

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 9, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP1633

Cir. Ct. No. 2009SC1003

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

GAIL M. HAUGEN,

PLAINTIFF-APPELLANT,

V.

DAVID A. NEHLS, D/B/A NEHLS HOME IMPROVEMENT,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Fond du Lac County: ROBERT HAWLEY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Gail M. Haugen appeals from a judgment of the circuit court dismissing her small claims action against David A. Nehls, d/b/a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Nehls Home Improvement. We conclude that the circuit court made proper findings of fact and we affirm the circuit court on these grounds.

¶2 On July 9, 2002, Haugen entered into a contract with Nehls to complete home improvements to Haugen's residence.² The work was completed and the final funds disbursed before April 14, 2003. On November 1, 2005, an employee of the rehabilitation division wrote a letter to Nehls informing him that eleven carpentry and electrical repairs³ were unfinished and required his attention. Enclosed in the letter was an itemized list detailing the eleven unfinished repairs.

¶3 Subsequently, Haugen filed a small claims summons and complaint on April 14, 2009, seeking \$5000 in damages and alleging that Nehls failed to satisfactorily complete the improvements in the 2002 contract. On May 21, 2009, the parties attempted to mediate the claim; however, mediation efforts failed and the claim was referred to trial. Thereafter, several different judges presided at different times throughout the course of the trial. At trial on January 20, 2010, Judge Weinke recognized that the contract between the parties had been executed in full; however, due to the contract's one year warranty, Nehls was obligated to repair several electrical and carpentry items. These were the same eleven repair items listed by the Fond du Lac Rehabilitation Division and enclosed in its

² Before Haugen entered into the contract with Nehls, she applied for and received a \$21,000 loan from the Fond du Lac Rehabilitation Division to finance her home improvements. The rehabilitation division retained control over the \$21,000 and dispersed the funds directly to Nehls for his work on Haugen's home improvements.

³ The Fond du Lac Rehabilitation Division employee's list and Judge Weinke's order contained electrical items numbered one through seven and carpentry items numbered one through four. Although numbered separately, throughout this opinion the items will be referred to as eleven overall repairs. Thus, item four of the carpentry repairs will be referred to as item eleven.

November 1, 2005 letter to Nehls. The first seven repairs dealt with electrical issues, while the last four repairs dealt with carpentry issues. Ultimately, Judge Weinke imposed a stayed judgment, ordering Nehls to complete the eleven unfinished repairs, which if not completed, would entitle Haugen to a judgment of \$5000.

¶4 Item eleven of the repair list stated that the “[c]eiling in northeast bedroom drywall has a very long crack in it,” and Judge Weinke, in discussing what was required of Nehls to complete the eleven items, specifically told Nehls with regard to item eleven, “The ceiling you can patch.”

¶5 Four months later, on May 3, 2010, the trial resumed with Haugen complaining to Reserve Judge Hazlewood that Nehls had not completed the repairs to her satisfaction and, therefore, she was entitled to the \$5000 judgment. In response, Reserve Judge Hazlewood went through the itemized list of repairs with Haugen in an effort to determine whether Nehls had in fact complied with the order within Judge Weinke’s stayed judgment.

¶6 First, Judge Hazlewood questioned Haugen about items one and two, fixing and programming several ceiling fans, and Haugen stated that the fans listed had either been removed and were no longer an issue or had been fixed by Nehls. Next, Haugen told the court that item three, fixing the G.F.C.I. outlet in the basement, was also completed. Also, item four, repairing a rear hall light fixture, had already been repaired and was no longer an issue. Item five, repairing the living room outlet, and item six, installing G.F.C.I. in the bathroom, had both been completed. Nehls also completed item seven, fixing a light switch, thus complying with all of the electrical issues within the Judge Weinke’s order.

¶7 Next, Judge Hazlewood questioned Haugen about the completion of the carpentry issues. Haugen conceded that Nehls had completed item eight, putting an access panel on the first floor bathroom, and item nine, filing the front door dead bolt receiver and fixing the barrel bolt.

¶8 Judge Hazlewood continued to question Haugen, moving on to item ten. Specifically, item ten contained two issues, stating that the “[l]iving room window to east operates very hard. Window to south weatherstrip [sic] does not stay on window sash.” When Haugen was asked about the living room window to the east, she responded that it still operated hard, but was unsure about the state of the weather strip in the living room window to the south. As a result of Haugen’s own uncertainty surrounding the completion of item ten, Judge Hazlewood made a finding on the whole that item ten was to be treated as completed and moved on to item eleven.

¶9 According to Judge Hazlewood’s determination, Nehls had complied with items one through ten of the order. The only remaining issue was whether item eleven had been completed in accordance with Judge Weinke’s order.

¶10 The underlying repair of item eleven required Nehls to fix a crack in the ceiling of Haugen’s northeast bedroom. However, at the May 3 trial, Haugen alleged that Nehls had not adequately repaired the ceiling so as to comply with Judge Weinke’s order. Nehls told the court that he had complied with its order to fix Haugen’s ceiling, patching the crack as advised by Judge Weinke on January 20, 2010. In response, Judge Hazlewood agreed that Nehls had patched the crack in the ceiling and stated that, if Judge Weinke’s order did in fact allow for patching, Nehls will have complied with item eleven of Judge Weinke’s order. Judge Hazlewood told the parties that he or another judge must analyze the

January 20, 2010 transcripts containing both Judge Weinke’s stayed judgment and order of repairs to determine whether item eleven had been completed satisfactorily and whether Judge Weinke had orally mentioned other items to be included as part of the order.

¶11 Subsequently, Judge Hawley reviewed the transcripts, and on May 17, 2010, he issued a final judgment. Specifically, Judge Hawley made the following findings: “one, Judge Steven W. Weinke’s original order of January 20, 2010 encompasses ... the seven electrical issues and four carpentry issues[;] two, [] Judge Hazlewood made findings of fact that the defendant substantially complied with ... [Judge] Weinke’s order of repairing the [eleven] items”

¶12 Haugen appeals pro se, making two arguments. First, Haugen alleges that Judge Hawley’s final judgment violated the terms of Judge Weinke’s stayed judgment issued on January 20, 2010. In particular, Haugen alleges that Judge Weinke’s stayed judgment specified that if Nehls did not complete the repairs to Haugen’s satisfaction she would be entitled to a \$5000 judgment. Haugen claims she was dissatisfied with the repairs and, as a result, is entitled to a \$5000 judgment.

¶13 Second, Haugen alleges that Judge Hawley’s final judgment was based on an error of fact with regard to Judge Hazlewood’s findings of fact on May 3, 2010. Specifically, Haugen alleges that Judge Hawley’s final judgment erroneously concluded that during the court trial on May 3, 2010, Judge Hazlewood made findings of fact that Nehls had complied with the terms of Judge Weinke’s stayed judgment.

¶14 In the first part of her second argument, Haugen suggests that Judge Hazlewood overlooked the fact that there were two underlying issues within item ten—(1) the living room window to the east and (2) the living room window to the south—and, at trial, ignored the first repair, only concluding that the second repair had been resolved. In the second part of her second argument, Haugen suggests that Nehls did not satisfactorily complete item eleven, which stated that the “[c]eiling in northeast bedroom drywall has a very long crack in it (drywall over plaster).” Thus, Haugen alleges that the circuit court erroneously ruled that Nehls had fully complied with the completion of both item ten and item eleven.

¶15 Haugen’s arguments do not persuade this court. In small claims actions, a circuit court’s “[f]indings of fact shall not be set aside unless clearly erroneous.” WIS. STAT. § 805.17(2). Moreover, “[a] trial court’s findings will not be upset on appeal unless they are against the great weight and clear preponderance of the evidence.” *Fidelity & Deposit Co. v. First Nat’l Bank*, 98 Wis. 2d 474, 484, 297 N.W.2d 46 (Ct. App. 1980). In this case, the circuit court’s findings of fact are not clearly erroneous nor against the great weight and clear preponderance of the evidence; thus the circuit court’s findings will not be set aside.

¶16 First, Haugen alleges that Nehls’ compliance with Judge Weinke’s order relied in part on her satisfaction with the repairs. Although Nehls’ compliance with Judge Weinke’s order did rely on Haugen’s satisfaction, at trial, Haugen offered no evidentiary support for Nehls’ alleged inadequate repairs aside from her own unsubstantiated statements of dissatisfaction. Haugen’s in-court statements of dissatisfaction were not supported with any evidence. Thus, the circuit court had no basis to find that Nehls failed to adequately complete the eleven repairs. As a result, we cannot conclude that the circuit court was clearly

erroneous in finding that Nehls repairs were in compliance with Judge Weinke's order.

¶17 Next, Haugen alleges that Judge Hawley's final judgment erroneously concluded that during the court trial on May 3, 2010, Judge Hazlewood made findings of fact that Nehls had complied with the terms of Judge Weinke's stayed judgment. At trial on May 3, 2010, Judge Hazlewood questioned Haugen as to whether Nehls had in fact completed the eleven ordered repairs. Based on Haugen's responses, Judge Hazlewood concluded that the only remaining issue was whether patching the crack in the ceiling for item number eleven on the repair list had been previously contemplated by the court as acceptable. According to Judge Hazlewood, if patching was permitted by the court, the matter would be concluded in favor of Nehls because he had completed all of the other items on the list.

¶18 Haugen takes specific issue with the circuit court's ruling that Nehls had completed item ten, repairing the two living room windows. However, Judge Hazlewood made a finding on the whole that item ten was to be treated as completed and moved on to item eleven. We cannot find that the circuit court's findings of fact meet the clearly erroneous standard. The circuit court made a reasonable finding based on Haugen's lack of evidence and lack of knowledge regarding the completion of Judge Weinke's order.

¶19 Additionally, Haugen takes issue with the satisfactory completion of item eleven, repairing the crack in the bedroom ceiling. On May 3, 2010, Judge Hazlewood found that Nehls had patched the crack in the ceiling, and subject to the court's review of Judge Weinke's direction on January 20, 2010, Nehls had complied with the completion of item eleven. Ultimately, Judge Hawley reviewed

the transcripts from January 20, 2010, in which Judge Weinke specifically told Nehls that he could fix the crack in the ceiling by patching the drywall. As a result, Judge Hawley concluded that in Judge Weinke's stayed judgment, Nehls was ordered to complete a list of eleven repairs, and because Judge Hazlewood made findings of fact that Nehls had sufficiently completed those eleven repairs, Haugen's claim was to be dismissed.

¶20 The circuit court's findings of fact, namely that Nehls complied with Judge Weinke's order, are not clearly erroneous nor against the great weight and clear preponderance of the evidence. The circuit court made its findings of fact and issued its judgment in accordance with both the January 20 and May 3, 2010 court trial transcripts. Therefore, we will not upset the circuit court's findings of fact nor its subsequent judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

