

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

LL/EBS Company, :
 :
Plaintiff-Appellee, :
 :
v. : No. 10AP-844
 : (C.P.C. No. 08CVH-04-5290)
Power of Faith Christian Center et al., :
 : (REGULAR CALENDAR)
Defendants-Appellants. :

D E C I S I O N

Rendered on December 22, 2011

Breen Law Office, and *John E. Breen*, for appellee.

NRW Law Office, and *Necole Russell-Washington*, for appellants.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Power of Faith Christian Center, appeals from a judgment of the Franklin County Court of Common Pleas awarding damages to plaintiff-appellee, LL/EBS Company, in a dispute arising from the construction of a church sanctuary.

{¶2} Power of Faith filed its notice of appeal in this matter on September 7, 2010. The matter was set for oral argument before this court on April 12, 2011. Power of Faith duly filed its appellant's brief, and LL/EBS was granted a first extension of time to file its appellee's brief. On December 30, 2010, we granted a second motion by LL/EBS for an

extension through January 10, 2011 to file appellee's brief. On April 8, 2011, four days before scheduled oral argument and submission of the matter to the court, LL/EBS filed yet another motion to stay the case for 90 days in light of ongoing settlement negotiations between the parties. That motion was not granted and the case was submitted as scheduled without the benefit of appellee's brief. The parties having given no indication that they have effectuated a settlement either during or after the requested 90-day stay, we now decide the matter upon the merits.

{¶3} The matter began with an attempt by Power of Faith and its pastor, Alonzo James, to undertake construction of a new church sanctuary. LL/EBS initially began work solely as the electrical subcontractor on the job. An entity identified as DK Development and its principal, Tim Flynn, was the nominal general contractor on the job. Over the course of construction, LL/EBS and its principal, Lafayette R. Westbrook, Sr., assumed de facto general contractor responsibilities over the work, including supervising subcontractors in other specialties and performing work other than electrical either through subcontractors or LL/EBS's own employees. Continuing delays and problems with non-conforming work, for which all parties dispute the cause and responsibility, led to difficulties with the project. Flynn terminated Westbrook and LL/EBS from participation in the project in March 2008. Based upon unpaid invoices for materials and labor, LL/EBS brought suit against Power of Faith and DK Development seeking \$152,097.15 in damages. During the course of litigation, Flynn passed away and DK Development ceased to contest the action by the time trial commenced.

{¶4} The matter was tried to a magistrate commencing May 26, 2010. The court heard testimony from Westbrook and Pastor James, as well as various other participants

in the construction project: Adam Henry, a framing and drywall contractor; Dennis Kapehart, a plumbing contractor; Jose Serra, another framing and drywall contractor; and Tim Niton, an electrical contractor.

{¶5} After two days of testimony and submission of extensive documentary exhibits, LL/EBS reduced its demand from \$152,097.15 to \$108,690.49. The reduction was based upon various deficiencies and duplications in the invoices submitted by LL/EBS. From this reduced prayer the magistrate eventually subtracted the further sum of \$37,755.74 for a group of invoices, collectively designated as plaintiff's exhibit R, comprising drywall installation work. The magistrate found that due to internal conflicts and imprecisions, this collective invoice item was unreliable and could not form the basis for damages. Despite the fact that the invoices, in addition to the gross amount due, also reflected various payment amounts by Power of Faith to LL/EBS and applied to the invoices, the magistrate deducted the full gross amount of \$37,755.74 from LL/EBS's total demand. After this deduction, the magistrate found for LL/EBS on its unjust enrichment claim in the amount of \$68,934.75.

{¶6} From this award in favor of LL/EBS, the magistrate further deducted a counterclaim award of \$23,349 payable by LL/EBS to Power of Faith for rework and delay attributable to LL/EBS's failure to satisfactorily complete certain portions of the job. The net amount payable from Power of Faith to LL/EBS, after these adjustments, was \$44,585.75.

{¶7} Power of Faith filed objections to the magistrate's decision seeking further reductions based upon alleged discrepancies in LL/EBS's invoices and bookkeeping. The trial court rendered a decision sustaining the various objections and rejecting others.

Initially, the trial court found that certain invoices and charges were not substantiated or had already been paid. The trial court used these to reduce the amount payable by Power of Faith by \$12,851. The trial court then considered Power of Faith's objections to the magistrate's treatment of exhibit R. The trial court, however, concluded that the magistrate had erred in subtracting the entire total of the invoices in exhibit R, because a \$12,500 payment reflected therein was not included in the original demand by LL/EBS. The trial court therefore allowed only \$27,255.74 as the deduction from the demand amount. As a result, including the additional \$12,851 deducted pursuant to other objections, the amount awarded under the trial court's decision rose slightly from the amount ordered by the magistrate to \$45,234.75. Power of Faith has timely appealed and brings the following two assignments of error:

I. THE TRIAL COURT'S DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT INCREASED THE JUDGMENT AWARDED PLAINTIFF.

The two assignments will be considered together.

{¶8} When reviewing a trial court's decision on a manifest weight of the evidence basis, we are guided by the presumption that the factual findings of the trial court were correct. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The rationale for this presumption is that the trial court is in the best position to evaluate the evidence by viewing witnesses and observing their demeanor, voice inflections, and gestures. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Likewise, documentary evidence is best viewed in the context of the entire scope of

evidence heard at trial, and the trier of fact is in the best position to assess the global weight of all evidence heard. Thus, judgments supported by some competent, credible evidence going to all the essential elements will not be reversed by a reviewing court as being against the manifest weight of the evidence *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279.

{¶9} We will not disturb a trial court's decision to adopt, reject, or modify a magistrate's decision absent an abuse of discretion. *Wade v. Wade* (1996), 113 Ohio App.3d 414, 419.

{¶10} Because the arguments raised in the present appeal do not address the credibility of the witnesses nor the magistrate's essential underlying conclusions regarding the reliability of certain invoices as documentary support for an award of damages, the limited question for us is whether the trial court applied the proper computations when determining the amount by which discounting exhibit R would reduce the award. We find that the trial court did not err in this respect. We agree with the magistrate's factual finding, as did the trial court, that exhibit R contains too many internal inconsistencies to form a basis for damages.

{¶11} This group of three invoices, which represent bills for the same underlying work, are largely duplicative yet inconsistent both in the amount billed and in the amount owed. All three invoices in exhibit R, however, consistently reflect a \$12,500 payment by Power of Faith to LL/EBS in partial payment of the invoice. This \$12,500 payment was already discounted by LL/EBS in the overall computation of damages in the initial demand, which properly reflected only *unpaid* portions of invoices. Because the \$12,500 payment was never included as a basis for damages, it should not form the basis for a

further *reduction* in damages; if it were, the exclusion of exhibit R would represent a double deduction to the extent it included a \$12,500 payment. We accordingly find that the trial court properly deducted only the outstanding amount owed and claimed from exhibit R, \$27,255.74, rather than the full \$39,755.74 allowed by the magistrate, which included the \$12,500 payment. The trial court's adjustment of the damages award is therefore well-supported by the evidence in the record, and it was neither an abuse of discretion on the part of the trial court nor against the manifest weight of the evidence for the trial court to compute damages in this manner.

{¶12} For the foregoing reasons, Power of Faith's first and second assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
