

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-624
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

JUSTIN ATKINSON,
Plaintiff

v.

Surry County
No. 11 CVS 575

MICHAEL REIKOWSKY,
Defendant

Appeal by defendant from judgment and order entered 20 February 2014 by Judge Ronald E. Spivey in Surry County Superior Court. Heard in the Court of Appeals 22 October 2014.

Campbell Law Group, PLLC, by Hugh B. Campbell, III, for plaintiff-appellee.

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

CALABRIA, Judge.

Michael Reikowsky ("defendant") appeals from the trial court's judgment and order awarding Justin Atkinson ("plaintiff") \$10,738.22 in damages for unjust enrichment. We affirm.

In December 2008, plaintiff and defendant acquired a piece of residential real property located at 317 North Bridge Street

in Elkin, North Carolina ("the property"). In January 2009, the parties entered into an oral contract whereby plaintiff would live on the property rent free in exchange for the labor involved in making extensive repairs to make the property marketable. Plaintiff periodically submitted the costs of items used for the repairs to defendant, and defendant would reimburse plaintiff for the expenditures.

In October 2009, the parties orally modified their prior arrangement. Plaintiff would continue providing labor in exchange for rent, but he would also begin purchasing the materials required for the restoration and renovation at his own expense. These acquisitions were financed by a loan from plaintiff's grandmother, who understood that she would be repaid upon the sale of the property. In October 2010, plaintiff informed defendant that he had exhausted most of his loan proceeds. Defendant informed plaintiff that he had changed his mind and now wanted to live on the property after repairs were completed. Plaintiff immediately ceased his work on the property.

On 4 May 2011, plaintiff initiated an action against defendant in Surry County Superior Court. Plaintiff sought reimbursement of the funds he had personally expended on the

renovation of the property. After a bench trial, the trial court concluded that defendant had been unjustly enriched in the amount of \$9,519.39. Defendant appealed to this Court, which, in an unpublished opinion, affirmed the trial court's judgment as to defendant's liability but reversed and remanded for additional findings as to damages. *Atkinson v. Reikowsky*, ___ N.C. App. ___, 753 S.E.2d 399, 2013 N.C. App. LEXIS 1125, 2013 WL 5945660 (2013) (unpublished).

On remand, the parties waived the opportunity to offer new evidence and allowed the court to make additional findings with respect to the amount of damages. On 20 February 2014, the trial court entered a "Judgment and Order" which concluded that defendant had been unjustly enriched in the amount of \$10,738.22. Defendant appeals.

Defendant argues that three of the trial court's findings of fact were unsupported by the evidence presented during the bench trial. 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

(2002) (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163 (2001)). "[F]indings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if . . . there is evidence to the contrary." *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (internal quotations and citation omitted). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *City of Asheville v. Aly*, ___ N.C. App. ___, ___, 757 S.E.2d 494, 499 (2014). "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).

"[T]he measure of damages for unjust enrichment is the reasonable value of the goods and services to the defendant." *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988).

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. Marsh Furniture Co., 217 N.C. 695, 697, 9 S.E.2d 379, 380 (1940). In the instant case, defendant contends that three of the trial court's findings regarding damages for unjust enrichment were not supported by competent evidence.

Defendant first challenges the trial court's findings that he was unjustly enriched for \$2,600.00 in labor charges. He contends that the evidence presented did not demonstrate that he agreed to reimburse plaintiff for the labor of other individuals and that plaintiff's testimony regarding this labor was too speculative. At trial, plaintiff testified that defendant was aware that plaintiff was utilizing outside labor and that defendant had been present at times when these other individuals were assisting plaintiff with repairs. Defendant did not object to the use of outside labor. Plaintiff testified that he paid these other individuals \$10.00 per hour, and that all of their work was for the benefit of the property. This testimony was sufficient for the trial court to find that defendant had been unjustly enriched for these labor expenses.

Defendant next challenges the trial court's finding that he was unjustly enriched \$100.00 for carpentry services. However, in addition to the testimony cited above, plaintiff specifically testified that he paid \$100.00 in cash to a carpenter named Jeff

Key to build supports for a bathtub. Plaintiff testified that he was not a licensed contractor, and there was additional evidence that plaintiff hired qualified tradesmen to assist in areas of the restoration of the home that required additional expertise. Moreover, defendant had previously paid one of these qualified tradesmen, licensed electrician Dennis Miller ("Miller"), for his work prior to the change in the parties' arrangement in October 2009. This evidence was sufficient competent evidence to support the trial court's finding that defendant was unjustly enriched for the \$100.00 of carpentry work.

Finally, defendant challenges the trial court's finding that he was unjustly enriched \$850.00 for the cost to repair an air conditioning unit. Defendant argues that plaintiff failed to provide competent evidence that the unit was purchased between October 2009 and November 2010, as found by the trial court. The evidence at trial was that, in December 2008, when the parties acquired the property, it did not have a functioning air conditioning unit. Additionally, although it had been plaintiff's regular practice to promptly submit his costs to defendant, plaintiff did not submit any bill of sale for an air conditioning unit to defendant prior to the change in the parties' informal agreement in October 2009. Miller testified

that he installed the unit in November 2009. Finally, when defendant took possession of the property in October 2010, it had a functioning air conditioning unit. Based upon this evidence, the trial court could reasonably find that defendant was unjustly enriched for the air conditioning unit between October 2009 and November 2010.

Since all of the trial court's challenged findings of fact were supported by competent evidence, the trial court did not abuse its discretion by awarding plaintiff \$10,738.22 in damages for unjust enrichment. The trial court's judgment and order is affirmed.

Affirmed.

Judges STEELMAN and McCULLOUGH concur.

Report per Rule 30(e).