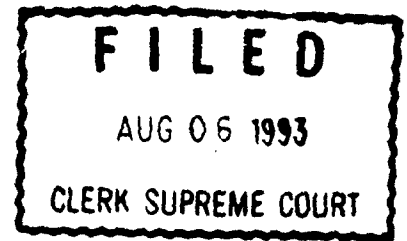


IN THE COURT OF APPEALS OF IOWA

No. 2-628 / 92-733



GEORGE HEYWOOD, JR.,

Plaintiff-Appellant,

vs.

THOMAS WEBER and AMY WEBER,

Defendants-Appellees.

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Appeal from the Iowa District Court for Pottawattamie
County, Leo F. Connolly, Judge.

Plaintiff appeals order denying recovery in a petition
to foreclose on a mechanic's lien. **AFFIRMED.**

Richard D. Crotty, Council Bluffs, for appellant.

Hugh P. Finerty, Jr., and Stephen L. Rosman of
Finerty-Rosman, Council Bluffs, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

PER CURIAM 000290

Plaintiff George Heywood Jr. appeals the district court's order in this foreclosure action of a mechanic's lien.

On March 6, 1991, Heywood filed a petition to foreclose on a valid mechanic's lien against Thomas and Amy Weber. Heywood alleged the parties had entered into a written contract for the construction of a house foundation, garage, and installation of a furnace and central air conditioning on Webers' property. Heywood claimed he had completed the terms of the contract and Webers' oral requests for additional labor. He maintained \$7,735 was due on the contract.

Webers answered, contending the work had not been done according to acceptable construction standards and additional moneys would need to be expended to complete the contract. Webers claimed Heywood was requesting additional payment for matters which were part of the original contract.

At trial Heywood testified Webers had failed to pay the final contract payment of \$2225. He also testified the total charges for the extra work equaled \$1535.25.

Webers entered into evidence the deposition of their expert witness, Neil Bach. Bach testified there were several extensive problems with the construction work done by Heywood. This expert witness provided a cost breakdown regarding several of the defects.

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In its decree of foreclosure, the district court determined Webers had failed to pay the final \$2225 owed under the contract, and Heywood was entitled to \$518.50 for extra work agreed to or requested by Webers. However, the district court found Heywood's workmanship to be defective. As a result, the court offset Heywood's recovery by \$3034. In addition, the court determined Heywood had failed to pay some materialmen who filed mechanics' liens against Webers in the amount of \$3209.83. The court also offset the amount of these liens from Heywood's recovery. Heywood appeals.

The Iowa Supreme Court has established the standard of review in a mechanic's lien case:

It is our responsibility to review the whole record and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the course of trial proceedings. While weight will be given to findings of the trial court, this court will not abdicate its function as triers de novo on appeal.

Ringland-Johnson-Crowley Co. v. First Cent. Serv. Corp., 255 N.W.2d 149, 151 (Iowa 1977) (citing Basic Chems., Inc. v. Benson, 251 N.W.2d 220, 225-26 (Iowa 1977)); see also Sulsberger Excavating, Inc. v. Glass, 351 N.W.2d 188, 191 (Iowa App. 1984).

Heywood failed to cite any authorities in his brief to support his argument. For such deficiencies, this court could summarily affirm. See Cannott v. Jennings, 202 N.W.2d 48, 49 (Iowa 1972) (citations omitted), cert.

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denied, 414 U.S. 892 (1973); Iowa R. App. P. 14(a)(5). We, however, have decided to address the merits of this case on appeal. See Culligan Soft Water Serv. v. Berglund, 259 Iowa 660, 662, 145 N.W.2d 604, 606 (Iowa 1966).

The record shows Webers paid Heywood a total of \$20,000 towards the contract price of \$22,250. George Heywood and Thomas Weber testified all contract payments had been made with the exception of the final \$2250 payment. Evidence also shows Webers orally requested or agreed to extra work. Heywood is entitled to \$518.50 for such extra work. These outstanding balances amounted to a total of \$2768.50 owed to Heywood by Webers. This court, however, finds the outstanding balance owed to Heywood must be adjusted in light of the defects in Heywood's workmanship. Under a contract where the builder has proven substantial performance, he is entitled to his contract price less deduction for the value of any defects in performance. Farrington v. Freeman, 251 Iowa 18, 24, 99 N.W.2d 388, 391 (1959); Moore's Builder & Contractor v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987) (citations omitted).

We must determine the costs involved with the defective workmanship. The district court found the total cost to be \$3034. This finding was based on the testimony of Webers' expert witness, Neil Bach. In its order, the district court found Bach's testimony regarding the costs associated with Heywood's defective work to be credible. With respect to credibility of witnesses the Iowa Supreme Court has stated:

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In mechanic's lien cases, involving as they do numerous charges and counter charges which depend on the credibility of the parties, we have frequently held the trial court is in a more advantageous position than we to put credence where it belongs.

McDonald v. Welch, 176 N.W.2d 846, 849 (Iowa 1970) (citing Huffman v. Hill, 245 Iowa 935, 938, 65 N.W.2d 205, 206 (1954)); see also Sulsberger Excavating, Inc., 351 N.W.2d at 191, 192. After a thorough review of the record, we find the district court's reliance on these valuations for defects to be reasonable and accept them as our own. See Moore's Builder & Contractor, 409 N.W.2d at 194.

Heywood's recovery must be offset by the costs associated with the defective workmanship. The result is a credit of \$265.50 in Webers' favor. We note Webers did not file a cross claim and did not cross-appeal. The decision of the district court is affirmed.

Costs of this appeal are taxed to Heywood.

AFFIRMED.