IN THE COURT OF APPEALS OF IOWA

No. 6-699 / 95-1915

MARK J. COOPMAN and VICKI A. COOPMAN,

Plaintiffs-Appellants,

vs.

LARRY C. ERNST and PAMELA A. ERNST,

Defendants-Appellees.

LARRY C. ERNST and PAMELA A. ERNST,

Third-Party Plaintiffs,

vs.

CHUCK PEKIOS CO.,

Third-Party Defendant-Appellee.

FILED
DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Max R. Werling, Judge.

The buyers of residential property appeal from a district court judgment in favor of the sellers on the buyers' action for damages due to alleged defects in the property. **AFFIRMED.**

Mark A. Tarnow of Wessels, Stojan & Stephens, P.C., Rock Island, Illinois, for appellants.

Amy M. Britt, Davenport, for appellees.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

SACKETT, C.J.

This is a suit against sellers of residential real estate and property for alleged defects in the property sold. We affirm.

Plaintiffs-appellants Mark J. Coopman and Vicki A. Coopman purchased a home from defendants-appellees Larry C. Ernst and Pamela A. Ernst on January 25, 1994. The home had been constructed by third party defendant-appellee Chuck Pekios Co.

Plaintiffs visually inspected the home three times and defendants gave plaintiffs a disclosure statement. After occupying the home, plaintiffs brought suit against defendants contending defendants had concealed certain defects in the real estate and personal property sold in the transaction. Plaintiffs then brought in builder Chuck Pekios Co. as a third party defendant. The matter was tried to the district court who considered plaintiffs' claims, made factual findings, and dismissed plaintiffs' claim and the claim against the third party defendant.

Plaintiffs advance two issues on appeal. The first issue advanced is difficult to understand, but appears to be an argument that plaintiffs proved their claim by proving promissory estoppel. Plaintiffs have not shown how this issue was preserved for review. No claim of promissory estoppel was made in plaintiffs' pleadings. The trial court did not address promissory estoppel. No Iowa Rule of Civil Procedure 179(b) motion was filed. This issue was not preserved for appellate review. *See Clark v. McDaniel*, 546 N.W.2d 590, 595 (Iowa 1996).

Plaintiffs next contend they proved the elements of fraud by clear and convincing evidence. We review for errors at law. Iowa R. App. P. 4; *City of McGregor v. Janett*, 546 N.W.2d 616, 617 (Iowa 1996).

This sale predated the enactment of Iowa Code chapter 558A. The basis of plaintiffs' claim was defendants' alleged fraud. The elements of a cause of action based on fraud are: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage. *Garren v. First Realty Ltd.*, 481 N.W.2d 335, 338 (Iowa 1992); *Hagarty v. Dysart-Geneseo Community Sch. Dist.*, 282 N.W.2d 92, 95 (Iowa 1979).

Plaintiffs re-argue the evidence. Most of the evidence plaintiffs introduced in support of their claim was contradicted. We view the evidence in the light most favorable to the verdict. *Grefe v. Ross*, 231 N.W.2d 863, 865 (Iowa 1975). The factual findings of the district court support its verdict. We affirm.

AFFIRMED.