

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

MARK BOULDIN,
Appellant,

Case No. 15-000078AP-88A
UCN 522015AP000078XXXXCI

v.

JAMES DERUSHA,
Appellee.

_____/

Opinion Filed _____

Appeal from Final Judgment
Pinellas County Court
Judge Edwin Jagger

Jay Daigneault, Esq.
Attorney for Appellant

Thomas John Dandar, Esq.
Attorney for Appellee

PER CURIAM.

Defendant/Appellant, Mark Bouldin, appeals the Final Judgment entered on November 3, 2015, in favor of Plaintiff/Appellee James DeRusha for \$750.00. Remanded with instructions, otherwise affirmed.

Statement of Case

In December 2007, Mr. Bouldin was in the process of renovating a condominium. Mr. Bouldin met with Mr. DeRusha to discuss the installation of a closet system in the master bedroom closet. There was no written contract.

Mr. DeRusha installed a prefabricated "Freedom Rail" closet system in one-half of the master bedroom closet. Mr. Bouldin was satisfied with the work. However, Mr. Bouldin's wife did not like the look of the system and wanted a custom closet installed in her half of the closet.

After discussions with the couple, Mr. DeRusha fabricated custom boxes in his

shop to be installed in Mrs. Bouldin's half of the master bedroom closet. The custom boxes were then disassembled and transported to the condominium. The condominium community rules restricted the hours contractors were permitted to remain on the property. Due to these rules, Mr. DeRusha was required to stop work before he could substantially reassemble the completed boxes. Upon observing the partially reassembled boxes, Mr. and Mrs. Bouldin did not like what they saw. Mr. Bouldin called Mr. DeRusha and told him to remove the items.

Mr. Bouldin paid Mr. DeRusha for the prefabricated closet system installed in one-half of the master bedroom closet, but according to Mr. DeRusha he still owed \$1,693.63 for the boxes prepared for Mrs. Bouldin's half of the master bedroom closet.

No payment was forthcoming. This litigation commenced in the Small Claims Division of the County Court on March 10, 2009. Mr. Bouldin filed a counterclaim for negligence asserting a claim in excess of \$5,000.00. Therefore, the case was transferred to the Civil Division of the County Court.

After a trial on September 24, 2015, the trial court entered the following Final Judgment on November 3, 2015:

This action on Plaintiff's claim for an unpaid invoice, related to the design, purchase and install of a closet system at Defendant's residence, and Defendant's counterclaim for negligence regarding same, was tried before the Court on September 24, 2015. On the evidence presented, the Court finds that Defendant authorized additional services related to a possible change in plans, and as such, Plaintiff is entitled to some reasonable compensation in that respect. Beyond that, however, the parties had no firm understanding for actual construction to constitute an enforceable contract for all the materials/labor sought by Plaintiff. As to the counterclaim, the Court finds the evidence insufficient to support Defendant's stated cause of action. Accordingly, it is adjudged that Plaintiff, James DeRusha, recover from Defendant, Mark Bouldin, the sum of \$750, that shall bear interest at the prevailing statutory interest rate of 4.75% per year, for which let execution issue. Defendant shall take nothing under the counterclaim and Plaintiff shall go hence without day. The Court will reserve jurisdiction as to attorney's fee and costs.

Analysis

On appeal, Mr. Bouldin asserts that the trial court "agreed with Bouldin that no enforceable oral contract was formed, but awarded DeRusha the sum of \$750.00 despite that finding and based that recovery upon 'additional services related to a possible change in plans.' The court's ruling was legal and factual error and must be reversed." Mr. Bouldin insists that because there was no alternative claim for relief other than the breach of oral contract claim, and the court found there was no contract, Mr. DeRusha cannot recover. Mr. Bouldin further argues that the judgment of \$750.00 is not supported by competent, substantial evidence.

Upon review of the Final Judgment set out above, this Court concludes that, in fact, the trial court did find that there was an oral contract to renovate the master bedroom closet. However, the trial court determined that the oral agreement was insufficient to constitute an enforceable contract for all the materials/labor sought by Plaintiff. We agree and affirm the trial court's finding that there was an oral contract between Mr. Bouldin and Mr. DeRusha to renovate the master bedroom closet.

At trial, Mr. Bouldin introduced into evidence Defendant's Exhibit 3 (R 135) in which Mr. DeRusha documented \$729.03 spent on materials and \$960.00 in labor for fabrication of the custom boxes. Extensive testimony was presented by Mr. DeRusha concerning the work he performed and concerning the materials he purchased and used in fabricating the custom boxes for Mrs. Bouldin's half of the master bedroom closet. Documentary evidence was admitted into evidence at trial to show the work performed by Mr. DeRusha.

The Final Judgment is not detailed and the trial court did not set out findings of fact to explain how it reached the decision that \$750.00 should be awarded to Mr. DeRusha. However, this is not a case in which "effective appellate review is made impossible by the absence of specific findings." See, e.g. Featured Properties, LLC v. BLKY, LLC, 65 So. 3d 135, 137 (Fla. 1st DCA 2011).

Upon review of the testimony presented at trial and the exhibits admitted into evidence, this Court concludes that there is competent, substantial evidence to support a finding that \$729.03 was the cost of the materials purchased by Mr. DeRusha to fabricate the custom boxes for Mrs. Bouldin's half of the master bedroom closet. Mr.

DeRusha also sought \$960.00 in labor charges. The trial court provides no explanation for the award to Mr. DeRusha of an additional \$20.97 above the \$729.03 expended on materials.

Although difficulty in proving damages or uncertainty as to the amount will not prevent recovery as long as there is sufficient evidence to satisfy the mind of a prudent, impartial person as to the amount, there must be a reasonable basis in the evidence for the amount awarded. See Schimpf v. Reger, 691 So. 2d 579, 580 (Fla. 2d DCA 1997); see also Aponte v. Exotic Pools, Inc., 699 So. 2d 796, 797 (Fla. 4th DCA 1997); Lansons, Inc. v. AAC SYDCO, Inc., 489 So. 2d 217, 218 (Fla. 3d DCA 1986). This Court concludes that competent, substantial evidence supports the trial court's judgment that there was an oral contract between the parties and that Mr. DeRusha is entitled to damages in the amount of \$729.03. There is no evidence to support the award of \$20.97 for labor as Mr. DeRusha only presented evidence that he was entitled to \$960.00. The trial court does not explain its ruling. Therefore, an Amended Final Judgment must be entered by the trial court in the amount of the award supported by the evidence. See Sager v. Turner, 402 So. 2d 1282, 1283 (Fla. 4th DCA 1981); see also Schimpf, 691 So. 2d at 580; Aponte, 699 So. 2d at 797.

In the Final Judgment the trial court concluded the evidence did not support Mr. Bouldin's counterclaim. Mr. Bouldin did not appeal this ruling. This ruling is affirmed. Mr. DeRusha is the prevailing party in this action.

Accordingly, we remand with instructions to the trial court to enter an Amended Final Judgment for Mr. DeRusha for \$729.03. In all other respects the trial court's order is affirmed. Affirmed in part, reversed and remanded in part, with instructions.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 15 day of August, 2016.

Original Order entered on August 15, 2016, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Keith Meyer.

Copies furnished to:

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Hon. Edwin Jagger