**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1492**

John Koppi,
Appellant,

vs.

Robin Marsh,
Respondent,
XYZ Corporation, et al.,
Defendants.

**Filed August 3, 2020**
**Affirmed**
**Florey, Judge**

Anoka County District Court
File No. 02-CV-18-533

John Koppi, Big Lake, Minnesota (pro se appellant)

Robin J. Marsh, Forest Lake, Minnesota (pro se respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

**U N P U B L I S H E D  O P I N I O N**

**FLOREY**, Judge

Following a court trial, appellant seeks review of a district court's order awarding appellant damages alleged to be erroneously low and denying his claim on a mechanic's lien. We affirm.

## FACTS

Appellant John Koppi operates a tree-servicing business in Minnesota. Following a severe storm in the summer of 2017, respondent Robin Marsh sought to employ Koppi's services to clear felled trees and debris from his property. Marsh indicated that he would not commit to any particular agreement until he had consulted with his insurance-claims adjuster because he did not want to hire Koppi for more than the dollar amount that Marsh's insurance claim would cover. On July 19, Koppi met with Marsh and his claims adjuster. After inspecting the property, the claims adjuster informed Marsh that the insurance company would cover the costs of clearing a path to all structures, removing all trees from structures, and trimming trees that were either on or within three-feet of suspended powerlines; but the adjustor did not estimate the total cost of those covered services at that time. Koppi then hand-drafted an agreement for the services—which provided that Koppi would "cut trees off all structures" for the price of $50,000 and "haul away up to one $500 load"—and both parties signed (the July 19 contract). Later that day, Koppi returned with a printed document which contained the same terms as those in the July 19 contract, but it contained an additional clause titled "Notice of Lien Rights." The new clause purported to summarize Minnesota Lien law and provide Marsh with notice of Koppi's right to file a lien against the property in the event of non-payment.

Throughout the course of the work, the parties had several discussions and disputes with respect to the terms of their agreement. On July 21, Koppi orally agreed to undertake some additional work that was not included in the July 19 contract: trimming certain trees with branches which extended over a parking space; moving trash; and hauling debris until

Marsh instructed Koppi to stop, as opposed to the original one-load limit. Marsh orally agreed to pay an additional $1,500 for the tree-trimming and trash-removal and $500 for each additional haul and wrote Koppi a check as partial payment for the additional hauling (the July 21 agreement).

Another discussion and dispute occurred on July 24 after Marsh instructed Koppi to stop his work on the property. Marsh presented Koppi with a handwritten document titled, "Contract Between Robin Marsh and John Koppi Tree Service," which provided that Koppi agreed to work "for Robin Marsh for the money that the insurance company is going to pay for the work that his company is doing." Koppi initially refused, but after Marsh threatened to withhold further payments, Koppi signed the document (the July 24 agreement).[1] As he signed, Koppi commented that Marsh's proposed agreement was "irrelevant" because he had already completed his obligations under the July 19 contract.

After completing the work, Koppi sent Marsh an invoice for the additional work that was the subject of the July 21 agreement, whereupon Marsh issued Koppi a partial payment of $1,000. Later, Koppi sent Marsh a finalized invoice of $59,506.25—accounting for the previous invoice (for the work described in the July 21 agreement), the $3,000 in payments Marsh had made up to that point, and the work contemplated by the original July 19 contract. Marsh, having received nearly $23,000 from his insurance claim, issued Koppi a check for $20,000 and wrote "paid in full" on the memo line. The district court found that Koppi insisted that Marsh strike the "paid in full" language before he

[1] Koppi's first signature was followed by the phrase "under duress," but he later signed it again at Marsh's request without qualification.

would accept it, that Koppi prefaced his endorsement of the check with the words "under protest," and that the check was deposited with Marsh's "paid in full" language stricken. Having applied the $20,000 payment against the balance, Koppi prepared a final invoice with an outstanding balance of $39,506.25. Marsh tendered no further payments.

Two weeks later, Koppi's attorney filed a mechanic's lien against Marsh's property in the amount of the purported outstanding balance and brought a breach-of-contract claim against Marsh. Following a bench trial wherein both Koppi and Marsh testified, the district court found the foregoing facts and concluded, in relevant part, (1) that when Koppi signed the document Marsh presented on July 24, the July 19 contract was still executory and was therefore modified by the same and (2) that Koppi's services were not "improvements" to the property as required by the mechanic's-lien statute. From its findings and determinations, the court ultimately concluded that the sum of the enforceable contractual obligations between the parties called for Koppi to perform services as he did and for Marsh to pay Koppi a total of $29,951.99. Therefore, the district court concluded that Marsh breached the modified contract by failing to pay the full amount when it was due. Accounting for the payments already made, the court awarded Koppi a judgment of $6,951.99.[2] The district court also held that Koppi did not hold a valid mechanic's lien against Marsh's property because Koppi's services were not "improvements" as is required by the mechanic's-lien statute. Koppi's attorney withdrew from representation, and Koppi appealed pro se, arguing that the district court erred by (1) finding that the July 19 contract

[2] This figure was subsequently adjusted to correct for a minor clerical error. Neither the error nor the amendment to the judgment are at issue here.

had not been completed by July 24 and (2) concluding that Koppi did not have a valid mechanic's lien against Marsh's property.[3]

**D E C I S I O N**

It is undisputed that no contracts involved herein are within the statute of frauds. Likewise, the parties agree that the July 24 agreement was not accompanied by additional consideration. While consideration is a necessary component to the formation of a valid contract, there need not be consideration if the agreement serves as an amendment to an existing contract not within the statute of frauds. *Mitchell v. Rende*, 30 N.W.2d 27, 30 (Minn. 1947). For an agreement to be a valid amendment, the existing contract to be amended must be executory at the time of amending. *Id.* "The term 'executory contract' refers to a contract on which some performance remains due on both sides." *Sitek v. Striker*, 764 N.W.2d 585, 591 (Minn. App. 2009) (quotation omitted).

[3] These are the contentions that are discernable from Koppi's brief. Koppi makes a number of specific factual allegations that contradict the district court's findings without any specific attribution of error and vaguely alludes to and implies other potential legal issues. To the extent that additional issues or arguments were intended, we conclude that they are inadequately briefed and not properly before this court. *McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (stating that arguments inadequately briefed are waived where the appellant alludes to issues but "fails to address them in the argument portion of his brief"); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it."); *see also Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings" and that the court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings").

Koppi argued before the district court that the July 19 contract was not executory when he signed the July 24 agreement because he had completed his performance at that time. And on appeal, Koppi again argues that he completed his obligations before signing the proposed amendment. We interpret this argument to be a challenge to the district court's finding to the contrary, as "this court cannot serve as the fact-finder." *Wright Elec., Inc. v. Ouellette*, 686 N.W.2d 313, 324 (Minn. App. 2004).

"[W]hen the issue turns on the district court's findings of fact, we review the findings for clear error . . . ." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). "If there is reasonable evidence to support the district court's findings, we will not disturb them." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). That is, we will only disturb a district court's findings of fact where, upon review of the record, we are "left with the definite and firm conviction that a mistake has been made." *Thornton*, 933 N.W.2d at 790 (quotation omitted).

Aside from the testimony of the parties, there is no evidence in the record that sheds light on the issue of whether Koppi had completed performance prior to signing the July 24 agreement. Limited to the conflicting testimony of the only two witnesses, the district court was limited to basing its finding on its assessment of the witnesses' credibility on this point. "The assessment of witnesses' credibility is the unique function of the trier of fact." *Kubis v. Cmty. Mem'l Hosp. Ass'n*, 897 N.W.2d 254, 260 (Minn. 2017) (quotation omitted). It is well established that we defer "to the opportunity of the trial court to assess the credibility of the witnesses." *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Here, the district court ultimately concluded that Koppi's testimony as to whether the work was completed at the time of signing was not credible. We agree.

While Koppi acknowledged that he was working at the time of signing on July 24, he testified that the work he was performing at that time was pursuant to Marsh's July 21 request for additional work—not the July 19 contract. However, the district court observed, Koppi also testified that the specific tasks he was then undertaking included trimming trees that had fallen too close to suspended power lines. Koppi had earlier testified that he understood—from his conversation with Marsh and his insurance-claims adjuster—that the July 19 contract included trimming trees that had fallen on or too close to the powerlines. The district court observed that this contradicted his contention that the work he was doing on July 24 was not part of the July 19 agreement. Because Koppi offered contradictory testimony, the district court considered it not credible. Therefore, the court held that the July 19 contract was still executory, because "[a]t a minimum, Koppi had not completed working on trees near the powerlines on July 24."

On appeal, Koppi does not provide any specific arguments as to why the district court's finding is not supported by the evidence. That finding, which was based solely on Koppi's own contradictory testimony, has ample support in the record and therefore was not clearly erroneous.

Koppi also argues that the district court erred in holding that he did not have a valid mechanic's lien against Marsh's property.

Mechanic's liens are governed by statute and allow, under certain circumstances, someone who "contributes to the improvement of real estate by performing labor, or

furnishing skill, material or machinery" to hold a lien against the property in question. Minn. Stat. § 514.01 (2018). The district court concluded that Koppi did not hold a valid lien against Marsh's property because his services did not "contribute[] to the improvement" thereof and were merely "ordinary repairs."

Whether any given service contributes to an improvement to property under Minn. Stat. § 514.01 presents a mixed question of law and fact. *Kloster-Madsen, Inc. v. Tafi's, Inc.*, 226 N.W.2d 603, 607 (Minn. 1975). We review such mixed questions de novo. *Burgmeier v. Bjur*, 533 N.W.2d 67, 70 (Minn. App. 1995). "Whoever . . . contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated . . . shall have a lien upon the improvement, and upon the land on which it is situated." Minn. Stat. § 514.01. We have held that to establish a lien right under this section, a claimant must "show that the real estate has been improved, that he supplied labor or materials, and that labor or materials were supplied for one of the purposes stated in the statute." *M & G Servs., Inc. v. Buffalo Lake Advanced Biofuels, L.L.C.*, 895 N.W.2d 277, 282 (Minn. App. 2017) (quotation omitted). With respect to what constitutes an "improvement" under the statute, we have held that, by definition, "an improvement is a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Kloster-Madsen, Inc.*, 226 N.W.2d at 607.

The district court did not provide extensive reasoning for its conclusion that "clearing trees and debris from the property following a storm was an ordinary repair and

not an improvement." Nevertheless, because Koppi's services were limited to cleaning and repairing the property after a storm, we agree. Koppi did not "enhance [the property's] capital value" or render it "more useful or valuable" than it had been before the storm damaged it. *Id.*

Koppi cites *Consol. Lumber Co. v. N. Lakes Constr., Inc.* for the proposition that "clearing" and "grubbing" are improvements under the statute. No. A10-1472, 2011 WL 1545794, at *3 (Minn. App. Apr. 26, 2011). However, "[u]npublished opinions of the court of appeals are not precedential." Minn. Stat. § 480A.08, subd. 3(c) (2018); *Vlahos v. R & I Constr., Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004) (pausing "to stress that unpublished opinions of the court of appeals are not precedential" and noting that "[t]he danger of miscitation is great because unpublished decisions rarely contain a full recitation of the facts"). Moreover, even if *Consol. Lumber Co.* was precedential and reliably contained a full recitation of the relevant facts, the clearing and grubbing performed in that case were done to prepare the sight for construction of a new development—which undeniably "improved" the property. That is, the issue in *Consol. Lumber Co.* was not whether clearing or grubbing can constitute improvements—those activities are explicitly provided for in the lien statute—but whether, in the circumstances of that case, those were the first visible activities.

Because Koppi's services did not improve the property as is required under the mechanic's lien statute, Koppi holds no valid lien.

**Affirmed.**