IN THE COURT OF APPEALS OF IOWA

No. 8-525 / 07-1529
Filed July 30, 2008

JEFFREY FAST and MELANIE A. FAST,
Plaintiffs-Appellees/Cross-Appellants,

vs.

LARRY D. FAST,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Mills County, Greg W. Steensland, Judge.

Defendant appeals and the plaintiffs cross-appeal from the ruling on plaintiffs' action to foreclose a mechanic's lien. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

J. Patrick Ryan, Council Bluffs, for appellant.

Richard Crowl of Stuart Tinley Law Firm, L.L.P., Council Bluffs, for appellee.

Considered by Vogel, P.J., and Zimmer and Miller, JJ.

VOGEL, P.J.

Larry Fast appeals the district court ruling enforcing a mechanic's lien filed by his son and daughter-in-law, Jeffrey and Melanie Fast, and ordering sale of the property to satisfy the in rem judgment of $10,602.00. The court also awarded Jeffrey and Melanie reasonable attorney fees of $4768.75. Jeffrey and Melanie cross appeal, seeking an increased award under their theory of quantum meruit. Upon our de novo review, we affirm in part, reverse in part, and remand.

In October 2004, Larry purchased a tax sale certificate for a residence in Henderson, Iowa, for $2,292.80, and was later issued a tax deed. The house was uninhabitable and in need of extensive repairs. In April of 2005, Larry approached Jeffrey and Melanie with an offer whereby Larry would provide the materials if Jeffrey would perform all the labor to fix up the house and make it habitable. After it was complete, Larry would sell the house to them at his costs. Jeffrey accepted the proposal and work began in June.

Jeffrey and Melanie continued to work on the house and moved into it on April 1, 2006. After all the repairs were made, the house was given a market analysis value of $39,000. Jeffrey and Larry discussed entering into a purchase agreement in the form of an installment contract, but they were unable to reach terms satisfactory to both. With this impasse, Larry served a three-day notice to quit on Jeffrey and Melanie, eventually evicting them from the house.

In June of 2006, Jeffrey and Melanie filed a mechanic's lien claiming Larry owned them the sum of $28,211.83 for improvements they made to the house but for which they were not compensated. This was followed by their petition to foreclose the mechanic's lien. Larry counterclaimed in the amount of $5000 for

alleged expenses he incurred because of Jeffrey and Melanie's repairs preformed in a negligent and un-workmanlike manner. Jeffrey and Melanie later filed a motion to amend their petition, seeking to add a count of breach of contract and "quantum meruit—contract implied-in-fact." Larry resisted this motion, claiming such amendment was improper under Iowa Code section 572.26 (2005). No ruling was ever made on the motion and resistance, and the matter proceeded to trial.

Following trial, the court entered a ruling. First, it concluded that because no meeting of the minds had been reached, the breach of contract claim failed. Second, it concluded that Jeffrey and Melanie could recover on their quantum meruit theory. It therefore entered an in rem judgment in their favor in the amount of $10,602[1] and ordered that a special execution be issued for the sale of the property in order to satisfy the mechanic's lien, costs, and attorney fees.

Larry has appealed from this ruling. He claims first that the court erroneously allowed Jeffrey and Melanie to amend their petition. Second, he claims the court erred in granting judgment in favor of Jeffrey and Melanie.

Actions to enforce mechanic's liens are tried in equity. *See* Iowa Code § 572.26; *Baumhoefener Nursery, Inc. v. A & D Partnership, II*, 618 N.W.2d 363, 366 (Iowa 2000). Therefore, they are reviewed de novo. *Griess & Ginder Drywall, Inc. v. Moran*, 561 N.W.2d 815, 816 (Iowa 1997). "Weight will be given to the findings of fact and credibility determinations of the district court, especially in mechanic's lien cases." *Bidwell v. Midwest Solariums, Inc.,* 543 N.W.2d 293,

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[1] This amount was based on the 1710 hours of work performed by Jeffrey at the minimum wage rate of $6.20 per hour.

294 (Iowa Ct. App. 1995). Quantum meruit recovery based on an implied-in-fact contract is normally reviewed for corrections of errors at law. *See Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa Ct. App. 2000). However, where the case was tried in equity, review is de novo. *See id.*

We first address Larry's claim that the trial court erred in allowing the plaintiffs to amend their petition by adding a cause of action for breach of contract and for quantum meruit. He cites to Iowa Code section 572.26, which provides that an "action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith." Accordingly, as our supreme court has stated, "a plaintiff in a mechanic's lien foreclosure action is prohibited initially from suing in one count in equity to foreclose his lien and in a separate count at law to obtain a personal judgment on his claim." *Capitol City Drywall v. C.G. Smith Constr. Co.*, 270 N.W.2d 608, 611-12 (Iowa 1978). However, the court has further held, "that a defendant to a mechanic's lien foreclosure action who urges a set-off or counterclaim against the plaintiff loses the protection of the bar against joinder." *I*d. at 610.

In this case, Larry filed a counterclaim seeking damages from Jeffrey and Melanie in the amount of $5000, thereby losing his right to object to the additional claims being joined. Moreover, while Larry filed a resistance to Jeffrey and Melanie's motion to amend their petition, it does not appear that any ruling was ever made on this motion and resistance thereto, even though substantial evidence was introduced at trial on the contract and quantum meruit issue. We therefore also consider the issues to have been tried by consent. *See Gibson*

Elevator, Inc. v. Molyneux, 668 N.W.2d 565, 568 (Iowa 2003). Finally, at the outset of the trial, the court stated the following:

> The court would note from the file that there is a Petition to Foreclose Mechanic's Lien, and attached to that Petition – I mean, in Answer to that Petition, the Defendants make their Answer, Affirmative Defense, and Counterclaim. Are all of the issues joined on those matters, as far as the parties are concerned?

Both parties' counsel responded in the affirmative. Thus, because Larry's attorney agreed that all matters were properly joined for trial, and his counterclaim asserted damages against Jeffrey and Melanie, we also conclude he has waived any objection to the amended petition. *See Arbie Mineral Feed Co. v. Nissen*, 179 N.W.2d 593, 595 (Iowa 1970).

We next address Larry's claim that the court erroneously granted recovery to Jeffrey and Melanie on the quantum meruit theory. A party seeking recovery under an implied-in-fact contract must show (1) the services were carried out under such circumstances as to give the recipient reason to understand (a) they were performed for him and not some other person, and (b) they were not rendered gratuitously, but with the expectation of compensation from the recipient; and (2) the services were beneficial to the recipient. *Roger's Backhoe Service, Inc. v. Nichols*, 681 N.W.2d 647, 651 (Iowa 2004). Quantum meruit damages for a breach of an implied-in-fact contract are "the reasonable value of the services provided and the market value of the materials furnished." *Iowa Waste Sys., Inc.*, 617 N.W.2d at 30.

Upon our de novo review of the record, we affirm the district court's finding that Jeffrey and Melanie are entitled to recover on their quantum meruit claim. First, Larry was under the explicit understanding that the work performed by

Jeffrey was done for his benefit. He invited the work and owned the home on which all the repairs and improvements were made. Second, there was an expectation that Jeffrey's work was not undertaken gratuitously, but rather with the expectation of some form of compensation. Specifically, Jeffrey agreed to perform the work with an understanding that he would be able to purchase the home for the amount of materials Larry had provided. Finally, when the sale fell through and Larry evicted Jeffrey and Melanie from the house, Jeffrey's services were indeed beneficial to Larry. He purchased the tax sale certificate for $2,292.80. The market analysis obtained by Larry on the house, after all the work was undertaken by Jeffrey, was $39,000. Even accepting Larry's evidence that his "costs" to improve the house were $25,287.90[2], the home's value increased substantially. Accordingly, we affirm the judgment of the district court.

In their cross-appeal, Jeffrey and Melanie maintain the district court failed to award them an appropriate measure of damages. As noted, the court awarded them only the value of Jeffrey's 1710 hours of labor at a minimum wage rate. Quantum meruit damages for a breach of an implied-in-fact contract are "the reasonable value of the services provided and the market value of the materials furnished." *See Iowa Waste Sys., Inc.*, 617 N.W.2d at 30. Prior to trial, Larry claimed his cost in the home was $20,000 and Jeffery agreed to this amount. We therefore accept that value. Considering that the home's post-renovations market analysis value was $39,000, the evidence supports that Jeffrey's labors added $19,000 in value to the home. The "reasonable value of

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[2] The district court discounted this figure as many of the itemized expenses were clearly unrelated to this property.

[Jeffrey's] services" are thus best defined by this quantifiable increase in value of the house. Accordingly, we reverse the damages award and remand to the district court for the entry of an order awarding Jeffrey and Melanie $19,000.

Jeffrey and Melanie request appellate attorney fees. Iowa Code section 572.32 directs that a prevailing plaintiff may be awarded reasonable attorney fees. Section 572.32 "in no way limits attorney fees to those incurred in the district court . . . . [T]he statute contemplates the award of appellate attorney fees." *Schaffer v. Frank Moyer Const., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001). Jeffrey and Melanie have provided an affidavit of attorney fees incurred in furtherance of its appeal. We find these fees reasonable and therefore award them $4462.50 in appellate attorney fees. Costs on appeal are assessed to Larry.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.