

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GORILLA BUILDERS LLC, *Plaintiff/Appellee*,

v.

KENNETH DEE BROWN, *Defendant/Appellant*.

No. 1 CA-CV 19-0181
FILED 2-27-2020

Appeal from the Superior Court in Maricopa County
No. CV2016-096820
The Honorable David Palmer, Judge

AFFIRMED

COUNSEL

Mark A. Tucker, PC, Mesa
By Mark A. Tucker
Counsel for Plaintiff/Appellee

Kenneth Dee Brown, San Diego, CA
Defendant/Appellant

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MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge James B. Morse Jr. joined.

P E R K I N S, Judge:

¶1 Kenneth Dee Brown appeals the trial court’s findings, conclusions, and post-trial rulings after a bench trial on various claims related to construction on his property. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Gorilla Builders, L.L.C. (“Gorilla”) is a general contractor. Gorilla and Brown entered a written contract for restorations to Brown’s property and addendum for Gorilla to build a second-story addition to that same property.

¶3 In November 2016, Gorilla sued Brown for breach of contract, breach of covenant of good faith and fair dealing, violation of Arizona’s Prompt Pay Act, conversion, quantum meruit, and judicial foreclosure of mechanics’ liens. These claims pertained to the second-story addendum portion of the contract. Brown counterclaimed for invalid mechanics’ liens, breach of contract, specific performance, and fraud.

¶4 Brown represented himself in the lawsuit and two-day bench trial. The trial court issued a detailed minute entry holding that Brown breached the contract; Brown “failed to establish by a preponderance of the evidence any credible grounds for his counterclaims or for any of his asserted defenses to the amounts owed under the contract[;]” Brown “failed to deal fairly or act in good faith[;]” Gorilla “filed appropriate, timely notices and documents” on its mechanics’ liens pertaining to the second-story addition; and Gorilla properly established the fact and amount of damages. The court awarded Gorilla \$40,531.97 in damages plus their attorney fees and costs pursuant to A.R.S. § 12-341.01, and entered judgment on January 14, 2019.

¶5 Brown then moved for a new trial under Rule 59, and filed a slew of other post-trial motions. Brown also filed a premature notice of appeal from the trial court’s ruling on February 13, 2019. On April 1, 2019, this court stayed the appeal and revested jurisdiction in the trial court to rule on the outstanding Rule 59 motion. That same day, the trial court

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issued a minute entry that denied or struck all of Brown’s post-trial motions. Brown amended his notice of appeal two days before the trial court entered its amended judgment on April 17, 2019. Brown timely appealed. Gorilla moved to strike Brown’s opening brief for lack of proper citations to the record and Brown responded; this court denied the motion.

DISCUSSION

¶6 Brown contends the trial court erred when it found he breached the contract, concluded that Gorilla possessed valid mechanics’ liens, admitted certain evidence and testimony, and denied his motion for a new trial. But “we will not consider issues not properly briefed.” *Watahomigie v. Ariz. Bd. Of Water Quality Appeals*, 181 Ariz. 20, 26 (App. 1994).

¶7 In our order denying Gorilla’s motion to strike Brown’s opening brief, this court notified Brown that: “When a party on appeal argues the superior court’s ruling is not supported by the evidence, that party must furnish a transcript.” Brown has not furnished the transcripts needed to assess his argument that the superior court had insufficient evidence for its ruling—despite this court’s direction that he do so. Nor does his opening brief include proper citations to the record as required under Arizona Rule of Civil Appellate Procedure (“ARCAP”) 11. Without the proper record, we must assume the evidence was sufficient to support the trial court’s findings and conclusions. *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995); see also *Delmastro & Eels v. Taco Bell Corp.*, 228 Ariz. 134, 137, ¶ 7 n.2 (App. 2011) (stating that appellant’s failure to provide proper citations to the record on allegedly defective mechanics’ liens established grounds for waiver).

¶8 The trial court also issued detailed findings of fact in support of its ruling. The court found a binding contract existed between Gorilla and Brown, and that Brown breached the second-story addendum to that contract by refusing to pay Gorilla for nearly 80% of the work completed. The court also found that Brown’s claims for “offsets” against this amount were incredible and relied on documents which had “limited evidentiary value due to a complete lack of foundation.” Lastly, the court found Gorilla’s mechanics’ liens as to the second-story addendum were timely due to the much later start date for that portion of the contract. Absent the proper record documents, we cannot find error in the court’s ruling, nor can we find error in the court’s denial of Brown’s Rule 59 motion.

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¶9 Gorilla requests attorney fees and costs on appeal under A.R.S. §§ 12-341 and -341.01, as well as the parties' written contract. As the prevailing party, Gorilla may recover its reasonable attorney fees and taxable costs upon compliance with ARCAP 21.

CONCLUSION

¶10 We affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA