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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000997-MR

DANIEL ADKINS DESIGNS, INC. APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE JEREMY MATTOX, JUDGE
ACTION NO. 16-CI-00203

LINVILLE'S FINISHED CARPENTRY, INC. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, SPALDING, AND TAYLOR, JUDGES.

DIXON, JUDGE: Daniel Adkins Designs, Inc., ("Adkins") appeals from the Scott Circuit Court's order to pay Linville's Finished Carpentry, Inc., ("Linville") an additional sum of $26,800 for services rendered. After a careful review of the record, we affirm.

Adkins, a general contractor, engaged Linville, a finish carpenter, to perform work on a home containing 10,300 square feet of finished space. While

Linville performed work on the home, periodic draws were submitted to Adkins for payment, and payment was made promptly until Adkins had paid Linville approximately $50,000 for its work. Linville completed the requested finish work on the home shortly thereafter and submitted its final bill, totaling approximately $80,000. The previous payments were reflected on the final bill, leaving a remaining balance of approximately $30,000. Adkins disputed the final bill because it was more than it had calculated, based upon its measurements of the home, when compared with a general basic trim price sheet received from Linville.

Linville sent a letter to Adkins and the homeowners informing them of its intent to take legal action, if necessary, to collect the outstanding balance. The instant lawsuit was subsequently filed along with a mechanic's lien. The funds in dispute were placed in escrow, and the homeowners were voluntarily dismissed from this litigation. Discovery was conducted, and a bench trial was held on February 2, 2018. Adkins and Linville testified at trial and the deposition of Charlie Ayres was submitted as additional expert witness testimony on Linville's behalf. Post-trial memoranda were filed, and the trial court entered its order on June 4, 2018. This appeal followed.

On appeal, Adkins raises three arguments: (1) the price/bid sheet provided by Linville to Adkins constituted a valid contract; (2) the final bill provided by Linville does not constitute a fair and reasonable value of labor; and

(3) Terry Linville ("Terry"), as the owner of Linville, does not qualify as an expert witness. We will address each issue, in turn.

We begin by commenting on the proper structure of an appellate brief and the importance of preservation. CR[1] 76.12(4)(c)(v) requires each argument in the brief for appellant to begin with a statement of preservation referencing "the record showing whether the issue was properly preserved for review and, if so, in what manner." The same rule also requires each argument to contain "ample supportive references to the record and citations of authority pertinent to each issue of law[.]" *Id.* Adkins' brief contains no statement of preservation for any issue raised.

Adkins' Statement of the Case contains many references to the record, as required by CR 76.12(4)(c)(iv). However, those references do not link the facts to the arguments and applicable case law, nor do they tell us where the trial court was given the opportunity to correct the errors of which Adkins now complains, a critical piece of information because "a party may not raise an issue for the first time on appeal." *Taylor v. Kentucky Unemployment Ins. Com'n*, 382 S.W.3d 826, 835 (Ky. 2012) (citations omitted). It is dangerous for counsel to ignore the rules of appellate procedure.

[1] Kentucky Rules of Civil Procedure.

We have three options: "(1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions; or (3) to review the issues raised in the brief for manifest injustice only." *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010), *citing Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990) (quoting).

Because these errors were made by counsel, we will not punish the client. We will review the alleged deficiencies as best we can but warn counsel that the Court may not be so lenient in the future. The rules are "lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated." *Louisville and Jefferson County Metropolitan Sewer Dist. v. Bischoff,* 248 S.W.3d 533, 536 (Ky. 2007) (quoting *Brown v. Commonwealth,* 551 S.W.2d 557, 559 (Ky. 1977)).

On review, "we defer to the trial court's factual findings, upsetting them only if clearly erroneous or if unsupported by substantial evidence, but we review without deference the trial court's identification and application of legal principles." *Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky. App. 2001). "Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Natural Resources & Environmental Protection Cabinet,* 891 S.W.2d 406, 409

(Ky. App. 1994). The standard of review concerning a trial court's evidentiary rulings is for abuse of discretion. *Tumey v. Richardson*, 437 S.W.2d 201, 205 (Ky. 1969). "The test for an abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound reasonable principles." *Penner v. Penner*, 411 S.W.3d 775, 779-80 (Ky. App. 2013) (citation omitted).

Adkins' first argument is that the price sheet, which he claims is the same as a bid sheet, provided by Linville to Adkins constituted a valid contract. The one-and-a-half-page document Adkins refers to is titled "LFC Price Sheet" and lists prices for "Basic Trim." Terry testified at trial that he gave Adkins the price sheet as a matter of convenience for Adkins in its calculation of basic trim prices in its bids on various construction projects. Adkins and Linville both offered testimony that Linville worked for Adkins providing basic trim on other homes as well. Terry also testified that the finish work done on the home at issue was much more time and skill intensive than basic trim installation and was almost exclusively custom work of museum quality. Therefore, Terry testified the pricing for the finish work on this home was correspondingly higher than what was listed on the price sheet for basic trim. Terry adamantly denied that the price list provided to Adkins was either a bid sheet or a contract between the parties. Terry's testimony constitutes substantial evidence in support of the trial court's

findings of facts and corresponding conclusions of law on this point. Further, our review reveals the notable absence of the required elements to convert this list into a valid, binding, and enforceable contract. As such, we cannot say that the trial court erred in its finding that the price sheet in question did not constitute a binding and enforceable contract.

Adkins' second argument is that the final bill provided by Linville does not constitute a fair and reasonable value of labor. The trial court awarded Linville additional monies based on principles of *quantum meruit*, as well as Terry's testimony as to the nature of the services provided and why these services were worth more than the basic services listed on the price sheet which Adkins referred to alternatively as a "bid sheet" and "contract."

> The party proceeding under a quantum meruit theory must establish the following elements:
>
> 1. that valuable services were rendered, or materials furnished;
>
> 2. to the person from whom recovery is sought;
>
> 3. which services were accepted by that person, or at least were received by that person, or were rendered with the knowledge and consent of that person; and
>
> 4. under such circumstances as reasonably notified the person that the plaintiff expected to be paid by that person.
>
> 66 Am.Jur.2d *Restitution and Implied Contracts* § 38 (2001).

Quadrille Business Systems v. Kentucky Cattlemen's Association, Inc., 242 S.W.3d 359, 366 (Ky. App. 2007).

Adkins contends that the trial court erred in its application of the principles of *quantum meruit* in this case because "the doctrine of *quantum meruit* is available as a method of recovery in the absence of a contract", and Adkins insists there was a contract between the parties. *Bradley v. Estate of Lester*, 355 S.W.3d 470, 472 (Ky. App. 2011). As previously discussed, the trial court did not err in finding the absence of a contract. Terry testified extensively as to the volume, quality, and pricing of the labor performed on this home. Terry also testified that he discussed the pricing of his services with Adkins and notified him that they would exceed the prices listed on the price sheet. His testimony constitutes substantial evidence supporting the trial court's findings of fact on the worth of Linville's work. We discern no error in the trial court's findings of facts and conclusions of law on this issue.

Adkins' third argument is that Terry, as the owner of Linville, does not qualify as an expert witness. "It is within the discretion of the trial judge to decide the qualifications of expert witnesses, and such a ruling is seldom disturbed on appeal." *Murphy by Murphy v. Montgomery Elevator Co*., 957 S.W.2d 297, 298 (Ky. App. 1997). Adkins' arguments on this point are neither well-developed nor persuasive. Adkins points to nothing in the record which evinces an abuse of

discretion by the trial court in allowing Terry to testify as an expert in finish carpentry. We will not search the record to construct Adkins' argument for it, nor will we go on a fishing expedition to find support for its underdeveloped arguments. "Even when briefs have been filed, a reviewing court will generally confine itself to errors pointed out in the briefs and will not search the record for errors." *Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979).

Further, as Adkins notes in its brief, Terry is also a fact witness and his testimony is admissible even if he is not considered an expert witness—which he is clearly qualified to be, based upon his experience and the testimony of the parties. Therefore, any error in considering Terry's testimony as an expert witness instead of simply a fact witness is harmless.

> Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 354 (Ky. 2003) (citations omitted).

For the foregoing reasons, the order of the Scott Circuit Court is affirmed.

SPALDING, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS AND WILL NOT FILE A SEPARATE OPINION.

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