NO. COA06-559

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

FRANK VIGNOLA and wife
PHYLLIS M. VIGNOLA,

Plaintiffs,

v. Carteret County
No. 03 CVS 1328

APOGEE CONSTRUCTION
COMPANY,

Defendant.

Appeal by defendant from judgment entered 12 October 2005 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 16 November 2006.

Harvell and Collins, P.A., by Wesley A. Collins and Amy C. Shea, for plaintiffs-appellees.

Wheatly, Wheatly, Weeks, Valentine & Lupton, P.A., by Claud R. Wheatly, III, for defendant-appellant.

JACKSON, Judge.

On or about 25 April 2002, Frank and Phyllis Vignola ("plaintiffs") and Apogee Construction Company ("defendant") entered into a contract for the construction of a single-family residential dwelling located in Carteret County, North Carolina, at a sum of $175,495.20. The contract contained a warranty that "all construction, labor, materials and other services on the building

[would] be accomplished in a workmanlike manner," and defendant delivered to plaintiffs an additional Contractor's Warranty Guarantee providing that "the material and workmanship shall be free from defects" and agreeing to make necessary repairs at no additional cost to plaintiffs during the first year of occupancy.

Within one year of completion of the dwelling, plaintiffs discovered problems with the construction, and on 26 November 2003, plaintiffs filed suit against defendant for breach of contract and express warranty, breach of implied warranty of workmanlike construction, and negligent construction. Specifically, plaintiffs alleged twenty-five defects that included the following: permanently-affixed light fixtures that were substantially off-center; a garage floor that had large cracks and lacked proper expansion joints and as a result, water seeped through the cracks; several exterior doors that did not open and close properly; a driveway that was sloped toward the house causing water to collect at the front of the house; shelving in multiple closets and cabinets in the kitchen that were not adequately secured to the walls; certain walls that were cracking; numerous ceramic floor tiles inside the house that were cracking; and sliding glass doors at the back of the house that leaked and did not open and close properly.

On 28 September 2005, the jury returned a verdict in favor of plaintiffs in the amount of $49,000.00. Judgment was filed on 12 October 2005, and defendant filed timely notice of appeal on 4 November 2005.

On appeal, defendant contends that the trial court erred: (1) in allowing plaintiffs' expert, Howard Rigsby, to testify concerning North Carolina Building Code violations when he was unaware that Carteret County had not adopted certain indices and appendices to the North Carolina Building Code; (2) in refusing to allow defendant to point out to the jury certain details on the plans and specifications during cross-examination after plaintiffs had shown the plans and specifications to the jury; (3) in allowing Edward Butler, Jr. to give certain testimony when he was found not to be an expert; (4) in failing to incorporate the portion of North Carolina Pattern Jury Instructions, Civil 503.21, setting forth the requirement for the jury to determine, when calculating damages, whether the corrective work would be economically unreasonable to perform; (5) in charging on incidental damages when there was no evidence concerning incidental damages; and (6) in refusing to give a definition of "workmanlike manner."

As a preliminary matter, we note that defendant has failed to provide the applicable standard of review for any of its assignments of error. Rule 28(b)(6) of the Rules of Appellate Procedure provides that

> [t]he argument shall contain a concise statement of the applicable standard(s) of review for each question presented, which shall appear either at the beginning of the discussion of each question presented or under a separate heading placed before the beginning of the discussion of all the questions presented.

N.C. R. App. P. 28(b)(6) (2006). Defendant has neither stated nor provided citation for the applicable standards of review, either at

the beginning of each question presented or under a separate heading. This rule violation alone could be fatal to defendant's appeal. *See State v. Summers*, __ N.C. App. __, __, 629 S.E.2d 902, 908 (declining to address one of the defendant's arguments when he failed to include a statement of the applicable standard of review), *appeal dismissed and disc. rev. denied*, __ N.C. __, 637 S.E.2d 192 (2006). Nevertheless, we choose to order defendant's counsel to pay the printing costs of this appeal pursuant to Rule 34(b). *See Caldwell v. Branch*, __ N.C. App. __, __, 638 S.E.2d 552, 555 (2007). We therefore instruct the Clerk of this Court to enter an order accordingly.

Additionally, with respect to defendant's second question presented, identified as its fifth assignment of error, defendant has provided no substantive argument and merely makes the conclusory statement that

> [t]he Plaintiff[s] offered evidence with the expert witness and the Court refused to allow the Defendant to have the witness to [sic] show the details on the plans and specifications to the jury as to what they actually showed. Moreover, the plans and specifications were an integral part of the contract.

Defendant does not identify the "details" to which it is referring, but instead, defendant proceeds to argue that Edward Butler, witness for plaintiffs, improperly testified to matters more properly described by an expert witness. Specifically, defendant contends that "[Butler] should have been qualified as an expert witness," and that allowing Butler to provide cost estimates was akin "to allowing a paralegal working for an attorney to come to

court and give expert opinion rather than using the attorney for whom he/she works or is employed." This argument, however, falls squarely within defendant's third question presented, identified by assignments of error numbered eight, nine, ten, eleven, and twelve. Defendant offers no substantive argument in support of its fifth assignment of error, and this alleged error is not mentioned in the brief. *See* N.C. R. App. P. 28(b)(6) (2006). Without any legal argument to support the second issue in defendant's brief, this Court has no way of evaluating defendant's contention, and "[i]t is not the role of the appellate courts . . . to create an appeal for an appellant." *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (per curiam), *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005). Accordingly, defendant's second argument is dismissed.

Proceeding to the merits of defendant's appeal, defendant contends in its first argument that the trial court erred in allowing Howard J. Rigsby to testify concerning North Carolina Building Code violations when he admittedly was unaware that Carteret County had not adopted certain indices and appendices to the North Carolina Building Code. We disagree.

Howard Rigsby ("Rigsby") received his bachelor's degree in mechanical engineering from North Carolina State University in 1996, and he received his master's degree in engineering in 2001. He worked as an engineer for Accident Reconstruction Analysis, Inc., a forensic engineering firm. The majority of Rigsby's work was spent on building construction, both residential and

commercial. A licensed engineer and general contractor, Rigsby had over ten years experience inspecting residential homes and had inspected over fifty homes in Carteret County alone. Rigsby personally visited plaintiffs' house on 22 October 2004, and after documenting his findings with photographs, field notes, and measurements, Rigsby compiled his findings and conclusions in a report.

After plaintiffs' counsel offered Rigsby as an expert, the jury was removed from the courtroom, and defense counsel conducted *voir dire* of Rigsby. During *voir dire*, defense counsel questioned Rigsby as to his knowledge of the North Carolina Building Code and its applicability in Carteret County. The court explained to counsel several times that "[t]his doesn't have anything to do with his qualification as an expert. You can ask him about his educational background, his experiences and those things." The questioning of the witness, however, devolved into a debate between defense counsel and the trial court over the applicability in Carteret County of certain appendices of the North Carolina Building Code. The court explained its position that Carteret County did not have the authority to opt out of certain portions of a statewide code, yet defense counsel continued to question the witness on the issue. The court reiterated that

> [w]e're not going to go through cross-examination of this man about his knowledge of the building code, okay.
>
> You can save that for when the jury's in here and go through on cross-examination. We're only talking about his qualifications to

> be tendered and accepted by the Court as an expert.
>
> . . . .
>
> I think there will be proper subject of grist for the cross-examination mill, but as far as criteria for his expertise, I don't think it has anything to do with that.

It is not clear from defendant's brief whether or not defendant contends that it was error for the trial court to find that Rigsby qualified as an expert. However, it is well-established that "[a] finding by the trial judge that the witness qualifies as an expert is exclusively within the discretion of the trial judge and is not to be reversed on appeal absent a complete lack of evidence to support his ruling." *Hill v. Williams*, 144 N.C. App. 45, 53, 547 S.E.2d 472, 477, *disc. rev. denied*, 354 N.C. 217, 557 S.E.2d 531 (2001). Here, Rigsby was qualified to testify as an expert based on his knowledge, skill, experience, training, and education, and his background therefore made him better qualified than the jury to form an opinion on the construction and engineering defects with plaintiffs' house. *See* N.C. Gen. Stat. § 8C-1, Rule 702(a) (2005).

Defendant also argues in this same section of the brief that the trial court erred in stating in front of the jury:

> Ladies and gentlemen, the State Building Code is a code that is established by the legislature of this State for the totality of the State of North Carolina. Carteret County doesn't have the authority to adopt or not adopt part of it. It's a State law.
>
> Don't ask him [Rigsby] about that again.

Defendant argues that the trial court's action was in contravention of this Court's ruling in *Shore v. Farmer*, 133 N.C. App. 350, 515

S.E.2d 495, *rev'd on other grounds*, 351 N.C. 166, 522 S.E.2d 73 (1999), where we provided that "[a] trial court may not 'express during any stage of the trial, any opinion in the presence of the jury on any *question of fact* to be decided by the jury." *Farmer*, 133 N.C. App. at 356, 515 S.E.2d at 499 (emphasis added) (quoting N.C. Gen. Stat. § 15A-1222 (1997)). However, in the passage quoted above, the trial court was not expressing an opinion on a question of fact to be decided by the jury, but rather, the court was expressing its opinion on a question of law — the applicability of the North Carolina Building Code to a particular county. Whether the trial court was correct in its opinion regarding the applicability of the Building Code is not an issue properly before this Court, *see* N.C. R. App. P. 28(b)(6) (2006), and accordingly, we decline to address the issue.

Furthermore, "to justify award of a new trial on appeal, a defendant must establish that comments of the trial court 'were so disparaging in their effect that they could reasonably be said to have prejudiced the defendant.'" *Farmer*, 133 N.C. App. at 356-57, 515 S.E.2d at 499 (quoting *Bd. of Transp. v. Wilder*, 28 N.C. App. 105, 107, 220 S.E.2d 183, 184 (1975)). Here, defendant has failed to show how the court's statement was prejudicial. The jury was not present for the extended discussion between the court and defense counsel during *voir dire* of Rigsby on the applicability of the North Carolina Building Code in Carteret County. When viewed in isolation, this brief statement could not reasonably be viewed as prejudicial toward defendant.

Additionally, the court's statement was a reasonable reaction to defense counsel's repeated questioning of Rigsby on the issue. The trial court noted defense counsel's objection to Rigsby's testimony following a lengthy *voir dire* limited to the issues surrounding the Building Code. Defense counsel brought up the issue once again during cross-examination of Rigsby, and it is well-settled that trial courts have "wide discretion . . . in controlling the arguments presented by counsel." *State v. Smith*, 139 N.C. App. 209, 218, 533 S.E.2d 518, 523, *appeal dismissed*, 353 N.C. 277, 546 S.E.2d 391 (2000). Interpreting North Carolina General Statutes, section 7A-97, this Court has held that

> "in jury trials the whole case as well of law as of fact may be argued to the jury." The statute is permissive in allowing the law to be argued to juries, but presents no mandatory requirement that, upon request by defendant, he be allowed to argue his version of the law.

Id. (quoting N.C. Gen. Stat. § 7A-97 (1997)). Defense counsel continued to question Rigsby on the applicability of the North Carolina Building Code in Carteret County, and after warning defense counsel not to pursue that line of questioning, the trial court did not abuse its discretion in telling defense counsel in front of the jury not to ask Rigsby more questions on the Code's applicability. Accordingly, this assignment of error is overruled.

In its third argument, defendant contends that the trial court erred in permitting Edward E. Butler, Jr. ("Butler") to give expert testimony when the trial court did not find him to be an expert. Plaintiffs tendered Butler "for the limited purpose of estimating the jobs that's [sic] the subject of this case." The trial court

noted that it "[would] not receive him as an expert witness, but [would] allow him to testify as to the cost estimates that he formulated in this case." Defendant objected, but his objection was overruled, and Butler testified as to the estimated costs of the necessary repairs to plaintiffs' house.

Although the trial court did not find Butler to be an expert, it expressly permitted Butler to testify as to the estimated costs of the repairs needed for plaintiffs' house. Our Supreme Court has held that

> [i]mplicit in this admission is a holding the witness was qualified to express the opinion. "[T]he rule with us is that the failure of a trial judge to specifically find that a witness is an expert before allowing him to give expert testimony will not sustain a general objection to his opinion evidence . . . if there is evidence in the record upon which the court could have based the finding . . . it will be assumed that the court found the witness to be an expert."

Apex Tire & Rubber Co. v. Merritt Tire Co., Inc., 270 N.C. 50, 53, 153 S.E.2d 737, 739–40 (1967) (quoting *Teague v. Duke Power Co.*, 258 N.C. 759, 764, 129 S.E.2d 507, 511 (1963)). Therefore, "[b]y admitting the evidence, the Court held in effect that the witness was an expert in the field covered by his testimony." *Id.* at 54, 153 S.E.2d at 740. Butler had been employed as an estimator for the past seven years, estimating costs for a variety of residential and commercial construction jobs, including but not limited to, maintenance, remodeling, repair, and new construction. He had

built a house for himself as well as a "spec house,"[1] and he explained that "since I was a teenager I have estimated materials and been around, you know, construction." "Whether someone qualifies to testify . . . in a particular field is within the sound discretion of the trial court," *Duke v. Hill*, 68 N.C. App. 261, 263, 314 S.E.2d 586, 588 (1984), and based on Butler's experience in the field of estimating construction jobs, the trial court did not abuse its discretion in permitting him to testify as to his estimates for repairs to plaintiffs' house.

In its next argument, defendant contends that the trial court erred in refusing to incorporate the portion of Pattern Jury Instruction 503.21 relating to whether repairs would be economically unreasonable to perform. Specifically, the instruction reads:

> Direct damages are the economic losses that usually or customarily result from a breach of contract. In this case, you will determine direct damages, if any, by determining the reasonable cost to the plaintiff of labor and materials (and other costs) necessary to correct the work to bring the improvement into conformity with the requirements of the contract.
>
> *If there is any evidence that the cost to correct would be economically unreasonable, the court must give the following additional instruction*: However, if you find that this corrective work would be economically unreasonable to perform under the

[1]A "spec house" has been defined as a house built by a speculative home-builder on land he owns, in anticipation of selling the improved parcel on the market. *See United States v. Hanson*, 161 F.3d 896, 898 n.5 (5th Cir. 1998); *Mt. Homes, Inc. v. United States*, 912 F.2d 352, 353 n.1 (9th Cir. 1990).

> circumstances, a different measure of damages will apply.

N.C.P.I., Civ. 503.21 (2003) (emphasis in original). The instruction describes several factors to consider in determining whether corrective work would be economically unreasonable to perform. *See id.* If the jury then determines that corrective work would be economically unreasonable, it must calculate direct damages using the following formula:

> First, you will determine the fair market value of the [improvement] as actually constructed by the defendant . . . . Second, you will determine the fair market value the improvement would have had if it had been constructed in conformity with the requirements of the contract. Fair market value is the amount which would be agreed upon as a fair price by a seller who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so. Third, you will subtract the fair market value of the improvement as actually constructed from the fair market value as contracted for.

Id.

"A trial court must instruct the jury on the law with regard to every substantial feature of a particular case." *Carrington v. Emory*, __ N.C. App. __, __, 635 S.E.2d 532, 533 (2006) (citing *Mosley & Mosley Builders, Inc. v. Landin Ltd.*, 87 N.C. App. 438, 445, 361 S.E.2d 608, 612 (1987)). To prevail on its assignment of error, defendant "must demonstrate that (1) the requested instruction was a correct statement of law and (2) was supported by the evidence, and that (3) the instruction given, considered in its entirety, failed to encompass the substance of the law requested and (4) such failure likely misled the jury." *Liborio v. King*, 150

N.C. App. 531, 534, 564 S.E.2d 272, 274, *disc. rev. denied*, 356 N.C. 304, 570 S.E.2d 726 (2002).

In the case *sub judice*, the jury instruction requested by defendant was a correct statement of the law. This Court has held that

> [i]n a breach of warranty action there are two methods of measuring damages. The first method looks at the difference in the value of the house as warranted and its value as actually built. This method is used when the trier of fact determines that a substantial part of the work would have to be redone to comply with the contract. The second method measures the damages by the cost of repairs. It is used when the trier of fact determines that the defects can be corrected without undoing a substantial part of the work.

Stiles v. Charles M. Morgan Co., Inc., 64 N.C. App. 328, 329, 307 S.E.2d 409, 410–11 (1983); *see also Kenney v. Medlin Constr. & Realty Co.*, 68 N.C. App. 339, 344, 315 S.E.2d 311, 314 ("Our courts have adhered to the general rule that the cost of repair is the proper measure of damages unless repair would require that a substantial portion of the work completed be destroyed."), *disc. rev. denied*, 312 N.C. 83, 321 S.E.2d 896 (1984). Furthermore, as this Court has noted, "the preferred method of jury instruction is the use of the approved guidelines of the North Carolina Pattern Jury Instructions." *Caudill v. Smith*, 117 N.C. App. 64, 70, 450 S.E.2d 8, 13 (1994), *disc. rev. denied*, 339 N.C. 610, 454 S.E.2d 247 (1995); *see also Carrington*, __ N.C. App. at __, 635 S.E.2d at 534 ("Jury instructions in accord with a previously approved pattern jury instruction provide the jury with an understandable explanation of the law.").

The flaw in defendant's contention, however, is not the that instruction was not a correct statement of the law but rather that the instruction was not supported by the evidence, even when the evidence is considered in the light most favorable to defendant. During the charge conference, defense counsel stated, "I asked the last witness would this cause waste, would it destroy all this stuff. He said, yes." Specifically, Nick Dicandia ("Dicandia"), formerly a corporate officer for defendant, testified, *inter alia*, that "[i]f you rip that carpet out, it will be hard to take it out without destroying it." Dicandia also explained that examining the house for hairline cracks in the concrete slab would be "[e]xtremely destructive" to the house. On the basis of Dicandia's testimony and other evidence presented, it is possible that the jury may have been able to decide that performing corrective work to plaintiffs' house was economically unreasonable. However, even assuming *arguendo* that such work was economically unreasonable, the record is devoid of any evidence to guide the jury in its calculation of the alternative damage formula requested by defendant. *See* N.C.P.I., Civ. 503.21 (2003).

During his testimony, Frank Vignola offered the vague and speculative estimate that the present value of the house was "[o]ver $400,000 probably," and as defense counsel explained to the trial court after the plaintiffs' case-in-chief, "that's the only evidence of value" that had been presented. During its own case-in-chief, defendant failed to provide any specific and competent evidence of the fair market value of the house as constructed. In

fact, during cross-examination of Robert Page ("Page"), the principal owner of defendant, defense counsel objected when plaintiffs' counsel attempted to elicit a fair market value from Page:

> PLAINTIFFS' COUNSEL: Well do you think that $230,000 or $240,000, which is the total of these numbers you've given me, is a reasonable fair market value for this property as it sits here today in '05?
>
> DEFENSE COUNSEL: Objection, Your Honor.
>
> COURT: Sustained.
>
> ROBERT PAGE: (No response.)
>
> PLAINTIFFS' COUNSEL: If the Vignolas did sell the home back to Apogee for $230,000 or $240,000 they wouldn't be able to buy a comparable home in Bogue Sound Yacht Club for that amount of money in 2005 would they?
>
> DEFENSE COUNSEL: Objection, Your Honor.
>
> COURT: Sustained.
>
> ROBERT PAGE: (No response.)

Defendant failed to offer testimony from a prospective buyer, a real estate agent, an experienced building contractor, a professional real estate appraiser, or any person qualified to provide an opinion as to the fair market value of plaintiffs' home as constructed. *See* N.C. Gen. Stat. § 8C-1, Rule 703 (2005); *see, e.g.*, *State v. Huffstetler*, 312 N.C. 92, 107, 322 S.E.2d 110, 120 (1984) (noting that "this Court [has] found no error in the admission of an opinion of a real estate appraiser, even though the opinion was based on information not admissible as substantive evidence." (citing *State Highway Comm'n v. Conrad*, 263 N.C. 394,

139 S.E.2d 553 (1965))); *Huff v. Thornton*, 287 N.C. 1, 4–5, 213 S.E.2d 198, 202 (1975) (holding that an experienced building contractor and a witness experienced in the local real estate and insurance business both were qualified to testify as to the fair market value of a house before and after it was damaged). Without any concrete and competent evidence as to the fair market value of plaintiffs' home as actually constructed, there was no basis for instructing the jury to calculate damages based on the fair market value of the house. Accordingly, this assignment of error is overruled.

In its fifth argument, defendant asks this Court to find that the trial court erred in instructing on incidental damages because, as defendant claims, "there had been no evidence presented as to the costs of any incidental damages." At trial, plaintiff Frank Vignola testified that he had contacted a Holiday Inn Express and had been informed that the price for a room would be $175.00 per night. Defendant objected, however, and the court stated:

> The court is going to sustain the objection as to anything that he learned from people at the Holiday Inn Express.
>
> You want to present that you can bring those people into court to testify about it.
>
> The jury will disregard any prior testimony of Mr. Frank Vignola regarding of [sic] any cost or expense allegedly established at the Holiday Inn Express.

No further evidence was introduced regarding the cost of a hotel room or other incidental damages relating to the repairs of plaintiffs' house. The trial court, however, forgot that it had

sustained the objection, and, based on Frank Vignola's testimony concerning the cost of a hotel room at the Holiday Inn Express, the court instructed the jury on incidental damages related to the cost of alternative housing. Defendant objected to the charge during the charge conference and again after the instruction was given.

Although the court instructed the jury on incidental damages, the court also instructed the jury to disregard Frank Vignola's testimony concerning the cost of a hotel room at the Holiday Inn Express. It is well-established that "[a] jury is presumed to follow the court's instructions." *Nunn v. Allen*, 154 N.C. App. 523, 541, 574 S.E.2d 35, 46 (2002), *disc. rev. denied*, 356 N.C. 675, 577 S.E.2d 630 (2003). Having disregarded Frank Vignola's testimony concerning the cost of alternative housing, the jury had no evidence upon which to base an award of incidental damages, and the jury is presumed to follow the trial court's further instruction that "an award of damages must be based on evidence, which shows the amount of the plaintiffs' damages with reasonable certainty. You may not award any damages based upon mere speculation or conjecture." We hold, therefore, that the jury's award was not impacted by the court's instruction on incidental damages, and accordingly, this assignment of error is overruled.

Finally, defendant argues that the trial court erred in refusing to provide the jury with a definition of "workmanlike manner." Refusing to provide a definition to the jury, the trial court stated, "What it ['workmanlike manner'] is, is what they [the jury] say it is."

We first note that defendant has failed to cite to any authority supporting its contention that the trial court should have provided to the jury a definition of "workmanlike manner." *See* N.C. R. App. P. 28(b)(6) (2006). Defendant merely has provided a quotation from a decision of our Supreme Court that the trial court *could* have employed and explained to the jury as a definition of "workmanlike manner." *See Cantrell v. Woodhill Enters., Inc.*, 273 N.C. 490, 497, 160 S.E.2d 476, 481 (1968). Defendant, however, has offered no legal authority supporting its argument that the trial court *erred* in not providing such a definition, and this Court routinely dismisses assignments of error for failing to cite any legal authority in support of an argument. *See, e.g.*, *State ex rel. Utils. Comm'n v. Wardlaw*, __ N.C. App. __, __, 634 S.E.2d 898, 904, *disc. rev. denied*, 361 N.C. 180, __ S.E.2d __ (2006); *Wilson v. Burch Farms, Inc.*, __ N.C. App. __, __, 627 S.E.2d 249, 257 (2006).

Nevertheless, it is likely that defendant failed to provide legal authority to support its contention because there is no legal authority requiring a trial court to define "workmanlike manner." In fact,

> [i]n *Lindstrom* [*v. Chesnutt*, 15 N.C. App. 15, 189 S.E.2d 749 (1972)] this Court (and, by denial of certiorari, the Supreme Court) approved, at least implicitly, the following instruction:
>
> > [The contractor] would be responsible for any actions of his subcontractors either in failing to use good quality materials or to construct in a workmanlike manner, or any negligent conduct on their part, if he knew or reasonably should have known as general

> contractor or builder of the house of those conditions. He is not to be responsible for any such things which a reasonable man in his position as builder and contractor of the house would not have discovered, but the mere fact that work was done by a subcontractor does not relieve the contractor of responsibility if he by the exercise of reasonable care knew or should have known of those conditions.

Sullivan v. Smith, 56 N.C. App. 525, 528, 289 S.E.2d 870, 872 (1982) (third alteration in original) (quoting *Lindstrom*, 15 N.C. App. at 23, 189 S.E.2d at 755). Thus, this Court has approved an instruction that did not define "workmanlike manner." Indeed, we have never required the trial court to define "workmanlike manner," and we decline to do so here. Defendant's assignment of error, therefore, is overruled.

As defendant has failed to present any argument with respect to assignments of error numbered one, four, and twenty, these assignments of error are deemed abandoned. *See* N.C. R. App. P. 28(b)(6) (2006) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."). Accordingly, the judgment of the trial court is affirmed.

Affirmed.

Judges GEER and LEVINSON concur.

Report per Rule 30(e).