[Cite as *Valley City Elec. Co., Inc. v. RFC Contracting , Inc.*, 2010-Ohio-964.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

VALLEY CITY ELECTRIC CO., INC. Appellee v. RFC CONTRACTING, INC. Appellant	C. A. No. 09CA009608 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 02CV131577

DECISION AND JOURNAL ENTRY

Dated: March 15, 2010

CARR, Judge.

{¶1} Appellant, RFC Contracting, Inc. ("RFC"), appeals from a judgment of the Lorain County Court of Common Pleas in favor of appellee, Valley City Electric Company, Inc. ("Valley City") that was issued five years after the conclusion of the bench trial. Because the trial court's judgment is against the manifest weight of the evidence presented at trial, this Court reverses and remands.

I.

{¶2} This contract dispute involves work performed by Valley City on an Ohio Turnpike Commission construction project at two maintenance buildings in Boston Heights and Amherst, Ohio. RFC, the turnpike commission's general contractor, entered into a written subcontract with Valley City to do the electrical work at each job site. The parties agree that they entered into a written contract for Valley City to perform the basic electrical contract work

for $137,000. They further stipulated that RFC paid Valley City $93,507 of the $137,000 contract price.

{¶3} On May 15, 2002, Valley City filed a complaint against RFC and the Ohio Turnpike Commission, although it eventually dismissed the turnpike commission from the case. Valley City alleged that RFC was in breach of contract for its failure to pay Valley City for its electrical work performed pursuant to the contract. RFC counterclaimed for damages, claiming that any money that it allegedly owed Valley City had been offset by the damages that RFC had incurred due to Valley City's breaches of the subcontract agreement.

{¶4} The case proceeded to a bench trial on December 15 and 16, 2003. Valley City presented evidence that RFC still owed it the remainder of the $137,000 contract price and that it also owed Valley City for extra work it had done pursuant to change orders that had been approved by RFC and the turnpike commission. RFC disputed some of Valley's City's evidence and also attempted to establish that Valley City had caused RFC to incur damages by delaying completion of the project, failing to complete some of the basic electrical work, and by failing to repair damage that it caused.

{¶5} On December 17, 2003, the trial court issued a journal entry in which it indicated that the trial had concluded and that it would begin deliberations. During the next five years, however, the trial court failed to issue a judgment in this case.

{¶6} On September 29, 2008, the trial court filed a journal entry stating that Valley City had filed proposed findings of fact and conclusions of law. Although the trial court indicated that Valley City "filed" proposed findings and conclusions, no such document appears in the record. RFC, who had retained new counsel since the trial, was apparently served with a

copy of Valley City's proposed findings and conclusions and did not file any of its own proposed findings and conclusions.

{¶7} On May 19, 2009, the trial court issued judgment in favor of Valley City for $55,365.60 plus pre-judgment interest. At the same time, the trial court filed findings of fact and conclusions of law. RFC appeals and raises six assignments of error that will be consolidated and addressed out of order for ease of discussion.

II.

ASSIGNMENT OF ERROR III

"THE TRIAL COURT'S FINDING OF FACT THAT RFC WAS ENTITLED TO A CREDIT OF ONLY [$2,000] FOR ASPHALT WORK ELIMINATED FROM THE SUBCONTRACT INSTEAD OF $12,082.50 WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE TERMS OF THE CONTRACT."

ASSIGNMENT OF ERROR IV

"THE TRIAL COURT'S FINDING THAT RFC PAID VALLEY CITY ONLY $89,582.50 INSTEAD OF THE $93,507 STIPULATED TO BY THE PARTIES WAS AN ABUSE OF DISCRETION AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

ASSIGNMENT OF ERROR V

"THE TRIAL COURT'S FINDINGS THAT RFC WAS NOT ENTITLED TO BACK CHARGES FOR THE AHU-1 ELECTRICAL CONNECTION; FOR WIRE TERMINATION NOT DONE; FOR GRADING AND SEEDING NOT DONE; FOR ADDITIONAL SUPERVISION; AND FOR PRORATA LIQUIDATED DAMAGES INCURRED BY RFC FROM THE OHIO TURNPIKE COMMISSION ON THE AMHERST PROJECT, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE TERMS OF THE CONTRACT."

ASSIGNMENT OF ERROR VI

"THE TRIAL COURT'S FINDINGS THAT RFC WAS NOT ENTITLED TO BACK CHARGES FOR AHU-1 ELECTRICAL CONNECTIONS; FOR CLEAN UP; FOR PROVIDING ADDITIONAL SUPERVISION; FOR PRORATA LIQUIDATED DAMAGES INCURRED BY RFC FROM THE OHIO TURNPIKE COMMISSION; FOR DAMAGE TO A CRANE MOTOR AND

GARAGE DOOR; FOR REDUCING VALLEY CITY'S CONTRACT PRICE; FOR SHALLOW TRENCHES DONE BY VALLEY CITY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE TERMS OF THE CONTRACT."

{¶8} This Court will address RFC's third, fourth, fifth, and sixth assignments of error together because they are closely related and are dispositive of this appeal. Through these assignments of error, RFC contends that the trial court's judgment, as evidenced through its findings of fact and conclusions of law, is against the manifest weight of the evidence presented at the trial. This Court agrees.

{¶9} This Court begins by emphasizing that the trial court issued the judgment in this case, as well as its findings of fact and conclusions of law, more than five years after the conclusion of the trial. At that time, the record did not include a transcript of hearing, so the trial court was left to rely on its memory and any notes that it may have had from the trial. Although Valley City had filed proposed findings of fact and conclusions of law and Civ.R. 52 authorized the trial court to review them, those proposed findings and conclusions served only as an aid and did not relieve the trial court of its ultimate responsibility to ensure that its findings and conclusions were factually and legally accurate. See *Paxton v. McGranahan* (Oct. 31, 1985), 8th Dist. No. 49645. RFC maintains that the trial court issued findings of fact and conclusions of law that it adopted almost verbatim from the proposed findings and conclusions submitted by Valley City. The record does not include a copy of Valley City's proposed findings and conclusions, however, so RFC has failed to demonstrate that the trial court simply adopted the proposed findings and conclusions prepared by Valley City.

{¶10} RFC has demonstrated reversible error on the record through other means, however. Because RFC submitted a transcript of the 2003 trial with the record on appeal, this Court was able to compare the trial court's findings and conclusions with the evidence that was

actually before it at trial. Because RFC has pointed to numerous prejudicial errors in the trial court's findings of fact and conclusions of law, it has demonstrated that the trial court's judgment was against the manifest weight of the evidence.

{¶11} Several of RFC's specific challenges to the trial court's factual findings and legal conclusions will not be addressed because they were based on disputed evidence. In reviewing whether the trial court's judgment was against the manifest weight of the evidence, this Court "must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial court." *Myers v. Garson* (1993), 66 Ohio St.3d 610, 616.

{¶12} RFC points to several other findings and conclusions of the trial court, however, that were not supported by any of the evidence that was before it at trial. Because this Court's review has revealed a myriad of obvious errors that directly affected the trial court's judgment, it will not enumerate every one of them but will focus on some specific examples.

{¶13} The first and most obvious error, which Valley City concedes is error, is the trial court's finding that RFC had paid Valley City only $89,582.50 toward the $137,000 contract price. That figure fails to appear in any of the evidence before the trial court. In fact, at the beginning of trial, the parties stipulated that RFC had paid Valley City $93,507 on the contract balance. The $93,507 figure was also presented to the trial court through an exhibit and the testimony of one of the witnesses.

{¶14} The trial court further found that RFC had failed to prove most of the back charges that it claimed against Valley City. In reaching its conclusions on many of the back charges, however, the trial court gave explanations that were not supported by any of the evidence at trial. For example, the trial court found that RFC was not entitled to a back charge

for hiring someone else to complete Valley City's work on the duct bank wire terminations at the Amherst site because Valley City's manager testified that the turnpike commission did not require RFC to complete that work. Valley City's manager gave no such testimony and, in fact, conceded that RFC was entitled to a back charge because Valley City did not complete the work. RFC presented evidence that the work was required by the main contract, that Valley City did not complete it, and that RFC paid another contractor over $3,000 to finish the job. Valley City did argue that the amount of the back charge was excessive, although it presented no contradictory evidence other than its manager testifying that some amount around $500 was a more appropriate charge.

{¶15} Several other items that RFC had back charged to Valley City were charges RFC had incurred to repair damages allegedly caused by Valley City during its work at each job site. The undisputed evidence established that the subcontract between Valley City and RFC incorporated the electrical contractor's duties under the main contract between RFC and the Ohio Turnpike Commission. The main contract explicitly provided that the electrical contractor would bear the cost of repairing any damage caused by its work.

{¶16} Although Valley City disputed that it had been the cause of some of the areas of damage alleged by RFC, it did not present any evidence to dispute its responsibility for some of the damage. For example, RFC presented evidence that Valley City had failed to re-grade and replant the grass in an outdoor area at the Boston Heights site that was damaged when Valley City installed an underground electrical conduit. Valley City did not dispute that it had damaged the area or that it failed to re-grade and reseed the area. It simply argued that RFC's back charge was excessive, but it presented no evidence of a different cost for the re-grading and reseeding work. Nonetheless, the trial court disallowed the entire back charge, reasoning that grading and

seeding was not part of Valley City's work under the contract. That conclusion was not supported by any of the evidence presented at trial.

{¶17} Similarly, the trial court disallowed RFC's back charge for work done by a mason at the Boston Heights site because masonry work was not part of Valley City's contract. Again, the trial court's explanation for disallowing the back charge was not supported by the evidence before it. RFC presented evidence that the work was required to repair unnecessary holes in the building masonry created by Valley City when it installed outdoor electrical outlets at the wrong height. Valley City conceded that it had initially installed the outlets at the wrong height and it did not dispute that it had failed to repair the holes in the masonry after the outlets were moved to the correct height. Valley City offered no evidence to contradict RFC's evidence of the charges it incurred to repair the damage.

{¶18} This Court's review of the trial court's findings of fact and conclusions of law reveals numerous additional errors that, although not necessarily prejudicial to the parties, further demonstrate that the trial court's findings of fact and conclusions of law do not reflect the evidence that was actually before it at trial. The findings give incorrect trial dates and incorrectly refer to the Boston Heights job site as the Richfield site. Although the villages of Boston Heights and Richfield may exist in close proximity in Summit County, none of the testimony or documentary evidence before this Lorain County trial court ever referred to the Boston Heights site as the Richfield site. The Boston Heights site was consistently referred to as the "Boston" or "Boston Heights" site.

{¶19} The trial court also explained that Valley City had failed to perform certain work under the contract because it had not been paid, but the testimony was actually that Valley City

had not completed certain work because the work required change orders and RFC had not yet approved them. Valley City was waiting to do the work until it received approval, not payment.

{¶20} There were other, similar errors in the trial court's findings, but this Court need not enumerate them all. The errors detailed above demonstrate that the trial court's judgment was against the manifest weight of the evidence. Having found reversible error solely because this civil bench trial resulted in a judgment that was against the manifest weight of the evidence, App.R. 12(C) authorizes this Court to either issue the judgment that the trial court should have entered or remand the case to the trial court for further proceedings. Because there are so many errors in the trial court's findings of fact and conclusions of law, this Court cannot determine what the judgment should have been without exceeding its role as a reviewing court and acting as a trier of fact in the first instance.

{¶21} Moreover, given the pervasiveness of obvious errors throughout the trial court's findings of fact and conclusions of law, coupled with the five-year lapse of time between trial and judgment, it appears that the trial court's memory was so impacted by the extensive lapse of time that it was unable to fulfill its obligation to act as an independent trier of fact in this case. Consequently, this Court must reverse the judgment and remand the matter for the trial court to issue a new judgment. On remand, rather than relying on its faded memory of the December 2003 trial, the trial court will have the benefit of reviewing the complete transcript of proceedings and the exhibits to fully evaluate the evidence that was actually before it at trial. RFC's third, fourth, fifth, and sixth assignments of error are sustained to the extent that they demonstrate that the trial court's judgment and supporting findings of fact and conclusions of law are not supported by the evidence presented at trial.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE APPELLEE TO SUBMIT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW NEARLY FIVE YEARS AFTER THE TRIAL OF THIS MATTER TO THE BENCH."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT ERRED AS A MATTER OF LAW BY DISREGARDING THE CLEAR AND UNAMBIGUOUS LANGUAGE IN THE SUBCONTRACT AGREEMENT THAT AUTHORIZES THE APPELLANT TO BACK CHARGE AND/OR DEDUCT ITEMS FROM THE CONTRACT PRICE."

{¶22} RFC's remaining assignments of error will not be addressed because they have been rendered moot by this Court's disposition of RFC's third through sixth assignments of error. See App.R. 12(A)(1)(c).

III.

{¶23} RFC's third through sixth assignments of error are sustained. Its first and second assignments of error were not addressed. The judgment of the Lorain County Court of Common Pleas is reversed and the cause is remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

ANTHONY B. GIARDINI, Attorney at Law, for Appellant.

ROBERT T. TINL, Attorney at Law, for Appellee.