

IN THE COURT OF APPEALS OF IOWA

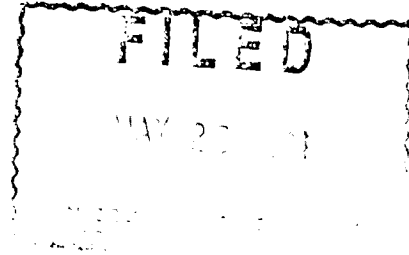
No. 1-209 / 00-1438

May 23, 2001

PAULINE COMPANY, INC.,
Plaintiff-Appellant,

vs.

FORT DODGE ASPHALT COMPANY,
Defendant-Appellee.



Appeal from the Iowa District Court for Webster County, William C. Ostlund, Judge.

Subcontractor appeals following judgment on its contract-based action against the primary contractor in which it sought additional compensation for extra work done on the project. **AFFIRMED.**

Timothy D. Ament of Gartelos, Wagner & Ament, Waterloo, for appellant.

Brian L. Yung of Bennett, Crimmins, Ostrander & Yung, Fort Dodge, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

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MAHAN, P.J.

Subcontractor appeals following judgment on its contract-based action against the primary contractor in which it sought additional compensation for extra work done on the project. Subcontractor contends the district court erred in refusing to compensate it on a "per-unit" basis for the work actually performed. We affirm.

Backgrounds Facts and Procedure. The Fort Dodge Airport Commission awarded Fort Dodge Asphalt Company (Fort Dodge Asphalt) a contract to perform resurfacing work at the Fort Dodge Regional Airport. The contract required some grass seeding in the areas surrounding the runways to repair damaged areas around the perimeter of the replacement paving.

On August 22, 1995, Fort Dodge Asphalt entered into a subcontract with Pauline Company (Pauline) to seed the area. Fort Dodge Asphalt chose Pauline, a minority-owned business, because of its disadvantaged business enterprise (D.B.E.) certification. The federally-funded airport project had a ten percent D.B.E. contractor goal. According to the terms of the subcontract, Pauline agreed to seed 25,000 square feet of land at forty cents per square foot, for a total of \$10,000.¹

On April 9, 1996, Keith Stork, a representative of Fort Dodge Asphalt, sent a fax to W.C. Stokes, president of Pauline, indicating approximately 2.5 acres (108,900 square feet) required seeding. Stokes did not review the subcontract

¹ The agreement also included \$500 for mobilization and \$500 for fifty linear feet of silt fence (\$10 per linear foot). The mobilization charge is not at issue. The silt fence was never installed, and Pauline never received payment for it.

agreement when he received the fax. He did not advise Fort Dodge Asphalt that Pauline would include an additional charge for seeding an area in excess of the contracted 25,000 square feet. According to Stokes, the area of erosion control actually needed often varies from the quantity called for in the contract. When variations occurred on previous occasions with other contractors, Pauline would be paid on a per-unit price for the work actually done.

After completing the work, Pauline sent a bill to Fort Dodge Asphalt, requesting payment of \$44,060, which included forty cents per square foot for the full 108,900 square foot area seeded (\$43,560) and a \$500 mobilization fee. Fort Dodge Asphalt disagreed with Pauline's "unit price" calculation, and instead paid Pauline a total of \$11,815.52, which it contended was "fair and reasonable" compensation for the work done.² Pauline filed suit, seeking recovery for the difference (\$32,244.38). The district court entered an order granting Pauline payment of the fair market value for services rendered. It determined Fort Dodge Asphalt owed Pauline \$1000 per acre for the additional area seeded (1.86 acres), for a total award of \$1860. After adding this amount to the original contract price (\$10,500) and deducting amounts paid by Fort Dodge Asphalt, the court awarded Pauline \$554.48. Pauline appeals.

Standard of Review. We review this breach of contract action tried at law for correction of errors at law. Iowa R. App. 4; *Land O'Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000). The district court's findings of fact have the effect

² The total included: the per unit price for 28,400 square feet (\$11,360) and the mobilization price (\$500), less a \$44.48 bond share. The additional 3400 square feet came from the engineer's final estimate.

of a special verdict and are binding upon us if supported by substantial evidence. *Van Oort Constr. Co., Inc. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 689 (Iowa 1999). "Evidence is substantial for purposes of sustaining a finding of fact when a reasonable mind would accept it as adequate to reach a conclusion." *Land O'Lakes*, 610 N.W.2d at 522 (quoting *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995)). We view the evidence in a light most favorable to the district court's judgment. *Van Oort Constr.*, 599 N.W.2d at 689.

"Per-unit" Versus "Fair Market Value" Compensation. Pauline contends the district court erred in refusing to compensate on a "per-unit" basis for the work actually done. Fort Dodge Asphalt contends paragraph 8 of the subcontract controls the omission or deletion of work from the contract entered into by the parties. Paragraph 8 provides:

8. The Contractor shall have the right to order in writing the omission or addition of work or material when omitted from or added to the General Contract by the Owner. *Fair deductions or increases shall be made in the sums payable hereunder for such omitted or added work or material.* No claim for extra compensation on account of changed or added work may be made by the Sub-Contractor unless such changed or added work was authorized in writing by the Contractor prior to the commencement thereof. (Emphasis added.)

Fort Dodge Asphalt argues this language calls for the payment of fair and reasonable compensation for the work added.

Pauline cites no legal authority to support its position. Failure in the brief to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3); *McIntyre v. Page County Sheriff's Office*, 538 N.W.2d 305, 306-07 (Iowa Ct. App. 1995).

Substantial evidence supports the district court's findings of fact. Expert testimony established a reasonable charge for seeding the area in question would range from \$500 to \$1000 per acre. The rate charged by Pauline amounted to \$17,000 per acre. Pauline's own expert witness testified some government entities allow a change in unit price if there is a substantial increase or decrease in quantity. For example, the expert testified, the Department of Transportation renegotiates the unit price if the quantity increases or decreases by twenty-five percent. The additional work requested by Fort Dodge Asphalt in this case amounted to a 400% increase. The district court concluded ordering Fort Dodge Asphalt to pay the amount requested would be "patently unfair." We agree. The district court did not err in refusing to compensate Pauline on a per-unit basis.

AFFIRMED.