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IN THE
COURT OF APPEALS OF INDIANA

WESTERN CONSOLIDATED TECHNOLOGIES, INC.,	)	
Appellant-Defendant,	)	
vs.	)	No. 76A03-0906-CV-253
RMJ SERVICES, INC.,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
Cause No. 76C01-0605-CC-243

December 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary and Issue

Western Consolidated Technologies, Inc. ("Western"), appeals an order granting the motion to correct error filed by RMJ Services, Inc. ("RMJ"), arguing that the trial court clearly erred in finding that Western owed RMJ $45,707.85 for services performed by RMJ prior to the cancellation of their contract on August 31, 2003. We affirm.

Facts and Procedural History

Western manufactures automotive parts, which it sold to Delphi Harrison Thermal Systems ("Delphi"). During March 2003, Delphi and Western agreed that Western's parts would be inspected by RMJ prior to shipment to Delphi and that Western would pay for RMJ's inspection services. This arrangement continued until August 31, 2003, when Western informed RMJ that its services were terminated and began using the inspection services of another company. Delphi then contracted with RMJ to inspect the parts after the company employed by Western. RMJ continued to bill Western for its inspections, which Western refused to pay.

On May 10, 2006, RMJ filed a complaint against Western alleging that it owed $97,758.00 for RMJ's inspection services. RMJ filed a motion for summary judgment, and Western filed a motion in opposition to RMJ's summary judgment motion. Following a hearing, the trial court issued an order finding that only two issues remained for resolution at trial: whether the contract between RMJ and Western terminated in August 2003 and which invoices, if any, remained to be paid. Appellant's App. at 41. After a bench trial, on December 17, 2008, the trial court issued its judgment, finding that the contract between

RMJ and Western terminated on or about August 31, 2003 and entering judgment for Western and against RMJ on RMJ's complaint. *Id*. at 42-45.

On January 12, 2009, RMJ filed a motion to correct error, arguing that there were unpaid invoices for inspections performed prior to August 31, 2003. The trial court held a hearing and took the matter under advisement. On May 5, 2009, the trial court issued an order granting RMJ's motion to correct error, which provided in relevant part as follows:

> 1. The Court did not commit error in its Judgment of December 17, 2008 in concluding that the contract which existed between RMJ and Western terminated on or about August 31, 2003.
>
> 2. The Court did, however, commit error in not awarding damages to RMJ.
>
> 3. In its Judgment of December 17, 2008, the Court incorrectly was of the opinion that all invoices for work performed by RMJ for the benefit of Western prior to August 31, 2003, had been paid in full by Western. The Court was incorrect.
>
> 4. [RMJ's] Exhibit 4, invoices 146 through 170, reflect[s] invoices for services performed by RMJ for and on behalf of Western prior to August 31, 2003.
>
> 5. Without adjustment being made by the Court, these invoices total $73,231.10.
>
> 6. [Western's] Exhibit E reflects, and the Court so finds, that invoice 167 is duplicitous of invoice 168, thereby necessitating a reduction of damages owing to RMJ by Western in the amount of $7,753.00.
>
> 7. [RMJ's] Exhibit 4 further reflects unpaid invoice 169 in the amount of $4,812.00.
>
> 8. [Western's] Exhibit E reflects, and the Court so finds, the correct unpaid amount of invoice 169 is $4,182.00, thereby necessitating a further reduction of damages owed to RMJ by Western in the amount of $630.00.

> 9. [RMJ's] Exhibit 4 reflects, and the Court so finds, Western has paid RMJ for work performed prior to August 31, 2003 the amount of $19,140.25.
>
> 10. The Court concludes there is owing to RMJ from Western for services performed by RMJ prior to the contract termination date of August 31, 2003, the amount of $45,707.85 ($73,231.10 - $7,753.00 = $65,478.10 - $630.00 = $64,848.10 - $19,140.25 = $45,707.85).

Id. at 5-7. Western appeals.

Discussion and Decision

Initially, we note that the parties have presented us with different standards of review. The confusion appears to stem from the distinction between negative and adverse judgments. Generally, when the trial court enters findings of fact and conclusions of law, its findings and conclusions shall not be set aside unless clearly erroneous. *Shady v. Shady*, 858 N.E.2d 128, 140 (Ind. Ct. App. 2006), *trans. denied* (2007). We define the particular clearly erroneous standard to be used based on whether the party is appealing a negative or an adverse judgment. *Romine v. Gagle*, 782 N.E.2d 369, 376 (Ind. Ct. App. 2003), *trans. denied*. "A negative judgment is one that was entered against a party bearing the burden of proof; an adverse judgment is one that was entered against a party defending on a given question, i.e., one that did not bear the burden of proof." *Id*. In the instant case, Western appeals from an adverse judgment because it was defending against RMJ's lawsuit and thus did not bear the burden of proof. *See Garling v. Ind. Dep't of Natural Res.*, 766 N.E.2d 409, 411 (Ind. Ct. App. 2002) (stating that appeal from judgment based on findings in favor of party with burden of proof is an appeal from an adverse judgment), *trans. denied*.

On appeal of an adverse judgment, the findings are clearly erroneous if they are not supported by substantial evidence of probative value. *Romine*, 782 N.E.2d at 376. Moreover, we will reverse the judgment even where the supporting evidence is substantial, if we are left with a definite and firm conviction a mistake has been made. *Id*.

Western argues that the trial court based its decision on unreliable evidence. The trial court predominately relied on Plaintiff's Exhibit 4, which is a statement of invoices sent to Western and payments made by Western. Copies of these invoices comprise Plaintiff's Exhibit 3, and the originals are part of Defendant's Exhibit E. Western points to the fact that some invoices were prepared after August 31, 2003. However, Plaintiff's Exhibit 3 and Defendant's Exhibit E show that these invoices were based on work performed before August 31, 2003. Although Western suggests that the invoices are unreliable because they were not timely sent, it does not deny that RMJ performed the inspections as indicated on the invoices. Western also directs our attention to errors in Plaintiff's Exhibit 4: the duplication of invoice 168 and the incorrect sum for invoice 169. The trial court acknowledged and corrected both of these errors. Finally, Western asserts that on October 29, 2003, Robert Duve, RMJ's owner, sent Western an email that indicated that Western owed RMJ only $23,000. However, that email states, "The invoices *sent to you so far* total more than $23,000.00." Plaintiff's Ex. 6 (emphasis added). Thus, the statement leaves open the possibility that RMJ performed work for which Western had not yet been billed.

Our review of the record shows that the copies of the invoices in Plaintiff's Exhibit 3 accurately reflect the actual invoices contained in Defendant's Exhibit E. Further, Plaintiff's

Exhibit 4 is a substantially accurate summary of the invoices. As such, we conclude that the trial court's findings are supported by substantial evidence of probative value and we are not left with a definite and firm conviction that a mistake was made. *See Garling*, 766 N.E.2d at 411. Therefore, the trial court's order granting RMJ's motion to correct error is not clearly erroneous.

Affirmed.

DARDEN, J., and MAY, J., concur.