

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 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. 00-0159

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROBERT BARTELS, AND VICTORIA BARTELS,

PLAINTIFFS-RESPONDENTS,

v.

WILLIAM BREY,

DEFENDANT-APPELLANT,

MARY BREY,

DEFENDANT.

APPEAL from a judgment of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

¶1 DYKMAN, P.J.¹ William Brey appeals from a judgment in favor of Robert Bartels for \$375.00 plus costs. Bartels performed some home improvement work at Brey's request, with a fee to be determined later. After Bartels completed half of the work, Bartels and Brey disagreed on the appropriate fee. The trial court determined the reasonable value of Bartels' services to be \$375.00. Because there is sufficient evidence in the record to support the trial court's judgment, we affirm.

BACKGROUND

¶2 Bartels was a tenant, renting half of a duplex owned by Brey. He had five to six years of experience as a professional painter. Throughout his tenancy, Bartels did painting and other home improvement work for Brey in return for cash payment or rent abatement. Sometime before May 31, 1999, Brey commissioned Bartels to paint the decks on both sides of the duplex. The parties did not agree as to the amount of Bartels' compensation. Bartels completed work on half of the duplex sometime in May 1999. He withheld his June rent of \$600 as compensation for the work performed. Brey disagreed with Bartels' valuation of the work and requested June's rent, which Bartels then paid. Unable to reach an agreement with Brey for the value of his services, Bartels stopped working on the duplex and sued Brey. At trial, the parties produced disparate estimates for the work ranging from \$150 to \$1,500.² Based on the evidence and testimony provided, the trial court determined the reasonable value of Bartels' work to be \$375. Brey appeals.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(a) (1997-98).

² However, the disparity is not as large as it first appears. The \$150 estimate was for labor on half of the duplex, while the \$1,500 estimate was for labor on the entire duplex.

ANALYSIS

¶3 When “a party has rendered services to another, even though it is under an invalid and unenforceable contract, he may recover for those services upon quantum meruit, upon an implied promise of the defendant to pay the reasonable value of the services.” *Mead v. Ringling*, 266 Wis. 523, 528, 64 N.W.2d 222 (1954). Literally translated quantum meruit means “as much as he deserved.” *Id.* at 529. Here, neither party disputes the trial court’s finding that there was an agreement between Brey and Bartels. Brey requested Bartels’ services and Bartels expected reasonable compensation for his work. The debate here is over the appropriate amount of damages. Damages in quantum meruit are measured by the reasonable value of the services provided. *See Barnes v. Lozoff*, 20 Wis. 2d 644, 652, 123 N.W.2d 543 (1963). Reasonable value is defined in terms of the “rate of pay for such work in the community at the time the work was performed.” *Mead*, 266 Wis. at 529. In reaching its determination as to the reasonable value of services, the trial court must base its decision on the evidence provided by both parties. *See Ramsey v. Ellis*, 168 Wis. 2d 779, 791, 484 N.W.2d 331 (1992). The trial court “may not substitute its own judgment as to the reasonable value of the plaintiff’s services in a quantum meruit action.” *Id.*

¶4 A determination of reasonableness is a mixed question of fact and law. *See Wassenaar v. Panos*, 111 Wis. 2d 518, 525, 331 N.W.2d 357 (1983). We will uphold the trial court’s factual determinations unless they are clearly erroneous. *See Richards v. Land Star Group, Inc.*, 224 Wis. 2d 829, 846, 593 N.W.2d 829 (1999). Whether facts fulfill the legal standard of reasonableness is a question of law, and we normally do not defer to the trial court on questions of law. *See Figliuzzi v. Carcajou Shooting Club*, 184 Wis. 2d 572, 590, 516 N.W.2d 410 (1994). However, because conclusions of reasonableness can be intertwined

with the facts supporting the conclusion, we will give weight to the fact finder's conclusion, but not controlling weight. See *Langreck v. Wisconsin Lawyers Mut. Ins. Co.*, 226 Wis. 2d 520, 524, 594 N.W.2d 818 (Ct. App. 1999).

¶5 Here, both parties provided estimates from local painters as to the value of Bartels' services, as well as the amount of time such a job would take. Bartels testified that he worked on the duplex for two and one-half days, and that his normal rate of pay for painting was between \$15 and \$20 per hour. Brey contends that because he had previously paid Bartels between \$8 and \$10 per hour for his services, the trial court's decision to accept Bartels' testimony was clearly erroneous. However, the standard for determining the reasonable value of services is the "rate of pay for such work in the community," not the rate of pay that Bartels received for prior services. *Mead*, 266 Wis. at 529. The trial court correctly looked to both parties' estimates, and to Bartels' testimony as a professional painter, to determine the reasonable value of his services. If two and one-half days equals twenty hours, the trial court's determination reflects an hourly wage of \$18.75, well within the \$15 to \$20 range to which Bartels testified. Because the trial court's fact finding is supported by the evidence and testimony, it is not clearly erroneous. And, giving due deference to the trial court's determination of reasonableness, we conclude that Bartels was awarded the reasonable value of his services.

CONCLUSION

¶6 Because there is sufficient evidence in the record to support the trial court's determination of the reasonable value of Bartels' services, we affirm its judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

