STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0020

Metro Paving, Inc.,
Appellant,

vs.

Michael Luedeman, et al.,
Respondents.

Filed January 22, 2008
Affirmed
Wright, Judge

Hennepin County District Court
File No. 27-CV-03-016592

Alfred M. Stanbury, Stanbury Law Firm, 2209 St. Anthony Parkway, Minneapolis, MN 55418 (for appellant)

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Considered and decided by Peterson, Presiding Judge; Randall, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges the district court's entry of judgment after remand, arguing that our previous decision on appeal was clearly erroneous. We affirm.

FACTS

In 2002, respondent Michael Luedeman hired appellant Metro Paving to construct a driveway in front of his workshop and a walkway between his workshop and home. Because Luedeman was not satisfied with Metro Paving's performance, he refused to pay for the work. As a result, Metro Paving filed an action to recover the contract price, and Luedeman counterclaimed for the cost of removing the asphalt installed by Metro Paving.

Following a bench trial, the district court determined that Metro Paving had substantially performed the work agreed to and awarded it the contract price, reduced by the cost to Luedeman of curing deficiencies in that work. Luedeman appealed. We reversed in an unpublished opinion, concluding that the district court's finding of substantial performance was clearly erroneous. *Metro Paving, Inc. v. Luedeman*, A05-776, 2006 WL 1320603, *3 (Minn. App. May 16, 2006), *review denied* (Minn. Aug. 15, 2006) (*Metro Paving I*). Because this conclusion prevented Metro Paving from recovering under the contract, Luedeman was entitled to damages rather than an offset. *Id.* We, therefore, remanded for entry of a $2,600 judgment in Luedeman's favor. *Id.* at *4, *5.

After the Minnesota Supreme Court denied Metro Paving's petition for review, Luedeman moved the district court to enter judgment in accordance with our decision. Metro Paving opposed this motion, asserting that our decision had no factual support. Following a hearing, the district court granted Luedeman's motion and ordered the entry of judgment. This appeal followed.

D E C I S I O N

Metro Paving argues that the district court abused its discretion by following our instructions on remand because our prior decision "was clearly wrong and worked a manifest injustice." This argument lacks both merit and legal support.

Once a matter has been litigated and decided on appeal, a party may not circumvent the effect of our decision by attempting to relitigate it in a different form. *Pers. Loan Co. v. Pers. Fin. Co. of St. Paul*, 213 Minn. 239, 243, 6 N.W.2d 247, 249 (1942). The Minnesota Supreme Court has held that the public interest requires an end to litigation; and when a case has been considered and decided on appeal and remanded with directions, "the lower court has no power but to obey." *Id.* Thus, on remand, a district court must execute our mandate "strictly according to its terms" and is without discretion to "alter, amend, or modify" it. *Rooney v. Rooney*, 669 N.W.2d 362, 371 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).

Metro Paving is attempting to relitigate a matter that we have already decided on the merits. As we observed in our previous opinion, "substantial performance was the primary issue at trial." *Metro Paving, Inc. v. Luedeman*, A05-776, 2006 WL 1320603, *2 (Minn. App. May 16, 2006), *review denied* (Minn. Aug. 15, 2006). Generally, substantial performance is sufficient to satisfy the duty to perform a construction contract. *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 18 (Minn. 1982). Substantial performance permits a contractor to recover the contract price despite minor, unintentional deviations from the contract or defects in construction. *Knutson v. Lasher*, 219 Minn. 594, 604, 18 N.W.2d 688, 695 (1945). If the owner has substantially obtained

that which was bargained for, the cost of curing any deviations or defects reduces the contractor's ultimate recovery rather than barring it altogether. *Ylijarvi v. Brockphaler*, 213 Minn. 385, 390, 7 N.W.2d 314, 318 (1942). But if the contractor deviates from the contract intentionally, even "to substitute what [the contractor] may think is just as good as what the contract calls for," the contractor is not entitled to recover at all. *Knutson*, 219 Minn. at 604, 18 N.W.2d at 695.

In *Metro Paving I*, Luedeman argued that the district court erred when it found that Metro Paving had substantially performed the contract. 2006 WL 1320603, *3. Under the contract, Metro Paving was required to perform grading work so that water would drain away from the driveway. *Id.* Luedeman argued that Metro Paving did not substantially perform because it decided unilaterally to grade the area in the opposite direction from what was specified in the written contract. *Id.* We concluded that the district court's finding that the parties did not agree on a particular direction for the drainage to flow was clearly erroneous because the record established that the original plan incorporated in the contract required the water to drain to the west. *Id.* Moreover, the record established that Metro Paving intentionally deviated from the contract when it diverted the water in the opposite direction after it encountered difficulties in performance, and nothing in the record demonstrated that Luedeman agreed to this change. *Id.* Accordingly, we held that, because Metro Paving's intentional deviation, even if well intentioned, precluded any recovery based on substantial performance of the contract, Luedeman was entitled to $2,600 in damages for breach of contract rather than

an offset against the contract price.[1] *Id.* at *4, *5. Reversing the district court's decision, we ordered entry of judgment on remand. *Id.* at *5. The district court followed our mandate over Metro Paving's protests.

Metro Paving now argues that the district court erred by following our instructions on remand because our previous decision was "without any basis in fact." Specifically, Metro Paving argues that, although "the direction of the grading was indeed a term of the contract," its decision to change the direction during performance did not cause the damage Luedeman complained of. Rather, it was where Metro Paving placed the swale to channel the water out of the driveway that caused the damage. Metro Paving now asserts that, because the district court found that "the location of the swale was not a term of the contract," we erred by holding that Metro Paving intentionally deviated from it.

Metro Paving, however, is appealing from the district court's judgment, not from our previous decision. Minn. R. Civ. App. P. 103.03(a). Our function on appeal is to determine whether the district court erred when it ordered a $2,600 judgment to be entered in favor of Luedeman. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949). When, as here, an appellate court "reverses an order or judgment and remands the case with specific directions as to the order or judgment to be entered," the district court must follow those directions precisely. *Rydeen v. Collins* (*In re Hore's Estate*), 222

[1] Although our holding that Metro Paving had intentionally deviated from the contract was, by itself, sufficient to reverse, we also determined that the grading was a material defect, independently precluding a finding of substantial performance. *Id.* at *3; *see also Ylijarvi*, 213 Minn. at 390, 7 N.W.2d at 318 (explaining that "substantial performance" implies that other party must substantially get the thing bargained for).

Minn. 197, 200, 23 N.W.2d 590, 592 (1946). Indeed, the district court would have erred had it failed to order entry of judgment as we instructed. *Rooney*, 669 N.W.2d at 371.

Metro Paving is attempting to use its right to appeal from a final judgment as a substitute rehearing on the merits. Even if we were permitted to directly reconsider the merits of our prior decision,[2] our previous decision is the law of the case. This doctrine prohibits a party from relitigating issues—either in the district court or on a second appeal—after an appellate court has already decided and remanded for further proceedings on other matters. *Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989).

As Metro Paving correctly observes, the law of the case "is a rule of practice, not a limitation on the power of the court to re-review and overrule a prior decision." *Lange v. Nelson-Ryan Flight Serv., Inc.*, 263 Minn. 152, 156, 116 N.W.2d 266, 269 (1962). But like stare decisis, it is a rule we adhere to absent compelling reasons to do otherwise. *Cf. Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 221 (Minn. 2007) (noting similarity between law-of-the-case and stare-decisis doctrines). Adherence to law-of-the-case doctrine is necessary to prevent obstinate litigants from engaging in wars of attrition through repeated appeals. *Lange*, 263 Minn. at 156, 116 N.W.2d at 269. Indeed, the district court addressed this very concern on remand, finding it "troubling that a case with this amount involved and things that people should be able to move on from can't come to an end."

[2] *Cf.* Minn. R. Civ. App. 140.01 ("No petition for rehearing shall be allowed in the Court of Appeals.").

Metro Paving suggests that we should nevertheless revisit our previous decision because it was "clearly wrong" and "worked a manifest injustice." Although Metro Paving cites several federal cases for that proposition,[3] Minnesota appellate courts have not expressly adopted the manifest-injustice exception to the law-of-the-case doctrine. Moreover, even if adopted, this exception is reserved for "truly exceptional circumstances," which are not present here. *See Laffey v. Nw. Airlines, Inc.*, 740 F.2d 1071, 1082-83 (D.C. Cir. 1984) (quotation omitted) (emphasizing that manifest-injustice exception is not "an auxiliary vehicle for the repetition of arguments previously advanced, without success, in appellate briefs, petitions for rehearing, and petitions for certiorari").

Thus, the district court properly executed our mandate on remand when it entered judgment in favor of Luedeman.

Affirmed.

[3] While these cases recognize "manifest injustice" as an exception to the law-of-the-case doctrine, they provide no support for applying it here. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816-17, 108 S. Ct. 2166, 2178 (1988) (applying doctrine to transfer between different circuits of federal courts of appeals); *Arizona v. California*, 460 U.S. 605, 618-19, 103 S. Ct. 1382, 1391 (1983) (declining to apply doctrine, "crafted with the course of ordinary litigation in mind," in original action in United States Supreme Court); *White v. Murtha*, 377 F.2d 428, 432 (5th Cir. 1967) (declining to apply doctrine because previous decision "not only was not clearly erroneous, but was correct, and that such decision will not work a substantial injustice and should be followed").