

Not Reported in N.E.2d, 1995 WL 141352 (Ohio App. 10 Dist.)

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CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Tenth District, Franklin County.
Clyde E. PRICE, Plaintiff-Appellant,
v.
Stan WILL, dba Stan Will Plumbing, Defendant-Appellee.
94APE10-1439.
March 30, 1995.

Appeal from the Franklin County Court of Common Pleas.

OPINION

CLOSE

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_____ (Cite as: 1995 WL 141352, *1 (Ohio App. 10 Dist.)) _____

This is an appeal from a judgment rendered for defendant-appellee, Stan Will, dba Stan Will Plumbing, in the Franklin County Court of Common Pleas, on a claim of breach of contract or negligence.

In the latter part of 1992, plaintiff-appellant, Clyde E. Price, contracted with appellee to provide plumbing services for a building owned by appellant on Morse Road. Appellant was engaged in the remodeling of the building, which included the tearing out of old construction, replacement and renovation of the building. In connection with that, appellant needed plumbing services, which he contracted with appellee to provide. The contracts were oral based on time and material. The total scope of the contract was unknown, as the parties were not aware as to what difficulties would be incurred in the renovation.

In the process of doing that work, appellee obtained a permit and ultimately, after work was begun, recommended to appellant that he replace the underground sewer in the building. Appellant, believing that the underground sewer was in good condition, declined to take that advice. Appellee proceeded to perform plumbing at the subject premises, capping off the openings in the sewer to accommodate plumbing fixtures to be installed. The city of Columbus, Department of Building Regulations, tested the new underground plumbing added by appellee. After that inspection was passed, appellant asked appellee and the city if he could repour the concrete floor in the building. That was authorized. Some time later, appellee returned to the job site to install plumbing fixtures.

Appellant later became aware that appellee apparently charged appellant for the time of a plumber's helper when one was not present; he then decided to hire another plumber. That plumber found that the underground sewer was leaking, which required removal of the floor previously poured over the entire sewer. Appellant then instituted the instant lawsuit in order to recover monies for appellee's negligence and breach of contract for not performing the work in a workmanlike manner and for overcharging for the work actually performed.

Appellant brings a single assignment of error, as follows:

“THE TRIAL COURT ERRED BY ACCEPTING THE REFEREE’S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BY CONCLUDING THAT APPELLANT AND APPELLEE ENTERED INTO SEPARATE, DIVISIBLE CONTRACTS.”

The gravamen of appellant's appeal is that, if the parties entered into a single indivisible contract for all plumbing work in the building, then the trial court was in error. If, on the other hand, as the trial court found, the contract or contracts were divisible, appellant cannot recover. A judgment in a civil case will not be reversed as contrary to the manifest weight of the evidence where there is some competent, credible evidence in the record supporting each essential element of the prevailing party's case. See [C.E. Morris Co. v. Foley Construction Co. \(1978\), 54 Ohio St.2d 279.](#)

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_____ (Cite as: 1995 WL 141352, *2 (Ohio App. 10 Dist.)) _____

Appellant's arguments are correct in the context that the trial court could have found this to be a single, indivisible contract. Unfortunately for appellant, the referee chose not to believe the witnesses that appellant would have preferred, and the referee drew inferences from the direct evidence contrary to appellant's position. For a discussion of the quality of inferential evidence, see [State v. Jenks \(1991\), 61 Ohio St.3d 259.](#) The trial court not only reviewed the evidence presented, but, very articulately, explained why she felt the referee was correct in determining this to be a series of divisible contracts. Quite simply, the trial court believed that appellee had contracted on a piece-work basis to do some specific items as directed by appellant. As such, he was paid time and material, as each of his projects were needed, and certainly, at some point in time, was replaced by another plumbing contractor who did the same. We would be overstepping our bounds if we were to hold that the trial court abused its discretion in making the factual determinations that it did. Appellant's single assignment of error is overruled.

Appellant's assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

[TYACK](#) and McCORMAC, JJ., concur.

McCORMAC, J., retired, of the Tenth Appellate District, assigned to active duty under authority of [Section 6\(C\), Article IV, Ohio Constitution.](#)

Ohio App.10 Dist.,1995.

Price v. Will

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