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2017 IL App (3d) 160180-U

Order filed April 12, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

RUSSELL SHAHEEN,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Tazewell County, Illinois.
)	
v.)	Appeal No. 3-16-0180
)	Circuit No. 13-SC-900
LYNN SCHUMACHER,)	
)	Honorable
Defendant-Appellant.)	James Mack,
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* A judgment in favor of a homeowner in an action by a contractor to recover payment for work completed was affirmed as not against the manifest weight of the evidence when the testimony established that the contractor was hired on a time and materials basis and was entitled to be paid on that basis.
- ¶ 2 The defendant homeowner appealed from a judgment in her favor for \$67.94, plus costs, in an action against her by the plaintiff contractor to recover payment for work done.

FACTS

¶ 3

¶ 4

The plaintiff, Russell Shaheen, filed a complaint against the defendant, Lynn Schumacher, seeking to recover \$1092.01 for work done at Schumacher's home. The complaint alleged that Shaheen and Schumacher had an oral agreement for the completion of certain home improvements at the rate of \$30 per hour, plus materials. Shaheen alleged that Schumacher paid four invoices but did not pay the final invoice. Schumacher filed a countercomplaint, and then an amended countercomplaint. The amended countercomplaint contained three counts. Count I sought damages for unworkmanlike work, Count II alleged fraudulent misrepresentations, and Count III sought relief under the Consumer Fraud and Deceptive Practices Act.

¶ 5

At a bench trial, Shaheen testified that he had been doing handyman work since the 1990s. He knew Schumacher because he had worked as a handyman at the greenhouse where she worked, and he had done some small jobs for her in the past. Schumacher told Shaheen that she wanted a shower replaced in her basement, along with some other work on the basement, including a dryer vent, a new laundry tub, and a water softener. When he went to look at the job, Schumacher also told him that she wanted a railing put in and backs put on four steps. She also showed him a sunroom that was not completed. In addition, she indicated that she wanted some lights installed and a shed taken down. Shaheen testified that he told Schumacher that he worked by the hour and that he would bill Schumacher \$30 per hour, plus materials, on a weekly basis. He was not a licensed plumber or electrician, but he never represented to Schumacher that he was. Shaheen testified that he informed Schumacher that the work would probably not be up to code but it would work. Schumacher paid the first four week's bills, but told Shaheen not to come back at the end of the fifth week and never paid his invoice for that week. The invoice for that week was \$1092.01.

¶ 6 Schumacher testified that she told Shaheen that she wanted a new shower, toilet and vanity in the basement and that she wanted it to be up to code for resale purposes. She was aware that he charged \$30 per hour. She acknowledged that Shaheen also put in the dryer vent, the backs to the steps, new light fixtures, and electrical receptacles at her request. He also installed a water softener and a new utility sink, all of which she paid for. She testified that the dryer vent was functional, as was the overflow drain from the washer. She had never tried to use the utility sink. The railing was functional and the light fixtures that Shaheen installed were functional. The vanity and toilet were in her basement, but not hooked up. The shower was also not completed. While working on the shower, Schumacher testified that Shaheen admitted that he was having some difficulties with the installation, but said that he could figure it out. The next day, though, Schumacher found Shaheen working on the sunroom rather than the basement and told him not to come back. Schumacher testified that she had a professional plumber give an estimate for finishing up the basement up to code.

¶ 7 The HVAC inspector and code enforcement officer for the city of Peoria, David VanDyke, testified that there was no permit secured for the work. He looked at the pictures from Schumacher's basement and testified that there was no air gap on the drain coming from the water softener and it looked like none of the PVC pipe was properly anchored. He could not tell from the pictures if there was a vent in the floor drain of the shower. It did not look to him like the fittings from the cast iron to the PVC pipe were Fernco fittings. It also looked like there was an illegal wet vent trap.

¶ 8 Barbara McCarty testified regarding the plumbing proposal from Tazewell Plumbing for a bathroom addition in Schumacher's basement. The proposal included removing concrete and debris to install a shower and shower drain line, pouring of concrete, installing water, drain, and

vent lines, and setting shower and plumbing fixtures, all in accordance with the Illinois plumbing code. The estimate was \$4,900.

¶ 9 During closing argument, Shaheen's attorney acknowledged an overpayment by Schumacher of \$322.21 due to a mathematical error, reducing the claim in the initial complaint to \$769.80. The trial court found that this was a time and materials job. The plumbing estimate provided by Schumacher to finish the bathroom in the basement was not sufficient evidence of the work needed to fix any errors by Shaheen. There was no evidence that there was an agreement between Shaheen and Schumacher to bring the basement plumbing up to code. However, the trial court did find some deficiencies in the work. The trial court determined that Shaheen could recover \$254.77 for materials from the week five bill, but no labor costs. Schumacher would recover the \$322.21 overpayment from the earlier invoice, which resulted in a judgment for Schumacher for \$67.94, plus costs¹. The trial court found that an award of attorney's fees or punitive damages was not warranted. Schumacher appealed.

¶ 10 ANALYSIS

¶ 11 Schumacher argues that the trial court's decision was against the manifest weight of the evidence, contending that there was disputed evidence regarding the quality of the work but there was no dispute that it was not up to code. Schumacher contends that she wanted the work done up to code and that she relied upon Shaheen to do so. Shaheen argues that Schumacher was aware that he was not a licensed plumber and that he never represented that the work would be done up to code, only that it would be functional. We review a trial court's decision following a bench trial to determine if it was against the manifest weight of the evidence. *Reliable Fire Equip. Co. v. Arredondo*, 2011 IL 111871, ¶ 12.

¹ We note that this calculation, based upon the numbers provided to the trial court by the Shaheen's attorney, actually results in a total of \$67.44. However, since the difference is *de minimus*, and challenged by neither party, we accept the total judgment as stated as \$67.94.

¶ 12 The evidence tended to establish that the water softener, the dryer vent, and the utility sink worked, but the shower, vanity, and toilet were not functioning because they were never completed and hooked up. The trial court found that Shaheen was hired to do a job for time and materials, and he never represented himself to be a licensed plumber. There was no written contract, but both parties agreed that Shaheen was to work at the rate of \$30 per hour. Shaheen did the work that he was paid for, although some looked to not be in a workmanlike manner. Thus, the trial court discounted Shaheen's final bill by his total labor cost, but allowed him to recover for the materials that Schumacher retained. This decision was not against the manifest weight of the evidence.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Tazewell County is affirmed.

¶ 15 Affirmed.