

IN THE COURT OF APPEALS OF IOWA

No. 1-943 / 11-0689
Filed January 19, 2012

**WILLIAM E. VENARD and
KATHLEEN R. VENARD,**
Plaintiffs-Appellants,

vs.

**MIKE MARTIN and
MFM ENTERPRISES, INC.,**
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, James Richardson, Judge.

Plaintiffs appeal the district court decision on their petition for a full accounting and damages based on an oral contract with a builder. **AFFIRMED.**

Matthew V. Stierman, Council Bluffs, for appellants.

William F. McGinn of McGinn, McGinn, Springer & Noethe, Council Bluffs, for appellees.

Considered by Danilson, P.J., Mullins, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

William and Kathleen Venard owned a house in Council Bluffs, Iowa. In 2007 they entered into an oral agreement with Mike Martin, doing business as MFM Enterprises, Inc., to repair and remodel the house prior to selling it. Martin agreed to perform concrete work, drywall work, and painting. The Venards agreed to give periodic payments to Martin at his request, and Martin was to provide them with receipts. The parties disagree as to whether Martin was to provide invoices for materials and labor, or only for materials.

The Venards paid \$30,000 for the work performed by Martin and his subcontractors. Martin did not provide any invoices for labor. On October 26, 2007, William Venard and Martin met at the house to review what had been accomplished. Martin still had some work to complete on the outside of the house at that time. Venard did not make any complaints about the work that had already been completed. Martin's last day at the job site was November 5, 2007. The Venards eventually sold the house for \$175,000.

In a letter dated November 26, 2008, William Venard requested Martin to "provide paperwork showing the work you had completed and how the money was spent for said work." Martin apologized for not sending the invoices and final bill earlier, citing family health problems. On January 5, 2009, Martin filed a mechanics lien against the property. He later admitted this was a mistake, and the lien was withdrawn. On January 20, 2009, the Venards requested a more particular breakdown of the amount Martin charged for labor. Martin sent a list showing the total time worked on the Venards' house each day between

August 16 and November 5, 2007, and the number of people who worked on the house each day. Martin charged thirty dollars per hour for carpentry, electrical, and plumbing work. Despite a request, Martin did not provide any further information as to the breakdown of labor costs.

The Venards filed a petition against Martin on January 19, 2010, requesting a full and complete accounting of the material and labor costs with respect to the parties' agreement. They also requested damages, claiming they had overpaid Martin \$9241.26 because he had not provided documentation to support these charges. Martin counterclaimed, asserting that after he reviewed his records he found the Venards still owed him \$1215.19.

At the hearing, Martin testified Justin Tooley worked 137 hours, Carl Martin worked 129 hours, and Martin himself worked 134 hours on the project. He stated he traded labor and materials with Tooley to compensate him for 137 hours at thirty dollars per hour. Also, Carl Martin, who was Martin's father, was paid with a combination of labor and materials. Martin testified he and other workers often traded labor back and forth. Martin stated he charged at a uniform rate of thirty dollars per hour for his work, although he could have charged fifty dollars per hour for electrical and plumbing work.

The district court entered a decision on April 4, 2011. The court determined the Venards had not shown they had overpaid Martin. The court noted Martin "paid certain labor or subcontractor cost with material or exchanged labor." The court also found Martin had failed to show the Venards still owed \$1215.19. The court denied the Venards' petition and also denied Martin's counterclaim. The Venards appeal the district court's decision.

II. Standard of Review.

This case was tried in equity, and therefore our review is de novo. Iowa R. App. P. 6.907. In equity cases, we are not bound by the district court's factual findings, but we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g).

III. Merits.

The Venards claim the district court's decision is not supported by the evidence. They allege, "[t]he agreement of the parties was that Martin would be compensated for labor and material costs as long as those labor and materials could be documented." They assert Martin cannot provide documentation to support charges of \$9241.26. They believe they overpaid Martin and request he pay them back for this amount.

The district court did not make a specific finding as to whether under the parties' oral agreement Martin was required to provide documentation for labor costs. The court did find, however, the Venards were required to pay the amount Martin was claiming as labor costs for the work on their house, despite the fact Martin did not pay money for certain work by his subcontractors but instead exchanged labor and goods for their work on the Venards' house. Thus, by implication, the court found the Venards were not responsible only for labor costs supported by invoices.

In our de novo review, we agree with the court's conclusion. The Venards did not dispute the labor was performed or make complaints about the work, and all parties recognized the labor charges were well below market value. They are instead arguing Martin did not provide sufficient documentation and therefore

they should be excused for paying for some labor and materials on the house. The Venards cannot escape responsibility to pay for the labor of repairing their house simply because they are unhappy with Martin's paperwork. We conclude that under the parties' agreement, Martin agreed to perform certain work and the Venards agreed to pay him for it.

On appeal, the Venards also claim Martin overcharged them for materials. The district court did not address this issue, finding simply, "Venards question MFM's labor costs." The Venards did not file a post-trial motion asking the court to address the issue of material costs. We conclude the Venards have not preserved this issue for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002) (noting that if the district court does not decide an issue presented to the court, a party must call the court's attention to this by filing a post-trial motion).

We affirm the decision of the district court.

AFFIRMED.