, 556 S.W.3d at 617.

When none of an appellant's points is preserved, the appropriate disposition is to dismiss her appeal. *See, e.g., Jarvis v. State*, 472 S.W.3d 238, 242 (Mo. App. 2015) ("Because Mr. Jarvis's point on appeal is not preserved for our review, his appeal is dismissed"). The deficiencies in Ms. Vaughn's brief would require this Court to become her advocate to address the supposed merits of her appeal, which it cannot do. Therefore, the Court should dismiss her appeal.

II. Ms. Vaughn's argument that the trial court erred in failing to hold a hearing on her first motion for restoration is not preserved, and in any case she cannot show she was prejudiced because she was ultimately heard in full on the merits of her claim for restoration.

(*Response to Appellant's Point I*)

In her first point, Ms. Vaughn argues the trial court's refusal to grant an evidentiary hearing on her first motion for restoration was reversible error (Resp.Br. 24). But she failed to preserve this argument for review by objecting to this at a time when the trial court could have address the issue. And in any case, Ms. Vaughn could not have been prejudiced by this alleged error because she was ultimately heard in full on the merits.

A. Ms. Vaughn failed to properly call attention to her alleged error and did not give the trial court an opportunity to rule on the question, making it not preserved for appeal.

The law of Missouri is that for "an appellant to raise a claim of error on appeal, the trial court must first be given the opportunity to rule on the question." *In re K.C.G.*, 689 S.W.3d 759, 762 (Mo. App. 2024). "To give the trial court an opportunity … a party must make a timely objection or request, which is one made when the occasion for the ruling desired first appears." *Id.* (citing *In re E.G.*, 683 S.W.3d 261, 266 (Mo. banc 2024) (internal quotation marks omitted). "Even in a court-tried case, where a post-trial motion is not necessary to preserve an otherwise properly raised issue for appellate review, the appellant *must* make some effort to bring the alleged error to the trial court's attention" in a timely and proper manner. *Heck v. Heck*, 318 S.W.3d 760, 767 (Mo. App. 2010) (emphasis added).

In *Heck*, a father appealed a dissolution judgment that awarded the mother both retroactive child support and a monetary judgment for past due childcare bills. *Id*. at 761-62. On appeal, he argued the retroactive child support and the past due childcare bills were the same debt so he should not be liable for both. *Id*. at 767. This Court affirmed the original award "[b]ecause Father did not raise the prospect of a duplicative award with the trial court," so "the trial court was not given an opportunity to correct any claimed mistake." *Id*. Therefore, the issue was not preserved for review. *Id*.

In *Horton v. St. Louis Pub. Schs.*, 700 S.W. 3d 311, 313 (Mo. App. 2024), a man was terminated from his position and sued his employer for both racial and age discrimination. The employer moved to dismiss the case for a failure to state a claim, which the court granted. *Id*. The plaintiff then moved to vacate the order and requested leave to amend his petition, which the court denied. *Id*. So, the plaintiff appealed, arguing the trial court erroneously granted the motion to dismiss because he did not have to attach a charge of discrimination to his petition. *Id*. at 315.

This Court affirmed, holding the plaintiff's argument was not properly preserved because it challenged the order granting the motion to dismiss, which was not at issue. *Id*. at 315. Instead, this Court was reviewing the trial court's decision to deny his motion to vacate and request to amend his petition. *Id*.

Ms. Vaughn's challenge to the trial court's failure to hold a hearing on her first motion for restoration is equally unpreserved for appeal. As in *Heck*, she did not raise the alleged error in time for the court to act and correct any

failure. Her original motion for restoration was filed in March 2023 (D386 p. 1). The court denied it without a hearing (D387). But in response, she did not move the court to reconsider or amend its order let alone, argue a hearing was necessary (D372 p. 17). Nor did she argue at trial that she had been entitled to that initial hearing and was prejudiced by its denial (Tr.2 at 1-90). She also did not request the court grant some sort of relief because she had been denied her requested hearing (Tr.2 at 1-90).

Ms. Vaughn had every opportunity to dispute the trial court's original order and seek relief at that time, but chose not to. If she believed a hearing was required, she could have asked the court to set aside its order and hold one. She did not. This Court cannot consider this belated claim now.

Also, as in *Horton,* Ms. Vaughn is challenging the wrong order. Here, she is appealing the trial court's final judgment restoring her possession of the Property and reimbursing Neighborhoods United for the Property's rehabilitation (D486 pp. 8-33). That is not the order denying her first motion for restoration without a hearing (D387).

Nothing in the record indicates Ms. Vaughn raised the alleged error as a substantive argument to the trial court at any time when it could have been remedied. This Court cannot convict the trial court of an error on an issue that was not presented for it to decide. *Loutzenhiser v. Best*, 565 S.W.3d 723, 730 (Mo. app. 2018). Ms. Vaughn's first point fails.

B. In any case, Ms. Vaughn cannot show prejudice because she was heard.

Ms. Vaughn argues her statutory right to a hearing was infringed when the trial court denied her first motion for restoration (Aplt.Br. 23). If this

claim is somehow preserved, then the problem with it is that she ultimately was heard. Therefore, regardless of her claim, she cannot have been prejudiced.

For an error to be reversible, an appellant also must show it prejudiced her. *Paulson v. Dynamic Pet Prods., LLC*, 560 S.W.3d 583, 591 (Mo. App. 2018). Ms. Vaughn invokes a statutory right for her restoration claim to be heard under § 447.638 (Aplt.Br. 23). But if an appellant claims a violation of her right to be heard, she is not prejudiced if she ultimately was indeed heard. *See, e.g., Burns v. Granger*, 513 S.W.3d 800, 803-04 (Mo. App. 2020).

In *Burns*, the appellant claimed the trial court erroneously dismissed his petition following a hearing that was scheduled with less than five days' notice, in violation of Rule 44.01(d). *Id.* at 803. This Court held that even if his right to timely notice was infringed, he suffered no prejudice because he later received the relief he claimed he was denied: an opportunity to appear and be heard, when his motion to reconsider resulted in a full hearing, at which, he received that opportunity. *Id.*

Here, Ms. Vaughn was heard below. While her first motion for restoration of the Property was denied without hearing (D387), her second motion was taken up at trial in full (Tr.2 at 7) and decided – in her favor, at that (D485 p. 13). Therefore, she cannot show prejudice even if the trial court initially was wrong to rule without a hearing. This Court should deny her first point.

III. The trial court properly found Neighborhoods United was entitled to reimbursement of $186,969.18.

(Response to Appellant's Point II)

Additional Standard of Review

Ms. Vaughn's second point argues both that the trial court's judgment lacked substantial evidence in its support and was against the weight of the evidence (Aplt.Br. 25-34). She also argues the trial court misapplied the law (Aplt.Br. 28). While Neighborhoods United explained above at pp. 44-45 that this is impermissibly multifarious and warrants dismissal, if the Court reviews this point anyway there are three additional standards of review.

Misapplication-of-Law Challenge

"A claim that the trial court erroneously declared or applied the law is reviewed *de novo*." *Est. of Briggs*, 449 S.W.3d 421, 425 (Mo. App. 2014). A challenge under *Murphy v. Carron's* misapplication-of-the-law ground presupposes that the trial court's factual findings are correct and instead reviews the application of law to those factual findings. *Est. of Elder v. Est. of Pageler*, 564 S.W.3d 742, 748 (Mo. App. 2018).

Lack-of-Substantial-Evidence Challenge

In 2014, the Supreme Court clarified the standard of review appellate courts must use to evaluate whether a lower court's necessary findings are supported by substantial evidence:

> Substantial evidence is evidence that, if believed, has some probative force on each fact that is necessary to sustain the circuit court's judgment. Evidence has probative force if it has any tendency to make a material fact more or less likely. When reviewing whether the circuit court's judgment is supported by substantial evidence, appellate courts view the evidence in the

> light most favorable to the circuit court's judgment and defer to the circuit court's credibility determinations. Appellate courts accept as true the evidence and inferences … favorable to the trial court's decree and disregard all contrary evidence. In addition, this Court has made clear that no contrary evidence need be considered on a substantial-evidence challenge, regardless of whether the burden of proof at trial was proof by a preponderance of the evidence or proof by clear, cogent, and convincing evidence.
>
> Circuit courts are free to believe any, all, or none of the evidence presented at trial …. In addition, Rule 73.01(c) provides that "all fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

Ivie, 439 S.W.3d at 199-200 (internal quotation marks and citations omitted).

This Court has detailed a three-part analysis an appellant must conduct to prove a finding is not supported by substantial evidence:

> (1) Identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
>
> (2) Identify all the favorable evidence in the record supporting the existence of that proposition; and
>
> (3) Demonstrate why that favorable evidence, when considered along with the reasonable inferences draw from that evidence, does not have probative upon the proposition such that the trier of fact could not reasonably decide the existence of the proposition.

Houston, 317 S.W.3d at 186.

Against-the-Weight Challenge

In *Ivie*, the Supreme Court went on to explain the standard of review for claims that a trial court's finding is against the weight of the evidence:

> Appellate courts act with caution in exercising the power to set aside a decree or judgment on the ground that it is against the

> weight of the evidence. A claim that the judgment is against the weight of the evidence presupposes that there was sufficient evidence to support the judgment. In other words, weight of the evidence denotes an appellate test of how much persuasive value evidence has, not just whether sufficient evidence exists that tends to prove a necessary fact. The against-the-weight-of-the-evidence standard serves only as a check on the circuit court's potential abuse of power in weighing the evidence, and an appellate court will reverse only in rare cases, when it has a firm belief that the decree or judgment is wrong.
>
> When reviewing the record in an against-the-weight-of-the-evidence challenge, this Court defers to the circuit court's findings of fact when the factual issues are contested and when the facts as found by the circuit court depend on credibility determinations. A circuit court's judgment is against the weight of the evidence only if the circuit court could not have reasonably found, from the record at trial, the existence of a fact that is necessary to sustain the judgment. When the evidence poses two reasonable but different conclusions, appellate courts must defer to the circuit court's assessment of that evidence.

439 S.W.3d at 205-06 (internal quotation marks and citations omitted).

Likewise, the Court in *Houston* also announced a four-part rubric to determine when a trial court's finding is against the weight of the evidence:

> (1) Identify a challenged factual proposition, the existence of which is necessary to sustain the judgment;
>
> (2) Identify all of the favorable evidence in the record supporting the existence of that proposition;
>
> (3) Identify the evidence in the record contrary to the belief of that proposition, resolving all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit; and,
>
> (4) Demonstrate why the favorable evidence, along with the reasonable inferences drawn from that evidence, is so lacking in probative value, when considered in the context of the

> totality of the evidence, that it fails to induce belief in that proposition.

317 S.W.3d at 187.

* * *

In her second point, Ms. Vaughn argues the trial court's judgment reimbursing Neighborhoods United $186,969.18 "cannot be supported on any tenable basis given the evidence in the case" (Resp.Br. 26). This is in error. Viewing the evidence in the light most favorable to the trial court's judgment, which Ms. Vaughn does not, the trial court's judgment was entirely proper.

A. The trial court properly monitored and assessed Neighborhoods United's rehabilitation expenditures.

1. Ms. Vaughn presents an evidentiary challenge that is not preserved for appeal.

Ms. Vaughn begins the argument over her second point by arguing Neighborhoods United was required to file quarterly reports with the trial court throughout the proceeding, and if it missed even a single report, it was not entitled to compensation (Aplt.Br. 26-28). She argues her point is preserved for appeal because a "sufficiency of the evidence" question "does not require a specific objection at trial or in a post-judgment motion, and instead" is automatically preserved (Resp.Br. 25).

But Ms. Vaughn is not raising a sufficiency-of-the-evidence question. Instead, this is an evidentiary objection: that Mr. Kimble's testimony and evidence at trial was inadmissible to prove the amounts of the rehabilitation. This is not preserved.

Unlike a sufficiency-of-the-evidence question, "[p]reservation of evidentiary questions for appeal requires an objection at the time the

evidence is sought to be introduced along with the same objection being carried forward on appeal." *Brown v. Brown*, 530 S.W.3d 35, 44 (Mo. App. 2017) (citation omitted). An objection to the admissibility of certain evidence must be specific. *Id*. The purpose of the rule requiring a contemporaneous objection "is to ensure that the trial court is informed of the reasons for the objection so that it can make a reasoned and informed ruling." *Id*. If a party does not object contemporaneously, the objection is waived, and the party may not raise those grounds for the first time on appeal. *Id*. at 45.

Here, at trial, Neighborhoods United presented a final invoice for all the work completed on the Property (Tr.2 at 29-30). Mr. Kimble stated he personally prepared the invoice and then provided comprehensive testimony of the rehabilitation and its associated costs (Tr.2 at 25, 29-34). While Ms. Vaughn did initially object to Mr. Kimble's testimony, her objection was not on the basis that Neighborhoods United had failed to comply with § 447.636, R.S.Mo. (Tr.2 at 24-25). Moreover, she did not object to Mr. Kimble's testimony about the charges contained in the invoice or to the invoice itself (Tr.2 at 29-30). Because Ms. Vaughn did not make a contemporaneous objection to the admissibility of Neighborhoods United's reported expenditures, the trial court was free to review the invoice and Mr. Kimble's testimony in crafting its judgment.

Therefore, to the extent Ms. Vaughn argues Mr. Kimble's testimony was inadmissible, it was admitted without objection and her argument is not preserved.

2. Even as a sufficiency-of-the-evidence claim, Ms. Vaughn's point still fails.

Even if this Court agrees Ms. Vaughn's argument about Mr. Kimble's testimony and other evidence is preserved, it still fails. She argues that a quarterly report is the only evidence a trial court can consider for rehabilitation costs in an Abandoned Housing Act case. This is not the law of Missouri.

Section 447.636 states, "The organization shall file a quarterly report of its rehabilitation and use of the property, including a statement of all expenditures made by the organization and all income and receipts from the property for the preceding quarters." But the statute does not state a party is no longer entitled to relief if it misses a quarter or does not file these reports at all. Ms. Vaughn fails to present any authority supporting this reading. "Failure to cite relevant authority supporting a point or to explain the failure to do so preserves nothing for review." *Mansfield v. Horner*, 443 S.W.3d 627, 642 (Mo. App. 2014) (citation and internal quotation marks omitted).

To be sure, the statutory construction Ms. Vaughn advocates is absurd. Regardless of the filing of quarterly report, a trial on the matter was always required. And at that trial, all relevant evidence to prove the parties' cases was admissible.

Here, the trial court approved the rehabilitation plan and granted Neighborhoods United temporary possession of the Property because it constituted a nuisance and a blight on the surrounding area (D385 pp. 3-4). Neighborhoods United provided an initial expenditures report in August 2023 when it had concluded 95% of the rehabilitation (D428; D429; D485 p. 11).

This report did not include receipts or other itemized receipts with the invoice (D485 p. 11), which Ms. Vaughn argues was mandatory. But in an Abandoned Housing Act case, "[r]eceipts are not necessarily needed to support the valuation that a witness places on labor and materials." *Urban Renewal of K.C. v. Bank of N.Y.*, 289 S.W.3d 631, 636 (Mo. App. 2009). So, Neighborhoods United's report still complied with § 447.636 because it sufficiently accounted for all the expenditures Neighborhoods United made at that time in the rehabilitation of the Property.

When the project concluded in October 2023, Neighborhoods United moved for an administrator's deed (D385; D434). Mr. Kimble executed an affidavit in support of the request (D437 p. 3) and attached receipts and a final itemized invoice reporting the total cost of the project to the court (D442). This affidavit and attachment acted as a final report to the court of all the expenditures Neighborhoods United made during the rehabilitation process.

At the same time, Ms. Vaughn sought to restore her possession of the Property and requested the court hear her petition under § 447.638 (D408 pp. 3-5). Per § 447.638, "If the court determines that the rehabilitation work has been completed by the organization or that the owner has the capacity and resources to complete the rehabilitation, the court shall then determine proper compensation to the organization for its expenditures, including management fees, based on the organization's reports to the court."

Here, the court held a trial on Neighborhoods United's request for a court administrator's deed and Ms. Vaughn's petition for restoration (Tr.2 at

7). Without objection from Ms. Vaughn that it was legally irrelevant or improper, the trial court heard testimony from Mr. Kimble concerning his oversight of the Property's rehabilitation (Tr.2 at 24-56). His testimony included a comprehensive review of an invoice he personally prepared for the work completed on the Property (Tr.2 at 29-34). And the invoice was admitted into evidence without objection (Tr.2 at 30).

Nor can Ms. Vaughn show any unfair surprise or other prejudice from the trial court's unchallenged decision to admit Neighborhoods United's final report of expenditures. She did not object when the final report was offered into evidence (Tr.2 at 30). She did not object to Mr. Kimble's testimony providing the court with further explanation of how he arrived at those figures and the work rendered on the project (Tr.2 at 29-34).

To the contrary, Ms. Vaughn was properly apprised of the compensation Neighborhoods United was seeking because it provided its final invoice in October 2023 (D442) and trial was not until March 2024 (Tr.2 at 7). Therefore, Ms. Vaughn and the trial court had ample time to review the complete statement of Neighborhoods United's expenditures. Substantial evidence supports the trial court's award to Neighborhoods United of the expenses of its rehabilitation. Ms. Vaughn's argument otherwise is in error.

B. The trial court correctly awarded Neighborhoods United a 15% contracting fee.

Ms. Vaughn then multifariously argues the trial court improperly applied this Court's decision in *Urban Renewal of K.C.* when it "awarded a management fee of $23,171.25" to Neighborhoods United (Resp.Br. 29-30). She says her argument is "identical" to "the bank in *Urban*" because

"Neighborhoods United is not entitled to collect a separate contractor's fee because [it] is the organization under R.S.Mo. § 447.638, and not a contractor" (Resp.Br. 30).

Ms. Vaughn misunderstands *Urban*. There, a non-profit organization was granted temporary possession of and rehabilitated a foreclosed-on house. *Urban*, 289 S.W.3d at 632. The court then restored possession of the house to the Bank of New York, but it ordered the bank to reimburse the non-profit for its rehabilitation expenses. *Id*. The bank appealed, arguing including a contractor's fee was inappropriate because the non-profit was not a contractor. *Id*. at 635-36. It also argued a management fee could not be assigned because the non-profit did not rent the property. *Id*. at 636.

This Court disagreed with the bank and affirmed. *Id*. "It [did] not matter that Urban was not the general contractor." *Id*. The contracting fee was still a reasonable expense for the rehabilitation because "Urban testified that it hired a general contractor to oversee the repairs for the rehabilitation, and the rehabilitation was completed. Thus, the evidence supported compensation to Urban for an expenditure of a contractor's fee." *Id*.

The same is true here, and the contracting fee was equally appropriate. Mr. Kimble was both Neighborhoods United's director and ran a contracting company (Tr.2 at 25-56, 36). Neighborhoods United hired his company to oversee and complete the rehabilitation, which included directing and working with different subcontractors (Tr.2 at 36, 43-44). The rehabilitation was completed (D485 p. 8). Therefore, as in *Urban*, the evidence supported compensating Neighborhoods United for a contractor's fee.

While the trial court judgment refers to this as a "management fee" (D485 p. 12), it is plainly a contracting fee. In its judgment, the court cited *Urban's* language concerning awarding reasonable contracting fees where a rehabilitation relies on several subcontractors (D485 p. 12). The court then immediately stated Mr. Kimble testified he was the general contractor and used subcontractors in the Property's rehabilitation (D485 p. 12). Therefore, Neighborhoods United was not required to have tenants on the Property, because the trial court awarded a contracting fee, not a management fee.

Ms. Vaughn also argues the trial court should have required Neighborhoods United to produce receipts to justify the cost associated with labor and materials (Resp.Br. 30). Again, this Court in *Urban* already foreclosed that, holding "receipts are not necessarily needed to support the valuation a witness places on labor and materials." *Id*.

Ms. Vaughn attributes this quote from *Urban* to *Wallace v. Snider*, 204 S.W.3d 299, 305 (Mo. App. 2006), which she argues is "distinguishable from this case because the *Wallace* case discusses a dispute about an easement by prescription to use the road in controversy. The *Wallace* decision has no relevance in interpreting whether receipts are necessary for compensation for rehabilitation expenses pursuant to the Act" (Resp.Br. 30). She omits that this Court in *Urban* relied on *Wallace* for this same reasoning and applied it to an Abandoned Housing Act case. Therefore, the trial court justifiably considered Mr. Kimble's testimony to determine the value of the rehabilitations labor and materials.

C. The trial court's $186,969.18 award to Neighborhoods United for its rehabilitation of the Property was supported by substantial evidence and was well within the weight of the evidence.

Ms. Vaughn (again, multifariously) argues Neighborhoods United's compensation award was not supported by substantial evidence and was against the weight of the evidence (Resp.Br. 25, 28-29, 31-34). This is not so.

First, Ms. Vaughn fails to obey the mandatory rubrics for these two challenges that this Court announced in *Houston v. Crider*. More importantly, her points rely almost exclusively on evidence contrary to the finding she disputes, which this Court may not consider. Under the favorable evidence supporting the judgment, the finding Ms. Vaughn disputes was supported by substantial evidence and was not against the weight of the evidence.

Ms. Vaughn's only evidence of an excessive compensation award was Neighborhoods United's initial estimate for the rehabilitation and some receipts that she deems invalid. The trial court reasonably could find that Neighborhoods United was entitled to compensation for the costs it reported were associated with the rehabilitation. This Court should affirm the trial court's judgment.

1. Ms. Vaughn fails to identify the favorable evidence supporting the existence of the factual proposition necessary to sustain the judgment.

"[T]he success of a" lack-of-substantial-evidence or "against-the-weight-of-the-evidence challenge depends on an appellant's initial identification of a challenged factual proposition, *the existence of which is necessary to sustain the judgment*." *In re Marriage of Schubert*, 561 S.W.3d 787, 801 (Mo. App.

2018) (emphasis in the original) (internal quotation marks and citation omitted). "*Houston's* analytical sequence is mandatory because it reflects the underlying criteria necessary for an appellant to succeed on appeal." *In re J.X.B.*, 610 S.W.3d 720, 731 (Mo. App. 2020). An appellant's failure to employ the *Houston* rubric renders her argument "analytically useless" and so "dooms [her] challenge." *Id.* (internal quotation marks and citations omitted) (denying four points on appeal challenging trial courts findings a against the weight of the evidence for failure to comply with *Houston*).

Despite Ms. Vaughn claiming throughout her brief that she is challenging the trial court's judgment as being against the weight of the evidence and not being supported by substantial evidence (Aplt.Br. 25-34), she never applies the *Houston* rubric, nor does she make any attempt to proceed through its analytical sequence.

First, Ms. Vaughn does not identify the "challenged factual proposition, the existence of which is necessary to sustain the judgment." *Houston*, 317 S.W.3d at 187. Here, that identification is straightforward: the court's finding that Neighborhoods United was entitled to a compensation award of $186,969.18 for the costs associated with the rehabilitation is the only finding necessary to sustain its judgment.

More importantly, Ms. Vaughn fails to "identify all the favorable evidence in the record supporting the existence" of the necessary factual proposition. *Id.* Instead, she focuses almost exclusively on evidence *not* favorable to the judgment, such as Neighborhoods United's initial estimate for the rehabilitation (Aplt.Br. 28-29), and a selection of receipts that Ms.

Vaughn argues were invalid expenses (Aplt.Br. 33-34). These pieces of evidence do not favor the court's finding that Neighborhoods United was entitled to $186,969.18 as compensation for the Property's rehabilitation. As Neighborhoods Untied now explains, the evidence favoring that proposition is sufficient to support it.

Ms. Vaughn's failure to identify all favorable evidence supporting the court's necessary factual proposition "doom[s her] ability to satisfy the" final steps of the *Houston* rubrics for the challenges she mounts in her multifarious second point. 317 S.W.3d at 188. Her failure "strips [her] purported demonstrations of any analytical value or persuasiveness." *Id*. The Court should deny her second point.

2. Favorable evidence, which Ms. Vaughn ignores, supports the court's finding, so it was supported by substantial evidence and was not against the weight of the evidence.

Regardless, Ms. Vaughn's second point fails on its merits. The evidence on which Ms. Vaughn relies to support her factual challenges does not favor the judgment. The real favorable evidence supports the judgment.

First, Ms. Vaughn argues evidence establishes that Neighborhoods United could have completed the Property's rehabilitation for a little over $100,000.00 (Aplt.Br. 29). She argues that because Neighborhoods United initially estimated it could complete the rehabilitation for $76,015.00 and stated it could adequately complete the project with its current funds of a little over $100,000.00, it admitted to making a financial windfall for itself (Aplt.Br. 28-29). She also argues that because Neighborhoods United's final invoice did not include time sheets and had invalid receipts, the

compensation award should be limited to $20,922.94, at most (Aplt.Br. 32-33). Ms. Vaughn is wrong. All of this ignores all the evidence favorable to the court's finding the value of the rehabilitation was $186,969.18.

Ms. Vaughn correctly notes that Neighborhoods United initially believed it could rehabilitate the Property for approximately $76,000.00 (Tr.1 at 13). As the judgment recounts, this plan was approved and Neighborhoods United was granted temporary possession of the Property (D485 p. 4). As well, in its first quarterly report, Neighborhoods United exceeded its original estimate and noted the cost of the rehabilitation in August 2023 had amounted to $158,965.00 (D485 p. 5). Mr. Kimble explained why this happened, which the trial court was entitled to believe. The estimate had assumed that the house had "good bones" (Tr.2 at 30). But once Neighborhoods United got inside, it was forced to deviate from its original plans and the cost of the renovations increased (Tr.2 at 30-33). Mr. Kimble stated Neighborhoods United's mission is to provide "enhanced housing opportunities in" the Kansas City area (Tr.2 at 25). Any deviations that were made from the original rehabilitation plan were done to enhance the curb appeal of the Property for the benefit of the home and the neighborhood overall (Tr.2 at 32-33).

Neighborhoods United exceeding its initial estimate has no bearing on the trial court's finding that the reasonable compensation for the rehabilitation was $186,969.18. This is because in a lack-of-substantial-evidence challenge, this Court must "view the evidence and the reasonable inferences drawn from the evidence in the light most favorable to the

judgment, disregard all evidence and inferences contrary to the judgment, and defer to the trial court's superior position to make credibility determinations." *Houston*, 317 S.W.3d at 186. Ms. Vaughn may have wanted the trial court to infer Neighborhoods United could have completed the rehabilitation for its initial estimate and created a financial windfall for itself, but the court had no obligation to draw that inference and agree with her.

Ms. Vaughn also challenges a selection of charges from Neighborhoods United's itemized invoice (Resp.Br. 31-34). She argues the trial court should have limited its compensation award to $20,922.94 at most, because Neighborhoods United relied on quotes, invoices that did not identify the Property, and duplicate receipts (Resp.Br. 31-33). She also argues the cost of labor could not be included because the cost of work was not reflected in timesheets (Resp.Br. 33). Again, this fails to view the evidence in the light most favorable to the judgment. It also fails to defer to the trial court's superior position to make credibility determinations.

For example, Ms. Vaughn ignores that Mr. Kimble testified that even though some of the statements were identified as quotes, they accurately reflected the sums spent to rehabilitate the Property (Tr.2 at 53). He also stated all the receipts he provided with the final invoice were for the Property and not some other home (Tr.2 at 53). The trial court could find his testimony credible and so determine those expenditures were credible too. As this Court must "accept as true the evidence and inferences favorable to the"

trial court's fact findings, *Ivie*, 439 S.W.3d at 200, it must take Mr. Kimble's testimony as true too.

Similarly, Ms. Vaughn's counsel moved to strike the duplicate receipts at trial and the trial court assured it would "take that up in [its] judgment" (Tr.2 at 43). That is exactly what happened. Neighborhoods United requested $212,308.25 for the rehabilitation, including its contracting fee (D485 p. 7). After reviewing all the evidence, the trial court awarded Neighborhoods United only $184,969.18 (D485 pp. 12-13). *This constitutes a $27,339.07 deviation*. The reasonable inference supporting the judgment is that this accounts for, among other things, the duplicate invoices.

Finally, Neighborhoods United not including timesheets in its final invoice has no bearing on the trial court's award for compensation. Mr. Kimble testified the final invoice was itemized and included a description of each project and the costs associated with it (Tr.2 at 33). He stated those costs included both labor and materials (Tr.2 at 33). And he determined the value of labor by assessing the complexity of a project and the hours it took to complete it (Tr.2 at 33). Receipts are not required to support the valuation a witness places on labor and materials. *Urban*, 289 S.W.3d at 636. Therefore, the trial court was free to find Mr. Kimble's valuations credible. And this Court must accept those inferences favorable to the trial court's fact-finding. *Ivie*, 439 S.W.3d at 200.

While this Court may also consider certain contrary evidence in an against-the-weight-of-the-evidence challenge, Ms. Vaughn's contrary evidence described above does not qualify. This is because contrary evidence only may

be considered when "(1) the evidence was offered by a party with no burden of proof as to the ultimate issue for which the evidence was offered; (2) the efficacy of that evidence is not based on a credibility determination and (3) the evidence is uncontested, uncontradicted, and not disputed in any manner." *J.X.B.*, 610 S.W.3d at 731 (citation omitted). Here, while Neighborhoods United carried the burden of proving its reasonable expenditures, almost all the efficacy of Ms. Vaughn's evidence was based on credibility determinations. Moreover, nearly all of her evidence was also disputed in Mr. Kimble's testimony. This Court therefore should not consider Ms. Vaughn's invoice dispute when deciding her second point.

Ms. Vaughn's failure to identify any evidence in the record favorable to the finding she challenges dooms her second point. And the complete lack of any contrary evidence of the kind of which *Houston's* against-the-weight rubric permits consideration equally dooms this point.

The trial court's finding compensating Neighborhoods United $186,969.18 for its expenditures is supported by the evidence and was not against the weight of the evidence at trial. This Court should affirm the trial court's judgment.

Conclusion

The Court should dismiss Ms. Vaughn's appeal. Alternatively, it should affirm the trial court's judgment.

Respectfully submitted,

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Certificate of Compliance

I certify that I have prepared this brief using Microsoft Word for Office 365 in 13-point, Century Schoolbook font, which is not smaller than 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b), as this brief contains 11,201 words.

/s/Jonathan Sternberg
Attorney

Certificate of Service

I certify that I signed the original of this brief of the appellant, which is being maintained by Jonathan Sternberg, Attorney, P.C. per Rule 55.03(a), and that on February 28, 2025, I filed a true and accurate Adobe PDF copy of this brief of the respondent via the Court's electronic filing system, which notified the following of that filing:

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