FILED
FEB 21 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

305

GENE L. HANCER, d/b/a GENE'S CABINET SHOP,

Plaintiff-Appellee,

vs.

EARL ZIEMS and LILLIAM ZIEMS,

Defendants-Appellants.

Filed February 21, 1984

3-428
83-483

Appeal from the Iowa District Court for Woodbury County - James P. Kelley, Judge.

Defendants appeal the trial court's award of judgment in favor of plaintiff in the amount of the balance of his charges, and in the establishment of a mechanic's lien upon defendant's property. AFFIRMED.

Ronald R. Runge of Runge & Runge, Sioux City, Iowa, for defendants-appellants.

Daniel C. Galvin of O'Brien, Galvin, Kuehl & Mullin, Sioux City, Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Schlegel, JJ.

SCHLEGEL, J.

Defendants, Earl and Lillian Ziems, appeal the trial court's award of judgment in favor of plaintiff in the amount of the balance of his charges, and in the establishment of a mechanic's lien upon defendant's property. Defendants assert that the trial court's findings are not supported by sufficient evidence and that the evidence shows that plaintiff overcharged defendants. Defendants also claim that rulings of the court during the course of trial prevented them from receiving a fair trial and that their motion for mistrial should have been sustained, allowing them to try the matter before a different judge.

An action to enforce a mechanic's lien is in equity. Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d 149, 151 (Iowa 1977); Iowa Code § 572.26 (1983). Consequently, review is **de novo**. Iowa R. App. P. 4.

> It is our responsibility to review the whole record and determine from the credible evidence rights anew on those propositions properly presented, provided issue has been raised and error, if any, preserved in the course of trial proceedings. While weight will be given to findings of the trial court, this court will not abdicate its function as triers **de novo** on appeal.

Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d at 151.

The Iowa Supreme Court has also stated:

> In mechanic's lien cases, involving as they do numerous charges and counter charges which depend entirely on the credibility of the parties, we have frequently held the trial court is in a more advantageous position than we to put credence where it belongs.

McDonald v. Welch, 176 N.W.2d 846, 849 (Iowa 1970) (citations omitted).

The burden of proof is upon the mechanic's lien claimant. Ringland-Johnson-Crowley Co. v. First Central Services Corp., 255 N.W.2d at 151. To be entitled to a mechanic's lien, there must be an express contract or such a state of facts as will give rise to an implied contract. Id. If there is no express agreement as to the amount of compensation to be paid, the law implies a promise to pay a

reasonable compensation. Olberding Construction Co., Inc. v. Ruden, 243 N.W.2d 872, 875 (Iowa 1976).

In this case, as in Olberding, there is no claim that an express contract existed as to the amount of compensation to be paid. Accordingly, a promise to pay reasonable compensation is implied. The proper measure of recovery for plaintiff's services is the reasonable value of the services rendered and the materials furnished as opposed to actual cost to the contractor. See Olberding, 243 N.W.2d at 875.

I. The trial court found that there was sufficient evidence to establish the existence of a contract to render services in the construction of several cabinets, unique in nature, in the home of the defendants. There being no claim that there was an agreed price for the labor and materials, the court found that the price charged by plaintiff was the reasonable charge for those services and materials.

The defendants did not present expert testimony to challenge the reasonableness of the charges testified to by plaintiff. On our **de novo** review, we find that there was sufficient evidence for the findings of the trial court and we agree with its decision that the prices charged by plaintiff were reasonable. Accordingly, we affirm the judgment of the trial court.

II. Defendants complain of the trial court's failure to grant a mistrial in order to permit defendants to try this case to another judge. The defendants assert in their brief that the trial judge was biased and unfair in his conduct of the trial, and that the impression was generated that the judge harbored a prejudice for either the parties, the counsel for the defendant, or the case. The defendants request that we reverse and remand this case back to the district court for a new trial.

Defendants have failed to direct the appellate court to any authority in support of this claim, and have failed, in their brief and argument, to specify any place in the record which they claim would demonstrate prejudice which would

entitle them to the relief they suggest. Defendants have failed to comply with the requirements of Iowa Rules of Appellate Procedure 14(a)(3) and (5) in presenting this issue. Moreover, defendants made no motion at trial for change of venue on account of claimed prejudice of the judge, as provided for in Iowa Rule of Civil Procedure 167(c).

Our review of the record fails to reveal conduct or statements of the trial judge which demonstrate prejudice on his part which would in any way effect the outcome of this case. Defendants' claim in this respect is without merit.

Upon the whole record, we affirm the trial court.

AFFIRMED.