IN THE COURT OF APPEALS OF IOWA

No. 7-745 / 96-2180

KEVIN P. WALTZ and MERRIJEAN WALTZ,

Plaintiffs-Appellees,

vs.

JERALD M. BOYLE and AVA BOYLE,

Defendants-Appellants.

FILED
JUL 31 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Union County, William Joy, Judge.

Defendants appeal the district court's ruling on their counterclaim for rescission of a sales contract based on fraudulent misrepresentation. **AFFIRMED.**

J. Brad Reich of the Reich Law Firm, Adel, for appellants.

Arnold O. Kenyon III, Creston, for appellees.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

PER CURIAM.

Defendants-appellants Jerald M. Boyle and Ava Boyle appeal after the trial court denied their counterclaim for rescission[1] based on fraudulent misrepresentation of a January 30, 1996, real estate contract wherein appellants sold a tract of land containing 4.9 acres, more or less, to plaintiffs-appellees Kevin P. Waltz and Merrijean Waltz. We affirm.

Appellants claim appellees fraudulently concealed the agreed boundary prior to the land being surveyed. They contend this resulted in the contract's legal description including a strip of land on the western boundary 29 feet wide and 443 feet long not intended to be included in the sale to appellees. The trial court, after making credibility findings, determined appellants failed to prove their claim by clear and convincing evidence and dismissed the counterclaim.

Appellants on appeal first claim we should not give credence to the trial court's credibility findings because the trial court allowed its reaction to appellant Jerald Boyle to influence its credibility assessment.

This case was tried in equity. Consequently, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's factual findings, but are not bound by them. *Israel v. Farmers Mut. Ins. Ass'n of Iowa*, 339 N.W.2d 143, 146 (Iowa 1983).

---

[1] The suit originated when appellees sued appellants to set aside a forfeiture of the contract. Appellees were successful on this claim, and this appeal does not address those issues.

We apply this standard. We also review cases on appeal for legal error. Iowa R. App. P. 4; *State ex rel. Casas v. Fellmer*, 521 N.W.2d 738, 740 (Iowa 1994).

Appellants next contend they proved their claim by clear and convincing evidence. They contend appellees moved a western boundary stake further west after the area agreed on had been defined but before the survey was completed. They challenge the trial court's finding to the contrary.

When a party claims he has been induced to enter into a contract based on the other contracting party's misrepresentation, he may seek to avoid the contract by suing for rescission using the misrepresentation as a basis for the requested relief. *Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562, 568 (Iowa 1987). The elements of an equitable claim for rescission based on misrepresentation are: (1) a representation, (2) falsity, (3) materiality, (4) an intent to induce the other to act or refrain from acting, and (5) justifiable reliance. *Hyler v. Garner*, 548 N.W.2d 864, 871 (Iowa 1996).

Appellants had not wanted to sell the land to appellees. Appellees' down payment was less than promised and appellees were late with payments. The trial court found these factors severely strained the parties' relationship.

Initially the sale was negotiated for a tract bounded on the east by a county road and the north by a fence line. A southern boundary was renegotiated by moving it further south so as to include a driveway. A survey was necessary. Appellees, who

alleged they wanted a five-acre tract, hired a surveyor. Appellants contend they said the parcel was estimated at five acres, but they never agreed to sell five acres.

The preliminary survey showed the western boundary, which is the boundary in question, as an old fence row. The surveyor placed two laths at each end of the fence row. The preliminary survey came up with only a little more than three acres. The surveyor told appellees the only way to get five acres was to move the western boundary. Appellants contend the boundary was then moved without their knowledge and consent by appellees west of the old fence line.

The survey and legal description was completed June 30, 1993. Appellants' attorney, using the legal description on the survey, prepared a sales contract. The contract was signed August 16, 1993, and recorded August 24, 1993. Appellees took possession July 9, 1993. Appellants' contention is at no time did they understand they were selling the extra 29-foot strip of land.

Appellants contend after the survey was completed they saw lath and string stretched on the old fence line and this was done to convince them the western boundary of the property stopped there. Appellees denied having so acted. Appellants further contend appellee Kevin Waltz called them down to look at the proposed boundary and it followed the old fence line.

The surveyor testified appellee instructed him to make a five-acre parcel and he moved the boundary west at appellee Kevin Waltz's direction to make a five-acre parcel. He further testified he had no direction from appellants as to the parcel size.

There was further testimony that after the sale, when appellant Jerald Boyle was present, appellee Kevin Waltz told a caterpillar operator the property line was the old fence line, not the line the surveyor had established further west.

Appellants' case, if their testimony is believed, supports the necessary elements to prove their claim for rescission based on false representation. However, the trial court found appellants' testimony on these issues not credible. There was also evidence appellees in 1995 began putting a fence on the western boundary identified in the survey. The trial court reasoned this showed appellants accepted the boundary.

Appellants further contend the trial court erroneously applied the law in imposing a duty on appellants to inspect and discover appellees' fraud. When an individual acts on the representation of another and relies on them in good faith, he has no duty to further investigate. *Cedar Falls Bldg. Ctr., Inc. v. Vietor,* 365 N.W.2d 635, 639 (Iowa App. 1985); *see also Riley v. Bell,* 120 Iowa 618, 626, 95 N.W. 170, 172 (1903). We do not, however, read the trial court's findings as imposing such a duty on appellants.

We find no valid reason to disagree with the conclusions of the trial court. We affirm.

AFFIRMED.