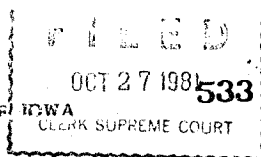


IN THE COURT OF APPEALS OF IOWA



IVAN STRONG and SANDRA STRONG,)

Plaintiffs-Appellants,)

Filed October 27, 1981

vs.)

KENNETH WILLIAMS, d/b/a WILLIAMS)
CONSTRUCTION COMPANY,)

1-304
2-65997

Defendant-Appellee.)

Appeal from Polk District Court - Robert Frederick, Judge.

Plaintiffs-homeowners appeal from judgment for defendant contractor in an action alleging that defendant failed to complete a home improvement contract with plaintiff and that the work which was completed was defective. AFFIRMED.

Frank Murray Smith, Des Moines, Iowa, for plaintiffs-appellants.

Darrell Goodhue and James F. Fowler, Indianola, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs-homeowners appeal from judgment for defendant contractor in an action alleging that defendant failed to complete a home improvement contract with plaintiff and that the work which was completed was defective.

Plaintiffs' petition was in three counts: the first, charging breach of an express contract; the second, charging negligence; and the third, charging breach of an implied warranty to perform the job in a workmanlike manner. The case was tried to the court without a jury and resulted in a decision and judgment adverse to the plaintiffs on all three theories.

The result in the trial court was based upon the trial court's determination that plaintiffs had failed to carry their burden of proof on the legal issues presented. Where, as here, a case reaches an appellate court in this posture, the appellate court should not disturb the result in the lower court unless it finds that the plaintiffs have carried their burden as a matter of law. Roland A. Wilson & Associates v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976). In this regard where a general finding as to the insufficiency of the evidence is coupled with specific findings as to particular matters, the findings are to be construed liberally in favor of the judgment. Bahnsen v. Rabe, 276 N.W.2d 413, 414 (Iowa 1979). Factual contentions not specifically addressed in the findings of the trial court are deemed to have been resolved adversely to the losing party. Id. at 414.

When plaintiffs' contentions on appeal are judged by these standards, we find that they have demonstrated no right to relief from the trial court's judgment. They are in effect arguing on appeal that this court should find that they have established a right of recovery as a matter of law under one or more of their legal theories. Our review of the record convinces us that they have not.

As to the portion of their claim based upon express contract, the trial court found on conflicting evidence that the original contract had been rescinded by the parties in favor of a time and material arrangement. The trial court further found that under the new time and material agreement, defendant performed such work as was paid for by plaintiffs and justifiably refused to continue with additional work because of the knowledge of both parties that plaintiffs were unable to pay for any further work. This finding by the trial court is supported by substantial evidence and serves to defeat plaintiffs' claim for so-called unfinished work under the original agreement.

With respect to the claim of defective performance of that work which was completed by the defendant, the evidence is conflicting as to whether the buckling of a basement wall resulted from improper installation of the wall in the first instance or from other causes. Plaintiffs have not demonstrated that they were entitled to recover as to any portion of their claim as a matter of law and therefore the trial court's decision and judgment must be affirmed.

AFFIRMED.