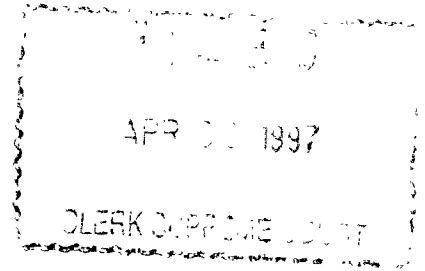


IN THE COURT OF APPEALS OF IOWA

No. 6-772 / 95-2039



JEFF MADISON,

Appellant,

vs.

DAVID RIDGWAY and ROSEMARY RIDGWAY,

Appellees.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson,
Judge.

Jeff Madison appeals from an award in his favor for \$3244.25 for work he
performed for the Ridgways. **AFFIRMED IN PART AND REMANDED.**

Larry L. Miller, Des Moines, for appellant.

Stacey N. Bell of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney,
Shindler & Scalise, P.C., Des Moines for appellees.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

This is an appeal by Jeff Madison claiming the trial court improperly calculated the amount David and Rosemary Ridgway owe for services rendered. We affirm in part and remand by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jeff Madison performed services for the Ridgways in the construction of an addition to their home. He submitted a bill afterward for \$9500. The Ridgways presented Madison with a check for that amount, but later stopped payment. Madison brought this action to enforce a mechanic's lien.

Proceedings to enforce a mechanic's lien are tried in equity. Iowa Code § 572.26 (1995). Our review is, therefore, de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Madison testified he agreed to do the job for \$5000, with the Ridgways paying extra for all materials. He also testified he did additional work beyond that originally agreed. David Ridgway testified he understood the agreement to be \$5000 for the job, including materials. The Ridgways paid for the materials as the project proceeded and their cost exceeded \$4000. David Ridgway agreed that Madison performed some additional work installing basement piers, for which he agreed to pay \$500.

Like the trial court, we find it clear that the parties did not reach an agreement as to the scope of work Madison was to perform or the payment he would receive therefor. There was no express contract between the parties.

Madison is nonetheless entitled to the reasonable value of the services he performed for the Ridgways. *See Carson v. Roediger*, 513 N.W.2d 713, 715 (Iowa 1994) (mechanic's lien statute liberally construed to promote principles of restitution and unjust enrichment). Unfortunately, neither Madison nor the Ridgways kept a record of the time Madison spent on this project. The materials Madison needed were not all delivered, however, until November 2, 1994. The evidence shows that Madison did not work on the project after Thanksgiving. Madison testified he was also working out of the union hall during this time frame.

The trial court considered the testimony and determined Madison worked on the project four hours per day during the week and eight hours per day on Saturdays and Sundays during the month of November 1994 (120 hours). The court also found that Madison spent six hours discussing the project with the Ridgways and had to hire another bricklayer for sixteen hours of services. The court multiplied the total hours (142) by the amount Madison testified was his wage when he worked out of the union hall (\$22 per hour). The court concluded the reasonable value of Madison's services was \$3124; with interest, the Ridgways were ordered to pay Madison \$3224.25. We find no reason to set aside these findings.

Madison also argues that the trial court improperly denied his request for attorney fees. The trial court did not award attorney fees because “the amount recovered by Madison is only slightly more than what the Ridgways believed Madison was entitled to.” We conclude this matter must be remanded for a determination of reasonable attorney fees.

It appears Madison was required to bring this action to obtain compensation for the work he performed. Iowa Code section 572.32 provides in part, “[i]n a court action to enforce a mechanic’s lien, . . . the plaintiff, if successful, *shall* be awarded reasonable attorney fees.” (Emphasis added.) Madison’s recovery, while less than he requested, was not nominal. See *Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 716 (Iowa 1985) (contractor, though not entirely successful, entitled to enforcement of mechanic’s lien and attorney fees); *Bidwell v. Midwest Solariums, Inc.*, 543 N.W.2d 293, 297 (Iowa App. 1995) (where costs incurred by the owner to complete contract exceeds amount due builder in a mechanic’s lien foreclosure action, builder not “successful” party); see also *Dutcher v. Randall Foods*, 546 N.W.2d 889, 895 (Iowa 1996) (remand for determination of reasonable attorney fees in wage discrimination case where statutory language mandates attorney fee award to prevailing party); *Vaughan v. Must, Inc.*, 542 N.W.2d 541 (Iowa 1996) (court has discretion in making attorney fee award where plaintiff is partially successful). Consequently, we remand this case to the trial court to determine a reasonable attorney fee award.

We affirm in part and remand for a determination of a reasonable attorney fee award. We do not retain jurisdiction.

Costs of this action are assessed one-half to each party.

AFFIRMED IN PART AND REMANDED.