NO. COA13-526
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

JUSTIN ATKINSON,
Plaintiff,

v. Surry County
No. 11 CVS 575

MICHAEL REIKOWSKY,
Defendant.

Appeal by defendant from judgment entered 20 July 2012 and order entered 21 December 2012 by Judge Ronald E. Spivey in Surry County Superior Court. Heard in the Court of Appeals 25 September 2013.

Campbell Law Group, P.L.L.C., by Susan Curtis Campbell and Hugh B. Campbell, III, for plaintiff.

Finger, Roemer, Brown & Mariani, L.L.P., by Andrew G. Brown, for defendant.

Elmore, Judge.

In December 2008, Michael Reikowsky (defendant) and Justin Atkinson (plaintiff) were involved in the purchase of a residence at 317 N. Bridge Street in Elkin. The house was in poor condition and required extensive repairs. The parties subsequently agreed that plaintiff would live in the house rent

free in exchange for renovating the residence. Although the agreement was silent as to how the cost of materials needed for the renovations would be paid, defendant reimbursed plaintiff for costs incurred from January 2009 until May 2009 based on receipts submitted by plaintiff to defendant.

Thereafter, in October 2009, plaintiff offered to pay for materials if defendant would reimburse him when the house sold. Plaintiff asked defendant to memorialize the agreement in writing, but defendant declined to sign a contract. Instead, defendant agreed to the terms with a handshake. From October 2009 until November 2010, plaintiff paid out-of-pocket for physical materials used to renovate the house. On 5 November 2010, plaintiff made specific attempts to obtain money from defendant for incurred costs but was unable to retrieve anything. Plaintiff subsequently filed a complaint dated 4 May 2011, alleging breach of contract, quasi-contract, quantum meruit, and unjust enrichment.

The parties waived their rights to a jury trial, and on 18 July 2012, Judge Ronald E. Spivey heard this matter in a bench trial. The trial court denied defendant's motion for a directed verdict at the close of plaintiff's evidence. Defendant renewed his motion at the close of all the evidence, and the trial court

denied his motion a second time. The trial court entered judgment, awarding plaintiff $9,519.39 for unjust enrichment. On 30 July 2012, defendant filed a post-trial motion to dismiss pursuant to N.C.R. Civ. P. 41(b), which was also denied by the trial court in a final order entered 21 December 2012.

I. Analysis

a.) Post-Trial Motion to Dismiss

Defendant first argues that the trial court erred in denying his post-trial motion to dismiss because it allowed plaintiff to recover under a claim of unjust enrichment even though an express contract existed between plaintiff and defendant. We disagree.

"The standard of review for a Rule 41(b) dismissal is (1) whether the findings of fact by the trial court are supported by competent evidence, and (2) whether the findings of fact support the trial court's conclusions of law and its judgment." *Cohen v. McLawhorn*, 208 N.C. App. 492, 498, 704 S.E.2d 519, 524 (2010) (citation and quotation omitted). Where findings of fact are not disputed on appeal, "they are deemed to be supported by competent evidence and are binding on appeal." *State v. McLamb*, 186 N.C. App. 124, 125, 649 S.E.2d 902, 903 (2007), *writ denied*, *review denied*, 362 N.C. 368, 663 S.E.2d 433 (2008) (citation and

quotation omitted). However, "[c]onclusions of law are reviewed *de novo* and are subject to full review." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011); *see also Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004) ("Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal.").

Unjust enrichment is "based upon the equitable principle that a person should not be permitted to enrich himself unjustly at the expense of another." *Hinson v. United Fin. Servs., Inc.*, 123 N.C. App. 469, 473, 473 S.E.2d 382, 385 (1996) (citation and quotation omitted). A claim under this theory is not rooted in tort or contract law but "is described as a claim in quasi contract or a contract implied in law." *Id.* (citation and quotation omitted). The law will not imply a contract where an actual contract exists between parties and it governs the dispute at issue. *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988) (citation omitted). Thus, the theory of unjust enrichment "does not operate to alter the terms of a enforceable contract." *Rongotes v. Pridemore*, 88 N.C. App. 363, 368, 363 S.E.2d 221, 224 (1988). However, the existing contract must cover "the whole subject matter" of the dispute to preclude

an unjust enrichment claim. *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 714, 124 S.E.2d 905, 908 (1962).

In the case *sub judice*, the undisputed facts show that the January 2009 oral contract between the parties was valid. The oral contract did not address who was responsible for paying the costs of the physical materials. It merely allowed plaintiff to live in the house rent free in exchange for making repairs and improvements to the property. In October 2009, plaintiff unsuccessfully attempted to modify the oral contract, or in the alternative, create a new contract whereby he would bear the cost of materials, and defendant would reimburse him once defendant sold the property. Nevertheless, from October 2009 until November 2010, plaintiff acquired materials with his own funds to renovate the property with defendant's knowledge, and at no time did defendant stop plaintiff's activity. When plaintiff unsuccessfully attempted to recoup money from defendant in November 2010 for costs incurred, defendant refused to pay. Defendant clearly obtained a benefit from plaintiff's purchases of materials due to the renovations of the property, and the oral contract did not address the subject matter of the conflict between the parties regarding how the materials' costs would be paid. Thus, the trial court did not err in denying

defendant's post-trial motion to dismiss plaintiff's claim for unjust enrichment. *See Atl. Coast Line R. Co. v. State Highway Comm'n*, 268 N.C. 92, 95-96, 150 S.E.2d 70, 73 (1966) (citations omitted) (stating that the doctrine of unjust enrichment is applicable if "services are rendered and expenditures made by one party to or for the benefit of another, without an express contract to pay[.]" *See also Vetco Concrete Co. and Booe*, *supra*.

b.) Standard for measuring Damages

Defendant next argues that the trial court erred by using an incorrect standard to measure plaintiff's damages. We disagree.

"The standard of review on appeal from a judgment entered after a non-jury trial is 'whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment.'" *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163 (2001)), *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002). "The trial court's award of damages at a bench trial is a matter within its sound discretion, and will not be disturbed on appeal absent an abuse of discretion." *Helms v. Schultze*, 161 N.C. App. 404, 414, 588 S.E.2d 524, 530 (2003) (citation omitted). Under this standard, a trial court's decision will be upheld

"unless it is 'manifestly unsupported by reason.'" *Crutchfield v. Crutchfield*, 132 N.C. App. 193, 195, 511 S.E.2d 31, 34 (1999) (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)).

Under an implied contract, damages are measured by "the reasonable value of the services accepted and appropriated by the defendant." *Harrell v. W. B. Lloyd Const. Co.*, 41 N.C. App. 593, 595, 255 S.E.2d 280, 282 (1979) *aff'd,* 300 N.C. 353, 266 S.E.2d 626 (1980) (citations omitted). The person providing services is entitled to the value of "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. Marsh Furniture Co.*, 217 N.C. 695, 697, 9 S.E.2d 379, 380 (1940) (citations omitted). While an invoice or bill by itself is not sufficient evidence to support an award for damages as to the reasonable value of services, testimony about "what was billed for the materials and labor and the evidence of a payment for a part of it at the billed rate" is sufficient. *Booe*, 322 N.C. at 571, 369 S.E.2d at 556.

In *Booe*, the plaintiff incurred expenses for labor and materials related to construction projects. *Id.* The defendant initially re-paid the plaintiff for those costs, but subsequently stopped even though the plaintiff continued to furnish "a substantial quantity of materials and labor after the last payment by the defendants." *Id.* The plaintiff's bookkeeper testified as to the amount of money paid and owed by the defendants and provided the trial court with the "plaintiff's bill and the previous payment to the plaintiff in accordance with the bill." *Id.* This evidence was held sufficient to measure the reasonable value of services provided by the plaintiff. *Id.*

Similarly, in the case *sub judice*, plaintiff testified that he paid for materials out-of-pocket to make repairs and defendant initially reimbursed him from the receipts plaintiff provided. The trial court found that "[p]laintiff diligently retained the actual receipts for materials and products that were purchased and used in the renovation[.]" When defendant stopped making payments in October 2009, plaintiff continued to maintain records to document the amount of money still owed to him by defendant. Plaintiff testified that part of those costs included charges for individuals hired by plaintiff to sand the

floors, connect the air-conditioning, and perform carpentry work.

Thus, the trial court did not err in its standard for measuring damages because it considered more than just the "amount billed to the defendant[]." *Id.* *See also Envtl. Landscape Design Specialist v. Shields*, 75 N.C. App. 304, 307, 330 S.E.2d 627, 629 (1985) (holding evidence sufficient for the jury to consider damages where, in addition to plaintiff's bill, "there was evidence . . . that the landscaper who eventually landscaped defendants' property also charged $30.00 per hour.").

c.) Unjust Enrichment in the Amount of $9,519.39

Defendant also avers that the trial court's findings of fact does not support its legal conclusion awarding plaintiff $9,519.39 in damages for unjust enrichment. We agree.

Here, the trial court's order was devoid of any findings of fact that supported its unjust enrichment award of $9,519.39. The order found that "[p]laintiff commenced purchasing materials used to improve the residence, and the Defendant received the value of these materials." However, the trial court failed to disclose the specific "value" of the materials. The trial court referenced Plaintiff's Exhibit 1 as support for its award of damages, but the expenditures listed in that exhibit amounted to

$14,320.87. Plaintiff conceded at trial that not all of Exhibit 1 should be considered in his unjust enrichment claim because the amount of damages he requested was only $11,110.39. These aforementioned dollar amounts do not comport with the trial court's award. At no time did the trial court explain the basis for the amount of damages in its order, and neither can any support be found from testimony, exhibits, or plaintiff's complaint. Thus, the trial court erred because its findings of fact do not support its conclusion of law awarding $9,519.39 to plaintiff.

d.) Plaintiff's Expectation to be Reimbursed

On his next issue on appeal, defendant argues that the trial court's findings of fact do not support its legal conclusion that defendant knew or should have known that plaintiff expected to be repaid for his expenditures. We disagree.

In support of its legal conclusion, the trial court found that: 1.) plaintiff would "submit the costs of the acquired items to the Defendant, who would then reimburse the Plaintiff for his expenditures[;]" 2.) plaintiff unsuccessfully attempted to create an agreement with defendant to pay for physical materials in exchange for reimbursement when defendant sold the

property; and 3.) on 5 November 2010, plaintiff tried to obtain money from defendant for renovations and costs. Each of these findings shows that defendant was aware of plaintiff's multiple efforts to receive payment over an extended period of time for the cost of materials. The trial court also found that the property needed "extensive repairs . . . to make the residence habitable[.]" Given the poor state of the property, defendant should have known that plaintiff would expect some form of reimbursement for the extensive cost of materials during renovation. Accordingly, the trial court did not err in its conclusion of law that defendant knew or should have known that plaintiff expected to be re-paid.

e.) Dates of Unjust Enrichment

Defendant avers that the trial court's findings of fact does not support its conclusion of law that he was unjustly enriched beginning in May 2009. We agree.

The trial court concluded that "the Defendant ha[d] been unjustly enriched by the expenditures of the Plaintiff to renovate or make repairs to the residence between the dates of May 2009 and November 2010[.]" However, the trial court's findings provide no support for unreimbursed expenditures in May, June, July, August, or September of 2009. Rather, the

trial court's own findings of fact decree "[t]hat in October of 2009 . . . Plaintiff commenced purchasing materials used to improve the residence, and the Defendant received the value of these materials." Furthermore, plaintiff did not offer one scintilla of evidence at trial related to claimed expenses incurred in June, July, August, and September 2009. His testimony focused on expenditures made after the "handshake agreement in October of '09[.]" Importantly, the trial court's findings reflect plaintiff's testimony that he was repaid by defendant for costs incurred from January 2009 through May 2009, and that those costs were not part of his claim. Even plaintiff's Exhibit 1, which was relied upon by the trial court in its award of damages, noted a charge for $130.98 in May 2009 (which is not part of plaintiff's claim), but the next listed expense does not begin until October 2009.

Thus, the trial court erred because its findings of fact do not support its conclusion of law that defendant was unjustly enriched between May 2009 and October 2009.

II. Conclusion

In sum, the trial court did not err in: 1.) denying defendant's post-trial motion to dismiss; 2.) its standard for measuring damages; and 3.) concluding that defendant knew or had

reason to know that plaintiff would expect repayment. Thus, we affirm those issues on appeal.

However, the trial court erred in concluding that defendant was unjustly enriched in the amount of $9,519.39 between May 2009 and November 2010. These conclusions of law are not supported by the trial court's findings of fact. Thus, we reverse and remand for further findings as to the amount of damages and the dates defendant was unjustly enriched.

Affirmed in part, reversed and remanded in part.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).