

IN THE COURT OF APPEALS OF IOWA

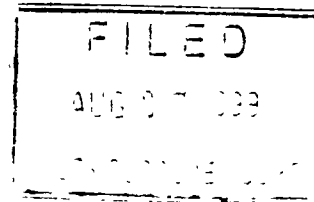
No. 1999-99 (9-286) / 98-1738

Filed August 27, 1999

DONALD HULSING and LISA HULSING,
Plaintiffs-Appellants,

vs.

BOB HENZEN,
Defendant-Appellee.



Appeal from the Iowa District Court for Scott County, Gary McKenrick,
District Associate Judge, and G. David Binegar, Judicial Magistrate.

The plaintiffs were granted discretionary review of a district court decision reversing a judgment in their favor entered by a judicial magistrate in plaintiffs' small claims action based upon water damage they sustained in a house they purchased from the defendant. **REVERSED.**

James M. Stein, Davenport, for appellants.

Amy M. Britt of Vollertsen and Britt, P.C., Davenport, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Donald and Lisa Hulsing were granted discretionary review of a district court decision reversing a judgment in their favor entered by a judicial magistrate in their small claims action based upon water damage they sustained in a house they purchased from Bob Henzen. We reverse.

The Hulsings purchased a house from Henzen in late 1995. Henzen's seller disclosure statement indicated there were no water problems with the basement. However, the basement of the home flooded in the spring of 1996, 1997, and 1998. The Hulsings sued Henzen in small claims court to obtain the money necessary to repair and waterproof the basement. The magistrate ruled for the Hulsings and awarded \$4000 plus interest.

On appeal to the district court, Henzen contended the Hulsings had failed to meet their burden to prove all seven elements of fraudulent misrepresentation. The district court found the Hulsings had proven six of the elements by a preponderance of clear, convincing, and satisfactory evidence. However, the district court determined the Hulsings had failed to prove they had reasonably relied upon Henzen's representation the basement did not suffer from water problems because of the age of the house. The district court then reversed the magistrate's judgment.

The Hulsings were granted discretionary review by our supreme court.

I. STANDARD OF REVIEW. An appeal from a small claims court to a district court is governed by Iowa Code section 631.13(4) (1997). The district court

conducts a *de novo* review on the record before the magistrate unless it finds the record inadequate for the purpose of rendering a judgment, in which case it may order additional evidence to be presented. *Sunset Mobile Home Park v. Parsons*, 324 N.W.2d 452, 454 (Iowa 1982); *Ravreby v. United Airlines, Inc.*, 293 N.W.2d 260, 262 (Iowa 1980).

On discretionary review of a small claims action, our standard of review depends on the nature of the case. *Hyde v. Anania*, 578 N.W.2d 647, 648 (Iowa 1998). The essential character of a cause of action and the relief it seeks, as shown by the complaint, determine whether an action is at law or equity. *Wolf v. DaCom, Inc.*, 499 N.W.2d 728, 730 (Iowa App. 1993). The Hulsings' fraudulent misrepresentation claim is an action at law because they requested compensatory damages. *See, e.g., Feaker v. Bulicek*, 538 N.W.2d 662, 663 (Iowa App. 1995) (fraudulent misrepresentation claim seeking damages was at law). Therefore, we review for the correction of errors of law. Iowa R. App. P. 4. The district court's findings of facts are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

II. FRAUDULENT MISREPRESENTATION. The record before the magistrate was that the seller disclosure statement prepared on October 9, 1996, clearly indicated Henzen did not have any known water problems with the basement/foundation area of the house. The Hulsings testified they relied on this disclosure statement in making their decision to purchase the property. In addition,

the Hulsings and another witness had inspected the basement/foundation area. It was described as being white-washed with no evidence of any prior water problems or damage. Henzen testified he had owned the property for twenty-three years and his mother resided in the house for fourteen years. He and his mother testified they had no knowledge of any water problem.

The magistrate acknowledged the foundation and basement in question was in excess of one hundred thirty years of age. The magistrate then concluded:

A review of Plaintiffs' photos show that this is not merely a water seepage problem, but essentially the basement completely floods. Obviously this is a condition that is dangerous, as the water heater and furnace are located in the basement. The Defendant would have the Court believe that this situation never occurred prior to the spring of 1996. The only explanation Defendant offers is that there is some kind of road work occurring on Interstate 80 some 300 to 400 feet from the property's location. The Court finds the defendant's contentions to be not credible. It is simply not believable that this property has been in existence for over 130 years and in the spring of the 131st year, suddenly started having water problems in the basement. Rather, the Court finds that it would be more logical that the water problems had occurred periodically throughout the life of the structure. Further, having owned and having had family members live in the property for 17 years, the Court cannot believe that this problem had never occurred before the spring of 1996.

The magistrate further concluded the Hulsings had proved all the elements of fraudulent misrepresentation pursuant to Iowa Code section 558A(4)(1) and *Arthur v. Brick*, 565 N.W.2d 623 (Iowa App. 1997).

The district court found the record before the magistrate to be adequate and also allowed oral arguments. In its decision filed Aug. 28, 1998, the district court stated in part:

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The ruling and order filed by Magistrate Binegar includes findings of fact. A review of the findings of fact and a comparison of those findings with the notes of evidence presented to the Magistrate reveals that there is substantial support for the findings in the evidence presented to the Magistrate. The Magistrate has assessed credibility to the Plaintiffs and the Court sees no reason indicating that assessment is in error.

....

From this Court's review, this Court concludes that the Plaintiffs have established by a preponderance of clear, convincing and satisfactory evidence that the defendant knowingly made a false representation of a material fact with the intent to deceive and induce the Plaintiffs into purchasing the subject property. The false representation was in the disclosure statement under which the defendant claimed there had been no known water problems with the basement/foundation. That statement clearly from the evidence presented was untrue. The Plaintiffs also clearly established resulting injury and damage as a consequence of the Defendant's misrepresentation.

The district court agreed with the magistrate to the extent that six of the seven elements of fraudulent misrepresentation had been proved. The district court concluded the critical issue was that of "reasonable" reliance.

The district court determined the Hulsings had not proved reasonable reliance after apparently applying an objective test. This is error. In Iowa we require proof of justifiable reliance, not reasonable reliance. *Lockard v. Carson*, 287 N.W.2d 871, 878 (Iowa 1980). Justifiable reliance is determined by the application of a subjective test. *Id.* This test is not whether a reasonably prudent person would be justified in relying on such representations but rather, whether the complaining party, in view of his own information and intelligence, had a right to rely on the representations. *Id.*

The district court relied solely on the age of the house and the pictures of the water damage *after* the flooding in concluding "this court has great difficulty understanding how the plaintiffs reasonably could rely on any representation that this old basement did not suffer from water problems."

We have carefully reviewed this case and conclude all seven elements of fraudulent misrepresentation were proved by the Hulsings. The district court erred in reversing the decision of the magistrate. We therefore reverse and reinstate the judgment of the magistrate.

REVERSED.