

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN FAULKNER and MARTHA
FAULKNER,

UNPUBLISHED
August 25, 2000

Plaintiffs-Appellants,

v

RICHARD WADE, d/b/a WADE
CONSTRUCTION,

No. 219178
Hillsdale Circuit Court
LC No. 98-028123-CP

Defendant-Appellee.

Before: White, P.J., and Talbot and R. J. Danhof*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the trial court entering judgment for plaintiffs in the amount of \$2,374.51, and judgment for defendant in the amount of \$9,874.51 on defendant's counterclaim. We affirm.

This case arises out of a remodeling contract between plaintiffs and defendant. Plaintiffs contacted defendant and requested, among other things, an estimate for the addition of a garage and office to their home, as well as the replacement of siding, windows, and roof. The parties eventually entered into a time and materials contract.

As the project progressed, plaintiffs began to have problems with defendant's workmanship. However, plaintiffs paid the monthly bills that defendant sent to them. When defendant completed the project, he sent plaintiffs a final bill for \$9,874.51. It was upon receipt of this bill that plaintiffs notified defendant that they were dissatisfied with defendant's work and thus were not going to pay the final bill. Plaintiffs then filed suit alleging, among other things, breach of contract. Defendant filed a countercomplaint seeking final compensation from plaintiffs.

At trial, plaintiffs offered expert testimony that identified numerous deficiencies in defendant's work. However, the expert was unable to testify how much it would cost to fix the deficiencies.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant, on the other hand, testified that it would cost \$1,800 to fix the identified deficiencies. Additionally, to support plaintiffs' calculation of damages, plaintiffs submitted an itemization of five invoices that defendant had sent them.

At the conclusion of plaintiffs' case in chief, defendant moved for a directed verdict. Although the trial court granted defendant's motion, the court awarded plaintiffs damages of \$2,374.51. This amount is to be set off against defendant's damages of \$9,871.51. Plaintiffs appealed as of right.

On appeal, plaintiffs argue that the trial court's calculation of damages was against the great weight of the evidence. We disagree. The only direct evidence that supported plaintiffs' calculation of damages was defendant's testimony stating that the construction deficiencies identified by plaintiffs' expert could be corrected for \$1,800. Specifically, the plaintiffs' expert witness testified that he was unable to calculate an appropriate cost to fix the deficiencies he observed. *Walter Toebe & Co v Department of State Highways*, 144 Mich App 21, 38; 373 NW2d 233 (1985). Plaintiffs argue that Exhibit 19A establishes the cost of redoing the work, which the expert stated was necessary. However, the trial court rejected Exhibit 19A as reflecting an appropriate calculation of damages because there was no evidence to support the conclusion that the gross labor charges on the statements reflected the cost of removing and reapplying the siding. The court did not err in so concluding. Thus, the only evidence that remains is defendant's testimony stating that the construction deficiencies identified by the expert could be corrected for \$1,800. On this record, we cannot say that the trial court's setting damages based on this testimony was against the great weight of the evidence.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Robert J. Danhof*