COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 1, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1263

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

PHILIP J. TRAYNOR,

Plaintiff-Respondent,

v.

WAYNE T. COOK, SR., and
JERRI L. COOK,

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed.*

MYSE, J. Wayne Cook, Sr., and Jerri Cook, his wife, appeal a judgment ordering them to pay $1,400 and costs to Philip Traynor as reasonable compensation for roofing the Cooks' house. The Cooks assert that the trial court erred in finding an implied contract. Because there is sufficient evidence of an implied contract, the judgment is affirmed.

In February 1996, the Cooks requested Traynor to provide an estimate for roofing their house. Traynor estimated that it would cost $1,800 if no waferboard was needed, but $3,000 if waferboard was needed. Waferboard was needed for this roof. The parties, however, never expressly agreed on a

price even though the Cooks told Traynor to begin work and, in fact, were aware when he began work on their house. The Cooks also paid Traynor $1,600 before work began and the rest was to be paid in weekly increments of $100. The dispute is whether the parties contracted for a new roof for $1,800 and, if not, what the contractor is entitled to for the work done to the Cooks' home.

The Cooks assert that because there is no written contract pursuant to WIS. ADM. CODE § ATCP 110.05, the trial court could not imply a contract. This argument fails. First, this issue was not argued to the trial court. Arguments not made to the trial court will not be addressed on appeal. ***Vollmer v. Luety***, 156 Wis.2d 1, 10, 456 N.W.2d 797, 801-02 (1990). Second, violation of this section does not render the contract unenforceable under an implied contract theory. This section provides remedies for consumers but does not affect Traynor's right to recover the reasonable value of the services provided. As a result, Traynor may assert his implied contract theory.

Next, the Cooks argue that there was insufficient evidence for the trial court to find an implied contract and the remedy of implied contract was not available to Traynor as a matter of law. Appellate courts will not reverse trial court findings of fact unless they are clearly erroneous. ***Fryer v. Conant***, 159 Wis.2d 739, 744, 465 N.W.2d 517, 519-20 (Ct. App. 1990); *see also* § 805.17(2), STATS. If more than one reasonable inference may be drawn from the evidence, we must accept the inference that the trial court chose to draw. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis.2d 243, 250, 274 N.W.2d 647, 650 (1979); *see also* ***C.R. v. American Std. Ins. Co.***, 113 Wis.2d 12, 15, 334 N.W.2d 121, 123 (Ct. App. 1983). This court reviews whether the inferences the trial courts draw are reasonable. *See* ***Hennekens v. Hoerl***, 160 Wis.2d 144, 162, 465 N.W.2d 812, 820 (1991).

An implied contract may arise from an agreement circumstantially proved, but even an implied contract must arise under circumstances that show a mutual intention to contract. ***Kramer v. City of Hayward***, 57 Wis.2d 302, 306-07, 203 N.W.2d 871, 873 (1973). The question of the parties' intent to create a contract is a question of fact. ***Novelly Oil Co. v. Mathy Constr. Co.***, 147 Wis.2d 613, 617, 433 N.W.2d 628, 630 (Ct. App. 1988). "Recovery in quantum meruit is allowed for services performed for another on the basis of a contract implied by law to pay the performer the reasonable value of the services. To establish an implied contract, the plaintiff must show that the defendant requested the

services and that the plaintiff expected reasonable compensation." ***Ramsey v. Ellis***, 168 Wis.2d 779, 784, 484 N.W.2d 331, 333 (1992) (citations omitted).

In this case, Traynor demonstrated both elements. It is undisputed that the Cooks requested services from Traynor, and his estimate for the work to be done constituted his expectation for reasonable compensation. Further, the trial court found that $3,000 was reasonable compensation in light of the cost of materials and the number of hours Traynor worked on the roof. These findings are amply supported by the record.

Lastly, the Cooks ask this court to exercise its discretionary power of reversal because the real controversy has not been tried. After reviewing the entire record, this court is satisfied that the real controversy was fully tried in this case and accordingly declines to exercise that discretionary power. Because this court concludes there is sufficient evidence to support the finding of an implied contract, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.