

IN THE COURT OF APPEALS OF IOWA

No. 8-987 / 08-0759
Filed February 19, 2009

KIRK BUCKLEY and TAMI BUCKLEY,
Plaintiffs-Appellees/Cross-Appellants,

vs.

**BILL RENTSCH d/b/a RENTSCH
CONTRACTING,**
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Buena Vista County, Joseph J.
Straub, Judge.

Custom homebuilder appeals the damages awarded to the home's
owners. **AFFIRMED AS MODIFIED AND REMANDED.**

Ned A. Stockdale of Fitzgibbons Law Firm, Estherville, for appellant.

John M. Murray of Murray & Murray P.L.C., Storm Lake, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

EISENHAUER, J.

Kirk and Tami Buckley filed a law action against the builder of their new home, Bill Rentsch. Rentsch counterclaimed for foreclosure on his previously-filed mechanic's lien. The district court tried the case in equity and awarded damages to the Buckleys. Rentsch appeals and we affirm as modified after reducing the Buckley's damage award.

I. Background and Scope of Review.

The Buckleys hired Rentsch to build a house utilizing plans they obtained from PlanADream.com. This dispute arose late in the construction process when Rentsch presented an invoice for \$4612.60 to the Buckleys. Rentsch worked on the home the next day, a Wednesday, but received a phone call from Tami that evening. Tami stated there were several items on the bill they disputed and told Rentsch to stop working until they had a meeting about the invoice. The Buckleys planned to be out of town the upcoming weekend and a meeting date was not established.

Rentsch did not work on Thursday. Also on Thursday, the Buckleys arranged for Greg Haldin, another contractor, to inspect their home. Haldin testified the Buckleys "wanted some prices on what it would take to finish it. And we did a walk-around."

On Friday, Rentsch returned to the site and took his construction trailer and tools to a remodeling job he had been working on simultaneously. When Kirk came to the site after work on Friday, he was upset that Rentsch's trailer and

tools were gone. Kirk called Rentsch, used profanity, and told Rentsch he was done.

Rentsch believed he was fired and was concerned he would not be paid for the invoiced items. On Monday he filed a mechanic's lien for \$4,612.60. When Kirk received the lien on Tuesday, he again lost his temper and made another profanity-laced phone call to Rentsch.

The district court awarded damages to the Buckleys and a credit to Rentsch for some unpaid lien charges. The court declined to award attorney fees to either party. Rentsch appeals and both parties seek attorney fees on appeal. We review this equity case de novo. Iowa R. App. P. 6.4.

II. Shed Roof Design.

Rentsch first argues the court erred in awarding the Buckleys \$5400 for the future cost of rebuilding the leaking shed roof. He claims Haldin, the plaintiff's expert, agreed "the shed roof was constructed in compliance with the design contained in the plans provided by the owner," and the "leaks resulted from the design."

The record does not support Rentsch's claim. Rather, Haldin testified more than once that the shed roof Rentsch constructed did not follow the design in the plans. Specifically, Haldin explained, the "gable roof is actually supposed to be sitting on the shed roof, according to the plan." This is not how Rentsch constructed the shed and gable roofs. Although the plan was lacking in details, the first page clearly shows the shed roof shingles in a configuration Rentsch did not utilize. Instead, Rentsch constructed the meeting point of the garage, gable,

and shed roofs with a flat spot or “dead valley” causing interior leaking. After our de novo review, we agree with the district court’s award.

III. Work Completion Expenses.

The district court ordered Rentsch to pay \$7756 to the Buckleys for “the cost of completing the remainder of the contract.” On appeal, Rentsch argues his duty to finish the house or pay for the cost of finishing the house ended when Kirk Buckley told him he “was done” and fired him. We agree. “When one party to a contract repudiates the contract before the time for performance has arrived, the other party is relieved from its performance.” *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 241 (Iowa 2001). The district court found: “Kirk Buckley lost his temper on that Friday afternoon and gave [Rentsch] reason to believe that he had been fired.”

Once Rentsch was fired, the Buckleys had repudiated the contract and Rentsch could not finish the house project. The Buckleys are not entitled to a windfall in damages by recovering the future costs they would have to pay regardless of the identity of the builder. These items would have caused no additional expense to the Buckleys had they permitted Rentsch to finish the job rather than firing him. We remove \$7756 from the Buckley’s judgment. Equity requires we also eliminate the \$5500 future labor credit the court awarded to Rentsch.

IV. Contractor Workmanship.

Rentsch next argues the district court erred “when it concluded there was substantial evidence that the work of Rentsch Contracting was not workmanlike.”

We disagree. Rentsch did not build the shed roof in accordance with the plan's design and is now obligated to pay for the complete rebuilding of this roof. Further, the court found Rentsch "did not meet workmanlike standards by failing to install the siding before the onset of winter weather. In addition, [Rentsch] never did solve the problem of the multiple leaks throughout the house." For example, Haldin testified the house was only backfilled halfway up the basement leaving all the ground sloping toward the house. "All the water around the house was actually draining into the basement."

After our de novo review, we agree with the district court. Therefore, Rentsch is also obligated to pay \$100 for the reworking of the leaking master bedroom window, \$500 for the house wrapping, and \$460 for the backfill. The Buckleys are owed a total of \$1060 for these items.

V. Mechanic's Lien.

Shortly before trial, the Buckleys paid for five charges totaling \$2097.50. Rentsch had filed a mechanic's lien for these items. The district court thoroughly discussed the remaining lien items and concluded the Buckleys should pay five additional charges totaling \$780.10. This debt is reduced by \$125 for a previous material overcharge. Therefore the Buckleys owe \$655.10 and Rentsch is now credited with this amount.

Rentsch further claims the district court erred in disallowing a portion of his mechanic's lien. The court disallowed the lien's \$1500 labor charge and a \$360 window well charge. After our de novo review, we agree with the district court's lien analysis and conclusions.

VI. Attorney Fees.

The district court did not award attorney fees. On appeal, both parties assert an entitlement to trial attorney fees and appellate attorney fees. We conclude each party should pay their own attorney fees.

Under Iowa's mechanic's lien statute, a successful plaintiff is entitled to attorney fees. See *Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001). Rentsch filed a mechanic's lien for \$4612.60. However, Rentsch did not recover all the lien items. Additionally, Rentsch's lien recovery of \$2752.60 (\$2097.50 pretrial and \$655.10 at trial) must be contrasted with the Buckley's award of \$6460 (\$5400 shed roof and \$1060 other poor workmanship). We cannot conclude Rentsch is a successful plaintiff.

In rejecting the Buckley's attorney fee claim, we adopt the well-reasoned opinion of the district court:

The [Buckleys] also claim they are entitled to receive attorney fees, pursuant to section 572.32(2) of the Code, which provides, in part, that in an "action to challenge a mechanic's lien . . . if the person challenging the lien prevails, the court may award reasonable attorney fees". . . . However, the difficulty with the [Buckley's] claim for attorney fees is that this action was not initiated by [Rentsch] to enforce his mechanic's lien, but was initiated by the [Buckleys], and defense of the mechanic's lien was only an incidental part of the legal services performed. Even though this case started out as a law action, it became triable in equity when [Rentsch] asserted his mechanic's lien. The court should apply equitable standards and the court's conclusion is influenced very much by the fact that the Plaintiff Kirk Buckley lost his temper on that Friday afternoon and gave [Rentsch] reason to believe he had been fired even though Kirk's wife was trying to set up a meeting so that the parties could discuss their differences of opinion.

VII. Disposition.

The district court correctly ordered Rentsch to pay \$5400 for the future cost of rebuilding the leaking shed roof and \$1060 for redoing other items of poor workmanship. The Buckleys owe \$655.10 in unpaid charges covered by the mechanic's lien and Rentsch is entitled to a credit for this amount. The Buckleys are not entitled to \$7756 to complete construction. Neither party is entitled to attorney fees. We remand for entry of a judgment in favor of the Buckleys for \$5,804.90 plus appropriate interest.

AFFIRMED AS MODIFIED AND REMANDED.