

NOT DESIGNATED FOR PUBLICATION

A & A TOWING, L.L.C. * **NO. 2000-CA-0563**
VERSUS * **COURT OF APPEAL**
CEDYCO CORPORATION * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
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APPEAL FROM
PLAQUEMINES 25TH JUDICIAL DISTRICT COURT
NO. 43-699, DIVISION "B"
HONORABLE WILLIAM A. ROE, JUDGE

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JUDGE MAX N. TOBIAS, JR.

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr., and Judge David S. Gorbaty)

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AFFIRMED

This suit arises from work contractually performed by the Plaintiff/Appellee, A & A Towing, L.L.C. (“A & A”) for the Defendant/Appellant, Cedyco Corporation (“Cedyco”). A & A maintains that it performed debris removal at two different Cedyco oil fields and is entitled to payment in full for its billings. Cedyco maintains that the work was inadequately and incompletely performed. A bench trial was held in March 1999. The court rendered judgment in favor of A & A for the amounts claimed plus 10% attorney’s fees, costs and legal interest. The court further recognized the two liens held by A & A as valid and enforceable against Cedyco and specifically enforceable against the property as described in the liens and judgment.

Cedyco devolutively appealed from the final judgment rendered on 15 April 1999. It presents the following assignments of error committed by the trial court:

- (1) failure to admit various photographs into evidence;

- 2 (2) failure to recognize and apply the amount of its claimed set-off;
- (3) improperly recognizing the plaintiff's liens;
- (4) improperly awarding attorney's fees; and,
- (5) refusing to allow Cedyco to file a reconventional demand.

We affirm.

First, Cedyco asserts the trial court erred when it failed to admit photographs as evidence. We have reviewed the trial transcript and find that regardless of whether or not the photographs were formally introduced, the court heard testimony regarding them, considered them in rendering its decision, and made provisions for them to be transferred to this court as proffered evidence. Thus, we are relieved from addressing the question directly since the error, if any, was cured by the proffer and was available for us to examine. We find the photographs unnecessary; however, they assist us to understand this case. Whatever error occurred, if any, was harmless.

Cedyco next raises the question of whether the court erred in finding that Cedyco was responsible to A & A for the full sum of its claims. In effect, Cedyco asks this court to overturn the trial court on various key factual issues. Our review of the record indicates that the trial court was presented with contradictory testimony by the witnesses requiring it to weigh the evidence before it as to truthfulness. Findings based on

witnesses's credibility are given great deference. *Rossell v. ESCO*, 549 So.2d 840 (La. 1989); *Goins v. Dept. of Police*, 570 So.2d 93 (La. App. 4th Cir. 1990). The reviewing court must give great weight to factual conclusions of the trier of fact. Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed on review. *Virgil v. American Guarantee & Liability Ins. Co.*, 507 So.2d 825 (La. 1987). In reviewing the factual findings of a trial court, an appellate court is limited to a determination of manifest error. *Stobart v. State/DOTD*, 617 So.2d 880 (La. 1993). Nonetheless, we are cognizant of our constitutional duty to review facts, not merely to decide if we, as a reviewing court, would have found the facts differently, but to determine whether the trial court's decision was manifestly erroneous, clearly wrong based on the evidence, or clearly without evidentiary support. *Ambrose v. New Orleans Police Dept. Ambulance Service*, 93-3099, 93-3110, 93-3112 (La. 7/5/94) 639 So.2d 216. We find no manifest error.

Cedyco's third assignment of error asserts that the liens that the trial court referenced in its judgment were not properly before the court and a part of the record. Our review of the trial transcript indicates that evidence

of the liens was presented through live testimony and, further, copies of the liens were attached to and thus a part of correspondence which was admitted into evidence. No objection was made as to the authenticity of the copies.

We find no error.

Cedyco's fourth assignment of error is dependent on the success of its third. Having found that the court did not err in recognizing the liens, we further find that the court did not err in enforcing the provisions of La. R.S. 9:4862B(4). That statute specifically authorizes the award of reasonable attorney's fees of not more than ten percent of the amount claimed in favor of the holder of the privilege against oil, gas and/or water well properties.

We find no error.

Finally, Cedyco assigns as error that the trial court refused to allow the last minute filing of its reconventional demand. We empathize with the frustration that a trial judge experiences when confronted with a motion such as this on the morning of trial, especially in light of the defendant's failure to appear at the previously scheduled trial. The legislature has seen fit to provide a specific procedure by which a trial court may order the separate trial of an incidental action, thereby avoiding any delay of the principal

demand. La. C.C.P. art. 1038. We find no abuse of discretion in not permitting the filing and delaying trial court.

For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED