

**IN THE COURT OF APPEALS OF IOWA**

No. 2-812 / 12-0788  
Filed November 15, 2012

**PATRICIA K. SOMMER,**  
Plaintiff-Appellee,

**vs.**

**ROGER HASSTEDT, Individually, and  
ROGER HASSTEDT d/b/a R & M BUILDERS,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge.

Roger Hasstedt appeals the district court's ruling granting summary judgment in favor of Patricia Sommer. **REVERSED AND REMANDED.**

Erin Patrick Lyons of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellants.

Patrick C. Galles of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

Considered by Vogel, P.J., and Danilson and Mullins, JJ.

**VOGEL, P.J.**

Roger Hasstedt appeals the district court's ruling granting summary judgment in favor of Patricia Sommer. Hasstedt asserts the court erred in finding he failed to produce evidence showing there is a genuine issue of material fact. Hasstedt asserts there is a genuine issue of material fact regarding his ownership interest in the business known as R & M Builders. For the reasons stated herein, we reverse the district court's ruling and remand for further proceedings.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

In July of 2011, Patricia Sommer, filed suit alleging Roger Hasstedt, individually, and Roger Hasstedt d/b/a R & M Builders, performed roofing work in 2008 on her home that was defective and not done in a workmanlike manner. Hasstedt filed two answers, one on behalf of himself claiming, "I do not own or run R & M Builders," and one on behalf of R & M Builders stating "denial of claim." Sommer asserts she was not served with a copy of either of these answers; however, the record reveals they were filed with the district court on August 1, 2011.

Sommer filed a motion for summary judgment in October of 2011, supported by her own affidavit alleging the same facts stated in her petition. She also filed a memorandum of authority, but did not file a statement of undisputed facts as required by Iowa Rule of Civil Procedure 1.981(8). Hasstedt filed a hand-written, pro se resistance on behalf of himself and R & M Builders, briefly stating he had a defense, he could testify under oath that he was not at fault, and there was a one year warranty for labor. Sommer again claims she never

received this resistance, though it was filed with the district court on October 28, 2011.

At the summary judgment hearing, Sommer also submitted the affidavit of the Cedar Falls building inspector who asserted there was a major failure in the roofing job as the shingles were sliding off the roof in large sections. Hasstedt appeared pro se and told the court he neither owned nor ran R & M Builders and did not receive any of the profits. He asserted the business belonged to his sons. Hasstedt stated he did not do any of the roofing work on Sommer's home except for picking up nails that had fallen to the ground or other light work. After the hearing Hasstedt submitted another statement saying he forgot to mention that there was a one-year warranty on the labor and workmanship, and that the work was done almost three years earlier.

After the hearing, the district court granted Sommer's motion, finding, "the defendants rested upon mere allegations and denials and failed to produce affidavits or verified statements setting forth specific facts showing that there is a genuine issue for trial." The court awarded Sommer \$6846.32, the amount she paid R & M Builders for the roofing work.<sup>1</sup>

Hasstedt appeals claiming there is a genuine issue of fact regarding whether or not he owned or operated R & M Builders. He asserts his sons own

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<sup>1</sup> In Sommer's affidavit and her petition, she asserted she paid R & M Builders \$6846.32 for the roofing work. In her petition she stated she received an estimate for \$5850.00 from another roofing company to replace/repair R & M Builder's work. In her affidavit she asserted the amount of the estimate to have the roofs redone was \$5800.00 plus \$125.00 for a permit. It is unclear why the district court awarded Sommer \$6846.32 in light of rule that generally the measure of damages in a defective construction case is the cost of repair. *Serv. Unlimited v. Elder*, 542 N.W.2d 855, 858 (Iowa Ct. App 1995) ("As a general rule, the cost of correcting the defects or completing the omissions is the proper measure.").

the business. Sommer counters that she dealt exclusively with Hasstedt for the roofing project, Hasstedt filed the answer for himself and R & M Builders, and he appeared pro se for himself and the company at the summary judgment hearing. She also claims Hasstedt did not preserve error on his warranty claim.

## II. SUMMARY JUDGMENT.

Our review of the district court's grant of summary judgment is for correction of errors at law. *Bank of the W. v. Kline*, 782 N.W.2d 453, 456 (Iowa 2010).

Summary judgment is appropriate if the moving party has met his or her burden of showing the nonexistence of a material fact. The nonmoving party [is] afforded every legitimate inference that can be reasonably deduced from the evidence, and if reasonable minds can differ on how the issue should be resolved, a fact question is generated and summary judgment should not be granted.

*Id.* at 456–57. Our review is thus confined to whether there is a dispute regarding a material fact and whether the district court applied the law properly. *Ranes v. Adams Lab., Inc.*, 778 N.W.2d 677, 685 (Iowa 2010).

A party resisting a properly supported motion for summary judgment may not rest upon conclusory allegations in the pleadings. Iowa R. Civ. P. 1.981(5); *Castro v. State*, 795 N.W.2d 789, 795 (Iowa 2011). Under the rule, Hasstedt was required to set forth specific facts showing that there is a genuine issue for trial. Iowa R. Civ. P. 1.981(5).

Sommer supported her motion for summary judgment with her personal affidavit. We acknowledge that her affidavit states that the facts in her petition are true and correct. However, the petition refers to a singular defendant, and the only reference to R & M Builders is that Sommer “believed” Hasstedt owned

the business. Sommer's affidavit in support of her summary judgment motion again refers to a singular defendant in stating, "That in 2008 Defendant reshingled the roof to my house and garage for which I paid him," and also avers, "That the amount paid to Mr. Hasstedt should be returned to me as the job as done by him was not up to City Code." Her affidavit makes no reference to R & M Builders.

Hasstedt resisted the motion with a hand-written statement asserting he could testify under oath that he was not at fault and that there was a one-year warranty for labor on the roof. At the hearing he testified he neither owned nor ran R & M Builders. He asserted the business belonged to his sons. See Iowa R. Civ. P. 1.981(5) (allowing oral testimony to oppose or support affidavits).

While only minimally complying with Iowa Rule Civil Procedure 1.981, we find Hasstedt has set forth material facts which are in dispute, mainly the issue of ownership of R & M Builders. Moreover, with various identifications of the defendants in Sommer's pleadings and Sommer's failure to file a statement of undisputed facts, summary judgment should not have been granted. *Id.* at 1.981(8). Therefore, we find granting summary judgment on this record was in error. We reverse and remand for further proceedings.

**REVERSED AND REMANDED.**