

STATE OF MICHIGAN
COURT OF APPEALS

ZIAD ZAGHATI,

Plaintiff-Appellee,

v

CLASSIC HOME BUILDERS, INC.,

Defendant-Appellant.

UNPUBLISHED

May 19, 1998

No. 197908

Wayne Circuit Court

LC No. 95-516761 CH

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's denial of his motions for judgment notwithstanding the verdict, for entry of new or amended judgment, or for a new trial. We affirm in part, and remand for further proceedings.

Plaintiff brought suit seeking specific performance and damages after defendant declared plaintiff to be in breach of their contract and discontinued construction of plaintiff's new residence. Following a bench trial with an advisory jury, the trial court adopted the jury's findings and entered judgment in favor of plaintiff. The court ordered defendant to convey title to the unfinished home to plaintiff, and to pay plaintiff \$12,000 in anticipation of plaintiff's costs beyond the unpaid portion of the original contract price for completing his home. On appeal, defendant argues that the trial court failed to issue adequate findings of fact, that the verdict was against the great weight of the evidence, and that the court erroneously excluded from evidence an early draft of building specifications.

Where a court is the ultimate trier of fact, the court has a duty to issue findings of fact and conclusions of law concerning contested matters. MCR 2.517(A) provides as follows:

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

Although the level of detail in a court's findings of fact and conclusions of law will vary depending on the nature of the case, the court's findings should be sufficiently detailed as to indicate the factual basis for the court's conclusions. *Ray v Mason Co Drain Comm'r*, 393 Mich 294, 302; 224 NW2d 883 (1975).

Here, it is clear that the trial court did not make its own findings of fact, but instead merely adopted the conclusions of the advisory jury. The trial court's statement of findings consists of a summary of the advisory jury's findings plus calculations to determine the monetary aspect of the remedy. At the subsequent motion hearing, the court indicated plainly that it had deferred to the advisory jury, stating, "All I did was plug in the figures based on the advisory jury." However, although a court may weigh the findings of an advisory jury, the court must nonetheless "find the facts specially." MCR 2.517(A)(1). In this instance, the trial court failed to issue findings that plainly reflected the court's independent judgment. Further, the insufficiency of the court's findings leaves an inadequate record for appellate review of the verdict and relief granted. For these reasons, we remand this case to the trial court for factual findings and conclusions of law as required by MCR 2.517(A). See *Abner A Wolf, Inc v Walch*, 385 Mich 253, 266-267; 188 NW2d 544 (1971).

We find no merit in defendant's argument that the trial court erred by not admitting a preliminary building specification sheet into evidence. Defendant offered the unsigned document to prove defendant's representative's state of mind when negotiating the contract, and to shed light on the negotiations taking place at the time the document was prepared and presented. The trial court ruled the document irrelevant. This Court reviews rulings on the relevance of evidence for an abuse of discretion. *Dickerson v Raphael*, 222 Mich App 185, 201; 564 NW2d 85 (1997).

Evidence is relevant if it has any tendency to make the existence of a fact, which is of consequence to outcome of the action, more probable or less probable than it would be without the evidence. MRE 401. Although all relevant evidence is presumptively admissible, MRE 402, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence, MRE 403.

Here, a signed building specification sheet had been admitted into evidence before the unsigned earlier such sheet was offered and excluded. Further, the document in question included handwritten notes purportedly added after the time that defendant presented it to plaintiff. Additionally, because defendant's representative freely testified about his state of mind, and the nature of the negotiations with plaintiff, at the time that he created the specifications sheet, the court could have excluded the document as merely cumulative evidence. For these reasons, the trial court did not err in excluding that evidence.

Affirmed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.