

IN THE COURT OF APPEALS OF TENNESSEE

DAVID HOWARD and wife)	C/A NO. 03A01-9510-CH-00379
DESSIE HOWARD,)	BRADLEY COUNTY CHANCERY COURT
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	HONORABLE EARL H. HENLEY,
)	CHANCELLOR
)	
STEVE MATHIS d/b/a)	
MATHIS CONSTRUCTION COMPANY,)	
)	
Defendant-Appellee.)	AFFIRMED AND REMANDED

<p>FILED</p> <p>March 19, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

LYNN PERRY, Cleveland, for Appellants

D. MITCHELL BRYANT of JENNE, SCOTT & BRYANT, Cleveland, for Appellee

MEMORANDUM OPINION¹

Susano, J.

¹Rule 10 of the Rules of this court provides, in pertinent part, as follows:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value.

This case arose out of a dispute between the parties over the construction of the plaintiffs' residence. The plaintiffs, husband and wife, sued their contractor for damages caused by breach of the parties' written contract, and for removal of a contractor's lien filed against their residence. They also sought damages arising out of the filing of the lien. The defendant filed a counterclaim for monies due for work performed under the contract and for damages, including attorney fees. The trial court dismissed the original complaint, awarded the defendant a judgment for \$10,000, and decreed that he "be allowed to enforce his lien against the [plaintiffs'] property, to the satisfaction of said judgment." Plaintiffs appeal, essentially arguing that the evidence preponderates against the trial court's judgment and that the trial court erred in failing to "judicially" remove the contractor's lien. The appellee raises, as an additional issue, the failure of the trial court to award attorney fees under the contract.

The evidence does not preponderate against the trial court's judgment. T.R.A.P. 13(d). All issues, including appellee's issue with respect to attorney fees, are found to be without merit.

The judgment of the trial court is affirmed. This case is remanded for enforcement of the judgment and for collection of

costs assessed below pursuant to applicable law. Costs on appeal are taxed and assessed to the appellants and their surety.

Charles D. Susano, Jr.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.