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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-799

No. COA21-783

Filed 6 December 2022

Alamance County, No. 20 CVD 1150

ARTHUR BLACKWELL d/b/a BLACKWELL CONCRETE, Plaintiff,

v.

DIANE ZYCZKIEWICS, Defendant.

Appeal by Plaintiff from Order entered 30 July 2021 by Judge Kathryn W. Overby in Alamance County District Court. Heard in the Court of Appeals 24 August 2022.

SMITH GILES, PLLC, by Todd Allen Smith and Robert Clyde Giles, II, for Plaintiff-Appellant.

No brief filed on behalf of Defendant-Appellee.

HAMPSON, Judge.

¶ 1 Arthur Blackwell d/b/a Blackwell Concrete (Plaintiff) appeals from Order entered 30 July 2021 awarding Plaintiff $525.00 in damages from Diane Zyczkiewics (Defendant) following a bench trial on Plaintiff's breach of contract claim. On appeal, Plaintiff, through counsel, requests this Court "issue a directed verdict" for the full amount of Plaintiff's alleged damages or, alternatively, "issue such other Order as is

required to properly dispose of this matter." We conclude Plaintiff's arguments are baseless and affirm the trial court. The Record before us tends to reflect the following:

Factual and Procedural Background

¶ 2 On 2 July 2020, Plaintiff filed a Complaint in Alamance County District Court against Defendant alleging Defendant failed to pay Plaintiff for work performed to pour a concrete slab at Defendant's home. Plaintiff alleged damages in the amount of $13,945.00, which Plaintiff claimed consisted of $13,945.00 for "services rendered" and $525.00 for engineering services. Defendant filed an Answer denying the key allegations and denying Plaintiff was entitled to any relief.

¶ 3 The case was tried as a bench trial in Alamance County District Court on 22 February 2021. At trial, in summary[1], the testimony reflected Plaintiff entered into an oral agreement with Defendant to prepare and pour a concrete pad for a driveway and garage at Defendant's home.[2] Plaintiff testified the parties agreed on a total estimated price of $22,500.00 for the work. Plaintiff further testified he also

[1] Much of the testimony at trial was presented in the form of narrative testimony from the parties with little guidance or focus provided through examination by counsel. Rather than attempt to piece together a synthesis of individual witness testimony, we simply draw out the salient facts from the various parties and witnesses.

[2]Plaintiff testified this agreement was made around September 2018. However, the evidence reflected the work he agreed to perform and dispute surrounding that work occurred in July and August 2018. On appeal, Plaintiff, though counsel, simply ignores this discrepancy. Ultimately, this chronological discrepancy has no bearing on our decision in this case, and, as such, we merely grit our teeth and move on.

performed work to install a drainpipe and landscaping along with distributing gravel on a separate driveway.

¶ 4 Plaintiff began work on the property in July 2018 including building up the pad for the garage and in preparation for pouring the concrete for the driveway. During this time, Defendant paid two installments to Plaintiff of $1,500.00 and $1,790.00, respectively. However, Plaintiff's work on the pad for the garage failed two inspections. In part, this was because the work required an engineering report to assess the structural support for the concrete pad and proposed garage. Plaintiff obtained an engineer's report and advanced the $525.00 cost for the report.

¶ 5 However, after the two failed inspections, Defendant informed Plaintiff she no longer wished for him to complete the work. Defendant hired another contractor to complete the work. The new contractor utilized the engineering report previously obtained by Plaintiff. Plaintiff subsequently sent an invoice to Defendant for the amount he claimed was owed for the work completed. This invoice reflected a total owed for the work on the concrete slab and driveway of $18,300.00. After giving Defendant credit for the amounts already paid, Plaintiff claimed he was still owed $13,420.00 for the work along with the $525.00 for the engineering report.

¶ 6 On 30 July 2021, the trial court entered its Order finding:

> 1. That a contract was formed between the parties with regard to pouring a concrete driveway at the Defendant's home . . . .

> 2. That Defendant paid $1,500.00 on [or] around [10 July 2020] toward the work done as part of that contract.
>
> 3. That the Defendant paid $1,790.00 on or around [27 July 2020] toward the work done as part of that contract.
>
> 4. That the work failed a county inspection two times . . . . The reason noted for failure was, "Need Engineer's Report."
>
> 5. That after the above mentioned failed inspections, the Defendant told the Plaintiff not to complete the job.
>
> . . . .
>
> 7. That the Plaintiff had an engineer prepare a report for the Defendant . . . . Such report cost [Plaintiff] $525.00.
>
> 8. That [Plaintiff][3] did not itemize his bill and therefore the Court could not find that he was due for the work that was left uncompleted.
>
> 9. That the Court therefore finds that the Defendant owes the [Plaintiff] $525.00 in damages in this case.

¶ 7 The trial court ordered Defendant to pay Plaintiff in the amount of $525. On 9 August 2021, Plaintiff filed written notice of appeal.

Issue

¶ 8 The sole issue on appeal is whether the trial court erred in not awarding Plaintiff an additional $13,420.00 Plaintiff claimed owed for the completed work.

Analysis

[3] Finding #8 erroneously refers to Plaintiff as Defendant in the Order.

¶ 9 Appeal lies before this Court from any final judgment of a district court in a civil action. N.C. Gen. Stat. § 7A-27 (b)(2) (2021). In a bench trial, "[t]he trial judge becomes both judge and juror, and it is [their] duty to consider and weigh all the competent evidence before [them]." *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968). It is within the province of the trial court to determine the credibility of the witnesses and the weight to be attached to their testimony, and the inferences legitimately to be drawn therefrom in exactly the same sense that a jury should do in the trial of a case. *Hodges v. Hodges*, 257 N.C. 774, 779, 127 S.E.2d 567, 571 (1962). It is the trial court's role to consider and weigh all the competent evidence before it, giving to it such probative value as in the trial court's sound discretion it is entitled. *Id*. On appeal, this Court considers whether the trial court's findings of fact are supported by competent evidence. *Hollerbach v. Hollerbach*, 90 N.C. App. 384, 387, 368 S.E.2d 413, 415 (1988). "If the court's factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary." *Lagies v. Myers*, 142 N.C. App. 239, 246, 542 S.E.2d 336, 341 (2001). "In contrast, the trial court's conclusions of law are reviewable *de novo*." *Id*. (internal citation and quotations omitted). "Furthermore, in examining the conclusions of law, we must determine whether they are supported by the court's factual findings." *Id*.

¶ 10 In this case, Plaintiff contends the trial court was required to award Plaintiff the additional $13,420.00 Plaintiff claimed as owed for the work completed. "The

burden of proving damages is on the party seeking them." *Olivetti Corp. v. Ames Bus. Sys., Inc.*, 319 N.C. 534, 547, 356 S.E.2d 578, 586 (1987). "As part of its burden, the party seeking damages must show that the amount of damages is based upon a standard that will allow the finder of fact to calculate the amount of damages with reasonable certainty." *Id.*

¶ 11 It is evident from the Record before us and from the trial court's Order the trial court simply determined Plaintiff failed to meet his burden of proof to establish the amount of damages in this regard. Specifically, the trial court found Plaintiff did not itemize his bill and, as a result, the trial court could not find what he was due for the uncompleted work. Indeed, the evidence in this case reflected Plaintiff did, in fact, perform some work on Defendant's property and that Defendant paid Plaintiff for some of the work on Defendant's property. However, the trial court, in weighing the evidence before it, was simply unable to assess exactly what work was done and the value of that completed work to calculate the amount of damages owed to Plaintiff, if any, with any reasonable certainty. Although, Plaintiff claimed to be owed $13,420.00 for the work, it remained the province of the trial court to weigh this evidence, determine its credibility, and give it the probative value the trial court deemed due.

¶ 12 Thus, the trial court was acting in its province as the finder of fact in determining the evidence was insufficient to determine Plaintiff was entitled to any

additional damages. Therefore, the trial court did not err by not awarding Plaintiff the additional $13,420.00. Consequently, the trial court did not err in entering its Order awarding Plaintiff $525.00.

Conclusion

¶ 13 Accordingly, for the foregoing reasons, we affirm the trial court's 30 July 2021 Order.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).