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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0445**

Allan C. Brittle, Jr.,
Appellant,

vs.

Joseph Shun,
individually and d/b/a Model Garage Builders,
Respondent.

**Filed April 21, 2009
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CV-06-19768

Dennis E. Dalen, 5101 Thimsen Avenue, #100, Minnetonka, MN 55345 (for appellant)

Joseph Shun, 775 Torchwood Drive, New Brighton, MN 55112 (respondent)

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges the district court's determination that he breached a contract
with respondent, arguing that it was respondent who breached the contract and that the

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

evidence supports appellant's claim that the value of the labor and materials he received was approximately \$7,000 and not the \$19,000 he paid. We affirm.

D E C I S I O N

In November 2004, respondent Joseph Shun, a contractor, agreed to build a 24-foot by 24-foot detached garage for appellant Allan Brittle, to be completed by July 1, 2005, for a price of \$ 28,350. Shun obtained a building permit and commenced work on the project. Brittle made two \$9,500 payments to Shun before the relationship between the two soured. In May 2005, Brittle terminated the contract after growing dissatisfied with the lack of progress on the project, discovering that Shun's contractor's license had been suspended, and becoming concerned about Shun's financial stability.

Brittle contended that by failing to maintain his contractor's license, Shun breached the contract. Brittle sued on the breach-of-contract theory to recover the amount he claims Shun is unjustly enriched.¹ Following a bench trial, the district court found that it was Brittle who breached the contract by terminating it prior to the completion deadline and that all "damages claimed . . . flow solely from the Contract[, and a]lthough Shun held himself out as operating as a corporation and as a residential building contractor, none of Brittle's claims arise from these representations." The district court also found that, because Brittle terminated the contract and thereby prevented Shun from returning to work, Brittle "failed to sustain his burden of proof and . . . failed to establish that the labor and materials he received had a value of [only]

¹ Although in his brief Brittle appears also to raise a claim that the contract was void for illegality, any such claim was expressly waived by counsel at oral argument.

\$7,024.”² On appeal, Brittle challenges the findings of the district court, contending that the uncontroverted evidence establishes that Shun breached the contract by failing to maintain his contractor’s license and that \$7,084 is the value of the labor and materials he received.

When a contract exists, Minnesota courts have held that a breach of that contract is material when “one of the primary purposes” of the contract has been violated. *See Steller v. Thomas*, 232 Minn. 275, 282-86, 45 N.W.2d 537, 542-43 (1950); *see also Black’s Law Dictionary*, 183 (7th ed. 1999) (defining material breach as “[a] substantial breach of contract, usu[ally] excusing the aggrieved party from further performance and affording it the right to sue for damages”). The materiality of a breach is a question of fact. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). Findings of fact are not set aside on appeal unless they are 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.’” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quoting *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987)).

The district court did not explicitly find that holding a contractor’s license is not a material term in the contract. But because the district court ruled that Brittle was the first breaching party, even after finding that Shun’s contractor’s license had been suspended

² The record attributes three slightly different claimed values to the work completed. The district court found that Brittle failed to sustain his burden of proof that Shun’s labor and materials had a value of “\$7,024;” in his brief, Brittle used the figure “\$7,084;” and, Brittle’s trial witness stated the amount of “\$7,804.” The inconsistency required mention but has no bearing on our decision.

prior to Brittle terminating the contract, the district court necessarily implicitly found that holding a contractor's license was not a material term of the contract. Because Brittle does not point us to any facts in the record clearly disputing this finding, nor is procuring a contractor's license reasonably considered a "primary" purpose of a construction contract, we cannot conclude that the district court's finding was clearly erroneous.

Moreover, even if we were persuaded by Brittle's argument that Shun breached the contract, on the record before us we cannot determine that the district court erred by finding that Brittle failed to satisfy his burden of proof with regard to damages. In reviewing bench trials, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). We will not reverse the district court's judgment merely because we view the evidence differently. *Id.*; *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support findings other than those made by the trial court does not show that the court's findings are defective."). Rather, the district court's factual findings must be clearly erroneous or "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole" to warrant reversal. *Rogers*, 603 N.W.2d at 656 (quotation omitted); *see also* Minn. R. Civ. P. 52.01 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). And "[i]f there is reasonable evidence to support the district court's findings, we will not disturb them." *Rogers*, 603 N.W.2d at 656.

A 79-year-old semi-retired mason, who was the only witness to testify about the value of the work completed, stated that his bid to perform what had been done on the project would be \$7,804. But read in the context of the entire record, that testimony alone does not persuade us that the district court's findings are clearly erroneous. The district court found that Brittle's actions caused delays and added expense to the project. The witness' testimony did not account for additional charges that may have stemmed from such delays. Moreover, while it is always preferable for the district court to make an explicit credibility finding to explain the rejection of critical testimony, the witness testified that he (1) gets his pension and does contracting work to "stay in shape" and was "not in it to make a living;" (2) was engaged by Brittle's counsel, a friend, and had never met Brittle to obtain information specific to the project; (3) had never visited the project site to observe such relevant features as soil conditions and slopes; and (4) based his hypothetical bid solely on viewing pictures provided by Brittle's counsel. The opinion of a sporadically employed, semi-retired contractor is not necessarily conclusive of the reasonable value of the labor and materials provided, and on this record we cannot determine that the district court's conclusion that Brittle failed to satisfy his burden of proof was clearly erroneous.³

Affirmed.

³ At oral argument, Brittle's counsel raised the argument that the district court order improperly referenced and ruled on Shun's counterclaim after the district court had previously rejected Shun's counterclaim in its entirety for being untimely. Although improper, the district court's error does not affect our decision.