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**IN THE
COURT OF APPEALS OF INDIANA**

JERRY KOHLHOUSE,)

Appellant-Defendant,)

vs.)

No. 42A01-1010-SC-594

BLACK'S EXCAVATION,)

Appellee-Plaintiff.)

APPEAL FROM THE KNOX SUPERIOR COURT

The Honorable Jim R. Osborne, Judge

Cause No. 42D02-0910-SC-1716

May 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jerry Kohlhouse appeals the trial court's judgment for Black's Excavation ("Black's") and its dismissal of his counter-claim. Kohlhouse raises three issues for our review, which we consolidate and restate as the following issue: whether the trial court's judgment for Black's and against Kohlhouse is clearly erroneous.¹

We affirm.

FACTS AND PROCEDURAL HISTORY

On the morning of March 29, 2009, a building owned by Kohlhouse in Monroe City caught fire. The local fire department was called to the scene, but the building was almost completely destroyed. Debris from the building had settled on the nearby road and sidewalk. An officer of the fire department contacted Jeff Black ("Jeff"), the owner of Black's, to see if he could bring an excavator to the scene to assist with the cleanup.

Before he began to do any work at the site, Jeff called Kohlhouse for permission. Kohlhouse told Jeff that "he wanted us [Black's] to do the job and when . . . we got this done . . . we'd have to get together and he'd give me an insurance card" Transcript at 7. Jeff understood Black's job to be knocking down the remaining walls and collecting the debris from the building, including removing the debris from the nearby roadway so that the road could be reopened. Black's completed that work the day of the fire, and it submitted an invoice for \$2,100 to Kohlhouse's insurer once Kohlhouse had provided that information.

¹ We note that Kohlhouse has not filed an Appellant's Appendix. An appendix is required under Appellate Rules 23(C)(5) and 49(A). Nonetheless, we decide this case without the appendix.

Thereafter, Kohlhouse informed Jeff that he wanted Black's to get "everything cleaned up[. H]e wasn't concerned about building back in that site. He just wanted the hole filled up with fill and . . . some dirt [run] on top where he could grow grass." Id. at 9. Kohlhouse also stated that he wanted to leave the current sidewalks in place. Black's submitted a bid on the proposed work in the amount of \$25,950 to both Kohlhouse and Kohlhouse's insurer. Both Kohlhouse and an agent for the insurer informed Black's to proceed in accordance with the bid.

Over the course of the next week, Black's leveled the land and cleared the site of debris. Black's did not compact the land, pursuant to Kohlhouse's instruction. And Black's did not disturb the sidewalks, also pursuant to Kohlhouse's instruction.

Once the work was completed, Black's submitted an invoice for \$28,050 to the insurer, which reflected the bid amount plus the still-unpaid \$2,100 initial invoice. Kohlhouse then informed Black's that the insurer had remitted to him a check for \$25,000, which Kohlhouse paid over to Black's. Kohlhouse told Black's that he would pay the remaining \$3,050 once the insurer provided that additional sum.

Black's followed up with Kohlhouse on several occasions but to no avail. Eventually, Black's contacted the insurer directly, and the insurer stated that the only check it had issued to Kohlhouse was for the full amount of \$28,050. Black's promptly informed Kohlhouse that payment was due, and Kohlhouse told Jeff that "you w[ere] going to get paid, [but] now you've pissed me off and . . . you'll never see your money." Id. at 15.

On October 19, 2009, Black's filed suit against Kohlhouse for the balance of the invoice. Kohlhouse filed a counter-claim for \$3,601.28, which Kohlhouse alleged was the amount he had to spend to fix mistakes made by Black's. After a bench trial, on July 28, 2010, the trial court entered judgment for Black's on all claims. In so ordering, the court stated as follows:

Evidence shows the cleanup and fill of the property was completed and that at no time during the cleanup and fill, or the days after, did [Kohlhouse] contact [Black's] and complain concerning the quality of [Black's] work. Evidence shows that [Black's] submitted appropriate bills to [Kohlhouse's] insurance company totaling [\$28,050], and that said payment was made by the insurance company to [Kohlhouse]. Evidence also shows that [Kohlhouse] represented to [Black's] that he had only received [\$25,000] and would pay the remaining amount later. After several attempts to collect the remaining amount billed by [Black's], [Black's] filed this cause of action.

[Kohlhouse] now complains the job was not performed correctly and not completed in a workmanlike manner, and that he has suffered damages to his sidewalk and would incur additional fill expenses amounting to over [\$3,000].

The Court fails to recognize [Kohlhouse's] defense as valid, in that [Kohlhouse] did receive compensation from the insurance company based upon [Black's] bill. The Court finds there is no evidence that at any time prior to the bills being submitted, or the issuance of the check to [Kohlhouse], that he rendered any complaint to [Black's] about the job performance or that he was holding out final payment based upon the job performance. It was only after this matter was sought in Court that those issues were made known to [Black's].

The Court further rejects [Kohlhouse's] argument that the first part of the expenses billed by [Black's] for transporting equipment, unloading equipment, or doing the initial cleanup in the street was not a contract between [Black's] and [Kohlhouse], but one with the Monroe City Fire Department. The Court finds the evidence shows otherwise, and [Kohlhouse] knew [Black's] was performing the work for him.

Appellant's Br. at 13-14. This appeal ensued.

DISCUSSION AND DECISION

Kohlhouse contends that the trial court erroneously entered judgment for Black's and against him. Our standard of review in an appeal from a judgment entered after a bench trial is well established.² As we have stated:

we "shall not set aside the . . . judgment unless clearly erroneous." Ind. Trial Rule 52(A). A judgment is clearly erroneous if the record leaves us with a firm conviction that a mistake has been made. Because the trial court did not enter any specific findings of fact, we may affirm the general judgment based upon any theory supported by the evidence.

We presume that the trial court correctly applied the law. In addition, we must give due regard to the trial court's opportunity to judge the credibility of the witnesses. We may not reweigh the evidence, and we may consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.

Barber v. Echo Lake Mobile Home Cmty, 759 N.E.2d 253, 255 (Ind. Ct. App. 2001)

(some citations and quotations omitted; omission original).

Kohlhouse claims the trial court clearly erred when it entered its judgment. Specifically, Kohlhouse asserts that the court erred for the following reasons: (1) Black's \$2,100 invoice was based on a contract with the Monroe City Fire Department, not on a contract with Kohlhouse; (2) insofar as Black's and Kohlhouse did have a contract, the contract price was capped at \$25,000; and (3) Kohlhouse is entitled to offset Black's costs by the \$3,601.28 in damages that Kohlhouse claims Black's poor workmanship cost him. We cannot agree with any of Kohlhouse's assertions.

² Kohlhouse does not include a standard of review in his appellant's brief. See App. R. 46(A)(8)(b) ("The argument must include for each issue a concise statement of the applicable standard of review . . .").

All three of Kohlhouse's claims have a common theme: they completely ignore Jeff's testimony and the multiple exhibits supporting Jeff's testimony. As stated above, Jeff testified that Kohlhouse and Black's had an agreement for Black's to perform the \$2,100 in initial cleanup. Jeff also testified that their subsequent agreement was based on a bid showing an estimate of \$25,950 in costs. And Jeff testified that Black's performed the work in a workmanlike manner, which was corroborated by Kohlhouse's failure to complain about the work until after Black's had filed suit against Kohlhouse to recover payment of the balance of the invoice.

Instead of discussing Jeff's testimony in any meaningful way, Kohlhouse ignores that testimony and instead focuses only on his own testimony. As such, Kohlhouse's arguments on appeal are not consistent with our standard of review, which requires this court to credit only the testimony favorable to the trial court's judgment. Each of Kohlhouse's three proffered grounds of error are easily resolved against Kohlhouse based on Jeff's testimony and the exhibits support his testimony. Because we will not reweigh testimony or other evidence on appeal, Kohlhouse's claims of error must fail. Kohlhouse has failed to show that the judgment is clearly erroneous and, thus, the judgment is affirmed.

Affirmed.

ROBB, C.J., and CRONE, J., concur.