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# IN THE
# COURT OF APPEALS OF INDIANA

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| Nightingale Care Services, Inc. d/b/a Nightingale Home Healthcare, | ) | |
| Appellant-Defendant, | ) | |
| vs. | ) | No. 29A04-0903-CV-147 |
| Luisi Enterprises, Inc. d/b/a Carmel Pro Painter, | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
The Honorable William P. Greenaway, Magistrate
Cause No. 29D03-0809-PL-1082

**December 31, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issues

Nightingale Care Services, Inc. d/b/a/ Nightingale Home Healthcare ("Nightingale") appeals the trial court's judgment in favor of Luisi Enterprises, Inc. d/b/a Carmel Pro Printer ("Luisi") on Luisi's claim for collection of unpaid printing bills. For our review, Nightingale raises two issues: 1) whether the trial court erred when it entered judgment in favor of Luisi; and 2) whether sufficient evidence supports the trial court's award of damages.[1] Concluding the trial court did not err and the evidence supports the damages award, we affirm.

## Facts and Procedural History

On April 8, 2008, Nightingale contacted Luisi regarding the printing of magnetic-strip postcards advertising an open house to be held at one of Nightingale's facilities. That same day, Luisi provided Nightingale with a written cost estimate for printing the postcards and sending the postcards to a mail services company to be addressed, affixed with postage, and pre-sorted for mailing. The estimate for the postcards includes the following language: "Delivery 6-9 days after proof." Appellant's Appendix at 56. The estimate also includes a line item for inkjet addressing and presorting, tasks performed by the mail services company; however, evidence in the record indicates Nightingale paid the mail services company directly for postage. Id. It is unclear from the record whether the word "delivery" in the estimate intends delivery to the addressees or delivery to the mail services company.

Rajesh Relan, the Nightingale employee who arranged to have Luisi print the postcards, testified he informed Luisi that Nightingale wanted the postcards to be mailed so

[1] Luisi sought collection of unpaid bills for many different printing jobs; however, Nightingale only challenges the trial court's judgment and award of damages with respect to the printing of 11,000 postcards

as to be received by the addressees by April 18, 2008, because the open house was scheduled for April 23, 2008. Luisi's owners testified no specific date was mentioned other than the time frame contemplated by the estimate but admitted Relan was concerned about how quickly the job could be completed. However, Nightingale did not submit all of the artwork or approve the final proof of the postcard design until April 14, 2008. As a result, Nightingale could not begin printing until April 14th at the earliest. Luisi printed all 11,000 postcards, attached the magnetic strips, and sent the postcards to the mail services company by April 17, 2008. The mail services company addressed, affixed with postage, and pre-sorted the postcards and placed them into the mail on April 18, 2008. However, 180 postcards were not addressed properly because the magnets caused the postcards to stick together during the address printing process and, thus, were not mailed. Nightingale was not charged postage for those 180 postcards.

On September 5, 2008, Luisi filed a complaint against Nightingale for collection of unpaid bills, including bills for printing the postcards and invitations. Nightingale responded by claiming Luisi had breached the contract for printing the postcards because the postcards were not received by the addressees by April 18, 2008. The trial court held a bench trial on February 10, 2009, at which it heard testimony from the owners of Luisi and from Relan. The trial court found in favor of Luisi and entered judgment in the amount of $9,067.19. Nightingale now appeals.

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advertising an open house at one of Nightingale's facilities.

## Discussion and Decision

### I. Judgment

The trial court entered a general judgment without specific findings of fact or conclusions thereon. We will affirm a general judgment on any legal theory consistent with the evidence. Perkins v. Brown, 901 N.E.2d 63, 65 (Ind. Ct. App. 2009). We will neither reweigh the evidence nor rejudge the credibility of the witnesses. Id. In addition, we presume the trial court correctly followed the law and this presumption is one of the strongest presumptions applicable to our consideration of a case on appeal. Id.

Luisi provided a written estimate to Nightingale indicating it could print and deliver the postcards for mailing six to nine days after final proof of the design. Nightingale did not give final approval until April 14, 2008. Thus, Luisi had until April 20, 2008, at the earliest to complete the job according to the terms of the written estimate. Nonetheless, Luisi rushed the job, completing it on April 17, 2008, and the mailing services company addressed and mailed the postcards the following day. Therefore, even if the written estimate contemplated delivery to the addressees within six to nine days of final proof, the project was completed well under that timeframe. In addition, any delay in completing the job is attributable more to Nightingale for not providing a final version of its artwork, delaying Luisi's ability to start printing, than to Luisi or the mail services company failing to diligently complete the job.

Nightingale argues, however, Luisi knew of and agreed to ensure the postcards would be completed in time to be received by the addressees by April 18, 2008. Only Relan's testimony and no documentary evidence supports the existence of such an agreement;

whereas the testimony of Luisi's owners and the written estimate support an agreement to complete the job within six to nine days after final proof. This case boils down to a question of whom to believe, Nightingale or Luisi. Therefore, Nightingale's argument on appeal is essentially a request for this court to reweigh the evidence, which we will not do. Perkins, 901 N.E.2d at 65. Evidence in the record supports the trial court's judgment that Luisi printed the postcards within the timeframe promised in its written estimate and, as a result, is entitled to payment for its services. We affirm the trial court's judgment.

II. Award of Damages

We employ a limited standard of review to a trial court's award of damages. Prime Mortgage USA, Inc. v. Nichols, 885 N.E.2d 628, 656 (Ind. Ct. App. 2008). "No degree of mathematical certainty is required in awarding damages as long as the amount awarded is supported by evidence in the record." Id. (quoting Gasway v. Lalen, 526 N.E.2d 1199, 1203 (Ind. Ct. App. 1988)).

Luisi provided documentary evidence of its damages in the form of unpaid invoices totaling $9,067.19. Nightingale argues it should not be responsible for the costs of printing the postcards that were never properly addressed or mailed. Luisi contracted to print 11,000 postcards and deliver them to a mail services company to be addressed, affixed with postage, and mailed. Luisi printed and delivered 11,000 postcards. That only 10,820 postcards were actually mailed is the result of an error by the mail services company, not Luisi, and there is no evidence in the record linking Luisi to the mail services company. In addition, the record indicates the mail services company did not charge Nightingale postage for the 180 pieces

not properly addressed. Therefore, the evidence in the record supports the trial court's calculation of damages.

## Conclusion

The trial court did not err when it granted judgment in favor of Luisi and sufficient evidence supports its calculation of damages. Therefore, the trial court's judgment is affirmed.

Affirmed.

BAKER, C.J. and BAILEY, J., concur.