

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
APPELLATE DIVISION**

**STEPHEN J. SPENCER,
Appellant,**

**REF: 19-000029AP-88A
UCN: 522019AP000029XXXXCI
Lower Court: 15-005143CO**

-vs-

**GEORGE KONOTOS ROOFING, INC.,
Appellee.**

_____ /

Opinion filed: _____

Appeal from Final Judgment
Pinellas County Court
Judge Myra McNary

James A. Stack, Esq.
Attorney for Appellant

Anthone R. Damianakis, Esq.
Attorney for Appellee

PER CURIAM

THIS CAUSE is before the Court on appeal from the Order on Final Judgment entered March 22, 2019, in favor of George Konotos Roofing, Inc. Upon review of the briefs, the record on appeal and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm the findings of the trial court.

STATEMENT OF FACTS

On March 7, 2017, Appellee filed a First Amended Complaint in County Court, Case NO. 15-005143CO, alleging that Appellant breached an oral and written contract and sought damages under the equitable doctrine of quantum meruit seeking \$14,865.05 for the work of repairing and replacing a roof at Appellant's residence, 1086 Eldorado Avenue, Clearwater, Florida, 33767. Appellant denied the allegations arguing that there was no privity of contract between the parties. The case proceeded to a non-jury trial and an Order on Final Judgment was rendered March 22, 2019.

Appellant argues that the Order on Final Judgment is in error as Appellant was not the "owner" of the property and therefore he could not benefit or retain a benefit from the new roof on the subject property and that even if Appellant received some benefit from the new roof, the amount of damages were incorrectly calculated.

STANDARD OF REVIEW

When an appellant fails to provide a transcript or an approved statement of the proceedings, this Court can only look for fundamental error on the face of the order. See *Tramontana v. Bank of New York Mellon*, 230 So. 3d 601, 602 (Fla. 2d DCA 2017) ("Without a transcript, and in the absence of fundamental error on its face, an appellate court will affirm a trial court's decision.").

DISCUSSION

On appeal, Appellant raised three issues. Appellant challenges the trial court's findings that a benefit was conferred on him by the repair of the roof of the home he resided in as Appellant is not the "owner" of the home. The trial court found that Appellant listed the subject property as his residence in his Petition for Bankruptcy as well as service of process of the complaint which is

the subject of this appeal. Without a transcript of the trial, this Court cannot determine what testimony was produced concerning the title of the property. The appellate record is silent as to the ownership of the subject property.

Appellant also challenges the trial court's findings that Appellee's claim for quantum meruit is supported by the weight of the evidence. Quantum meruit is a "legal doctrine which, in the absence of an express agreement, imposes legal liability on a contract that the law implies from facts where one receives goods or services ... where ... a reasonable person receiving such benefit would ordinarily expect to pay for it." *W. R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc.*, 728 So.2d 297, 305 (Fla. 1st DCA 1999). See *Daake v. Decks N Such Marine, Inc.*, 201 So.3d 179 (Fla. 1st DCA 2016). Appellant cites to several cases in which a tenant could not be found to have received a benefit from improvements. These cases are not applicable. The trial court found that Appellant "used this property enough to classify it as his residence at least during a two year period, thereby making the roof job a direct benefit to the defendant." And that the subject property "has been in Defendant's family for over 30 years according to Defendant." Appellant is unable to demonstrate that the trial court committed error in the proceedings below.

Appellant challenges the trial court's factual findings of the amount of damages. However, Appellant does not cite to anything in the appellate record to support his argument, and, there is no testimony adduced at the trial reported. *Bei v. Harper*, 475 So.2d 912, 915 (Fla. 2d DCA 1985) (finding that without a sufficient record to review the points raised on appeal, appellate court cannot say that trial court erred in awarding damages.) The law in Florida is that the decision of the trial court has the presumption of correctness and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So.2d 1150, 1152 (Fla. 1979). The trial court is charged with determining the weight, credibility, and sufficiency of the testimony and evidence

presented, Appellant is unable to overcome the presumption of correctness of the trial court's ruling without a transcript. See *Applegate*. The trial court specifically found that the "testimony of Defendant was not credible" and that "[t]he credibility of the witnesses and the weight of the evidence demonstrates that Defendant acquiesced in the provision of service provided by Plaintiff" See *Smiley v. Greyhound Lines, Inc.*, 704 So.2d 204, 205 (Fla. 5th DCA 1998)(explaining that the appellate court cannot substitute its opinion of the evidence but rather must indulge every fact and inference in support of the trial court's judgment, which is the equivalent of a jury verdict.). Accordingly, the Court finds that the trial court's judgment must be affirmed.

Therefore, it is

ORDERED AND ADJUDGED that the Order on Final Judgment rendered March 22, 2019 is affirmed.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this _____ day of _____, 2020.

Original Order entered on December 7, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Keith Meyer.

Copies furnished to:

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