

## ARKANSAS COURT OF APPEALS

DIVISION III  
No. CV-12-942

LARRY KNESEK, JR.  
APPELLANT/CROSS-APPELLEE  
V.

CAMERON HUBBS  
CONSTRUCTION, INC.; CAMERON  
HUBBS; NEIDECKER PLUMBING &  
HEATING COMPANY, INC.; and  
TAYLOR GRAHAM D/B/A/  
TAYLOR GRAHAM EXCAVATING  
COMPANY  
APPELLEES/CROSS-APPELLANTS

**Opinion Delivered:** June 5, 2013

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. 17CV-2009-561]

HONORABLE GARY COTTRELL,  
JUDGE

AFFIRMED IN PART; REVERSED  
AND REMANDED IN PART

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### **RHONDA K. WOOD, Judge**

The circuit court awarded Hubbs Construction and Neidecker Plumbing & Heating money damages against Larry Knesek for breach of contract. Knesek had hired the two companies to perform repairs, but never paid them. After entry of judgment, Hubbs and Neidecker each filed motions for prejudgment interest and attorney's fees. The circuit court declined to award any prejudgment interest, denied Hubbs's attorney's fees, and only granted part of Neidecker's attorney's fees. We affirm the circuit court's denial of prejudgment interest but reverse and remand its attorney's fee rulings.<sup>1</sup>

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<sup>1</sup> Knesek originally appealed the judgment, and Neidecker and Hubbs cross-appealed the circuit court's prejudgment interest and attorney's fee rulings. However, Knesek's appeal was dismissed before the case was submitted.

I. *Facts and Procedural History*

Larry Knesek hired Hubbs Construction to build an extension to his office building. Hubbs completed the project and sent Knesek a bill for \$76,264.22. Knesek paid \$45,612.74, leaving a \$30,651.48 balance. Knesek also failed to pay Hubbs's \$9,488.31 invoice for additional charges. Knesek also hired Neidecker Plumbing & Heating to do the plumbing for the addition. Neidecker did the work and sent Knesek a bill for \$10,929.50. Knesek did not pay this bill either.

Hubbs and Neidecker attempted to file liens on the project, so Knesek filed a complaint seeking declaratory judgment against them to avoid the liens. Hubbs and Neidecker counterclaimed for a judgment against Knesek for the unpaid balances.<sup>2</sup> At a bench trial, the court denied Knesek's claim for declaratory judgment, awarded Hubbs \$42,633, and awarded Neidecker \$10,929.50. Hubbs's award was reduced by \$7,657 to repair a defective paint job, and Neidecker's award was reduced by \$450 for ammunition that Knesek had given Neidecker.

Hubbs and Neidecker then filed motions for prejudgment interest and attorney's fees. The circuit court refused to award prejudgment interest to either party. It also denied Hubbs's attorney's fees because Hubbs recovered less than it asked for. Further, it only granted part of Neidecker's attorney's fees, but gave no explanation. Both parties appeal these rulings. They argue that the court should have awarded prejudgment interest and that the court's attorney's fee rulings were an abuse of discretion and made without

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<sup>2</sup> One other subcontractor was a defendant/counter-plaintiff at trial but is not involved in this appeal.

consideration of the factors laid out in *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).

## II. *Prejudgment Interest*

Hubbs and Neidecker argue that they are entitled to prejudgment interest. We disagree. Prejudgment interest is compensation for recoverable damages wrongfully withheld from the time of loss until judgment. *Reynolds Health Care Servs., Inc. v. HMNH, Inc.*, 364 Ark. 168, 217 S.W.3d 797 (2005). It is allowable where the amount of damages is definitely ascertainable by mathematical computation or if the evidence furnishes data that makes it possible to compute the amount of damages without reliance on opinion or discretion. *Woodline Motor Freight, Inc. v. Troutman Oil Co.*, 327 Ark. 448, 938 S.W.2d 565 (1997). Where conflict exists over the validity of the damages sought by the plaintiff and the fact-finder is required to use its discretion to determine the amount of damages, prejudgment interest should not be awarded. *Spann v. Lovett & Co.*, 2012 Ark. App. 107, 389 S.W.3d 77.

In this case, neither Hubbs nor Neidecker can recover prejudgment interest because the amount Knesek owed them could not be determined until trial. Before construction began, the parties never agreed how much Knesek would pay for their services. As the court found, “[t]he proof . . . showed that no definite or specific charge per hour was ever established between the parties.” Recently, we held that prejudgment interest is not recoverable where the parties’ contract omits a specific price term and the court must insert a “reasonable” amount. See *Steve’s Outdoor Invs., LLC v. Reynolds Forestry Consulting-RFC, Inc.*, 2013 Ark. App. 40. Likewise, in this case, the amount

payable to Hubbs and Neidecker was not expressly identified by the parties. Instead, the circuit court inserted a reasonable price term for Hubbs (cost plus 10%) and determined that Neidecker's invoiced amount was reasonable. In short, damages were not definitely ascertainable before trial because no agreement existed between the parties, and it was unclear what Knesek owed Hubbs or Neidecker. Accordingly, they cannot recover prejudgment interest.

### III. *Hubbs Construction's Attorney's Fees*

Hubbs has also appealed the circuit court's denial of its attorney's fees, and we agree that a remand is appropriate on this point for the circuit court to consider the *Chrisco* factors. Generally, in Arkansas, an award of attorney's fees is allowed only if specifically permitted by statute. *Bailey v. Delta Trust & Bank*, 359 Ark. 424, 198 S.W.3d 506 (2004). Our statutes provide that a prevailing party in a breach-of-contract action may recover reasonable attorney's fees. Ark. Code Ann. § 16-22-308 (Repl. 1999). The decision to award attorney's fees is discretionary and will be reversed only if the appellant can demonstrate that the circuit court abused its discretion. *Harrill & Sutter, PLLC v. Kosin*, 2011 Ark. 51, 378 S.W.3d 135.

Here, Hubbs submitted a motion for \$27,481.20 in attorney's fees under section 16-22-308. An affidavit with an itemized record of the time spent on the case supported the motion. The court did not conduct a hearing on the request, but entered an order denying the motion explaining that Hubbs was not entitled to any attorney's fees because "the amount recovered . . . was less than the amount sought."

While there is no fixed formula for determining a reasonable attorney's fee, the court should be guided by certain factors: (1) the experience and ability of counsel; (2) the time and labor required to perform the legal service properly; (3) the amount involved in the case and the results obtained; (4) the novelty and difficulty of the issues involved; (5) the fee customarily charged in the locality for similar services; (6) whether the fee is fixed or contingent; (7) the time limitations imposed upon the client in the circumstances; and (8) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. *Chrisco v. Sun Indus., Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990).

In denying Hubbs's motion for attorney's fees, the circuit court did not reference any of the above *Chrisco* factors. The court did say it was denying Hubbs's fees because Hubbs's judgment was less than what it sought. It is unclear whether the court thought that Hubbs was not the prevailing party, or thought, considering all of the above factors, that Hubbs was not entitled to any reasonable attorney's fees.<sup>3</sup> A circuit court's order denying attorney's fees without "specific finding[s] regarding the prevailing party or any pertinent analysis of the *Chrisco* factors" should be remanded for the court to make findings that enable us to review the fee decision. *Harrill & Sutter*, 2011 Ark. 51, at 18, 378

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<sup>3</sup> Just because a party does not receive the full amount it asked for in its complaint does not mean that it is not the prevailing party. See Howard W. Brill, *Arkansas Law of Damages* § 11:3 (5th ed. 2004). For example, when a party recovers three-fourths of the money it requested, it can still be the prevailing party. *CJ Bldg. Corp. v. TRAC-10*, 368 Ark. 654, 249 S.W.3d 793 (2007). The rule is that "each side may score, but the one with the most points at the end of the contest is the winner, and is entitled to recover his costs." *Id.* at 659, 249 S.W.3d at 797.

S.W.3d at 146. We therefore reverse and remand on this point so that the circuit court can conduct an analysis of the fee award using the *Chrisco* factors.

IV. *Neidecker Plumbing's Attorney's Fees*

We reverse and remand the circuit court's partial award of attorney's fees to Neidecker for the same reason. Here, Neidecker asked for \$5,980.80 in fees, but the court awarded it only \$1,850. Despite this reduction, the circuit court provided no explanation for granting less than a third of Neidecker's fee request, and we are unable to discern why. Where a court reduces an attorney-fee request without explanation or reference to the *Chrisco* factors, our practice has been to remand for the circuit court to conduct such an analysis. *E.g., Conway Commercial Warehousing, LLC v. FedEx Freight E., Inc.*, 2011 Ark. App. 51, 381 S.W.3d 94. So we reverse and remand for the court to explain its reduction of Neidecker's attorney's fees.

Affirmed in part; reversed and remanded in part.

PITTMAN and WALMSLEY, JJ., agree.

*Ray Hodnett*, for appellant/cross-appellee.

*Robertson, Beasley & Ford, PLLC*, by: *Mark E. Ford*, for appellees/cross-appellants.