

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0774-09T3

JOSEPHINE A. CICERO,

Plaintiff-Appellant,

v.

RICHARD WEINGARTEN,

Defendant-Respondent.

Submitted March 2, 2011 - Decided April 29, 2011

Before Judges Ashrafi and Nugent.

On appeal from Superior Court of New Jersey,
Law Division, Special Civil Part, Warren
County, Docket No. SC-000399-09.

Josephine A. Cicero, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff Josephine Cicero, a homeowner, appeals from a partially favorable Small Claims judgment entered against defendant, Richard Weingarten, a contractor. Plaintiff also appeals from the order denying her motion for a new trial. We affirm.

Plaintiff sued defendant to recover money she paid to him for work he did not complete, and for damages caused by

defective work he did complete at her home. The parties were the only witnesses who testified at trial. Plaintiff testified she contracted with defendant to complete a "contracting job" at her home, he worked periodically from October 1, 2007, through March 6, 2008, and she paid him for the work he completed during that time. On March 6, 2008, plaintiff advanced defendant \$1,478 to complete the work, but he never returned. Defendant admitted he received the money, did not complete the work, and owed plaintiff that amount.

In addition to her claim for the return of \$1,478, plaintiff sought compensation for damages caused by defendant's defective workmanship. The defective workmanship and damages included a shower bench that broke when plaintiff's daughter sat on it, causing a leak and damage to the living room ceiling; a leak in the bathtub; a leak under a bathroom sink that had to be reset; a hole under the sink; and repairs to sheetrock. Plaintiff stated she had an estimate that included the work defendant was to complete for \$1,478 and the cost to repair the damages caused by defective workmanship, but the estimate was not itemized or allocated to specific work. Plaintiff could only "guess" about how much of the estimate concerned the defective work and consequent damages.

Defendant testified that plaintiff was required to supply all of the materials, but on several occasions the materials were not there when he arrived. He told plaintiff not to install the shower seat because it did not have a "validation of weight" and did not look like it would work, but she had him install it anyway. The living room ceiling damage was caused by the broken shower seat. Defendant indicated that some of the repairs for which plaintiff was claiming additional damages were actually included in the \$1,478, and the leaking sink was installed by another contractor. Lastly, he disputed plaintiff's repair estimates.

The trial judge awarded plaintiff \$1,478 and entered a judgment against defendant for that amount, but implicitly found that plaintiff had not sustained her burden of proof as to the other damages. The judge was not "satisfied" that the shower seat collapsed because of negligent workmanship of defendant. Addressing the other damages, the judge commented that it was very difficult to understand exactly what was wrong, and more importantly, without expert testimony, she could not conclude the damages were causally related to defendant's work.

Plaintiff filed a motion for "reconsideration," which the judge denied. This appeal followed.

Our scope of review of a judgment entered in a non-jury case is limited. "Our courts have held that the findings on which it is based should not be disturbed unless 'they are so wholly [u]nsupportable as to result in a denial of justice[.]'" Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div.), aff'd o.b. 33 N.J. 78 (1960)). "Thus, '[w]e do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" Mountain Hill, L.L.C. v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (quoting State v. Barone, 147 N.J. 599, 615 (1997)).

Plaintiff contends the trial court erred in not finding defendant responsible for her damages. Plaintiff insists defendant was not credible and the trial court inadvertently aided him by not remembering important evidence, and by believing defendant's testimony that some of plaintiff's claims for his defective workmanship were included in the \$1,478. However, "[b]ecause a trial court 'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div.

1961)). Having considered the record in light of plaintiff's arguments, we find no reason to disturb the court's credibility determinations.

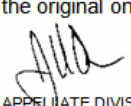
Plaintiff next argues that several errors in the trial transcript prevented the trial court from properly considering her post-trial motion. For example, in describing defendant's work on the shower bench, plaintiff testified, "[h]e . . . put the tiles on the wall and the sheet rock in there and the bench fell off while my daughter was showering." The transcript reads, "[h]e . . . pulls the tiles on the work and" (emphasis added). The errors were minor and there is nothing in the record that suggests the errors affected the judge's decision on the motion.

Lastly, plaintiff argues the trial court should have granted her post-trial motion. Plaintiff maintains that she was rushed, unfocused, and unable to present evidence and testimony at trial. The judge denied the motion, explaining that plaintiff had ample time to present her case. The judge cited instances where plaintiff stopped testifying, the judge asked if she had anything else, and plaintiff responded with additional testimony. The judge again explained that she was not persuaded defendant caused the damages described by plaintiff.

Plaintiff referred to the motion as one for reconsideration, but explained in her motion papers that she was asking for a new trial or the chance to present additional evidence pursuant to Rule 4:49-1, which permits the trial judge in an action tried without a jury to open the judgment and take additional testimony. This motion is "addressed to the sound discretion of the trial court and will not be disturbed unless that discretion has been clearly abused." Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 446 (1980). We find no abuse of discretion in the judge's denial of plaintiff's motion for a new trial.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION