

RECEIVED

Nov 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James B. Jackson, Jr., Master-In-Equity

Appellate Case No.: 2023-000513
Case No.: 2019-CP-38-00416

Cemetery Equity Solutions, Inc. Appellant,

v.

Jeffrey Wideman Respondent.

FINAL BRIEF OF RESPONDEENT

November 27, 2023

s/ I.S. Leevy Johnson
I.S. Leevy Johnson, SC Bar No. 3020
Chelsea A. Glover, SC Bar No. 103896
Johnson Toal & Battiste, PA
130 Centre Street
Orangeburg, South Carolina 29115
(803) 536-9610
islj@jtbpa.com
chelsea@jtbpa.com

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF ISSUE ON APPEAL	4
STATEMENT OF THE CASE	5
STANDARD OF REVIEW	8
ARGUMENT	9
I. There is evidence in the record to support the trial court’s finding that the time periods to which adequate record taking began 10/7/2017 and 11/3/2017.....	9
II. By examining the entirety of the record placed before the trial court, of the contract at issue, Appellant received full credit for all payments made.....	12
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<u>56 Leinbach Invs., LLC v. Magnolia Paradigm, Inc.,</u>	
411 S.C. 466, 769 S.E.2d 242 (Ct. App. 2014).....	8
<u>Johnson v. Little</u> , 426 S.C. 423, 827 S.E.2d 207 (Ct. App. 2019).....	8
<u>Ellie, Inc. v. Miccichi</u> , 358 S.C. 78, 89, 594 S.E.2d 485, 491 (Ct.App.2004).....	8

STATEMENT OF ISSUE ON APPEAL

The trial court did not err in failing to consider all of the Appellant's payments to Respondent for the entirety of the contract; Respondent provided credit for all payments received to ensure Appellant was not deprived of any monies paid.

STATEMENT OF THE CASE

On July 5, 2017, the parties, Cemetery Equity Solutions, Inc. (hereafter “Appellant” or “Defendant”) and Jeffrey Wideman (hereafter “Respondent” or “Plaintiff”) contracted for maintenance services to be performed by Respondent for two cemeteries: Memorial Gardens of Columbia located in Richland County and Forest Lawn Memorial Park located in Kershaw County. (Complaint ¶ 7; ROA 18). On August 21, 2017, the Defendant and Plaintiff entered into another contract for ground maintenance services for Belleville Memorial Gardens and Crestlawn Memorial Cemetery. (Complaint ¶ 8; ROA 18) The fee for this service to be paid by Appellant was to be \$1,200 weekly, the first of which to be written on July 14, 2017. (Plaintiff’s Exhibit 1 – Memorial Gardens & Forest Lawn Contract; ROA 112).

On August 21, 2017, the parties entered into another contract for the same maintenance services to be provided at two additional cemeteries. Each contract contained an Addendum, which provided the Respondent was to receive additional compensation for performing services related to opening and closing gravesites. (Plaintiff’s Exhibit 3 – Memorial Gardens & Forest Lawn Addendum ROA 114) (Plaintiff’s Exhibit 4 – Belleville Memorial Gardens & Crest lawn Memorial Cemetery Addendum ROA 115). Payments pursuant to the Addendums were made pursuant to an invoice system that included the following breakdown:

For each in-ground burial: \$400

Mausoleum Entombment: \$300

In ground Inurnment: \$250

Niche Inurnment: \$100 (Order 12/15/2022 p. 2; ROA 4)

Initially, Respondent was being properly compensated for services rendered pursuant to the contracts, however after the passing of a woman named Kathy¹, Appellant stopped rendering proper payments. (Transcript P. 8, 14- P. 9, 2; ROA 35, ROA 36). On March 26, 2019, Respondent brought claims for breach of contract. (Complaint ¶ 17, ROA 20).

On May 22, 2019, Appellant answered admitting to the contracts but denying the amount claimed. (Answer ¶ 10; ROA 26). The case proceeded to a bench trial before the Honorable James B. Jackson, Jr. on October 12, 2022. Judge Jackson ultimately entered judgment in favor of Respondent in the amount of \$65,750, a reduction of the \$71,600 claimed by Respondent. Judge Jackson issued his decision on December 15, 2022. Appellant filed a Motion to Alter or Amend Judgment on December 20, 2022, alleging, two key errors: (1) the order erroneously and improperly found that the dispute over the contract was limited to the dates of November 3, 2017 to September 7, 2018; (2) The order erroneously deviates from the pleadings in examining only a portion of the term of the contracts, depriving the Defendants of \$50,550. (Motion to Alter or Amend ¶ 4&5; ROA 12-13).

Respondent denied these errors in its response filed January 20, 2023 and asserted and maintains, “the contractual period was between August 2017-September 2018, issues did not arise with payment until November 2017, therefore Plaintiff’s scope of the dispute was limited to November 2017 to September 2018, when the breach of contract took place and the Court gave Appellant proper credit for payments rendered and asserts that Appellant failed to produce adequate evidence to assert it was deprived of credits for payments in the amount of \$50,550.” (Plaintiff’s Answer to Defendant’s Motion to Alter or Amend ¶ 4&5; ROA 14-15).

¹ Kathy Lee Conkley was working in bookkeeping with Cemetery Equity Solutions and ensured Mr. Wideman was paid promptly and consistently for the work provided. After her death, Cemetery Equity Solutions did not maintain proper records, nor did they ensure Mr. Wideman was paid. Kathy is mentioned in the trial transcript at: 8:25; 30:5 & 31:11. (ROA 35, ROA 57 & ROA 58)

The Court denied Appellant’s Motion to Alter or Amend the judgement without a hearing on February 28, 2023; and memorialized, “The Court also found that no money was owed to the Plaintiff from the beginning of the contract to the above dates [10/7/2017 and 11/3/2017] since he presented no evidence otherwise. Additionally, there was no evidence presented of any overpayments made during this time. Accordingly, the Court did consider the full extent of the contracts in question.”

(Order on Reconsideration ¶ 4, ROA 2) This appeal followed on March 29, 2023.

STANDARD OF REVIEW

On appeal of an action at law, an appellate court will affirm a master's factual findings if there is any evidence in the record which reasonably supports them. 56 Leinbach Invs., LLC v. Magnolia Paradigm, Inc., 411 S.C. 466, 769 S.E.2d 242 (Ct. App. 2014). In an action in equity, tried by the master, the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. 56 Leinbach Invs., LLC v. Magnolia Paradigm, Inc., 411 S.C. 466, 769 S.E.2d 242 (Ct. App. 2014). The Court of Appeals' scope of review for a case heard by a master-in-equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury. Johnson v. Little, 426 S.C. 423, 827 S.E.2d 207 (Ct. App. 2019). In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law. Id. “An action for breach of contract seeking money damages is an action at law.” Ellie, Inc. v. Miccichi, 358 S.C. 78, 89, 594 S.E.2d 485, 491 (Ct.App.2004).

ARGUMENT

1. THERE IS EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL COURT'S FINDING THAT THE TIME PERIODS TO WHICH ADEQUATE RECORD TAKING BEGAN 10/7/2017 and 11/3/2017.

The trial court's finding is not based on arbitrarily picking the earliest date out of the two respective tables created by the Respondent, but instead the dates to which Mrs. Wideman took over the collection of payments and the management of invoices paid. As apparent in the Court's Order of Reconsideration in which the judge memorializes:

The Court properly found that the dispute over payments made pursuant to the contracts for regular services was limited to the dates of November 3, 2017 to September 7, 2018 and the contracts for additional services was limited to October 7, 2017 to September 23, 2018. The Court also found that no money was owed to the Plaintiff from the beginning of the contract to the above dates since he presented no evidence otherwise. Additionally, there was no evidence presented of any overpayments made during this time. As a result, the Court did consider the full extent of the contracts in question. This is consistent with the testimony of the Plaintiff's witnesses that invoices were properly paid at the beginning of the contracts.

(Order on Reconsideration ¶ 4; ROA 2)

Not only did the court consider the full testimony surrounding these exhibits, Appellant was given ample time to provide contradictory exhibits and/or testimony.

Mrs. Wideman was Mr. Wideman's bookkeeper, she worked with Belleville Cemetery and Crestlawn for 20 years. (Transcript 20: 9-11 & 20-21, 27: 20-22; ROA 47, ROA 54). She testified they married in 2016 and she kept his books and made sure that the invoices got where they needed to go. (Transcript 20: 7-8, 20-21; ROA 47) With respect to the Maintenance table, she testified there could be way more, but these were the only missed payments they were able to account for.

Mrs. Wideman's records began 10/7/2017 and 11/3/2017, showing Respondents only began calculating missed payments from those dates, respectively.

Appellants argue that “simply because the only records Mrs. Wideman had begun on 10/7/2017 and 11/3/2017, respectively, it does not mean there were no other monies paid by Defendant for the duration of the contract.” Appellant states both a Custom Transaction Detail Report and Nada Fisher as their corporate representative. Ms. Fisher testified that she could not accurately assess what invoices had not been paid. The Court later found, “no money was owed to the Plaintiff from the beginning of the contract to the above dates [10/7/2017 and 11/3/2017] since he presented no evidence otherwise. Additionally, there was no evidence presented of any overpayments made from this time.” (Trial Court Order on Reconsideration dated 2/28/2023 p. 2; ROA 2)

When asked about comparing the invoices to the documents produced, Appellant’s only witness, Nada Fisher testified, “Well, I’m not sure I can – I don’t think it’s one there, but I can show you – you can match it up with that date that insure – I mean, the invoice.” (Transcript 74: 2-4; ROA 101).

Mrs. Fisher further testifies, “... as far as there being an invoice number on this printout, no, sir, there’s not one.” (Transcript 74:7-8; ROA 101) Demonstrating records maintained from Cemetery Equity Solutions Inc. did not keep an adequate record of which payments they were sending outside of the contracted payments routinely due, nor were they [Cemetery Equity Solutions, Inc.] maintaining an accurate record of the additional services they were requesting per the contract addendums. The most complete records were those kept by Mrs. Wideman. Her records were very detailed including a three-part book that they used to do invoices where they kept a copy and gave a copy to the office manager to submit to corporate for payment. (Transcript 21: 1-5; ROA 48) After getting the work order, it was routine for Mrs. Wideman to do an invoice. (Transcript 21:7-8; ROA 48) Mrs. Wideman’s spreadsheets were compiled of receipts and the

original invoices demonstrating which services Cemetery Equity Solutions tendered payment for and which were outstanding. (Transcript 21: 14-16, 22: 12-13; ROA 48, ROA 49). Mrs. Wideman's spreadsheet included numerous outstanding balances as well as her attempts to collect. (Transcript 29: 11-23; ROA 56) Mrs. Wideman stated earlier the payments were not always paid on time, they came sporadically, not at all and months later for a completed job. An order followed stating, "Mrs. Wideman testified Defendant would pay sporadically. There was no consistency in payment history. Plaintiff didn't always know which specific account to apply the payment but would apply every payment to the Defendants' outstanding balance, each time payment was received. (Trial Court Order dated 12/15/2022 p. 3 ¶ 2; ROA 5).

On October 31, 2018, Tim Hart, Chief Financial Officer for Cemetery Equity Solutions, admitted there was a discrepancy in the outstanding balance and did not dispute a sizable amount was due to Mr. Wideman." (Plaintiff's Exhibit 9; ROA 150)

Counsel for Respondent ensured credit was given to those invoices where payment had been rendered, "We're not contesting that payment. That's not on our spreadsheet. We acknowledge that you made payment." (Transcript 76: 10-12; ROA 103) To which Respondent's counsel clarified the record by stating, "we're not saying you didn't make some payments. We're saying that you made – you didn't make these payments." (Transcript 78: 10-11; ROA 105)

To which Mrs. Fisher responded, "I'll be real honest, if I did not see the invoice, and I could not match it to the bank statement, I don't know," (Transcript 78:15-17; ROA 105) and the following conversation ensues:

Q: because we're asking the Judge to pay us because we have put in evidence that these were not paid. And I'm asking you to show me in these documentations where you could – you – I'm showing you the invoice number, I'm showing you the name of the deceased, I'm showing you the name and the date.

... all I want you to do is just show me your
Record where your record reflects that these invoices
Were paid.

A: I Don't know. Only thing I had was like the little
Sheet. I went through and I matched it to everything
That was pulled for me that was paid. Now, if it wasn't paid, I don't know.

Q: If it wasn't paid, you don't know?

A: I would have no idea. I was, you know, like I said I
Wouldn't – my job was to go through with everything
That we had that you gave – that you had provided
To the company to go against what they pulled off of
Their computer, and I was to match it up with that was Paid.
If I didn't have anything, or they didn't pay it, I
Don't know. (Transcript 78: 20 - 79: 22; ROA 105 - 106)

Further, Ms. Fisher was not employed by Appellant at the time of Respondent's contracts with Appellant and relied on records she did not create. (Trial Court Order dated 12/15/2022 p. 3 ¶ 2; ROA 5) Respondent clarified with Nada Fisher by asking "You were not there when my client was billing," "so you were not the keeper of the invoices when they were actually mailed to your employer?" To both Mrs. Fisher responded, "no sir." (Transcript p. 81: 23-25, 82: 1-3; ROA 108-109)

Appellant erroneously states, this [the Custom Detail Report] was the only evidence the court had to rely on in determining the total amount of monies paid to Mr. Wideman. Bank records of Mr. Wideman were produced, along with spreadsheets detailing invoices and monies received over the 2-year period, Mrs. Wideman recorded in her spreadsheets an accurate accounting of which invoices came in and when they were paid.

2. BY EXAMINING THE ENTIRETY OF THE RECORD PLACED BEFORE THE TRIAL COURT, OF THE CONTRACT AT ISSUE, APPELLANT RECEIVED FULL CREDIT FOR ALL PAYMENTS MADE.

It is undisputed that the contracts between the parties existed between July/August 2017 to September 2018. (Defendant's Answer ¶5; Plaintiff's Exhibits 1 & 2; ROA 26, ROA 112-113). Appellants point to the payments made in their Custom Transaction Detail Report but according to Appellant's own witness, Appellant did not have an accurate accounting of exactly how much was due to Mr. Wideman. Appellant mailed checks in a sporadic and inconsistent manner in which they did not always detail which checks were being sent for which services, Appellant had a number of checks that were unable to be cashed. (Transcript 42:2-6; 34:6-9, ROA 69, ROA 61) Mrs. Wideman attempted to make contact with Cemetery Equity Solutions on numerous occasions to inquire about invoices to which payments should have been credited to properly log each check, she would ask them over and over to double check her records and Appellants would not comply. (Transcript 53:2-20, ROA 80) An order followed stating:

The Court and court personnel thoroughly reviewed all of the exhibits placed into evidence in this case and found:

3. *As to regular contract payments of \$2,400 per week:*
 - a. *No payments were made for Crestlawn and Forest Lawn from June 29, 2018 through August 24, 2018 amounting to \$10,800.*
 - b. *Four payments were made for Belleville for the 6 weeks between June 29, 2018 and August 31, 2018 leaving \$3,600 owing to the Plaintiff.*
 - c. *No payments were made for Memorial Gardens for 15 weeks from May 18, 2018 through August 24, 2018 amounting to \$9,000.*
 - d. *No payments were made for Belleville for one week between November 28, 2017 through December 8, 2017 amounting to \$600.*
 - e. *Contract services were not paid for 9/7/2018 amounting to \$2,400.*

As a result, the Defendant owes to the Plaintiff \$26,400 for regular contract services.

4. *As for additional services for opening and closing graves, entombments and inurnments:*
 - a. *During the time frame March 8, 2018 through September 23, 2018 the Plaintiff performed and invoiced for 131 different jobs but was paid for only 24 of those jobs.*
 - b. *As a result, the Defendant owes the Plaintiff \$40,350 for additional services for opening and closing graves.*
5. *All payments made by the Defendant were considered by the Court. As a result, the fact that Mr. Wideman cashed some checks that Plaintiff's records may not show becomes moot.*
6. *The Court finds, that the Plaintiff billed \$198,750 to the Defendant and Defendant paid to the Plaintiff \$133,000 during this period."*

(Trial Court Order dated 12/15/2022 ¶ 4-5, ROA 6-7)

Accordingly, the trial court did not err in entering the judgment in the amount of \$65,750.

CONCLUSION

By examining the entirety of the time period of the contract at issue, the trial court did not err in ruling for the judgement in the amount of \$65,750. Accordingly, for the reasons set forth above, Respondent respectfully requests that the Court affirm the decision of the Master in Equity.

November 27, 2023

s/ I.S. Leevy Johnson
I.S. Leevy Johnson, SC Bar No. 3020
Chelsea A. Glover, SC Bar No. 103896
Johnson Toal & Battiste, PA
130 Centre Street
Orangeburg, South Carolina 29115
(803) 536-9610
islj@jtbpa.com
chelsea@jtbpa.com

Counsel for Respondent