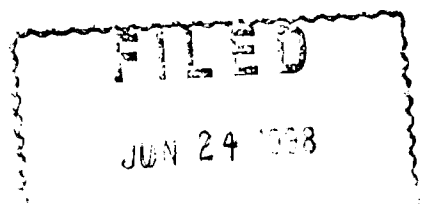
IN THE COURT OF APPEALS OF IOWA

No. 7-728 / 96-1331

JAY D. DRIESEN d/b/a RUSTIC HOME BUILDERS n\k\a RUSTIC HOME BUILDERS, LLC,

Plaintiff\Defendant to Counterclaim/Appellant,



vs.

VICTOR FISHER,

Defendant\Counterclaimant/Appellee.

Appeal from the Iowa District Court for Humboldt County, Ronald H. Schechtman, Judge.

Jay Driesen appeals from a district court order foreclosing his mechanic's lien for his portion of the work on building a log cabin. **AFFIRMED IN PART, REVERSED IN PART.**

Steve Vanden Berg of Torgenson & Vanden Berg, Mason City, for appellant.

Bernard L. Spaeth, Jr., and Anjela A. Shutts of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Mahan, and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HAYDEN, S.J.

Jay Driesen appeals from a district court order foreclosing his mechanic's lien for his portion of the work on building a log home for Victor Fisher. Driesen contends the district court erred in reducing his recovery by $5000 based upon his alleged failure, when Fisher ordered him to discontinue work, to provide Fisher with plans and to inform Fisher of precautions to take in completing the project.

Victor Fisher hired Jay Driesen to "dry in" a log home.[1] Driesen obtained the materials and began construction of the project according to preliminary plans with some annotations, because Fisher declined to purchase a completed plan at the scheduled price of $150. Fisher was very cost conscious and sought numerous changes to reduce expenditures on the project. Fisher stopped payments on two checks for materials, resulting in his conviction for second-degree theft, and ordered Driesen to discontinue work. Driesen warned Fisher to cover the structure but did not provide specific advice on other precautions. Fisher rejected Driesen's offers to return to the project. Fisher completed the project with a contractor who had no experience in building log homes, and substantial problems resulted.

[1] To "dry in" a log home is to complete the walls, roof, windows, and doors so that the structure is enclosed from the elements.

Driesen filed a mechanic's lien to recover the unpaid material costs and sought foreclosure. Fisher raised a number of affirmative defenses and counterclaims. All claims involving other parties were resolved prior to trial on the mechanic's lien.

Following trial the court determined Driesen substantially complied with the contract and was entitled to a recovery of $14,363.32. The court noted "[i]t was without reason [for Fisher] to complete this log home without inquiry into the procedures required to adjust for the obvious shrinkage which would occur to the logs." Nevertheless, the court further concluded Driesen should have left plans and specific advice on precautions to take in completing the project. The court reasoned:

> [W]hen the contractor is also the planner, and that contractor/planner is aware of what problems can develop with his product, and knows or has reason to know that others who would complete the project would be unaware of the construction precautions needed to be taken, it seems that the duty of the contractor/planner upon dismissal is to make those plans and precautions available, or, at least, attempt to.

The court reduced Driesen's recovery by $5000. It also rejected Fisher's other claims and counterclaims and awarded Driesen $1000 in attorney fees. Fisher appealed and Driesen cross-appealed. Fisher dismissed his appeal, and Driesen then proceeded as the appellant.

Actions to enforce mechanics liens "shall be by equitable proceedings." Iowa Code § 572.26 (1995). By agreement of the parties, however, the court would rule on objections as if tried at law. Where there is uncertainty about the nature of a case, a litmus test we use in making this determination is whether the trial court ruled on

evidentiary objections. *Ernst v. Johnson County*, 522 N.W.2d 599, 602 (Iowa 1994) (citing *Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982)). In addition, where the trial court labels its ruling a "decree," this is an indication it tried the matter in equity. *Id.* In its decree, the court first stated this was a petition in equity. It later explained it tried this matter, procedurally, at law. Consequently, we review for correction of errors of law. *Matter of Mt. Pleasant Bank & Trust Co.*, 426 N.W.2d 126, 129 (Iowa 1988); Iowa R. App. P. 4.

The findings of the trial court are binding upon us if supported by substantial evidence. *Kuehl v. Freeman Bros. Agency, Inc.*, 521 N.W.2d 714, 717 (Iowa 1994); Iowa R. App. P. 14(f)(1). We are not bound, however, by the trial court's application of legal principles or its conclusions of law. *State ex rel. Miller v. Internal Energy Management Corp.*, 324 N.W.2d 707, 710 (Iowa 1982). Evidence is substantial if a reasonable mind could find it adequate to reach the same findings. *Jones v. Lake Park Care Center, Inc.*, 569 N.W.2d 369, 372 (Iowa 1997). "The possibility of drawing two inconsistent conclusions from the same body of evidence does not prevent a finding from being supported by substantial evidence." *Baty v. Binns*, 354 N.W.2d 777, 780 (Iowa 1984); *see also Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995) ("Evidence is not insubstantial merely because it would have supported contrary inferences.").

On appeal, Driesen maintains the district court erred in reducing his recovery. He argues the contractual relations were conducted under a pricing schedule, and

Fisher refused to pay for plans and did not contract for warnings or advice on how to finish the cabin. The court concluded, "it seems that the duty of the contractor/planner upon dismissal is to make those plans and precautions available, or, at least, attempt to." The testimony and exhibits reveal the "plans" used by Driesen were a mixture of plans from previous homes built with changes for Fisher's house marked. It appears such plans would have been of little use to anyone not familiar with log home construction. Fisher had the option under the contract pricing sheet to order a complete set of standard plans, but chose to proceed "blindly." He also had an initial set of preliminary plans. The court stated,

> Driesen, by his subsequent letters, offered to return. . . . Fisher opted to blindly proceed with the construction of the remainder of the home, ultimately admitting his ignorance of log home construction and retaining a contractor who credibly but openly admits the same. *Any damage that occurred thereafter was invited and should have been foreseen.* . . . Fisher made no further inquiry into how this construction should be completed, although there was adequate time to do so. He kicked the person off the site who had the expertise, time and know-how to complete it. It was without reason to complete and cap this log home without inquiry into the procedures required to adjust for the obvious shrinkage which would occur to the logs. Damages resulted thereafter, as it pertains to the completion of the structure by Fisher. *Fisher assumed any substandard results* by his repudiation, his waiver of further performance by Fisher, his breach in *negligently proceeding without knowing what he was doing*, and in not obtaining a contractor experienced in log home construction. (Emphasis added).

We conclude substantial evidence in the record supports the findings just quoted and the determination Driesen is entitled to recovery of $14,362.32.

The trial court next concluded Driesen was a contractor/planner and imposed on him a duty to make or attempt to make the plans and precautions available to Fisher. For his failure to do so, the court reduced Driesen's recovery by $5,000. From our review of the court's findings, we conclude the court erred in concluding Driesen owed Fisher a duty to supply plans Fisher could have ordered, but didn't. We do not find support in the record or in prior case law for imposing such a duty. Because Fisher proceeded negligently and assumed any substandard results, we hold the trial court erred in reducing Driesen's recovery. We also conclude the amount of reduction determined by the trial court is without substantial support in the record.

We therefore affirm the award to Driesen in the amount of $14,362.32, reverse the $5,000 reduction in the recovery, and reverse the trial court's conclusion Driesen owed Fisher a duty to supply plans and precautions. We order Fisher to pay Driesen $750 in appellate attorney fees. *See* Iowa Code § 572.32. Costs of this appeal are taxed to appellee, Fisher.

AFFIRMED IN PART, REVERSED IN PART.