IN THE COURT OF APPEALS OF IOWA

No. 7-743 / 96-2124

000133

MICHELLE GRIFFIEON, Individually and as Next Friend of TRACIE GRIFFIEON, DAVID GRIFFIEON, and DEVANI GRIFFIEON,

Plaintiffs-Appellants,

vs.

RAY GRIFFIEON and JERALD BOYLE,

Defendants-Appellees.

FILED
FEB 25 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Decatur County, James W. Brown, Judge.

Plaintiffs appeal the district court's ruling granting defendants' motion for judgment notwithstanding the verdict in this fraudulent misrepresentation action. **AFFIRMED.**

Warren L. Bush, Wall Lake, for appellants.

Larry J. Handley of Handley & Block, Ankeny, for appellee Ray Griffieon.

J. Brad Reich and John O. Reich of the Reich Law Firm, Adel, for appellee Jerald Boyle.

Heard by Cady, C.J., and Sackett and Mahan, JJ.

SACKETT, J.

Plaintiff-appellant Michelle Griffieon brought this suit during the pendency of her marriage dissolution, on her behalf and on behalf of her children, against her husband Harley,[1] against defendant-appellee Ray Griffieon, Harley's father, and against defendant-appellee Jerald Boyle claiming fraudulent misrepresentation. After a jury verdict for plaintiffs against Ray and Jerald, the trial court granted defendants' motion for judgment notwithstanding the verdict, ruling there was not substantial evidence to prove Michelle was deceived and plaintiffs had justifiably relied on representations made by defendants. Plaintiffs appeal contending they did introduce substantial evidence supporting their claim. We affirm.

During their marriage, Michelle, Harley, and their children owned purebred cattle. In January 1995, Michelle and the children left the family farm. In July 1995, after the separation and prior to the time the dissolution decree was entered, Harley sold seventy-eight head of purebred cattle to defendant Jerald Boyle for $23,000. At the time, the district court had enjoined Harley from selling or disposing of assets except in the ordinary course of business.

This suit is based on allegations those purebred cattle, owned separately or collectively by Michelle, Harley, and their children, were sold for less than fair value, though defendants represented it was a bona fide sale for full value. Defendant Ray

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[1] Harley had been dismissed from the suit prior to trial.

Griffieon was subsequently made a party after it was determined he supplied the money used to buy the cattle.

The trial court, in sustaining defendants' motion, determined Michelle found the purebred cattle missing and learned of the purported sale. The trial court further found Michelle and the children were active in all aspects of the family's purebred cattle operation and Michelle, who knew what the cattle should sell for, took successful action to have the cattle returned. The trial court determined those factors showed Michelle was neither misled nor deceived. The trial court held because Michelle and defendants had equal knowledge concerning the subject matter there is no justification for reliance, and sustained the motion.

Our review of the record convinces us there was ample evidence defendants intended to deceive plaintiffs. Yet, the issue is whether there is substantial evidence there was justifiable reliance on the representations.

Michelle learned the cattle were missing on August 31, 1995. She also learned they had been sold to Jerald for the sum of $23,000. She believed then the price paid was too low. On September 8, Michelle filed this action naming Harley and Jerald as defendants, asking either for the return of the cattle or for a judgment for the difference between the sale price and their actual value. The dissolution court ordered the cattle returned on September 14. The cattle were returned on September 21 and Michelle counted them and checked their tattoos. The cattle were photographed and Michelle made a videotape of them.

The dissolution case was to be heard on September 27, 1995, but was continued. On January 3, 1996, a decree dissolving the marriage was entered. Certain issues were resolved by stipulation, including a provision to hold an auction to dispose of assets, including "all purebred cattle registered in the names of the parties' children." The decree further ordered Michelle shall release and dismiss with prejudice Harley from this lawsuit. Harley ultimately was dismissed from the suit.

The dissolution court retained jurisdiction until after the auction to resolve, among other things, any dispute over the agreed equal division of proceeds. On March 27, 1996, the dissolution court entered a supplemental decree dividing proceeds of the sale and other matters not at issue here.

Plaintiffs contend there was substantial evidence to support the verdict. We review the district court's grant or denial of a motion for judgment notwithstanding a verdict for the correction of errors at law. Iowa R. App. P. 4; *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 326 (Iowa 1996). We view the evidence in the light most favorable to the party against whom the motion was made, taking into consideration every legitimate inference that may fairly and reasonably be made. Iowa R. App. P. 14(f)(2); *Bredberg*, 551 N.W.2d at 326. The motion must stand or fall on the grounds raised in the motion for directed verdict. *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996).

Our only inquiry in assessing the motion is whether there is sufficient evidence to justify submitting the case to the jury. *Bredberg*, 551 N.W.2d at 326. The motion

should be denied if there is substantial evidence to support each element of plaintiffs' claims. *Id.* Evidence is substantial when a reasonable mind would find the evidence presented adequate to reach the same findings. *Willey v. Riley*, 541 N.W.2d 521, 526 (Iowa 1995).

The seven elements that must be proved to recover under fraudulent misrepresentation are delineated in *Robinson v. Perpetual Servs. Corp.*, 412 N.W.2d 562 (Iowa 1987), as: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage. *Id.* at 565; *City of McGregor v. Janett*, 546 N.W.2d 616, 619 (Iowa 1996); *Cornell v. Wunschel*, 408 N.W.2d 369, 374 (Iowa 1987); *Arthur v. Brick*, 565 N.W.2d 623, 625 (Iowa App. 1997). The first three elements are usually treated as one element and are referred to as fraudulent misrepresentation. *Clark v. McDaniel*, 546 N.W.2d 590, 592 (Iowa 1996). Plaintiffs must prove each element of their claim. *Magnusson Agency v. Public Entity Nat'l Co.-Midwest*, 560 N.W.2d 20, 29 (Iowa 1997).

No specific test in our case law exists for determining when a duty to reveal arises in fraud cases. *See Lockard v. Carson*, 287 N.W.2d 871, 877-78 (Iowa 1980); *see also Sinnard v. Roach*, 414 N.W.2d 100, 106 (Iowa 1987) ("Determinations of when a duty to reveal arises in a fraud case do not lend themselves to scientific formulation."). A misrepresentation may occur when one with superior knowledge, dealing with inexperienced persons who rely on him or her, purposely suppresses the truth respecting a material fact involved in the transaction. *Clark*, 546 N.W.2d at

592; *Kunkle Water & Elec., Inc. v. City of Prescott*, 347 N.W.2d 648, 653 (Iowa 1984).

Some misrepresentations may not justifiably be relied on. For example, "where plaintiff has equal information of certain knowledge as the defendant, he has no right to rely upon defendant's statements." *Andrew v. Baird*, 221 Iowa 83, 93, 265 N.W. 170, 175 (1936). Moreover, the recipient of a fraudulent representation is "required to use his senses, and cannot recover if he blindly relies on a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation." *Lockard*, 287 N.W.2d at 878.

Iowa courts have rejected any rule which would impose an objective standard of ordinary care on plaintiffs in fraud actions. *Id.* Finding such a standard would be inconsistent with the general rule that mere negligence of the plaintiff is not a defense to an intentional tort. *Id.* Such a rule would not take into account the effect which the representation is intended to have upon the plaintiff's mind. *Id.* Iowa courts have held the test for determining whether a party to a transaction has a right to rely on representations of the other 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.* This subjective standard depends not on what an ordinarily

prudent person reasonably would do to protect his or her interests, but upon what the *complaining party* reasonably could be expected to do. *Id.*

Plaintiffs' brief is somewhat confusing as to the specific representations defendants Ray and Jerald are to have made to plaintiffs. Plaintiffs rely in large part on representations made by Harley. However, Harley has been released from the suit so the representations he made are not the issue. We need not address whether there is substantial evidence to support the elements of fraudulent misrepresentation other than justifiable reliance.

We agree with the trial court plaintiffs failed to introduce substantial evidence showing Michelle relied on any fraudulent misrepresentations made by defendants Ray or Jerald. We affirm.

AFFIRMED.