FILED
SEP 25 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

59

GOSSARD CONSTRUCTION CO., INC.,

Plaintiff-Appellant,

vs.

Filed September 25, 1984

BARTON PARSHALL and SALLY J. PARSHALL,

Defendants-Appellees,

and THE MARSHALLTOWN SAVINGS AND LOAN ASSOCIATION,

Defendant.

BARTON PARSHALL and SALLY J. PARSHALL,

Plaintiffs,

vs.

NORMAN GOSSARD,

Defendant.

4-279
83-904

Appeal from the Iowa District Court for Tama County - Harold J. Swailes, Judge.

Plaintiff corporation appeals from the amount of a judgment in its favor in this action to foreclose a mechanic's lien. AFFIRMED.

Marie A. Condon of Fairall, Fairall, Kaplan & Condon, Marshalltown, for plaintiff-appellant.

Daniel Y. Rathjen of Willett & Rathjen, Tama, for defendants-appellees.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

Plaintiff corporation, Gossard Construction Company, Inc., appeals from the amount of a judgment in its favor in this action to foreclose a mechanic's lien. On appeal, plaintiff asserts that (1) the trial court erred in finding that plaintiff's alleged "estimate" was a contract between the parties providing a fixed price for the work on the house; and (2) the trial court miscalculated the damages of plaintiff, in part by allowing too large a set-off for defective workmanship. We affirm.

An action to enforce a mechanic's lien is in equity. Consequently, this court's review is de novo. Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d 149, 151 (Iowa 1977). Although we are not bound by the trial court's fact findings, we give weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I. The main issue in this appeal is whether the contract between plaintiff and the defendants, Bart and Sally Parshall, provided that the remodeling of defendants' house be done for a fixed price, or on a time and materials basis. The Iowa Supreme Court has considered this issue in at least three cases. Welter v. Heer, 181 N.W.2d 134 (Iowa 1970); Carlson v. Maughmer, 168 N.W.2d 802 (Iowa 1969); A & R Concrete and Construction Co. v. Braklow, 251 Iowa 1067, 103 N.W.2d 89 (1960). "In cases like this the questions to be decided are almost entirely factual." Welter, 181 N.W.2d at 137. The facts to be considered include whether the work was done with plans or specifications, whether many changes were made in the work to be done, the negotiations between the parties, and the terms of any relevant writings. See id. at 137-38; Carlson, 168 N.W.2d at 804; A & R Concrete, 251 Iowa at 1071-75, 103 N.W.2d at 91-94. We conclude that all of these factors support the trial court's decision.

The Parshalls, who lived in California, purchased a house in Garwin, Iowa. Because they desired to substantially remodel the house, they contacted Norm Gossard, President of plaintiff corporation. The Parshalls presented Norm a list

of tasks they wanted done for the remodeling. Accompanying the list were some pictures showing the result they desired. The Parshalls and Norm went through the house and discussed each of the tasks, with the Parshalls further explaining what they wanted done. Norm then prepared an estimate that totalled $39,500.

Financing for the remodeling project came from Marshalltown Savings and Loan. Based on an appraisal of the house, the savings and loan told the Parshalls that the maximum they could borrow was $30,000. The Parshalls advised Norm of this limit, and a meeting occurred in which Mr. Parshall and Norm eliminated several items from the estimate. This left the estimate total at $28,413.91. Throughout these dealings Norm assured the Parshalls that the estimate was purposely high and that Norm would probably be able to do the work for less.

The Parshalls then signed a written contract with plaintiff corporation. That contract explicitly incorporated by reference the estimate sheet. It also incorporated a work list with thirty-four specific tasks to be performed by plaintiff corporation and notes regarding materials to be ordered. The contract further stated, "All changes are to be negotiated and changes will require a change in price .... It is hereby agreed all change and additions will be time and material."

The trial court found, and we agree, that this language indicates the contract was for fixed prices. If not, such language would not be needed in the agreement. We find further support for this conclusion in the negotiations between the parties. Norm was fully aware that financing for remodeling was limited to $30,000, and he frequently assured the Parshalls that that sum would be sufficient. He was also provided with a detailed set of work instructions which he chose to incorporate into the contract. These facts are quite similar to the facts in Carlson v. Maughmer, 168 N.W.2d 802, 804, in which the court found the contract to be for a fixed price. The trial court did not err in finding the contract to be for a fixed price in the case at bar.

II. After determining the contract was for a fixed price, the trial court calculated the amount of money owed to plaintiff corporation for changes made in the work done and the amount of money to be set off in favor of the Parshalls for deficiencies in the work performed by plaintiff corporation. Plaintiff challenges the correctness of each amount.

These amounts of damages are findings of fact to which we will defer in this case. Plaintiff has not pointed out any specific mistakes in these fact findings. Rather, plaintiff argues the amount due plaintiff—as determined by the trial court—is incorrect because the trial court erroneously considered the contract to be for a fixed price. We rejected that argument in the first division of this opinion and reject it here also.

Plaintiff also argues that no setoff should have been awarded, claiming that all work was properly done. Alternatively, plaintiff claims the Parshalls did not present sufficient evidence to establish the value of the damages. Because the trial court could observe the witnesses and decide how credible each was, we defer to its finding that some of plaintiff's work was deficient. We also reject as without merit plaintiff's claim that there was insufficient evidence to establish the amount of the Parshalls' damages.

AFFIRMED.