

**FILED**

DEC 26 1984

CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

**AL SMITH, d/b/a A. R. S. GENERAL  
CONTRACTORS,**

Plaintiff-Appellant,

vs.

**GEORGE BERGESON and NANCY  
BERGESON,**

Defendants-Appellees.

Filed December 26, 1984

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4-411  
83-1408

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Appeal from the Iowa District Court for Polk County - Paul H. Sulhoff,  
Judge.

Plaintiff contractor appeals from the order sustaining defendants' motion for  
new trial in an action for breach of contract, asserting that the evidence was  
sufficient to support the jury's verdict for plaintiff. **AFFIRMED.**

Joseph B. Joyce of Adler, Brennan, Joyce & Steger, Des Moines, for plain-  
tiff-appellant.

Dale L. Spencer, Des Moines, and David L. Brown and John E. Swanson of  
Hanson, McClintock & Riley, Des Moines, for defendants-appellees.

Heard by Donielson, P.J., and Snell and Schlegel, JJ.

**DONIELSON, P.J.**

Plaintiff contractor appeals from the order sustaining defendants' motion for new trial in an action for breach of contract, asserting that the evidence was sufficient to support the jury's verdict for the plaintiff.

Plaintiff's petition, as amended, sought damages for breach of a contract for repair and remodeling of George and Nancy Bergeson's home, including both the unpaid contract balance and \$5,000.00 for loss of other work.

The written contract between the parties estimated the total price at \$58,000.00 and defendants paid plaintiff approximately \$45,000.00. When various disputes arose concerning the work, further negotiations were undertaken. Plaintiff denied that an agreement was reached that all work would be performed for \$62,710.00. He submitted an itemized exhibit supporting his claim that the total value of the work performed was \$71,994.48, but acknowledged on cross-examination that some of the itemized services had not been performed and that he had not paid some of the listed claims of subcontractors. Defendants introduced into evidence checks showing, inter alia, that they had directly paid claims of subcontractors totaling \$21,923.72.

Following trial, the jury returned a verdict for plaintiff and, in accordance with the verdict, plaintiff was awarded \$19,772.26. The trial court sustained defendants' motion for new trial on the ground that the jury's verdict was in error, excessive, and must have been influenced by passion or prejudice. The plaintiff has appealed from this determination.

The sole issue on appeal is whether the trial court erred in setting aside the jury verdict and granting a new trial. In addressing this issue we view the evidence in accordance with the same principles which govern the trial court's decision:

In determining whether a jury question was engendered when a party seeks a directed verdict, dismissal, or judgment notwithstanding the verdict, the trial court views the

evidence in the light most favorable to the party against whom the motion was made regardless of whether such evidence is contradicted and every legitimate inference which may be reasonably deducted therefrom must be carried to the aid of the evidence and if reasonable minds can differ on the issue it is for the jury. Schiltz v. Cullen-Schiltz & Assoc., Inc., 228 N.W.2d 10, 17 (Iowa 1975).

Meeker v. City of Clinton, 259 N.W.2d 822, 827 (Iowa 1977).

Applying these principles, we are inclined to agree with the trial court's determination that evidence was insufficient to support the jury verdict. Viewing the evidence in a light most favorable to the plaintiff, we will assume that total value of the work performed was \$71,994.48. The plaintiff has acknowledged that he has received \$45,410.00 from the defendants to apply against his claim. Furthermore, the record reflects that the claimed amount due includes claims of several subcontractors totalling \$25,994.48. Plaintiff acknowledged that he has not paid these subcontractors. In fact, the undisputed testimony of defendant, George Bergeson, reflects that he had paid \$21,923.72 directly to the subcontractors to satisfy their claims. Essentially, we agree with the trial court's conclusion that the plaintiff is not entitled to the \$25,994.48 and reasonable minds could not differ in this respect. Thus, when we subtract the amount paid by Bergeson to the plaintiff and the subcontractors' claims, we are left with a balance of \$590.00 which is still owed.

In addition to the contract price, plaintiff also claimed he was entitled to receive damages for loss of prospective income. Specifically, he argues that due to difficulties with the contract, he was not able to obtain or complete other contracting jobs, resulting in lost income in the amount of \$5,000.00. Even assuming that this is a proper measure of damages, it is clear that the maximum amount owed would be \$5,590.00. In fact, our arrival at this amount does not even take into consideration that all the services in the contract admittedly were not performed. Thus, viewing the evidence in a light most favorable to the plaintiff,

we are convinced that the jury verdict awarding \$19,772.26 is unsupported by the evidence.

Finding no error, we affirm the lower court's determination.

**AFFIRMED.**