STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1542

Rodney Preusse, et al.,
Appellants,

vs.

Robert W. Rakow Construction,
Respondent.

Filed August 4, 2009
Affirmed
Kalitowski, Judge

Crow Wing County District Court
File No. 18-C9-05-002384

Kimberly E. Brzezinski, Lonny D. Thomas, Thomas & Associates, P.A., 34354 County Road 3, P.O. Box 430, Crosslake, MN 56442 (for appellants)

Peter Vogel, Rosenmeier Law Office, 210 Northeast Second Street, Little Falls, MN 56345 (for respondent)

Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellants Rodney Preusse and Jean St. Pierre contend that the district court erred in concluding that respondent Robert W. Rakow Construction did not breach the parties' contract and that neither party was entitled to damages. Because the evidence supports the district court's findings and conclusions, we affirm.

D E C I S I O N

In November 2002, respondent contracted with appellants to construct a log home on appellants' property in exchange for $168,280. In May 2003, appellants terminated the contract due to concerns with construction delay and additional costs, but the contract was reinstated a few days later. In June 2003, appellants again suggested that the parties terminate the contract. Respondent agreed, and the contract was formally terminated in late June 2003.

Based on the additional costs and the delay in construction, appellants sought and obtained a judgment against respondent in conciliation court. Respondent removed the matter to the district court, where appellants alleged damages in excess of $50,000 for breach of contract, breach of warranty, breach of the duty of good faith and fair dealing, negligence, misrepresentation, and violation of the Minnesota Consumer Fraud Act. Respondent counterclaimed, seeking $4,560 for consulting and job coordination fees and other expenses.

After a two-day court trial, the district court determined that respondent did not breach its contract with appellants and that neither party was entitled to damages, costs or disbursements. Neither party moved for amended findings of fact or a new trial.

Appellants contend that the district court's interpretation of the facts was clearly erroneous because (1) respondent breached the contract by failing to complete the construction within a reasonable time; (2) respondent breached the contract by relocating the house and by requesting payment from appellants beyond the price provided for in the fixed-price contract; and (3) the district court erred in determining that appellants were not entitled to damages.

"On appeal from a judgment where there has been no motion for a new trial, appellate review is limited to determining 'whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.'" *Rainforest Cafe, Inc. v. State of Wisc. Inv. Bd.*, 677 N.W.2d 443, 450 (Minn. App. 2004) (quoting *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976)). Appellate courts may also review substantive questions of law properly raised at trial. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310-11 (Minn. 2003). We review questions of law de novo. *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 802 (Minn. App. 2001).

Reasonable Completion Time

Appellants argue that the district court erred by assigning liability for the delay in construction to both appellants and respondent. We disagree.

The contract at issue does not provide a starting date or a completion date for the construction project. "[W]here a contract is silent as to the time of performance, the general rule is that the contract must be performed within a reasonable time." *Hill v. Okay Const. Co.*, 312 Minn. 324, 333, 252 N.W.2d 107, 114 (1977). "Reasonable time" is generally such "time as is necessary . . . for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires should be done, having a regard for the rights and possibility of loss, if any, to the other party." *Davis v. Godart*, 147 Minn. 362, 365, 180 N.W. 239, 240 (1920) (quotation omitted).

Appellants assert that respondent assured them that construction would be completed within six months of November 2002. But this six-month term was not contained within the four corners of the written contract. Moreover, the contract does not provide any term clarifying which party was responsible for obtaining permits, variances and additional rights of way, or which party was responsible if these things led to a delay. Courts will not remake or rewrite a contract on behalf of the contracting parties. *Telex Corp. v. Data Prod. Corp.*, 271 Minn. 288, 295, 135 N.W.2d 681, 687 (1965). Here, therefore, we will not insert a six-month completion date into the contract.

The record indicates that as of May 2003, the construction had been delayed due to (1) appellants' need to obtain a vacation of part of the property from Crow Wing County and the legal process involved with the vacation; (2) the relocation of the house site; and (3) the need to install silt fencing and comply with a setback requirement. And the record indicates that due to Minnesota's weather conditions, excavation could not begin until March or April of 2003. On this record, we conclude that the evidence

supports the district court's conclusion that the occurrence of these problems does not show that the construction of the house was not completed within a "reasonable" time. Therefore, the record supports the district court's finding that respondent did not breach the contract for construction due to delay.

Appellants also complain that respondent was difficult to contact and this further delayed the construction of the house.

But respondent's testimony refutes this complaint. Respondent testified that despite informing appellants that he could not start excavating until he obtained a building permit, appellants "were constantly on [him] to get it started" before issuance of the permit. In addition, respondent testified that appellant Preusse assisted him in deciding the location of the house. This testimony contradicts Preusse's claim that appellants had no knowledge of, or participation in deciding, the home's ultimate location. Respondent also testified that neither appellants nor their attorney contacted respondent regarding their attempt to obtain a vacation from Crow Wing County, nor did they inform or consult respondent when they "called a halt to the vacation process."

The district court credited respondent's testimony, and we defer to the credibility determinations of the trier of fact. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Therefore, the evidence supports the district court's finding that "poor direct communication" on the part of both parties contributed to the delay in the construction project.

Relocating Home and Additional Costs

Appellants argue that respondent's decision to change the home's location and the additional fill costs incurred due to that change constituted a breach of the contract and justified appellants' termination of the contract. Despite appellants' complaint on appeal that respondent "caused the additional costs by selecting the ultimate location of the construction," at trial, neither party contested the propriety of the ultimate location of the home. And the four corners of the contract do not state that the contract is breached if respondent requests payment for additional, unexpected costs. Nor does the contract state which party is responsible for determining the location of the home. Moreover, the contract does not indicate that fill materials are included in the contract.

We conclude that the evidence supports the district court's findings that (1) the contract does not indicate whether any fill materials are included in the material portion of the contract; (2) the need for additional fill materials was not anticipated by the parties; (3) the present location of the home was not at issue at the time of trial; and (4) the "over run in the total project cost" did not constitute a breach of contract on respondent's part.

In conclusion, the district court's findings of fact support its conclusion that respondent did not breach its contract and its judgment that neither party is entitled to damages.

Affirmed.