

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-18-734

DAVID L. BARNES

APPELLANT

V.

ROBERT WAGONER AND
RHONDA WAGONER

APPELLEES

Opinion Delivered: March 13, 2019

APPEAL FROM THE MARION
COUNTY CIRCUIT COURT
[NO. 45CV-12-86]

HONORABLE GORDON WEBB,
JUDGE

AFFIRMED

MIKE MURPHY, Judge

Appellant David Barnes appeals from an order of the Marion County Circuit Court awarding the appellees, Rhonda and Robert Wagoner, a \$77,700 judgment against him after finding that he had breached a contract with the Wagoners to build a home. This is the third time this case has come before this court; it was previously dismissed for finality issues.¹ It is now properly before us. We affirm.

In June 2010, the Wagoners contracted with Barnes to build a home for \$100,000. By that December, the Wagoners had paid Barnes \$60,000 for materials and work completed but were dissatisfied with the length of time the project was taking. The Wagoners hired another contractor to inspect the work and that contractor found several issues.

¹*Barnes v. Wagoner*, 2018 Ark. App. 301.

At the trial, the new contractor, Johnny Jagneaux, testified about the problems he encountered when he took over the project: (1) Barnes had used blocks from different manufacturers that would not properly interlock; (2) the rebar used was the wrong size; (3) the main structure was four inches out of square (with up to, but ideally less than, one inch out of square being acceptable); (4) the basement slab was poured unevenly; (5) the window openings were too small; (6) Barnes had started pouring concrete without consideration for where plumbing pipes and air ducts would be placed; and (7) Barnes had started to install flooring before the roof, causing the flooring to be exposed to the elements, mildew, and require removal and replacement.

Barnes testified on his own behalf. He explained that the delays and extra costs were caused by the Wagoners' changing the plans, such as moving around window and door locations and raising the house four feet. While working on the house, Mr. Wagoner fell and broke his neck. Barnes explained that added to the delay and the cost. He said he understood that he had not been hired to handle any electrical, HVAC, or plumbing but that it would be no extra trouble to pour concrete first then cut holes wherever holes were needed.

The court took the case under advisement. In its order, it found that Barnes had breached the contract by failing to complete the work in a timely or workmanlike manner. It found that the Wagoners had paid Jagneaux \$117,700 to fix the issues caused by Barnes and to complete the construction. This was in addition to the \$60,000 they had already paid to Barnes. Thus, it cost the Wagoners a total of \$177,700 to build the home they had originally contracted with Barnes to build for \$100,000. The court awarded the Wagoners

\$77,700—the difference between the contract price and what they actually paid. Barnes now appeals.

In order to prove a breach-of-contract claim, one must prove “the existence of an agreement, breach of the agreement, and resulting damages.” *Keith Capps Landscaping & Excavation, Inc. v. Van Horn Constr., Inc.*, 2014 Ark. App. 638, at 5–6, 448 S.W.3d 207, 210. In civil bench trials, the standard of review on appeal is not whether there is substantial evidence to support the findings of the court but whether the court’s findings were clearly erroneous or clearly against the preponderance of the evidence. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been made. *Id.* Where the issue is one of law, our review is de novo. *Id.*

On appeal, Barnes first argues that the evidence does not support the court’s findings that he failed to complete the work in a timely or workmanlike manner. He argues that the court did not consider the additional work Barnes did beyond what was required in the contract. To support these points, Barnes explains that the Wagoners requested numerous changes to the specs, that the building did not need to be perfectly square because “once the concrete is installed the wall can be moved around to ensure the building is square,” and that “there was never a timeframe to complete the job.” He said that he installed the blocks per the manufacturer instructions and that Jagneaux did work beyond the scope of the contract he had with the Wagoners. Barnes’s arguments, however, ask us to reweigh the evidence. Disputed facts and determinations of credibility are within the province of the fact-finder. *Id.*

Barnes next argues that the Wagoners did not establish any construction standards or prove how Barnes had breached them. Barnes did not make the specific argument regarding establishing construction standards to the trial court or receive a ruling on it. We will not consider an argument that is raised for the first time on appeal. *Davis v. Davis*, 2013 Ark. App. 180, at 5. Further, to the extent that Barnes argues that the evidence does not support the findings of breach, generally, he again asks us to reweigh the evidence. As outlined above, there was extensive testimony about the issues with the house that the new contractor discovered and what measures he took to complete the project after taking it over to fix those issues.

After our review of the evidence, we are not left with a definite and firm conviction that a mistake was made.

Affirmed.

GLADWIN and BROWN, JJ., agree.

James E. Hensley, Jr., for appellant.

Benjamin A. Gibson, for appellees.