An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1436

NORTH CAROLINA COURT OF APPEALS

Filed: 01 August 2006

B & L SURVEYS,

Plaintiff,

v. Davidson County
No. 05 CVD 656

ZANDLE B. CLINE,

Defendant.

Appeal by defendant from order entered 28 July 2005 by Judge Dale Graham in Davidson County District Court. Heard in the Court of Appeals 17 May 2006.

Samuel Todd Leonard and Kim Howard Black, both pro se, for plaintiff-appellee.

Morgan, Herring, Morgan, Green, Rosenblutt & Gill, L.L.C., by John Haworth, for defendant-appellant.

ELMORE, Judge.

Zandle Cline (defendant) appeals a judgment entered by the district court awarding B & L Surveys (plaintiff) $2,100.00 for work performed under an implied contract. Defendant does not challenge the existence of the implied contract. Accordingly, our sole inquiry is whether the evidence presented in the district court was sufficient to support the damage award. We conclude that it was not.

The district court found that an implied contract existed between plaintiff and defendant for various surveying and engineering services under the doctrine of *quantum meruit*. That principle is defined as follows:

> Quantum meruit is an equitable principle that allows recovery for services based upon an implied contract. The law implies a promise to pay for services rendered by one party to another where the recipient knowingly and voluntarily accepts the services and there is no showing that the services were gratuitously given.

Harrell v. Construction Co., 41 N.C. App. 593, 595, 255 S.E.2d 280, 281 (1979) (citing *Johnson v. Sanders*, 260 N.C. 291, 132 S.E.2d 582 (1963)), *aff'd*, 300 N.C. 353, 266 S.E.2d 626 (1980). Since defendant submitted to the City of Lexington required survey records for development that plaintiff generated, and plaintiff brought forth those records at the district court hearing, the court properly concluded that an implied contract existed for the work performed.

As with any implied contract, there was no express agreement regarding the price to be paid plaintiff for its services. Further, our Supreme Court has held that "[d]amages are never presumed. The burden is always upon the complaining party to establish by evidence such facts as will furnish a basis for their assessment, according to some definite legal rule." *Lieb v. Mayer*, 244 N.C. 613, 616, 94 S.E.2d 658, 660 (1956). Thus, the fact-finder must determine the reasonable value of the uncompensated goods or services in order for plaintiff to recover more than nominal damages.

> The general rule is that when there is no agreement as to the amount of compensation to be paid for services, the person performing them is entitled to recover what they are reasonably worth, based on the time and labor expended, skill, knowledge and experience involved, and other attendant circumstances, rather than on the use to be made of the result or the benefit to the person for whom the services are rendered.

Turner v. Furniture Co., 217 N.C. 695, 697, 9 S.E.2d 379, 380 (1940).

Factors such as the "supply, demand, and quality" of the goods or services may be considered. *Cline v. Cline*, 258 N.C. 295, 300, 128 S.E.2d 401, 404 (1962). "Moreover, the reasonable value of services rendered is determined largely by the nature of the work and the customary rate of pay for such work in the community at the time the work is performed." *Environmental Landscape Design v. Shields*, 75 N.C. App. 304, 307, 330 S.E.2d 627, 629 (1985). But this Court has held that invoices and bills alone, representing plaintiff's charges for goods and services, are not sufficient to support a jury award as to the reasonable value of the goods and services. *Harrell*, 41 N.C. App. at 595-96, 255 S.E.2d at 281-82; *see also Hood v. Faulkner*, 47 N.C. App. 611, 617, 267 S.E.2d 704, 707 (1980) (Although relevant, neither a current bill nor plaintiff's opinion that the bill is a reasonable amount, alone is sufficient to establish reasonable value.). However, combining current bills with evidence of past payments in accordance with previous bills might be considered as sufficient evidence of the reasonable value of goods and services. *See Booe v. Shadrick*, 322 N.C. 567, 571, 369 S.E.2d 544, 556 (1988) (holding "that

[witness's] testimony as to what was billed for the materials and labor *and* the evidence of payment for part of it at the billed rate is evidence sufficient for the jury to find reasonable value to the defendants of the remaining goods and services for which bills were submitted and no payment was made.").

Plaintiff contends it presented sufficient evidence to support the district court's judgment of $2,100.00 as a reasonable value of the unpaid portion of its services; however, plaintiff did not present any evidence other than the work-products themselves together with current and previous billing invoices. Plaintiff failed to present evidence showing the "time and labor expended, skill, knowledge and experience involved," the "supply, demand, and quality," or "the customary rate of pay for such work in the community at the time the work is performed." Current billing invoices in isolation are not sufficient to support the district court's award of actual damages. *See Harrell*, 41 N.C. App. at 595-96, 255 S.E.2d at 281-82.

Plaintiff's evidence of the current billing invoice combined with a previously paid invoice for a "sketch plan" is similarly insufficient, because plaintiff currently seeks compensation for various "fieldwork" and the preparation of an "annexation map and description for the City of Lexington Planning Department," both of which bear no relation to what value might have been customary for a prior "sketch plan."

Finding no evidence supporting the district court's assessment of the reasonable value of the unpaid portions of plaintiff's

services, we remand the case for further proceedings on the issue of damages, *i.e.* the value of plaintiff's services.

Reversed and remanded.

Judges McGEE and STEELMAN concur.

Report per Rule 30(e).