FILED
DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RONALD J. DONOVAN,

Plaintiff-Appellee,

vs.

WEBER MOTOR SALES, INC.,

Defendant-Appellant.

Filed December 30, 1981

1-273
2-64859

Appeal from Dubuque District Court - Karl Kenline, Judge.

Defendant auto dealer appeals the judgment entered upon a jury verdict awarding plaintiff buyer $2750.00 in compensatory damages and $2000.00 exemplary damages arising from defects in a new Ford pickup and defendant's attempts to repair those defects. On appeal, defendant asserts that: (1) there was insufficient evidence to support jury instructions on negligence, breach of express warranty, breach of implied warranty of fitness, or breach of implied warranty of merchantability; (2) the damage awards were based on speculation; (3) the trial court erroneously allowed the jury to assess damages for defects which defendant had repaired; and (4) there was insufficient evidence to support a jury instruction on punitive damages. AFFIRMED.

Dave Hughes, Cascade, for defendant-appellant.

A. John Arenz of O'Connor, Thomas, Hammer, Bertsch & Norby, Dubuque, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Defendant auto dealer appeals the judgment entered upon a jury verdict awarding plaintiff buyer $2750.00 in compensatory damages and $2000.00 exemplary damages arising from defects in a new Ford pickup and defendant's attempts to repair those defects. On appeal, defendant asserts that: (1) there was insufficient evidence to support jury instructions on negligence, breach of express warranty, breach of implied warranty of fitness, or breach of implied warranty of merchantability; (2) the damage awards were based on speculation; (3) the trial court erroneously allowed the jury to assess damages for defects which defendant had repaired; and (4) there was insufficient evidence to support a jury instruction on punitive damages.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. We affirm.

I.

On June 30, 1977, plaintiff purchased a 1977 Ford pickup truck from defendant. The truck was equipped with the largest engine Ford then offered in order to pull plaintiff's recently purchased horse trailer. Shortly after the purchase, plaintiff began discovering various defects including: minor cosmetic paint defects; various door and window problems; and serious carburetor or intake manifold problems which greatly reduced the truck's gas-mileage. Plaintiff continued to use the truck in his business and for recreation while defendant attempted to repair the defects through the fall of 1977 and into 1978. Plaintiff was apparently without use of the truck during the times it was being worked on. Defendant was able to fix some of the defects to plaintiff's satisfaction; however, the most serious defect, the carburetor problem, was not successfully remedied. Ford factory representatives, who were involved in the attempt to solve some of the truck problems, recommended replacing the carburetor. The carburetor was never replaced.

On October 19, 1978, plaintiff filed a petition naming both Weber Motor and Ford as defendants.[1] In its final form, plaintiff's petition alleged negligence, breach of express and implied warranties, and malice. Plaintiff requested $8,000.00 in actual damages and $50,000.00 in punitive damages.

The case was tried to a jury on February 19-25, 1980. Plaintiff testified about the

[1] Ford was dropped from the suit prior to trial and no settlement of plaintiff's claim against Ford was reached prior to entry of judgment and perfection of appeal in this case.

alleged defects, his dealings with defendant and Ford Motor Co., and the attempts to repair the truck. Several of defendant's mechanics testified about repairs made on the truck. Defendant moved for a directed verdict of dismissal at the close of plaintiff's case and again at the close of all the evidence. Both motions were overruled. Defendant's objections to the court's proposed jury instructions were overruled. The jury was instructed on negligence, breach of express and implied warranties, compensatory damages, and punitive damages. On February 26, 1980, the jury returned a verdict for plaintiff of $2750.00 in actual damages and $2000.00 in punitive damages. Judgment was entered on the verdict and on March 4, 1980, defendant filed a motion for J.N.O.V. or for a new trial. However, on March 24, 1980, before the trial court ruled on the motion, defendant filed notice of appeal.

II.

Defendant asserts that the trial court erred by overruling defendant's motion for a directed verdict because there was insufficient evidence to support the giving of jury instructions on negligence, breach of express warranty, breach of implied warranty of fitness, and breach of implied warranty of merchantability. We disagree. Our analysis is guided by the following basic rules. The trial court has a duty to submit to the jury all issues presented by the pleadings that have evidence tending to support them. Conversely, it is error to instruct upon an issue that has no substantial support or which rests only on speculation. Miller v. International Harvester Co., 246 N.W.2d 298, 300-01 (Iowa 1976). Whether the evidence is sufficient to warrant submission of a pleaded issue to the jury is determined by giving the evidence the most favorable construction it will reasonably bear in favor of the party urging submission. Id. at 301. We find that when the evidence in this case is given such a construction, the trial court was correct to instruct the jury on negligence, express warranty, implied warranty of fitness, and implied warranty of merchantability, and that the alleged grounds of recovery were not based on mere speculation.

III.

Defendant asserts that the damages assessed on the record in this case would have to be based only on speculation, conjecture, or guess. Plaintiff in this case presented the following evidence as proof of damages: the estimated cost of curing unrepaired defects (e.g. $517.00 to replace the carburetor and intake manifold); evidence on loss of use damages due to the truck being out of service for repairs for over 56 days and rental

rates for a similar truck; evidence of working hours plaintiff lost due to problems with the truck; and evidence of consequential damages in the form of reduced fuel mileage. We find that this evidence, while not amenable to precise mathematical calculations, did afford a reasonable basis for the jury to estimate plaintiff's losses. Nicholson v. City of Des Moines, 246 Iowa 318, 327, 67 N.W.2d 533, 538 (1954).

IV.

Defendant's assertion that instruction no. 19 allowed the jury to assess damages for defects which defendant had already corrected is also without merit. Defendant's objection to instruction 19 was that it allowed "the recovery of damages which are a complication and overlapping of the same claim." Defendant's objection was not sufficient to preserve error because it did not specifically alert the trial court to the error defendant was asserting. Pose v. Roosevelt Hotel Co., 208 N.W.2d 19, 25 (Iowa 1973). We find the instruction given properly explained plaintiff's various claims for damages and would not lead the jury to grant an overlapping award of damages.

V.

Defendant's final assertion is that the trial court erred by submitting plaintiff's claim for punitive damages to the jury. Punitive damages are allowable upon a showing of actual or legal malice. Meyer v. Nottger, 241 N.W.2d 911, 922 (Iowa 1976). Legal malice may be established by demonstrating wrongful or illegal conduct committed or continued with a willful or reckless disregard of another's rights. Id. Based upon our review of the record, we cannot say that as a matter of law plaintiff raised no triable issue of fact with respect to punitive damages. The instruction on punitive damages was properly given. We therefore affirm the trial court.

AFFIRMED.