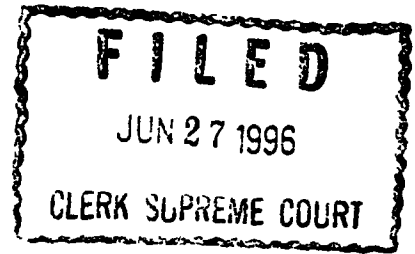


IN THE COURT OF APPEALS OF IOWA

No. 6-052 / 94-1502



DAVID BRYANT,

Appellant,

vs.

RICK RESSLER,

Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Bryan H. McKinley, Judge.

Plaintiff appeals from a district court order dismissing his claim for breach of contract, and entering judgment on defendant's counterclaim for payment for services rendered. **AFFIRMED.**

David Morse of Garten & Wanek, Des Moines, for appellant.

Mark A. Young of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellee

Considered by Cady, P.J., Huitink, J., and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

This is an appeal by a plaintiff claiming defendant breached a contract by not completing construction work. The district court dismissed plaintiff's case and granted defendant judgment on his counterclaim alleging plaintiff failed to pay him for services rendered. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In January 1993, David Bryant purchased a house in Mason City with the intention of fixing it up to resell it or rent it. Rick Ressler agreed to perform construction work on the house. Ressler worked on the house for about nine or ten weeks, when he quit. Ressler claimed Bryant had failed to provide materials needed to complete the work. Bryant hired others to finish the work on the house.

Bryant filed an action against Ressler, claiming delays in construction caused him lost rental income. Ressler filed a counterclaim, alleging Bryant had failed to pay him the reasonable value of his services. The district court dismissed Bryant's claim, finding it was Bryant's failure to provide materials in a timely fashion which caused the delay in construction. The court also found Ressler was entitled to the reasonable value of his work, which the court valued at \$10 per hour. After considering offsets, the court found entered judgment for Ressler for \$4,038.

Bryant now appeals. He claims the district court erred in determining the terms of the oral contract between the parties. He states the agreement was actually for labor in exchange for labor, and that he never agreed to pay Ressler money for his

services. In particular, he states he never agreed to pay Ressler \$10 per hour for his services. Bryant contends Ressler breached the contract by failing to complete the job in a timely fashion, which caused a delay in when Bryant would be able to rent or sell the house.

Ressler testified Bryant had agreed to pay him for his services. He stated his job for Bryant was one of his first jobs as a general contractor, and that he currently received \$15 per hour for his work. The district court was able to observe the parties and was in a better position to determine credibility. The court found Bryant was not credible in his claim the parties had agreed to exchange work for work in lieu of the payment of money for work. The court found Ressler had worked 540 hours for Bryant, while Bryant had only worked 36 hours for Ressler on other jobs.

We affirm the district court's conclusion that Bryant failed to prove his claim of breach of contract. We also affirm the judgment for Ressler for the reasonable value of his services. A person who performs services pursuant to request is entitled to the reasonable value of the services. *Heninger & Heninger, P.C. v. Davenport Bank & Trust Co.*, 341 N.W.2d 43, 48 (Iowa 1983). Costs of this appeal are assessed to Bryant.

AFFIRMED.