IN THE COURT OF APPEALS OF IOWA

No. 4-219 / 93-1332

ROBERT G. TADE and **CAROL E. TADE,**

Appellees,

vs.

DOROTHY CLINE and **JOHN H. MILLISER,**

Appellants.

Appeal from the Iowa District Court for Davis County, James D. Jenkins, Judge.

Defendants appeal a district court judgment ordering specific performance of a real estate purchase agreement and awarding attorney fees to plaintiffs. **AFFIRMED.**

C. K. Pettit of Pettit Law Office, P.C., Bloomfield, for appellants.

John B. Martin, Bloomfield, for appellees.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

Dorothy Cline and her husband, John Milliser, contacted real estate agent Virginia Rysdam about buying a home in Bloomfield. Rysdam contacted Robert and Carol Tade to see if they would be willing to show their home to Cline. The Tades indicated they would be willing to sell their home for a net price of $75,000.

On April 15, 1992, Cline and Milliser flew from Ohio to Bloomfield to view various homes. Rysdam went to the Tades' home on April 16 to prepare a data sheet prior to showing it to Cline. The data sheet provided, inter alia, the "pond in backyard is shared with Cody Barnett." This information was allegedly obtained from the Tades.

On the afternoon of April 16, Rysdam brought Cline and Milliser to view the Tade property. The parties discussed the southern but not the northern boundary of the property. The parties did not discuss the existence of an intervening lot between the Tade and Barnett properties. The Tades were actively attempting to obtain that lot from the Galliganis at the time, but did not discuss this with Cline.

After the tour, Cline and Milliser told Rysdam they wanted to make an offer on the Tade property. Rysdam prepared a purchase agreement listing a purchase price of $75,000. Rysdam reviewed the agreement with Cline and Milliser. Cline and Milliser signed the agreement, and later accepted the Tades' counter-offer of $75,500. The

parties also signed an attached memorandum indicating buyers agreed to pay Rysdam's fee.

On April 21, 1992, Galliganis conveyed title to their lot to the Tades by warranty deed. On June 9, 1992, Cline and Milliser discovered no part of the pond was located on the Tade property. Upon calling Rysdam, they also learned the Tades had begun excavating a basement on the intervening lot.

Cline and Milliser served a notice of rescission on the Tades on June 22, 1992, based on alleged misrepresentations the pond was on their land and the Tades' failure to disclose the existence of the intervening lot.

On July 14, 1992, the Tades filed an action in equity seeking specific performance of the purchase agreement and reasonable attorney fees. After a trial the district court entered its findings of fact, conclusions of law and order. The court determined the most the Tades had ever represented regarding the pond was that Cline could have access to it. The court further found there were no representations regarding the northern boundary of the Tade property and the Tades had no duty to disclose the existence of the intervening lot or their attempts to purchase it. The court noted the north/south width of the property was a matter of public record. The court ordered specific performance and awarded plaintiffs $3900 in attorney fees. Cline and Milliser appeal.

We review actions in equity de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially concerning the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Cline and Milliser argue the court should have granted their rescission of the contract based on misrepresentation of material facts concerning the property. We disagree. The Tades did not misrepresent the size or extent of their property. They had no duty to disclose their plans for building on the adjoining lot. The duty to disclose, absent some special or confidential relationship, extends to hidden defects, Loghry v. Capel, 257 Iowa 285, 289, 132 N.W.2d 417, 419 (1965), and "material facts about a property not readily observable upon reasonable inspection." Smith v. Peterson, 282 N.W.2d 761, 764 (Iowa App. 1979). The existence of the vacant lot was not discussed, but was readily discernible from the plat map. Even a cursory look at the property would reveal a line of trees at the north boundary. The Tades made no representation concerning the pond being partly on their property or being partly owned by them. The Tades are not responsible to have Cline and Milliser investigate the property before buying it. We find no basis for rescission of the sales agreement.

Specific performance is available as a remedy when a contract involves property which is unique. Berryhill v. Hatt, 428 N.W.2d 647, 657 (Iowa 1988). Real estate is

assumed to be unique. Moser v. Thorp Sales Corp., 256 N.W.2d 900, 907 (Iowa 1977); Dee v. Collins, 235 Iowa 22, 24, 15 N.W.2d 883, 885 (1944) (assuming money damages do not constitute an adequate remedy in real estate contracts without an actual showing of the inadequacy of the legal remedy). The Tades performed their part of the contract by tendering a deed to the property. Since there was no basis for rescission of the contract, the Tades were entitled to have the court order specific performance. We affirm the decision of the district court granting specific performance.

The purchase agreement provided, "If the BUYERS fail to fulfill this Agreement . . . SELLERS may proceed by an action of law or in equity. BUYERS agree to pay costs and reasonable attorney fees . . . incurred by the SELLERS." The district court properly awarded attorney fees based on the purchase agreement.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit.

AFFIRMED.