

IN THE IOWA SUPREME COURT

SUPREME COURT NO. 22-1721

BRADSHAW RENOVATIONS, LLC
Plaintiff, Counterclaim Defendant, and Appellant,

v.

BARRY GRAHAM and JACKLYNN GRAHAM,
Defendants, Counterclaim Plaintiffs, and Appellees

Appeal from the Iowa District Court for Polk County
Case Number LACL148948,
The Honorable Judge Sarah Crane

**APPELLEES BARRY AND JACKLYNN GRAHAM'S RESISTANCE
TO APPLICATION FOR FURTHER REVIEW**

(Court of Appeals decision filed October 2, 2024)

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STATEMENT RESISTING FURTHER REVIEW

Plaintiff Bradshaw Renovations, LLC (hereinafter “**Bradshaw**”) asks this Court to provide a fourth review of the evidence and testimony in this case, and to hold that everyone to this point has interpreted the evidence incorrectly – first, the Polk County jury, in its verdict rejecting Bradshaw’s arguments, Docket No. D0108; second, the Polk County District Court, in its Order Denying Bradshaw’s Motion for Judgment Notwithstanding the Verdict and for New Trial, Docket No. D0120; and third, the Iowa Court of Appeals, in its Decision Affirming the Polk County District Court. This Court should deny Bradshaw’s Application for Further Review because it amounts to nothing more than a request to re-weigh the evidence in this case. There are no unique legal issues for this Court to consider, and there are no inconsistencies between the Iowa Court of Appeals’ Decision and Iowa precedent for this Court to correct.

ARGUMENT RESISTING FURTHER REVIEW

I. THERE ARE NO UNIQUE OR UNRESOLVED LEGAL ISSUES FOR THIS COURT TO CONSIDER. BRADSHAW IS SIMPLY ASKING THIS COURT TO REWEIGH EVIDENCE THAT HAS ALREADY BEEN THOROUGHLY VETTED BY THE JURY, THE DISTRICT COURT, AND THE IOWA COURT OF APPEALS.

The mutually-agreed upon Verdict Form, Question Number 11, asked, “Did the Grahams prove by a preponderance of clear, convincing, and satisfactory evidence that Bradshaw Renovations, LLC acted with willful and wanton disregard for the rights of the Grahams?” Docket No. D0105. The jury answered, “yes.” *Id.* Bradshaw’s Application for Further Review (hereinafter “**Bradshaw’s Application**”) argues that the jury was wrong because the evidence was “not clear and convincing.” (Bradshaw’s App. for Further Review at 13). This resistance will not rehash the entire evidentiary record that was established at trial and in the Court of Appeals. Suffice it to say, the evidence supporting the jury’s “yes” to Question Number 11 on the verdict form was overwhelming, and included: billing the Grahams for items not actually purchased; improperly billing the Grahams for “markup” on items that Bradshaw represented did not include any “markup”; billing the Grahams for thousands of dollars of Bradshaw “labor” that Bradshaw did not actually

perform; and demonstrably false statements made by Bradshaw's owner throughout trial. (Grahams' Br. at 25-38).

Bradshaw argues that its wrongdoing consisted of, "at most," "poor communication." (Bradshaw's App. at 15-16). The jury disagreed, and the jury is entitled to significant deference on its determination. *Pavone v. Kirke*, 801 N.W.2d 477, 490 (Iowa 2011) (In ruling on a motion for directed verdict and JNOV, courts must "consider the record as a whole in the light most favorable to the nonmoving party and take into consideration all reasonable inferences that could be fairly made by the jury."); *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 891 (Iowa 1991) (quoting *Kautman v. Mar-Mac Cmty. School Dist.*, 255 N.W.2d 146, 148 (Iowa 1977)) (On appeal, appellate courts must "giv[e] the jury its right to accept or reject whatever portions of the conflicting evidence it chose," and appellate courts must give deference to "the fact the trial court, with benefit of seeing and hearing witnesses, observing the jury and having before it all incidents of the trial, did not see fit to interfere [with the jury's verdict]."); *Nepstad Custom Homes Co. v. Krull*, 527 N.W.2d 402, 406 (Iowa Ct. App. 1994) (On appeal, "the trial court's assessment of credibility of witnesses carries considerable weight," including a trial court's assessment of a party's "representations as to the meaning of [a construction contract]."); *Pavone*, 801 N.W.2d at 498 (The

jury's verdict must be "liberally construe[d]...to give effect to the jury's intention and harmonize the jury's answers if possible.").

Bradshaw attempts to entice this Court's review by framing the jury's decision on the issue of whether Bradshaw engaged in "willful and wanton" conduct as "an issue of first impression." (Bradshaw's App. at 5). This is incorrect. In reality, Iowa has decades of case law instructing on what constitutes "clear and convincing" evidence of "willful and wanton" conduct. *See e.g., Wolf v. Wolf*, 690 N.W.2d 887 (Iowa 2005); *McGough v. Gabus*, 526 N.W.2d 328, 334-35 (Iowa 1995); *Beeman v. Manville Corp. Asbestos Disease Compensation Fund*, 496 N.W.2d 247, 255 (Iowa 1993); *Fell v. Kewanee Farm Equipment Co.*, 457 N.W.2d 911, 919 (Iowa 1990); *Cueno v. Healthcare of Iowa, Inc.*, No. 20-0656, 2021 WL 2452063 at *6-8 (Iowa Ct. App. June 16, 2021); *Matter of Estate of Kline*, No. 18-1658, 2019 WL 6358421 at *9 (Iowa Ct. App. Nov. 27, 2019); *Shea v. Lorenz*, No. 14-0898, 2015 WL 4158781 at *18 (Iowa Ct. App. July 9, 2015); *Bronner v. Randall*, No. 14-0154, 2015 WL 2089360 at *9-10 (Iowa Ct. App. May 6, 2015); *Johnson v. Ventling*, No. 13-0157, 2014 WL 1714966 at *2-3 (Iowa Ct. App. April 30, 2014); *Jasper v. Hussain*, No. 13-0120, 2014 WL 69544 at *5-6 (Iowa Ct. App. Jan. 9, 2014); *Riggan v. Glass*, No. 06-0396, 2007 WL 911888

at *8 (Iowa Ct. App. Mar. 28, 2007); *Nemecek v. Santee*, No. 05-0518, 2006 WL 334298 at *2-4 (Iowa Ct. App. Feb. 15, 2006).

The jury's decision regarding Bradshaw's "willful and wanton" conduct in this case does not present this Court with any issues of first impression. Rather, it is a "weight-of-the-evidence" issue that juries have been deciding in Iowa for decades, and it is an issue that Iowa appellate courts consistently hold should remain in the jury's hands.

II. THERE ARE NO INCONSISTENCIES BETWEEN THE IOWA COURT OF APPEALS' DECISION AND OTHER IOWA PRECEDENT FOR THIS COURT TO CORRECT.

Bradshaw argues that the Iowa Court of Appeals' Decision conflicts with a previous decision of this Court, *Poller v. Okoboji Classic Cars, LLC*, 960 N.W.2d 496 (Iowa 2021). (Bradshaw's App. at 5, 16-18). This is incorrect. In *Poller*, the plaintiff paid \$45,000 for a car restoration, and "the testimony [made] it clear that the [plaintiff] in fact expected to pay up to \$45,000 for restoration services." *Id.* at 523. In other words, there was no dispute in *Poller* as to the contract terms or the amount billed to the plaintiff for the work performed. *See id.* This is the opposite of the present case, which centers on a dispute over the contract terms and the amount properly billed to

the Grahams. The Iowa Court of Appeals agreed that *Poller* is distinguishable, explaining as follows:

[T]he problem with [Bradshaw's] argument is that it assumes the parties contracted for completion of the renovations at the fixed price listed at the estimate – rather than a price tied in some way to the actual time and materials used on the project. This was one of the key disputes between the parties throughout the trial. And the jury could have agreed with the Grahams that the contract did not fix the price and that the Grahams thus had a contractual expectation to pay a price lower than the estimate given Bradshaw Renovations' actual time and materials costs. And so, the jury could have found that Bradshaw Renovations' billing practices – which the Grahams claimed were consumer fraud that deceived them into paying more than the actual time and materials cost – caused them to pay more than they expected under the contract.

Specifically, the Grahams argued that Bradshaw Renovations misrepresented or omitted material facts and engaged in deception or fraud on its invoices by billing \$41,248.06 more than the actual time and materials properly due under their contract. And factoring in the final \$18,779.15 invoice that the Grahams left unpaid, they claimed a loss of \$22,468.91 from these practices. They supported this claim with testimony and exhibits, including a detailed itemization of twenty-seven instances of erroneous billings on the invoices. The jury awarded about half the requested amount: \$10,000 in actual damages. And two categories of improper billings easily show losses supporting that award – even factoring in the \$18,799.15 billed amount the Grahams did not pay. First, the evidence that Bradshaw Renovations overbilled roughly \$24,000 in labor charges by billing at \$60 per hour

rather than the \$45 per hour that it said it was charging. And second, the evidence that it overbilled nearly \$14,000 in subcontractor expenses and materials above the amount it actually spent – despite its statement that it was taking “no profit” on “subs and materials.”

Bradshaw Renovations v. Graham, No. 22-1721, at 12-14.

To summarize, Bradshaw is incorrect when it argues that the Iowa Court of Appeals’ decision is inconsistent with *Poller*. The Iowa Court of Appeals addressed Bradshaw’s *Poller* argument and properly rejected it, because *Poller* is both distinguishable from, and consistent with, the Iowa Court of Appeals ruling in this case.

CONCLUSION

Bradshaw’s Application for Further Review does not present any issues of first impression, and it does not present any issues of conflicting precedent for this Court to resolve. Rather, it asks this Court to reweigh the evidence and reinterpret whether that evidence demonstrates “willful and wanton” conduct, and it asks this Court to decide that issue – an issue uniquely prescribed for a jury’s determination – differently than the jury, the Polk County District Court, and the Iowa Court of Appeals. The Court should reject Bradshaw’s

Application and allow the jury, the District Court, and the Iowa Court of Appeals to have the final word on this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Resistance to Application for Further Review was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on November 1, 2024, pursuant to Iowa R. App. P. 6.902(2) and Iowa R. Elec. P. 16.101(1).

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CERTIFICATE OF FILING

The undersigned hereby certifies that this Resistance to Application for Further Review was filed with the Iowa Supreme Court by electronically filing the same on November 1, 2024, pursuant to Iowa R. App. P. 6.902(2) (2013) and Iowa Ct. R. 16.1221(1).

/s/ Zach Hermsen _____

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This Resistance to Application for Further Review complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) or (2) because it has been prepared in a proportionally spaced typeface using Times New Roman 14-point font and 13,986 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Zach Hermsen

November 1, 2024
Date