

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 20, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2819**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**DAVID GUNDERMAN, D/B/A GUNDERMAN LOG HOMES,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JACK HARTWIG, INDIVIDUALLY, AND JACK HARTWIG  
AND JANE HARTWIG, HUSBAND AND WIFE, IN RELATION  
TO THEIR MARITAL PROPERTY,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Price County:  
DOUGLAS T. FOX, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jack and Jane Hartwig appeal a judgment awarding David Gunderman, d/b/a Gunderman Log Homes, \$20,000 for his services in constructing the Hartwigs' home. The Hartwigs argue that the trial court

erroneously determined that the parties entered a contract setting \$10,000 as the price of logs Hartwig provided and that the value of the construction services Gunderman provided was \$30,000. Because the record supports the trial court's findings of fact, we affirm the judgment.

### FACTS<sup>1</sup>

¶2 Gunderman is a log home builder whose business relationship with Hartwig originated in the 1980s when he bought logs from Hartwig's father. In the 1990s, Gunderman began purchasing logs directly from Hartwig, who discussed his interest in having Gunderman build a log home for him and his family.

¶3 Hartwig delivered several loads of logs to Gunderman, which Hartwig agreed to trade for Gunderman's labor. Gunderman testified that Hartwig initially delivered two loads of logs that he and Hartwig scaled and that they determined were worth \$3,877.50. Gunderman testified that Hartwig delivered three more loads for a total of five loads. The parties decided to value each load at \$2,000 apiece and deduct the total sum of \$10,000 from the price of a home that Gunderman would eventually build for the Hartwigs. Gunderman also testified that Hartwig did not want to be paid because Gunderman was going to build him a house.

¶4 Gunderman's role in the construction process was to put up the log shell for the house. Gunderman testified that he absolutely did not agree to work

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<sup>1</sup> Although many facts are disputed and subject to conflicting inferences, consistent with our standard of review, we set out those facts that support the trial court's decision. *See In re Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).

on an hourly basis and, consequently, did not keep track of his time on the job. Gunderman testified that he erected all the logs up to the top course of the exterior walls as well as the logs for the loft. Hartwig's family assisted. When Gunderman reached the roof system, Hartwig invited a carpenter, Bill Heath, to help work on the project. At that point, Gunderman testified that he felt that Hartwig wanted him off the job for some unexplained reason.

¶5 Following the completion of the log section of the home, Gunderman billed Hartwig \$18 a square foot times 1,680 square feet, for a total of \$30,240, minus \$10,000 for five loads of logs from Hartwig.<sup>2</sup> Gunderman testified that the parties had no contract or any agreement regarding the price of the construction. Hartwig testified, to the contrary, that they agreed that Gunderman would be paid \$15 per hour for his services and that the logs he delivered were to be valued at \$25,000.

¶6 Gunderman's expert witness, Jerry Waite, president of a log home building business, determined the value of the log work on Hartwig's home was \$39,340. Waite also determined that the value of the logs provided by Hartwig was \$7,816. A second expert witness placed the value of the log work at \$37,800.

¶7 The trial court found that the parties entered into a contract that set the price of the five loads of logs that Hartwig delivered to Gunderman at \$10,000. The court also determined that the parties failed to reach an agreement governing the compensation Gunderman was to receive for constructing Hartwig's log home. Nonetheless, the court concluded that Gunderman was to be compensated for the

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<sup>2</sup> Gunderman initially subtracted \$12,000 for six loads of the logs delivered, but later realized that he was mistaken and subtracted the \$10,000 instead. Hartwig does not dispute that he delivered five loads of logs.

reasonable value of his services. The court found that the reasonable value of Gunderman's labor and services was \$30,000.

## DISCUSSION

¶8 Hartwig challenges the trial court's determination that the parties entered into a contract that set the price of the five loads of logs at \$10,000. He argues that a more credible view of the evidence is that Gunderman did not have the money to pay Hartwig for the logs and that Hartwig requested considerably more than \$10,000 for his logs. He maintains that the discrepancies in the evidence preclude a finding of a legally binding contract. He argues, without citation to authority, that the finding that the parties entered into a contract is a conclusion of law to be reviewed de novo. We disagree with Hartwig's statement of our standard of review.

¶9 Whether the parties entered into an oral contract presents a question of fact. See *Gerner v. Vasby*, 75 Wis. 2d 660, 661-62, 250 N.W.2d 319 (1977). Also, when parties disagree as to the terms of an oral contract and the evidence is conflicting, questions regarding its terms present issues of fact. See *Dreazy v. North Shore Publ. Co.*, 53 Wis. 2d 38, 44-45, 191 N.W.2d 720 (1971); see also 17B C.J.S. *Contracts* § 777 (1999).

¶10 We defer to the trial court's assessment of weight and credibility of testimony.

[W]hen the trial judge acts as the finder of fact, and when there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.

*Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (citations omitted). We do not reverse its factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶11 We conclude that the record supports the trial court's finding that the parties entered into an oral contract. For a contract to exist, there must be an offer, an acceptance and consideration. *See Goosen v. Estate of Standaert*, 189 Wis. 2d 237, 247, 525 N.W.2d 314 (Ct. App. 1994). The trial court could accept as credible Gunderman's testimony to the effect that the parties agreed to exchange logs for labor and valued the five loads at \$10,000. Because the record supports the trial court's factual findings, they are not clearly erroneous and therefore will not be overturned on appeal.

¶12 Next, Hartwig argues that the trial court erroneously determined the value of Gunderman's services. He does not challenge the court's finding that Gunderman's services have some value. Hartwig contends, nonetheless, that the trial court did not give proper weight to the value of the assistance provided by him and his family. He maintains that viewing the evidence from his perspective, the value of Gunderman's services ranges from \$3,040 to \$16,360.

¶13 This argument suffers from the same defect as the previous one; it asks us to substitute our judgment of the facts for that of the trial court. Fact finding is not an appellate court function. *See Bulik v. Arrow Realty*, 154 Wis. 2d 355, 361, 453 N.W.2d 173 (Ct. App. 1990). Our role is to search the record for evidence to support the findings the trial court made, not for evidence to support findings the court could have but did not make. *See In re Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Although there is conflicting evidence concerning the appropriate value of Gunderman's services, it is a trial court, not an

appellate court, function to weigh the evidence and resolve conflicts in the testimony. *See id.* at 151. Because the record supports the trial court's finding that Gunderman's services provided Hartwig a \$30,000 benefit, the court's determination will not be overturned on appeal.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

