

STATE OF MICHIGAN
COURT OF APPEALS

RON VORRATH & SONS,

Plaintiff/Counterdefendant-Appellee,

v

ROBERT P. HOWINGTON, JR. and MARION
HOWINGTON,

Defendants/Counterplaintiffs-
Appellants.

UNPUBLISHED
May 21, 1999

No. 210328
Berrien Circuit Court
LC No. 90-004237 CK

Before: McDonald, P.J., and Sawyer and Collins, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's judgment, entered after remand of this case by our Supreme Court, awarding plaintiff \$44,160 for labor expended by plaintiff's owner, Ronald Vorrath, during construction of a home for defendants. We affirm.

This appeal involves a dispute between plaintiff, a building contracting company, and defendants over the contract price for construction of a new home. After final billing for the project, plaintiff filed suit to recover \$82,785.70 in charges that remained unpaid. The jury found for plaintiff in that amount. Defendants filed a motion for judgment notwithstanding the verdict, new trial, or remittitur, asserting, among other things, that the jury's verdict was against the great weight of the evidence with regard to labor charges. The court denied the motion and defendants appealed to this Court. In *Ron Vorrath & Sons v Howington*, unpublished opinion per curiam of the Court of Appeals, issued June 6, 1995 (Docket No. 154457), we affirmed the jury verdict but remanded for remittitur of certain electrical charges. On appeal, our Supreme Court vacated in part this Court's judgment and remanded the case to the trial court for "reconsideration of defendants' motion for a new trial."¹ The Court stated that, based on the methodology for calculating labor charges testified to by plaintiff's bookkeeper, "it appears that the defendants were overcharged for labor by over \$48,000," and ordered that the parties "provide the trial court with supplemental memoranda justifying their calculation of the appropriate charge for labor." 453 Mich 912 (1996).

The trial court construed the remand as “a reconsideration of the [defendants’] motion for new trial as it relates to the charges for labor in this contract” The court noted that the parties agreed that labor charges of \$80,317.50 were supported by written time records of three employees and that the only disagreement between the parties regarding labor charges was the amount of time that Ronald Vorrath spent on the project. After reviewing the parties’ written submittals and the relevant portions of the trial record, and after hearing oral argument, the court found that plaintiff was entitled to \$44,160 in compensation for Vorrath’s personal labor, for a total of \$124,610.31 in labor charges. The court recalculated the total amount owing using the revised labor figures, and remitted a portion of the jury award.²

On appeal, defendants argue that there was inadequate evidence to support any of plaintiff’s charges for labor performed by Vorrath, and that the trial court erred in failing to remit those charges for which no documentary evidence existed. We review a trial court’s decision regarding a request for remittitur for an abuse of discretion. *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 45; 550 NW2d 809 (1996). An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling. *Szymanski v Brown*, 221 Mich App 423, 431; 562 NW2d 212 (1997).

Although there are no written time records delineating the time that Vorrath expended his own labor on the house, there is abundant testimonial evidence that Vorrath worked on defendants’ house for an appreciable period of time. The trial court found that the jury accepted that testimonial evidence in rendering its verdict. The trial court further determined that Vorrath’s labor should be computed at \$23 per hour, the contract price for labor used by plaintiff’s bookkeeper in calculating charges for his labor. Although the record is unclear regarding why the trial court calculated the award at \$44,160 (equivalent to 1,920 hours, or forty-eight forty-hour weeks at \$23 per hour), the parties clarified at oral argument that the court accepted testimony that it took plaintiff approximately one year, or fifty-two weeks, to build defendants’ house and that the court deducted four weeks’ worth of wages based on plaintiff’s testimony that, for a portion of the time that he worked on defendants’ house, he also worked on another project. We find no abuse of discretion in the trial court’s decision.

We reject defendants’ argument that the trial court was precluded by the doctrines of res judicata and law of the case from finding that charges for labor done by Vorrath could be included in the jury’s verdict. Defendant contends that the issue of whether Vorrath’s labor charges were supported by the evidence at trial was already litigated and determined by our Supreme Court, as evidenced by its statement in its order that “it appears that the defendants were overcharged for labor by over \$48,000” and by its denial of plaintiff’s motion for reconsideration of the Court’s order. However, we find that the Court’s remand order did not constitute a determination with regard to whether Vorrath’s labor charges could be included in the jury verdict. Rather, the Court merely identified the issue to be resolved by the trial court. When a matter is remanded to the trial court by an appellate court, the trial court possesses the authority to take action that is consistent with the appellate court’s order. *Hadfield v Oakland Co. Drain Comm’r*, 218 Mich

App 351, 355; 554 NW2d 43 (1996). We find that the trial court's actions were consistent with the Supreme Court's order in this case.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Jeffrey G. Collins

¹ We note that the request for relief before the trial court after remand was for remittitur, not a new trial. We agree with defendants that the Supreme Court used the phrase "motion for a new trial" generically to include within its meaning the post-trial motion for judgment notwithstanding the verdict, new trial, or remittitur, which included the alternative prayer for remittitur.

² The total amount of the jury verdict remitted by the trial court after remand from the Supreme Court was \$16,865.46. This included the remittitur ordered by this Court for electrical charges in the amount of \$1,104.23, \$8,255.85 for premiums on materials, and the reduction in labor charges.