

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CW 0331

TODD CONTRACTING, L.L.C.

VERSUS

MILDRED COOK

Judgment Rendered: NOV 07 2014

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On Appeal from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C606222

Honorable Kay Bates, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

Whipple, C.J. concurs in the result.

JMC
WON concurs.
TMH

McCLENDON, J.

The defendant seeks review of a judgment in favor of the plaintiff for monies owed under a construction contract. After reviewing the facts and applicable law, we convert the appeal to an application for a supervisory writ of review, grant the request for supervisory review of the merits, and affirm the district court's judgment.

FACTS AND PROCEDURAL HISTORY

The relevant facts began when the defendant, Mildred Cook, hired the plaintiff, Todd Contracting, L.L.C. (Todd), to perform repairs and renovations on her 1930's two-story four-plex apartment building in Baton Rouge. The parties entered into two written contracts for the performance of the work. The first contract, dated August 15, 2009, was limited in scope and was to be completed within fourteen days. It involved work to repair a lower corner of the building that included the removal of the stucco exterior to determine the extent of damage to the building corner. A small portion of the stucco was removed on the first floor, and it was discovered that the wooden structural beams had rotted away. The work was expanded, with the authorization of Ms. Cook's sons, and ultimately, the entire corner of the building, from the first floor to the second floor, had to be repaired. As a result of the first contract and the discovery of the additional damage, a second contract, dated September 10, 2009, was agreed upon to repair the rest of the apartment building. The second contract was a cost-plus contract at a rate of \$742.80 per day without time limitations.

Close to the completion of the work on the second contract, Ms. Cook terminated Todd on June 4, 2010. Todd made a demand for payment for work performed prior to its termination, and when Ms. Cook failed to remit payment for the unpaid invoices, Todd filed suit in Baton Rouge City Court (City Court) to recover those amounts. Ms. Cook filed a reconventional demand, asserting she was overcharged under the contracts and that she was entitled to damages. After a trial on the merits, the City Court found in favor of Todd and awarded it

damages in the amount of \$9,347.69, plus interest and court costs. It also denied the reconventional demand of Ms. Cook.

Ms. Cook appealed the City Court judgment to the Nineteenth Judicial District Court, and the judgment was affirmed. Ms. Cook has now filed a suspensive appeal with this court.

APPELLATE REVIEW

Initially, we note that Ms. Cook has improperly taken an appeal from the district court's judgment. Appellate jurisdiction in this matter is vested in the district court pursuant to Louisiana Code of Civil Procedure Article 5001, which provides:

A. Except as provided in Paragraph B of this Article, an appeal from a judgment rendered by a parish court or by a city court shall be taken to the court of appeal.

B. Appeal from a judgment rendered by a city court located in the Nineteenth Judicial District shall be taken to the district court of the parish in which the court of original jurisdiction is located.

C. Appeal shall be on the record and shall be taken in the same manner as an appeal from the district court.

Because appellate jurisdiction is vested in the district court, this court lacks appellate jurisdiction. See **Miazza v. City of Mandeville**, 10-0304 (La. 5/21/10), 34 So.3d 849, 849 (per curiam).¹ See also LSA-Const. arts. V, §§ 16(B), 10(A).² However, a court of appeal may exercise supervisory jurisdiction over all matters arising within its jurisdiction. LSA-Const. art. V § 10(A).

¹ In **Miazza**, 34 So.3d at 849, the Louisiana Supreme Court stated:

Having found the legislature vested appellate jurisdiction in the district court, we conclude the court of appeal lacks appellate jurisdiction over this matter. See **Caire v. Stassi**, 379 So.2d 1056 (La. 1980) (holding statute granting appellate jurisdiction to district court divests court of appeal of appellate jurisdiction).

² Louisiana Constitution Article V, § 16(B) provides:

Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Also, Louisiana Constitution Article V, § 10(A) provides:

Jurisdiction. Except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of (1) all civil matters, including direct review of administrative agency determinations in worker's compensation matters as heretofore or hereafter provided by law, (2) all matters appealed from family and juvenile courts, and (3) all criminal cases triable by a jury, except as provided in Section 5, Paragraph (D)(2) of this Article. It has supervisory jurisdiction over cases which arise within its circuit.

Therefore, we convert Ms. Cook's appeal to an application for a supervisory writ of review and grant the request for supervisory review of the merits.

DISCUSSION

Under the manifest error standard, a factual finding cannot be set aside unless the appellate court finds that it is manifestly erroneous or clearly wrong. **Stobart v. State through Dept. of Transp. and Dev.**, 617 So.2d 880, 882 (La. 1993). In order to reverse a fact finder's determination of fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. **Id.** Thus, where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

At trial, Todd presented evidence demonstrating the scope of the work performed, including all invoices submitted to Ms. Cook, with receipts for the costs. Todd also provided testimony through its owner, Kasey Guillory, who testified as to the extensive work performed and for which the labor was invoiced. On the other hand, Ms. Cook argued that the work took too long, and she presented six witnesses on her behalf. At the conclusion of the trial, the City Court judge found the evidence in Todd's favor and stated, in oral reasons:

All of the pictures that have been put into evidence show me that once the stucco was removed it was very obvious that there was a lot of work to be done at this residence. . . . [T]he contract is the law between the parties, and there are two valid contracts in this case. The first one is . . . the one that was entered into August 15, 2009. It spells out exactly how much is going to be paid, you agreed to it, you paid it, and this . . . does have a time limit on there. For some reason you all agreed to a contract on September 10, '09, which . . . has no time limit. . . . There—he did not say that he would be finished with it in a certain amount of time. . . . [T]he two contracts are valid. They do represent the law between the parties. There is no evidence that Mr. Guillory did not do the work. There is no evidence that he charged for work he did not do. . . . [T]here's no evidence that he over charged for days that he only worked part of the time. . . . I am satisfied that Mr. Guillory did everything he was contracted to do. It didn't go as fast as you wanted. There wasn't anything in the four . . . corners of the contract that say there will be this many laborers on it at all time[s]. He did the work, you owe the money.

On appeal, the district court reviewed the record and considered the arguments of counsel before rendering judgment affirming the decision of the City Court. The district court gave the following oral reasons, in relevant part:

After careful review of the record and memoranda submitted in this matter, the court hereby finds that [the judge] was presented with testimony of witnesses and supporting evidence, and she carefully considered all of it in its entirety. After careful review of her ruling in favor of Todd Contracting, this court finds that a reasonable factual basis does exist, in fact, in her ruling, and the ruling of [the judge] contains no manifest error of law or fact. [The judge] has submitted written reasons in this matter In her reasons, [the judge] indicates that Ms. Cook did not submit any evidence proving that she is entitled to damages in this matter. [The judge] further found that Ms. Cook did not make any complaints about the work of the plaintiff, nor did she dispute the charges prior to entering into a second contract with the plaintiff.³

We have also carefully reviewed the record of the City Court proceedings and find no manifest error. A rational basis exists for the factual findings, and we find no error in the district court's decision to uphold the judgment of the City Court. Accordingly, we affirm the district court judgment.

CONCLUSION

For the above reasons, we convert Mildred Cook's appeal to an application for supervisory writs, grant the request for supervisory review of the merits, and affirm the district court's judgment, thereby upholding the award of damages in favor of Todd Contracting, L.L.C. and against Ms. Cook in the amount of \$9,347.69, with interest and costs, and denying Ms. Cook's reconventional demand. All costs of this supervisory writ application are assessed against Ms. Cook.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT OF REVIEW; WRIT APPLICATION GRANTED; AND DISTRICT COURT JUDGMENT AFFIRMED.

³ The judge's written reasons are attached to the brief that Ms. Cook filed with this court.