

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

MICHELE IACOVONE dba A-ACTION : BASEMENT WATERPROOFING AND PLUMBING,	O P I N I O N
Plaintiff-Appellee,	:
- vs -	:
PETER J. SELVAGGIO,	:
Defendant-Appellant.	:

CASE NO. 2014-L-090

Civil Appeal from the Mentor Municipal Court, Case No. 13 CVF 744.

Judgment: Affirmed.

Spiros E. Gonakis, 20050 Lakeshore Boulevard, Euclid, Oh 44123 (For Plaintiff-Appellee).

Richard D. Eisenberg, 1413 Golden Gate Boulevard, Suite 200, Mayfield Heights, OH 44124 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} In December 2009 or February 2010, Appellant Selvaggio contacted Appellee Iacovone regarding a problem with standing water in the basement of Selvaggio's home in Mentor on the Lake, Ohio. Iacovone owns and operates a business known as A-Action Basement Waterproofing and Plumbing. Iacovone advised Selvaggio that fixing the problem required significant work that included excavating the foundation, waterproofing the basement walls, laying new drain tile, and cutting and

replacing part of the cement driveway. Iacovone quoted Selvaggio a price of \$8800.00 for the work.

{¶2} Selvaggio informed Iacovone that he was unable to pay the entire cost presently but that he could pay a portion upon completion and pay off the remaining balance over time. The parties then discussed the possibility that Selvaggio's homeowner's insurance might cover the cost of the repairs.

{¶3} Iacovone started work almost immediately and completed the job over the course of several days. Selvaggio was present for nearly the entire time that the work was being performed. When the work was completed Selvaggio failed to pay Iacovone. Iacovone periodically contacted Selvaggio regarding the outstanding payment.

{¶4} On August 26, 2011, Iacovone sent Selvaggio an invoice for \$8800.00 for the basement waterproofing work. Also in August 2011, Iacovone taped an in-person conversation with Selvaggio wherein Selvaggio admitted that the waterproofing work had been performed. During the taped conversation Selvaggio told Iacovone that he would pay the bill after he sold a different property that he (Selvaggio) owned. The taped conversation also indicates that Selvaggio was satisfied with the work that Iacovone performed.

{¶5} In July 2012, Iacovone had his attorney send Selvaggio a collection letter for the basement waterproofing work. Iacovone did not receive payment. On September 16, 2013 Iacovone filed suit in the Mentor Municipal Court for breach of contract and unjust enrichment. On February 27, 2014 Selvaggio filed a motion for summary judgment which the trial court denied. On March 18, 2014 a bench trial was held in front of the trial court's magistrate. Both parties filed proposed findings of fact

and conclusions of law. On May 1, 2014 the magistrate issued his decision finding in favor of Iacovone awarding him a judgment of \$8800.00 plus interest of 3% from the date of judgment. On June 19, 2014 Selvaggio was granted leave to file his objections to the magistrate's decision. On July 18, 2014 the trial court adopted the magistrate's decision. This appeal followed.

{¶6} Selvaggio assigns two assignments of error for our consideration:

{¶7} "[1] The trial court committed prejudicial error in overruling Defendant's objections and adopting the Magistrate's Conclusion that 'The parties had a contract that Plaintiff would perform work upon Defendant's home and that Defendant would pay for that work.'

{¶8} "[2] The trial court committed prejudicial error in adopting the Magistrate's Conclusion of Law, overruling objection, that 'The testimony in the case that the damages are reasonable for the work performed as plaintiff is entitled to \$8800 for work performed on defendant's property.'"

{¶9} For the following reasons we affirm the decision of the trial court.

{¶10} There was no written contract between the parties and the amount of documentary evidence introduced in the trial court was minimal. The main source of evidence in this case is the testimony of Iacovone and Selvaggio. Selvaggio's argument is that no contract was formed inasmuch as he never agreed to pay Iacovone for the work performed.

{¶11} Selvaggio testified that he told Iacovone that he (Selvaggio) could not afford to pay the cost of the repair, and that Iacovone would only be paid if Selvaggio's homeowners insurance covered the claim. Selvaggio further testified that Iacovone told him not to worry about payment as he (Iacovone) works with insurance companies all the time. Iacovone denied that he made these statements. Iacovone also denied that there was an agreement in place wherein he would only be paid if Selvaggio's homeowner's insurance agreed to cover the repair.

{¶12} As far as determining the facts of a case as presented through testimony, the trial court is in the best position to "view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). It is incumbent upon us to accept every reasonable presumption in favor of a trial court's judgment regarding its findings of fact. Even if the evidence supports more than one interpretation, we shall give deference to the lower court's credibility determinations. *Id.*

{¶13} Here, the question in dispute involves whether an oral contract *exists* between the parties, and if an oral contract does exist, what are its terms? Iacovone, as the plaintiff bears the burden of proof as to the existence of the oral contract. *Snyder v. Snyder*, 170 Ohio App.3d 26, 2007-Ohio-122, ¶41 (11th Dist.). To prove the existence of the contract, Iacovone must show that the parties consented to the terms, that there was a "meeting of the minds" and that the terms of the contract are definite and certain. *McSweeney v. Jackson*, 117 Ohio App.3d 623 (4th Dist.1996).

{¶14} Selvaggio argues that no oral contract exists because there was no agreement that he would pay Iacovone for the work performed. Iacovone argues that an oral contract does exist between the parties and that under its terms Selvaggio is obligated to pay him for the work performed.

{¶15} Whether or not a contract exists is a determination to be made by the fact finder as determined from the facts, words, acts, conduct, and circumstances. *LaPoint v. Templeton*, 6th Dist. Fulton No. F-07-014, 2008-Ohio-1792, ¶35, quoting 89 Ohio Jurisprudence 3d, Trial, Section 178. Based upon the testimony and evidence presented, the trial court found there was an oral agreement between the parties that Iacovone would undertake the waterproofing job at Selvaggio's home and receive \$8800.00 for those services.

{¶16} Selvaggio's first assignment of error lacks merit.

{¶17} In his second assignment of error Selvaggio argues that the only evidence to support the trial court's award of \$8800.00 in damages is the self-serving testimony of Iacovone. First, it should be noted that Selvaggio offered no evidence to dispute the \$8800.00 figure offered by Iacovone. As we noted above the trial court is in the best position to determine the credibility of witnesses. This includes determining the credibility of self-serving testimony. *The T-Building Co. v. HVL, Inc.*, 8th Dist. Cuyahoga No. 98244, 2013-Ohio-933, ¶36.

{¶18} The magistrate noted in his findings of fact and conclusions of law that Iacovone's 34 years of experience in the waterproofing field allowed him to render credible testimony regarding the reasonable value of the work performed. Selvaggio's second assignment of error is without merit.

{¶19} For the foregoing reasons, appellant's assignments of error are not well-taken.

{¶20} The judgment of the Mentor Municipal Court is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.