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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1290**

In the Matter of the Estate of:  
Arthur H. Ziehl, Decedent.

**Filed January 22, 2013  
Affirmed  
Chutich, Judge**

Ramsey County District Court  
File No. 62-PR-11-163

Carl A. Blondin, Carl A. Blondin, P.A., Oakdale Minnesota; and

Bruce L. Beck, Divya D. Van Ness, Bruce L. Beck & Associates, LLC, Maplewood, Minnesota (for appellant)

Thomas E. Marshall, Ivory S. Umanah, Engelmeier & Umanah, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Chutich, Judge; and Crippen, Judge.\*

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

Appellant, the Estate of Arthur Ziehl, challenges the district court's judgment in this probate proceeding allowing respondent's claim against the estate for amounts owed under a contract to clean up the decedent's house. Appellant argues that the district court

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

erred by (1) failing to apply Minnesota's Truth in Repairs Act to limit respondent's recovery; (2) determining that the parties orally modified their contract; and (3) awarding an excessive amount of attorney fees. Because the district court's finding that the contract had been modified was not clearly erroneous and the district court did not abuse its discretion in awarding attorney fees, we affirm.

## **FACTS**

Arthur Ziehl died in his St. Paul home on or around January 11, 2011. Ziehl's sister, Elinor Forner, and her daughter were appointed personal representatives of his estate. Ziehl's home was completely filled with trash and debris and was uninhabitable. Ten days after Ziehl's death, the City of St. Paul served Forner with an abatement order stating that Ziehl's home had to be cleaned by the end of the next month. The order further stated that the city could clean the home at the cost of \$260 per hour.

Forner contacted several private companies including Kaldecon Services, Inc. (Kaldecon) to obtain an estimate for cleaning the home. Kaldecon is a bio-hazard cleaning and remediation company based in Minnesota and owned by Kenneth Abosi. Forner met Abosi at Ziehl's home for an inspection of the property. They attempted to enter the home through the back kitchen door, but could only open the door a few feet because of garbage and boxes piled inside of the home. Forner told Abosi that she thought only the kitchen was filled with garbage and that there were some empty boxes in the basement. Based on Forner's description and without entering the home, Abosi provided Forner a written estimate of \$5,000 to clean the home. Abosi estimated that the project would require two to three dumpsters.

Fornier, on behalf of the estate, and Abosi, on behalf of Kaldecon, executed an Agreement for Bio-Hazardous Services (the agreement). Part V of the agreement contained two options for a “Basic Service Fee,” flat rate or hourly. On the parties’ agreement, Abosi selected the flat-rate option and wrote \$5,000 for the basic service fee, including a \$2,000 retainer to begin the work. By signing the front of the agreement, Fornier agreed to bind the estate to the terms and conditions contained on the back of the agreement, which included the following:

1. PERFORMANCE OF SERVICES. Customer agrees to pay Company a reasonable fee in an amount to be set by Company in accordance with Company’s standard fee policies, but which in no event shall be less than the Basic Service Fee set forth in paragraph V above. . . .

....

6. ATTORNEY’S FEES. Customer shall reimburse Company for all charges, costs, expenses and attorneys’ fees, incurred by Company (a) in defending or protecting its rights under this Agreement; (b) in the enforcement of this Agreement or in the collection of any sum payable hereunder

....

Kaldecon began the project on February 24, 2011, starting in the garage before moving to the kitchen and the rest of the house. After cleaning the kitchen and part of the living room, Abosi and his subcontractor James Logan met with Fornier and informed her that the home required significantly more work than they had expected. Fornier asked what she could do to help Kaldecon complete the job. Abosi told Fornier that he needed money for additional dumpsters because Logan would not continue the project without

being paid in advance for the dumpsters. Forner wrote two checks to Kaldecon for additional dumpsters: one \$1,000 check and one \$1,700 check.

After Forner paid for additional dumpsters, Kaldecon continued the project. In the bathroom, Logan discovered large amounts of human feces in the tub and on the walls. Logan cleaned the bathroom by himself, taking precautions to avoid contamination from the bio-hazardous material. Because the house was unheated and the feces were frozen, it took Logan more than two days to clean and decontaminate the bathroom.

Kaldecon finished cleaning and decontaminating the house on March 10, 2011. In total, Kaldecon performed 136 hours of work, filled nine dumpsters, and removed 793 bags of waste from the home to make it habitable again. Using Kaldecon's standard rate structure, Abosi calculated the total cost of the project to be \$40,355. Because the estate had already paid a total of \$4,700 for the project, Abosi billed the estate for the remaining balance of \$35,655. After receiving the final bill, the estate tendered \$300 as final payment for Kaldecon's services, even though Forner later testified that she valued Kaldecon's services as worth approximately \$19,815 to \$21,200. Kaldecon refused to accept the \$300 payment and filed a claim against the estate for \$35,655.

The district court held a two-day bench trial. In a written order, the district court found that the parties' agreement was incomplete and had been modified. The district court concluded that the estate breached the original terms of the agreement and awarded

Kaldecon \$34,855 for its services.<sup>1</sup> The district court also found that the contract provided for recovery of attorney fees and costs and, in a separate order, awarded Kaldecon \$28,659.23 in attorney fees. The estate appeals.

## D E C I S I O N

### I. Minnesota’s Truth in Repairs Act

The estate first contends that the district court erred by not applying the Minnesota Truth in Repairs Act to the parties’ agreement. The Truth in Repairs Act states that “[i]f a shop provides a written estimate of the price of repairs, it shall not charge more than 110 percent of the total price stated in its estimate for the repairs.” Minn. Stat. § 325F.58, subd. 6 (2012). The estate did not raise this argument before the district court; we thus decline to address it because the record has not been fully developed and the issue is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

But we also note that the statute does not apply to Kaldecon’s work because it does not constitute a repair under the statute. The statute defines “[r]epairs” as “work performed for a total price of more than \$100 and less than \$7,500 . . . to restore a malfunctioning, defective, or worn . . . dwelling place.” Minn. Stat. § 325F.56, subd. 2 (2012). Kaldecon was not restoring a malfunctioning, defective, or worn part of the

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<sup>1</sup> The district court calculated that \$34,855 was the balance owed under the contract, which appears to be a mathematical error. Because respondent did not raise this error on appeal, we do not further address it.

home. In fact, nothing in the record indicates that the home itself needed any repairs as defined by the statute. Rather, the home was filled with garbage and debris and Kaldecon removed it from the home. The estate cites to no case law that upholds the application of the statute in a similar situation. Therefore, Kaldecon's work is not a repair under the plain language of the statute.

## II. Contract Modification

Whether a contract was modified is a question of fact. *Brodsky v. Brodsky*, 639 N.W.2d 386, 392 (Minn. App. 2002), *review denied* (Minn. Apr. 23, 2002). On appeal, a district court's findings of fact are given great deference and shall not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01. Findings of fact are clearly erroneous only if the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987). If reasonable evidence supports the trial court's findings of fact, a reviewing court should not disturb those findings. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

The district court concluded that "[b]ecause the scope of the work [Kaldecon] was to perform was much greater than the parties' Agreement originally estimated, modification to the Agreement was made." The record supports this conclusion. Abosi testified that, after he realized the amount of garbage that was in the home, he and Forner agreed to a modification of the pricing structure, specifically that Forner would pay for additional dumpsters and labor to complete the job. The estate's two additional checks to Kaldecon provide additional support for the conclusion that the parties modified the

pricing structure. Thus, the district court’s finding that the contract had been modified was not clearly erroneous.

Moreover, the district court ultimately concluded that the estate breached the terms of the original contract:

Under the terms of the Agreement, the Estate must pay [Kaldecon] “a reasonable fee in an amount to be set by [Kaldecon] in accordance with [its] standard fee policies, but which in no event shall be less than the Basic Service Fee set forth in paragraph V above.” A reasonable fee for [Kaldecon]’s services to the Estate is \$40,335. . . . The Estate breached its contract with [Kaldecon] by failing to pay the amount due, \$34,855.

The parties’ discussion after Kaldecon realized the full scope of the project demonstrates that Forner was put on notice that the cost of the project was going to exceed the \$5,000 basic service rate. As the district court found, Kaldecon’s final bill was “calculated using [Kaldecon’s] standard rate structure,” including an hourly rate of \$214 for non-biohazard cleaning labor. Although Forner was not given a copy of Kaldecon’s hourly rates, the district court found that Kaldecon’s hourly rate was reasonable in part because it was less than the hourly rate of \$260 that St. Paul would have charged. These findings—that Kaldecon’s final bill was calculated using its standard rate structure, and that the total bill was reasonable—are not clearly erroneous. Thus, we affirm the district court’s conclusion that the estate breached the contract and owes Kaldecon \$34,855 for its services.

### III. Attorney Fees

The estate next challenges the district court's award of attorney fees. "We review the district court's award of attorney fees or costs for abuse of discretion." *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008). The district court is most "familiar with all aspects of the action from its inception through post trial motions" and, therefore, is in the best position to evaluate the reasonableness of requested attorney fees. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 629 (Minn. 1988). "The reasonableness of the hours expended and the fees imposed raise questions of fact, and the district court's findings will be reversed only if they are clearly erroneous." *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 819–20 (Minn. App. 2011).

The district court concluded that Kaldecon is entitled to attorney fees under the attorney-fees provision on the reverse side of the parties' contract. The estate contends that the parties did not intend for the terms and conditions on the back side of the contract to be a part of the parties' agreement. We do not find this argument persuasive. By signing the first page of the agreement, Forner specifically agreed "to be bound" by the terms and conditions "as set forth on the back of this contract," including the attorney-fees provision. *See Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982) (stating that "a person who signs a contract may not avoid [a contract] on the ground that [she] did not read it or thought its terms to be different"). Thus, under the terms of the contract, Kaldecon is entitled to reasonable attorney fees.

The estate next argues that the number of hours charged by Kaldecon's counsel was unreasonable because it included too much time for "strategizing" and time for two attorneys to attend the bench trial. Kaldecon's counsel submitted their own billing records, which included a total of 91.7 attorney hours and 4.7 paralegal and legal-assistant hours. The estate is correct that the billing records include several hours of strategizing and time for two attorneys at trial. The district court accepted the evidence submitted by Kaldecon's counsel, however, and found that the time expended by Kaldecon's counsel, including the time for strategizing and trial, was reasonable. Nothing in our review of the record demonstrates that this finding was clearly erroneous. Thus, we conclude that the district court did not abuse its discretion by awarding Kaldecon attorney fees.

**Affirmed.**