

[Cite as *Schambach v. Afford-A-Pool*, 2009-Ohio-6809.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

SHERRILOU SCHAMBACH)	CASE NO. 08 BE 15
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
AFFORD-A-POOL & SPA)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the County Court,
Northern Division of Belmont County,
Ohio
Case No. 08 CVI 129

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Sherrilou Schambach, Pro se
71739 Sunny Acres Dr.
Martins Ferry, Ohio 43935

For Defendant-Appellant: Ryan Slack, Pro Se
Afford-A-Pool
67739 Banfield Road
St. Clairsville, Ohio 43950

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 17, 2009

WAITE, J.

{¶1} Pro se Appellant Afford-A-Pool & Spa appeals the judgment of the Belmont County Court, Northern Division, in a small claims action involving a contract dispute over the installation of an in-ground pool. Pro se Appellee Sherrilou Schambach (“Schambach”) hired Appellant to install a pool at her home, but various problems arose due to lack of proper drainage. Schambach alleged that Appellant made certain promises regarding the installation of french drains so that the pool and the ground water around the pool would drain properly. Appellant argued that french drains were not part of the contract. After a hearing, the court ruled in Schambach’s favor and awarded damages of \$3,000. Appellant argues on appeal that the verdict was against the manifest weight of the evidence and that Schambach did not prove the elements of a breach of contract claim. Most of the facts Appellant relies on were not presented at trial and cannot be used to support the arguments made on appeal. The record supports the trial court’s verdict, and the judgment is affirmed.

{¶2} Schambach hired Appellant to install a 15 feet by 30 feet in-ground pool at her home in Colerain, Ohio. The total cost of the pool was \$16,745.50. The parties entered into a written contract on April 5, 2006. The pool was completed in September of 2006. Drainage problems arose after the pool was installed. Schambach learned that no drains had been installed as promised and she attempted to contact Appellant to resolve the matter. After repeated unsuccessful attempts to contact Appellant, Schambach hired another contractor to install the drains.

{¶13} Schambach filed a small claims action on February 19, 2008. She requested \$3,000 in damages. A hearing was held on April 18, 2008. Schambach testified that Elliott Slack from Afford-A-Pool promised that french drains would be installed as part of the contract price. She testified regarding extensive drainage problems around the pool area. She also testified about a problem with the pool liner caused by improper drainage under the liner.

{¶14} Elliott Slack did not appear at trial to represent the interests of Afford-A-Pool. His son, Ryan, appeared instead. Ryan testified that french drains were not part of the written contract. He did not testify as to any firsthand knowledge as to whether his father had made any oral promises regarding french drains. He also testified that \$3,000 was excessive for installing french drains.

{¶15} The trial court issued its verdict on May 22, 2008.

{¶16} Appellant filed a document that purported to be a brief on October 24, 2008. We had the document stricken from the record for failure to conform to the Rules of Appellate Procedure, and granted an extension to file a substitute brief. Appellant filed a second brief on January 22, 2009. Appellee filed a responsive brief on April 21, 2009.

{¶17} Appellant does not present any assignment of error on appeal. Appellant generally disputes the proof that Schambach presented at trial, and therefore, the argument appears to challenge the manifest weight of the evidence. “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being

against the manifest weight of the evidence.” *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578.

{¶18} The underlying dispute in this case is a contract dispute. “To prove the existence of a contract, a party must establish the essential elements of a contract: an offer, an acceptance, a meeting of the minds, an exchange of consideration, and certainty as to the essential terms of the contract.” *Juhasz v. Costanzo* (2001), 144 Ohio App.3d 756, 762, 761 N.E.2d 679. The parties disagree as to whether french drains were part of the contract. The written contract does not specifically mention french drains, but it does state that Appellant would be responsible for normal excavation, including the removal of ground water. Schambach testified concerning a variety of drainage problems with the pool, including standing water around the pool and problems with water leaking under the pool lining. Ryan Slack testified that Schambach did not need french drains and did not contract to have them installed. He did agree that french drains were a method for dealing with the type of drainage problems that Schambach discussed at trial. He testified that he had no knowledge as to whether there was any current drainage problem because he had not been back to visit Schambach’s property after she had a different contractor install the drains. Since the contract does mention Appellant’s responsibility to remove ground water, and given the other evidence of drainage problems and the use of french drains to solve the problem, the record contains competent and credible evidence supporting a verdict in favor of Schambach. Although Appellant contends that Schambach’s testimony was not credible, questions regarding the credibility of

witnesses are primarily for the trier of fact to decide. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶19} Furthermore, Schambach testified that Elliott Slack, as an authorized representative of Afford-A-Pool, made an oral promise that french drains would be installed. Ryan Slack denied that any promise was made regarding french drains, but admitted that he had no direct knowledge about whether his father had promised to install the drains. Elliott Slack did not testify at trial. Once again, the trial court could have decided to believe Schambach's testimony and render its verdict based on simple breach of the oral contract provision. The trial court also deemed the contract provision regarding the removal of ground water to be ambiguous, and a court may consider parol evidence, such as oral promises or representations, to resolve ambiguities and determine the intent of the parties. *Davis v. Loopco Indus., Inc.* (1993), 66 Ohio St.3d 64, 66, 609 N.E.2d 144.

{¶10} Finally, Appellant objects to the amount of the award. Appellant contends that french drains could have been installed for \$500 or less. There is no evidence in the record supporting this conclusion. A party proving breach of contract is entitled to the benefit of his or her bargain. *Garofalo v. Chicago Title Ins. Co.* (1995), 104 Ohio App.3d 95, 108, 661 N.E.2d 218. In a breach of contract action, the award of money damages is designed to place an aggrieved party in the same position that he or she would have been had the contract not been breached. *World Metals, Inc. v. AGA Gas, Inc.* (2001), 142 Ohio App.3d 283, 287, 755 N.E.2d 434. Schambach testified that she obtained an estimate of \$3,800 to fix the drainage

problem. (Tr., p. 10.) She testified that she subsequently hired a contractor to install the drains. There is also a written estimate in the court's file corroborating Schambach's testimony. The trial court could have relied on this evidence to support an award of \$3,000, because that was the jurisdictional maximum that can be awarded in small claims court.

{¶11} The verdict in this case is not against the manifest weight of the evidence, and Appellant has not raised any other type of error that occurred in the trial court proceedings. Appellant's arguments are overruled and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, J., concurs.