

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

John Pomeroy v. Griffin Windows and Doors, LLC

No. 3D22-0738 (Fla. 3d DCA Oct. 18, 2023) · No. No. 3D22-0738 · Decided October 18, 2023

SUMMARY

The Third District Court of Appeal of Florida affirmed the trial court's judgment in favor of Griffin Windows and Doors, LLC. The court relied on the appellant's failure to present sufficient proof of the proper measure of damages and to provide a complete record for appellate review.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Fernandez; Lindsey; Lobree
JURISDICTION	Florida
DECIDED	October 18, 2023
DOCKET	No. 3D22-0738
DISPOSITION	affirmed
PROCEDURAL POSTURE	John Pomeroy appealed a judgment of the Circuit Court for Miami-Dade County. The Third District Court of Appeal affirmed in a per curiam opinion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	John Pomeroy v. Griffin Windows and Doors, LLC, et al.

TOPICS

- appellate procedure
- civil procedure
- damages
- construction law
- contracts

PRACTICE AREAS

- appellate procedure
- civil procedure
- construction law
- contracts
- remedies

QUESTIONS PRESENTED

- Whether the trial court erred in entering judgment consistent with a directed verdict when the appellant failed to present sufficient proof of the proper measure of damages.
- Whether the appellant provided an adequate appellate record to demonstrate reversible error.

HOLDINGS

1. The trial court did not err in entering judgment consistent with a directed verdict because the appellant failed to present proof of the proper measure of damages.
2. The judgment must be affirmed where the appellant fails to provide a record sufficient to permit review of the alleged error and overcome the presumption of correctness attaching to the trial court's ruling.

KEY QUOTATIONS

“The choice to provide piecemeal transcripts deprived this Court of the ability to review the record as a whole. Absent a full transcript, this Court cannot determine whether the evidence presented . . . at trial supported her argument”

“it is the appellant’s burden to provide a record that will overcome the presumption of correctness as to the trial court’s findings”

“to provide the appellate court with a record sufficient to review the matter assigned as error”

FACTUAL BACKGROUND

The case involved a contract-related dispute concerning construction improvements and the measure and proof of damages. The appellate opinion indicates that the appellant failed to provide a record sufficient to permit review of the trial proceedings and failed to establish the applicable measure or amount of damages. The court relied on authority addressing the difference between the contract price and reasonable completion cost and damages based on diminution in value where reconstruction would constitute economic waste.

PROCEDURAL HISTORY

The appeal arose from proceedings in the Circuit Court for Miami-Dade County, lower tribunal case number 18-8374. The appellate court affirmed the trial court's disposition, relying on authorities concerning proof of damages, the proper measure of damages for incomplete or defective construction, and the appellant's obligation to provide an adequate record for review.

DISPOSITION

affirmed

CASES CITED

- Mole v. First Fed. Sav. & Loan Ass'n, 674 So. 2d 144 (Fla. 5th DCA 1996)
- Grossman Holdings, Ltd. v. Hourihan, 414 So. 2d 1037 (Fla. 1982)
- Ponn v. Metro Express, Inc., et al., No. 3D22-991, 2023 WL 5731753 (Fla. 3d DCA Sept. 6, 2023)
- Solomon v. New ERA Meat No. 2, 961 So. 2d 989, 989 (Fla. 3d DCA 2007)
- Smith v. Orhama, Inc., 907 So. 2d 594, 596 (Fla. 3d DCA 2005)
- S. Fla. Apartment Ass'n, Inc. v. Dansyear, 347 So. 2d 710, 711 (Fla. 2d DCA 1977)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed October 18, 2023. Not final until disposition of timely filed motion for rehearing. _____ No. 3D22-0738 Lower Tribunal No. 18-8374 _____ John Pomeroy, Appellant, vs. Griffin Windows and Doors, LLC, et al., Appellees. An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Montalto Legal, LLC and Stephen Montalto, for appellant. Delgado Vega PLLC and Daniel R. Vega and Arielle J. Brazeal, for appellees. Before FERNANDEZ, LINDSEY and LOBREE, JJ. PER CURIAM. Affirmed. See *Mole v. First Fed. Sav. & Loan Ass’n*, 674 So. 2d 144 (Fla. 5th DCA 1996) (trial court did not err in granting judgment in accordance with motion for directed verdict where plaintiff failed to present proof of proper measure of damages, which was difference between contract price and reasonable cost to complete improvements); *Grossman Holdings, Ltd. v. Hourihan*, 414 So.

2d 1037 (Fla. 1982) (homeowners not entitled to total breach damages where house was built in opposite direction of that specified in contract, and having house torn down and rebuilt to original specifications would constitute economic waste; homeowners were entitled to any difference in value as of date of delivery between house homeowners contracted for and house that was ultimately built, and burden was on homeowners to prove any such difference); see also *Ponn v. Metro Express, Inc., et al.*, No. 3D22-991, 2023 WL 5731753 (Fla.

3d DCA Sept. 6, 2023) (“The choice to provide piecemeal transcripts deprived this Court of the ability to review the record as a whole. Absent a full transcript, this Court cannot determine whether the evidence presented... at trial supported her argument....”); *Solomon v. New ERA Meat* No. 2, 961 So. 2d 989, 989 (Fla. 3d DCA 2007) (stating “it is the appellant’s burden to provide a record that will overcome the presumption of correctness as to the trial court’s findings” (quoting *Smith v. Orhama, Inc.*, 907 So.

2d 594, 596 (Fla. 3d DCA 2005))); *S. Fla. Apartment Ass’n, Inc. v. Dansyear*, 347 So. 2d 710, 711 (Fla. 2d DCA 1977) (holding that appellant’s failure “to provide the appellate court with a record sufficient to review the matter assigned as error” leaves appellate court “no alternative but to assume that the trial court ruled correctly”). 3