STATE OF MICHIGAN

COURT OF APPEALS

JERRY ACCETTURO and KAREN L. PAIGE,

Plaintiffs/Counterdefendants-Appellants/Cross-Appellees,

v

CHRIS NORDMAN,

Defendant/Counterplaintiff-Appellee/Cross-Appellant.

UNPUBLISHED
November 17, 2000

No. 212732
Oakland Circuit Court
LC No. 96-534707-CK

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

In this case involving a construction contract, plaintiffs appeal as of right the trial court's judgment for defendant on defendant's counter-complaint. Defendant cross appeals the trial court's denial of mediation sanctions. We affirm in part, reverse in part, and remand.

Plaintiffs first argue that defendant's July 11, 1996 sworn statement and waiver of lien protects them from paying more than the original contract amount of $257,500 to defendant for building their house. We disagree.

This issue raises a question of law, which we review de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). Plaintiffs' argument relies on an application of the Construction Lien Act, MCL 570.1101 *et seq*.; MSA 26.316(101) *et seq*. The intent of the Construction Lien Act is to protect the interests of contractors, laborers and suppliers through construction liens and to protect owners from excessive costs. *Vugterveen Systems, Inc v Olde Millpond Corp*, 454 Mich 119, 121; 560 NW2d 43 (1997). The act is liberally construed to give effect to these purposes. *Id*., citing MCL 570.1302(1); MSA 26.316(302)(1). Subsection 107(1) provides:

> Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property shall have a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property . . . . A construction lien acquired pursuant to this act shall not exceed the amount of

> the lien claimant's contract less payments made on the contract. [MCL 570.1107(1); MSA 26.316(107)(1).]

Further, subsection 107(6) is intended to protect owners from excessive construction charges by providing them with a defense to liens that would force them to pay more than the price stated in the general contract. It provides:

> If the real property of an owner or lessee is subject to construction liens, the sum of the construction liens shall not exceed the amount which the owner or lessee agreed to pay the person with whom he or she contracted for the improvement as modified by any and all additions, deletions, and any other amendments, less payments made by or on behalf of the owner or lessee, pursuant to either a contractor's sworn statement or a waiver of lien, in accordance with this act. [MCL 570.1107(6); MSA 26.316(107)(6).]

Plaintiffs appear to argue, citing *Vugterveen Systems, supra*, that the act protects them by providing a defense to defendant's lien that would force them to pay more than the price stated in the general contract and protects them from having to pay for material, labor or services that were incurred before the sworn statement. In other words, plaintiffs seem to believe that defendant cannot collect additional amounts expended beyond the original agreement before the waiver was signed and is limited solely to the amounts stated in the waiver.

Contrary to plaintiffs' position, we find the Construction Lien Act inapplicable to the claims raised in defendant's counter-complaint because defendant did not seek to foreclose a lien pursuant to the act. Instead, defendant sought to recover money expended outside the written contract and for improvements for which he does not claim a lien, but based on theories of breach of contract, implied contract, unjust enrichment and fraud. Because defendant's counter-claim did not seek to enforce a lien, but rather to recover under other theories of liability, we find that the trial court did not err in concluding that the sworn statement did not preclude defendant from recovery of any costs for extras, whether they were incurred before or after the July 11, 1996 sworn statement.

Plaintiffs next argue that the trial court's factual findings and conclusions of law are insufficient. We disagree. MCR 2.517(A) addresses fact-finding made by a trial judge sitting without a jury. The rule requires the court to "find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 2.517(A)(1). "A finding of fact made by a trial court sitting without a jury is essentially a verdict, which may include an award of damages." *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). The findings of fact need only be brief, definite and pertinent, without overelaboration of detail or particularization of facts, MCR 2.517(A)(2), and are sufficient if it appears that the court was aware of the issues presented and correctly applied the law, and if appellate review would not be facilitated by requiring further explanation, *Triple E, supra*. An award of damages, like other findings of fact, is reviewed for clear error. *Id*. at 177.

Here, the trial court's opinion clearly sets forth its legal conclusions. Considering the evidence submitted by the parties, in particular defendant's itemized exhibit and plaintiffs' claims of out-of-pocket expenses and credits, we find that the court's $30,311.75 judgment as to the extra features provided to plaintiffs and not paid for by them is within the range of the evidence and not clearly erroneous. Remand is unnecessary because a further explanation of the trial court's award would not facilitate appellate review. *Triple E, supra*.

Next, plaintiffs argue that the trial court erroneously failed to include in its opinion a reference to its evidentiary ruling limiting testimony to construction costs incurred after July 11, 1996 and failed to discuss its conclusion of law regarding the effect of the sworn statement. First, plaintiffs' assertion that the trial court made an evidentiary ruling limiting the testimony regarding construction costs is not supported by the record. Second, "a trial court's findings are sufficient under MCR 2.517(A) if it appears that the trial court was aware of the factual issues and has applied the law correctly." *In re Cotton*, 208 Mich App 180, 183; 526 NW2d 601 (1994); *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990). Having determined that the trial court was correct in its decision not to consider the sworn statement in the manner sought by plaintiffs, we find the trial court's findings sufficient.

Plaintiffs also argue that the trial court was not justified in awarding defendant the $8,980 remaining on the parties' contract when plaintiffs hired another contractor to complete the work on their home after they discharged defendant. Because plaintiffs failed to raise this particular argument in their statement of questions presented, it is not preserved for appellate review. *Hilliard v Schmidt*, 231 Mich App 316, 318; 586 NW2d 263 (1998). We note, however, that defendant provided a credit to plaintiffs for the amount they paid the contractor, and plaintiffs have not otherwise shown that defendant was not entitled to the balance of his contract.

Finally, plaintiffs argue that the judgment is against the great weight of the evidence. Because plaintiffs failed to move for a new trial on the basis that the verdict is against the great weight of the evidence, this issue is waived. *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993). Further, our review of the record leads us to reject this argument on the merits.

In the cross-appeal, defendant argues that the trial court erred in denying his motion for mediation sanctions. A trial court's decision whether to grant mediation sanctions involves a question of law, which is reviewed de novo. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997). Resolution of this matter involves the interpretation of court rules, which also requires de novo review. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 328; 602 NW2d 633 (1999). The principles of statutory construction apply in the construction of court rules. *Meyer Jewelry Co v Johnson*, 229 Mich App 177, 180; 581 NW2d 734 (1998). The language of the court rule should be interpreted in accordance with its ordinary and approved usage, keeping in mind the purpose that the rule seeks to accomplish. *Bush v Mobil Oil Corp*, 223 Mich App 222, 226; 565 NW2d 921 (1997).

Before trial, the present case was submitted to mediation. The mediation evaluation awards defendant $30,000 and requires plaintiffs to each pay $30,000, apparently imposing joint

and several liability. All parties rejected mediation. After trial, defendant moved for mediation sanctions under MCR 2.403. The trial court denied the motion, stating:

> Unfortunately, there were two distinct claims here. Each party prevailed on their own claim in some way or another. I cannot determine, from what you've represented to me is the mediation award, how the mediators viewed those separate claims. Therefore, I can't determine who prevailed over or above or below the mediation award and I will not award costs to either of you.

From this statement, we surmise that the trial court rejected defendant's claim for mediation sanctions because the mediation award did not refer specifically to plaintiffs' equitable claim, but rather only awarded defendant a monetary amount.[1] We find that the trial court's decision is erroneous and remand is necessary to allow the trial court to reconsider defendant's motion.

According to *Reddam v Consumer Mtg Corp*, 182 Mich App 754, 757; 452 NW2d 908 (1990), the mediation rule

> envisions the submission of an entire civil action to mediation where monetary damages are involved and that the mediators shall evaluate the total valuation of the case. That is, absent a showing that less than all issues were submitted to mediation, a mediation award covers the entire matter and acceptance of that mediation award settles the entire matter.

Under this reasoning, we must conclude that the entire matter in the present case was submitted to mediation and that the mediation panel evaluated the total valuation of the case. Because no verdict as defined by MCR 2.403(O)(2) was entered on the equity issue because defendant conceded that the lien was in excess of the amount that the parties agreed on, the trial court must analyze whether mediation sanctions are required exclusive of equitable considerations.

Here, the trial court refused to award mediation sanctions altogether because it was unable to interpret the mediation evaluation. However, it is fair to infer that the mediation panel considered all monetary claims and concluded that defendant was entitled to $30,000 based on the net value of the parties' complaints. Because the trial court's verdict is more favorable to defendant than the mediation award, sanctions are mandatory under MCR 2.403(O). Thus, we remand to the trial court for calculation of and imposition of mediation sanctions.[2]

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[1] With regard to the trial court's determination that the mediation panel should have given an indication of how it considered plaintiffs' equitable claims, it was mistaken. MCR 2.403(K)(3) (With respect to claims for equitable relief, the "evaluation may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award."); *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 79; 577 NW2d 150 (1998).

[2] Because defendant conceded with regard to plaintiffs' equitable claim, defendant is not entitled to costs in defending that claim.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh