



IN THE COURT OF APPEALS OF IOWA

KENNETH STEVENSON AND
BETTY STEVENSON,

Plaintiffs-Appellants,

vs.

HAWKEYE FORD-MERCURY, INC.,
FORD MOTOR COMPANY, ROBERT K,
DENNY, AND LAURA G. DENNY,

Defendants-Appellees.

Filed August 30, 1983

3-82
2-68470

Appeal from Floyd District Court, Ralph F. McCartney, Judge.

Plaintiffs appeal from a judgment for defendants in their suit for rescission and damages based on defects in a new automobile. AFFIRMED.

J. R. Norris of J. R. Norris and Associates, Cedar Rapids, for plaintiffs-appellants.

James F. Smith and Roger Ott of Noah & Smith, Charles City, for defendants-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden,
JJ.

PER CURIAM

Plaintiffs Kenneth and Betty Stevenson bought a new Ford automobile from defendant Hawkeye Ford-Mercury, Inc., in December of 1978. The car's muffler evidently overheated or caught fire, and considerable gasoline was found in the crankcase, apparently the result of a defective carburetor. The transmission also "chattered" and there was a minor water leak at the back window. The dealer claimed to have repaired the problems satisfactorily, but plaintiffs asserted the gasoline in the crankcase would cause permanent damage to the engine.

Plaintiffs sued for actual and consequential damages, including mental distress. There was some suggestion by a Ford witness that the water leak might not have been completely repaired. Ford's position was that once the 12,000 mile/twelve-month warranty had expired, the buyer had no right to free rectification.

The court found that the defects had been remedied by the dealership stating that "not every defect, no matter how inconsequential. . . permits a buyer to rescind an agreement or to seek damages. . . ." The court held that the breaches must "go to the fabric of the agreement between the parties and nonconformity, in the case of initial acceptance, must be such that it cannot be 'cured.' "

On appeal, plaintiffs assert that (1) the trial court erred in failing to rule on plaintiffs' contention that defendants' failure to repair their car satisfactorily violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.; (2) there was not substantial evidence to support trial court's finding that defendants did not breach express or implied warranties; and (3) there was not substantial evidence that the defects did not "substantially impair" the value of the goods to plaintiff, Iowa Code § 554.2608(1)(UCC — revocation of acceptance). Our scope of review in this case is on assigned error.

We first address the contention that the trial court erred in failing to rule on the applicability of the Magnuson-Moss Warranty Act. Plaintiff contends that because both the original and amended petition alleged violations of the Act, the trial court's failure to rule on the issue constituted reversible error under Simonsen v. Todd, 261 Iowa 485, 154 N.W.2d 730 (1967). We agree with defendant, however, that since the trial court concluded that plaintiffs had failed to sustain their burden of proving, by a preponderance of the evidence, their allegations of negligence and breach of express and implied warranty, the Magnuson-Moss Act was necessarily rendered inapplicable. Therefore, whether or not the court made a specific finding of fact with regard to the applicability of the Act is unimportant because it would not have affected the outcome of the case, and the failure to make such a finding cannot be said to be error warranting reversal. See Ke-Wash Co. v. Stauffer Chemical Co., 177 N.W.2d 5, 13 ("error in the trial court's rulings relating to the sufficiency of the pleadings and proof to sustain the judgment on a theory asserted in another division is not grounds for reversal").

Plaintiff's other major contention on appeal is that the trial court's findings of fact—that the defendants did not breach express or implied warranties and that the defects did not "substantially impair" the value of the goods to plaintiff—were not supported by substantial evidence. Findings of fact in a law action are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). In making this determination, the evidence is viewed in the light most favorable to the findings of the trial court. Doggett v. Heritage Concepts, Inc., 298 N.W.2d 310, 312 (Iowa 1980). The issue before us, therefore, is whether there was substantial evidence in the record, when viewed in a light most favorable to the trial court's findings, from which the trial court could conclude that the defects alleged in plaintiffs' petition did not "substantially impair" the value of the car and did not rise to the level of a breach of warranty.

An examination of the record reveals that plaintiffs had the vehicle in the dealer's shop on five different occasions, once for fire, twice for transmission complaints, and twice for the rear window for a total of five times for which he received no bills. Plaintiffs' witness, James Lack, the foreman of the Hawkeye-Ford Mercury Dealership at the time the Stevenson car was serviced, testified that he saw evidence of overheating on a muffler hanger but that there was no sign of any fire as claimed by plaintiff. With reference to the transmission complaints, the plaintiffs' witness again testified that he could find no evidence of any defects in the transmission although he test-drove the car around the dealership and in town. Lack also testified that there was no evidence of any scoring of the valves or damage to the cylinders as claimed by plaintiffs, that fire to the hanger had not rendered it unserviceable for the muffler, and that the muffler was still supported by that hanger. Plaintiffs' witness further testified on cross-examination that the claimed leaks to the window were a very simple matter to repair. The defendant's witness, Larry Nelson, established himself as a technical expert for the Ford Motor Company and one whose expertise qualified him to assist dealers and their mechanics in their repair shops with particular problems, particularly when the problems are beyond the capacity of the local dealer's repair shop. Mr. Nelson's testimony as to the alleged fire damage, essentially the same as that of Mr. Lack, was that there was not any actual fire. Mr. Nelson further testified that the overheating was caused by a malfunction in the carburetor which the dealership corrected. He further testified that the window-seal was repaired, that the transmission was inspected, that no defects were found after substantial road-testing, and that such warranty work was without cost to the owner. Finally, Mr. Nelson testified that both the leaks to the rear-window and the driver's window were very minor defects which could be

repaired by sealing the leaks and that no substantial damage of any kind occurred to the interior of the car as a result of these leaks. In conclusion, Mr. Nelson testified that, after all his tests and inspections, he found no defects which could not have been easily remedied during the warranty period in the dealership's repair shop.

On the basis of this evidence, we conclude that the trial court's findings were supported by substantial evidence. The decision is accordingly affirmed.

AFFIRMED.