IN THE UTAH COURT OF APPEALS

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AWD Sales and Service, Inc., Plaintiff and Appellee, v. Supranaturals, LLC, a Utah limited liability company; TEM Properties, LLC, a Utah limited liability company; Thomas E. Mower, an individual; and Does 1-10, Defendants and Appellants.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090355-CA F I L E D (July 22, 2010) 2010 UT App 202

Fourth District, Provo Department, 070400206
The Honorable Steven L. Hansen

Attorneys: Stephen Quesenberry and Charles L. Perschon, Provo, for Appellants
Christopher D. Greenwood and Guy L. Black, Provo, for Appellee

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Before Judges McHugh, Voros, and Roth.

VOROS, Judge:

Supranaturals, LLC, and the other defendants in this case (collectively, Supranaturals) appeal from a judgment in favor of AWD Sales and Service, Inc. (AWD) following a bench trial.[1] We affirm.

In May 2005, Supranaturals contracted with AWD to provide design and construction services in connection with

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[1]Having reviewed the record in some detail, we are satisfied that Supranaturals filed a timely notice of appeal from a final judgment. We therefore have jurisdiction over this appeal. See Utah R. App. P. 3(a) (stating that an appeal may be taken from a final order or judgment); Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (stating that an appeal is improper if not taken from a final order or judgment).

Supranaturals' Springville, Utah facility. A dispute arose between the parties. AWD filed suit against Supranaturals alleging breach of contract and seeking to collect amounts due under the contract. Supranaturals filed a counterclaim alleging breach of contract and breach of the covenant of good faith and fair dealing. After a bench trial, the trial court granted AWD's claim and denied Supranaturals' counterclaim. On appeal, Supranaturals challenges one of the trial court's findings of fact.[2]

Supranaturals contends that "the trial court erred in finding that AWD had met its engineering obligations under the parties' contract despite not having a licensed engineer working on the plans." The trial court found that "AWD hired a P.E. [professional engineer] onto its staff, Curtis Warhol, who worked with [an officer of Supranaturals] on the plant design and the process and instrumentation drawings . . . until December of 2005." Supranaturals contends that "the trial court erred in finding that AWD, at any time, employed an 'in-house engineer.'"[3]

"A trial court's findings of fact will not be set aside unless clearly erroneous." Traco Steel Erectors, Inc. v. Comtrol, Inc., 2009 UT 81, ¶ 17, 222 P.3d 1164 (internal quotation marks omitted). A finding is clearly erroneous if, after "resolving all disputes in the evidence in a light most

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[2]We have determined that "the decisional process would not be significantly aided by oral argument," see Utah R. App. P. 29(a)(3).

[3]We note that Supranaturals has failed to establish that the challenged finding was relevant to a determination of either party's breach of contract claim. The unstated premise of Supranaturals' claim is that the contract required AWD to have a licensed engineer working on the plans. Yet Supranaturals has identified no contract provision requiring this. The paragraph that Supranaturals claims "specifically addressed AWD's engineering obligations" never mentions a licensed engineer. It merely requires AWD to "work closely with Supranaturals to understand [its] needs and produce high quality products, calculating product loads, utilities, refrigeration and electrical needs for current lines for possible future requirements, updating building layout drawing, [etc.]." In addition, Supranaturals contends that, "although it agreed that it did not want design drawings 'stamped by a licensed professional engineer,' Supranaturals did not state that it did not want the system designed by a professional engineer." However, this assertion, even if true, falls short of demonstrating that AWD was contractually obligated to have a licensed engineer design the plans.

favorable to the trial court's determination," State v. Pena, 869 P.2d 932, 936 (Utah 1994), it is "against the clear weight of evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made," State v. Walker, 743 P.2d 191, 193 (Utah 1987).

"A party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. App. P. 24(a)(9).

> In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence.

West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah Ct. App. 1991). "In so doing, appellants must present the evidence in a light most favorable to the trial court and not attempt to construe the evidence in a light favorable to their case." Chen v. Stewart, 2004 UT 82, ¶ 78, 100 P.3d 1177 (citation omitted).

Supranaturals does summarize in cursory fashion some of the testimony supporting the trial court's finding. For example, it acknowledges that AWD's president and vice president both testified that AWD employed a licensed engineer. However, Supranaturals does not point to a flaw in the evidence sufficient to convince us that the trial court's finding is "against the clear weight of evidence," see Walker, 743 P.2d at 193.

Supranaturals claims that the evidence supporting the trial court's finding is deficient in two respects. First, according to Supranaturals, the trial court "favor[ed] the self-serving, uncorroborated testimony from AWD's employees and gave less weight to the testimony from Supranaturals' employees, despite the fact that Supranaturals' employees had more experience." This contention, even if true, does not establish error. It "is nothing but an attempt to have this [c]ourt substitute its judgment for that of the trial court on a contested factual issue. This we cannot do under Utah Rule of Civil Procedure 52(a)." Covey v. Covey, 2003 UT App 380, ¶ 28, 80 P.3d 553 (alteration in original) (internal quotation marks omitted); see also Utah R. Civ. P. 52(a) ("[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). "Evaluating conflicting testimony is the proper role of the finder of fact. When an appellant asserts that the

evidence is insufficient to support the lower court's findings of fact, we do not weigh the evidence de novo. Rather, we accord great deference to the lower court's findings, especially when they are based on an evaluation of conflicting live testimony." Hogle v. Zinetics Med., Inc., 2002 UT 121, ¶ 16, 63 P.3d 80 (internal quotation marks omitted). Accordingly, merely identifying a conflict in the evidence and asserting that one's own witnesses were more credible than the opposing party's witnesses falls short of demonstrating that a trial court's finding of fact is against the clear weight of evidence.

Second, Supranaturals contends that the trial court erred by finding that AWD had a licensed engineer on staff despite the fact that the engineer himself never testified. However, Supranaturals cites no authority, and we are aware of none, that would preclude a finding that a licensed engineer worked on a project without testimony from the engineer. Accordingly, this claim is inadequately briefed. An adequately briefed argument "contains the contentions and reasons of the appellant with respect to the issues presented, . . . with citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). "Implicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority." State v. Green, 2004 UT 76, ¶ 13, 99 P.3d 820 (internal quotation marks omitted). Supranaturals' brief does not meet these standards. "[W]e may refuse, sua sponte, to consider inadequately briefed issues." State v. Lee, 2006 UT 5, ¶ 22, 128 P.3d 1179 (citing Utah R. App. P. 24(j); Bernat v. Allphin, 2005 UT 1, ¶ 38, 106 P.3d 707). We do so here.

In sum, Supranaturals has not demonstrated that the challenged finding of fact is clearly erroneous. We therefore affirm.

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J. Frederic Voros Jr., Judge

WE CONCUR:

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Carolyn B. McHugh,
Associate Presiding Judge

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Stephen L. Roth, Judge