FILED
DEC 31 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-297 / 90-847

BRUCE ALLAN MEAD ASSOCIATES, INC., d/b/a QUALITY QUICK PRINT; BRUCE ALLAN MEAD; HAZEL E. MEAD; FERN BENDICKSON; and **BRUCE ALLAN MEAD,** As Father and Next Friend of **ALLAN MADISON MEAD,** A Minor,

461

Appellants.

vs.

JIM HANSEN FORD, INC., A Corporation; **JAMES E. HANSEN;** and **MARSHALL RONNIGEN,**

Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Plaintiffs appeal a district court judgment following a jury verdict dismissing their claims concerning a used van purchased from defendants. **AFFIRMED.**

Mark J. Seidl of Tom Riley Law Firm, P.C., Cedar Rapids, for appellants.

James L. Kramer of Johnson, Erb, Latham, Gibb & Carlson, P.C., Fort Dodge, for appellees.

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

SCHLEGEL, J.

Sometime in November 1984 Bruce Mead decided to buy a used van for his business, Quality Quick Print. Bruce looked at vans at Jim Hansen Ford, Inc. in Clear Lake, Iowa. He became interested in a 1979 GMC van and looked the van over on at least three occasions. A salesman from Hansen Ford brought the van over to Quality Quick Print one day for the employees to look over. At that time one of the employees remarked that the van seemed to have good tires. On a different occasion, Jim Hansen, the president of Hansen Ford, personally visited Bruce and tried to interest him in buying the van.

On November 21, 1984, Bruce Mead, on behalf of Bruce Allan Mead Associates, Inc. d/b/a Quality Quick Print, purchased the van from Hansen Ford. Bruce was able to pick up the van about an hour after he bought it. Later that day, Bruce, Hazel Mead, Fern Bendickson, and Allan Mead embarked on a trip in the van. Their destination was a family Thanksgiving gathering in Evanston, Illinois. Hazel is Bruce's mother. Fern is Hazel's sister and Bruce's aunt. Allan is Bruce's minor son.

A few miles west of West Union, Iowa, the left front tire blew out. The tire had shredded. Bruce put the spare tire on and proceeded to a service station. The service station attendant noted that the right front tire had very bad tread. Bruce then purchased two tires, and these were placed on the front wheels of the vehicle. Nothing was done with the rear tires.

In Prairie du Chien, Wisconsin, the right rear wheel detached from the van. Although the passengers were very frightened by these occurrences, it does not appear that any of them suffered significant physical injuries. They stayed at a motel in Prairie du Chien that night. Bruce called Jim Hansen's residence and discussed his problems concerning the van with Hansen's wife.

The next day, Thanksgiving Day, November 22, 1984, Bruce rented a car and proceeded to Illinois. Bruce left the van in Prairie du Chien. On November 23, 1984, Bruce contacted his bank and stopped his check to Hansen Ford. He also called Hansen Ford and attempted to rescind his purchase of the van.

When Bruce came back through Prairie du Chien on November 25, 1984, the right rear wheel had been reattached and the van was operable. However, Bruce did not want to drive the van back to Iowa, and he continued to rent a car until he returned to Clear Lake. Jim Hansen eventually went to Wisconsin and retrieved the van with the tires still in the van. At trial, Hansen did not know what happened to the tires.

Hansen Ford refused to rescind the sale. Bruce then filed a complaint with the Iowa Attorney General's consumer protection division. Some negotiations were made, but no settlement was achieved.

In August 1986 Bruce Mead d/b/a Quality Quick Print, and the passengers of the van, including Bruce

individually, filed a petition seeking compensatory and punitive damages from defendants Hansen Ford, Jim Hansen, and Marshall Ronningen, the sales manager of Hansen Ford. Plaintiffs alleged that the defendants had made false representations by displaying the vehicle with good tires but then switching those tires for old, inadequate tires before Bruce picked up the van. Plaintiffs claimed these actions resulted in an unsafe vehicle. The plaintiffs also alleged emotional and physical injuries.

The district court granted defendants' motion in limine to prevent plaintiffs from referring to the filing of the complaint with the attorney general. While Bruce was testifying, it came to light that the van had been bought by the corporation, not by Bruce individually. The district court granted plaintiffs' motion to substitute the corporation as a plaintiff instead of Bruce Mead d/b/a Quality Quick Print. The court then granted defendants' motion to strike Bruce's testimony concerning personal injury or harm on the ground that the corporation was the real party in interest.

The court also granted defendants' motion in limine to prevent any of the plaintiffs who were passengers in the van from testifying about emotional fright or personal injury. The court found the pleadings could only be construed to raise a claim of fraudulent misrepresentation and that the issues of emotional or physical injury were irrelevant to the case. No offer of proof was made concerning damages to these plaintiffs.

Eventually, prior to submission of the case to the jury, verdicts were directed in favor of the defendants on all claims except for the corporation's claim of fraudulent misrepresentation against Hansen Ford. The jury returned a verdict in favor of Hansen Ford, and judgment was entered accordingly. Plaintiffs appealed.

I. Our scope of review in actions at law is for correction of errors at law. Midwest Recovery Services v. Wolfe, 463 N.W.2d 73, 74 (Iowa 1990). Where there is substantial evidence in the record to support the trial court's decision, an appellate court is bound by those findings of fact. Id. An appellate court is not bound, however, by the trial court's application of legal principles or its conclusions of law. Id.

II. Bruce filed the notice of appeal in this case pro se. The notice states, "You are hereby notified that the Plaintiff has appealed to the Supreme Court of the State of Iowa . . ." Bruce alone signed the notice of appeal. He subsequently filed a combined certificate which designated all of the plaintiffs as appellants. Bruce was thereafter represented by counsel in this appeal.

The defendants raise the issue of whether the notice of appeal was sufficient to initiate an appeal on behalf of all of the plaintiffs, or whether only Bruce individually filed a timely appeal. We hold that the notice of appeal in this case was sufficient to commence the appeal process on behalf of all of the plaintiffs in this case.

III. Plaintiffs contend the district court should have instructed the jury on the issues of strict liability, warranty, negligence, and negligent misrepresentation. They claim the pleadings could be construed to raise these theories, and the district court improperly restricted their case to the theory of fraudulent misrepresentation.

We first note that plaintiffs did not request any instructions on the issues of warranty or negligent misrepresentation. A theory of recovery which is neither raised nor suggested to the trial court is not preserved for review. Shill v. Careage Corp., 353 N.W.2d 416, 421 (Iowa 1984). We find plaintiffs did not adequately preserve error on the issues of warranty and negligent misrepresentation.

Plaintiffs did request jury instructions on the theories of products liability and negligence. It is fundamental that all well-pled issues which are supported by substantial evidence should be submitted to the jury. Feldhahn v. R.K.B. Quality Corp., 356 N.W.2d 226, 230 (Iowa 1984). We view the evidence in the light most favorable to the party requesting the instruction. Knauss v. City of Des Moines, 357 N.W.2d 573, 576 (Iowa 1984).

Assuming that the pleadings gave fair notice of the claims of strict liability and negligence, the district court did not err in failing to submit these claims to the jury. It is the general rule in Iowa that, absent intentional conduct by a defendant or some physical injury

to the plaintiff, no recovery may be had for emotional distress. Mills v. Guthrie County Rural Electric Cooperative Association, 454 N.W.2d 846, 852 (Iowa 1990). The plaintiffs here admitted in answers to interrogatories that they suffered no physical harm. We conclude plaintiffs could not recover under these theories based solely on their claims of emotional distress.

IV. Plaintiffs contend the district court improperly instructed the jury on the tort of fraudulent misrepresentation. Plaintiffs believe the court should have allowed claims for damages to the occupants of the van as part of the claim of fraudulent misrepresentation.

Before the instructions were given to the jury, plaintiffs objected only to the court's previous rulings which excluded certain issues and parties. The plaintiffs specifically made no objections to the instructions as they dealt which the issue remaining before the court, the issue of fraudulent misrepresentation.

Under Iowa Rule of Civil Procedure 196 a party must make specific objections to jury instructions in order to preserve error. Woods v. Schmitt, 439 N.W.2d 855, 866 (Iowa 1989). We do not consider on appeal objections to jury instructions which were not presented to the district court. Kansas City Life Insurance Co. v. Hullinger, 459 N.W.2d 889, 897 (Iowa App. 1990). We find that this issue has not been preserved for review.

V. Plaintiffs contend the jury's verdict was not supported by substantial evidence. In evaluating whether the verdict is supported by the evidence, we must view the evidence in the light most favorable to the prevailing party. Gore v. Smith, 464 N.W.2d 865, 868 (Iowa 1991). The findings of fact are binding upon us if supported by substantial evidence. Id.

Although plaintiffs presented the testimony of three former employees of Quality Quick Print who saw the van before Bruce bought it and stated that the tires appeared to be good, Jim Hansen testified that Hansen Ford did not switch the tires on the van. We find there was substantial evidence to support the jury's verdict.

VI. Plaintiffs also note that Jim Hansen last had possession of the faulty tires and that he was unable to produce these tires at the trial. They argue they were entitled to an inference of spoliation of evidence, which would have bolstered their case.

As discussed above, we do not consider on appeal an issue which was not presented to the district court. State ex rel. Iowa Department of Human Services v. Duckert, 465 N.W.2d 871, 873 (Iowa 1991). Plaintiffs did not request a jury instruction on spoliation of evidence. Therefore, this issue was not preserved for appeal.

VII. Finally, plaintiffs contend they should have been allowed to present evidence of their complaint to the attorney general's consumer protection division. Jim

Hansen testified that he had no reason to keep the tires because he did not hear from Bruce for one and one-half years after Bruce stopped payment on his check. Plaintiffs sought to impeach this testimony with evidence of negotiations through the consumer protection division. The district court allowed plaintiffs to question Hansen concerning whether any negotiations had been made but did not allow any reference to the consumer protection division.

The determination of the relevancy of evidence rests within the sound discretion of the trial court, and it will be reversed only upon a showing that such discretion has been abused. Tratchel v. Essex Group, Inc., 452 N.W.2d 171, 178 (Iowa 1990). The district court did not abuse its discretion in this case. Plaintiffs were allowed to impeach Hansen by asking whether there had been any negotiations. We do not believe plaintiffs were harmed by not being able to question Hansen about the forum for those negotiations.

We affirm the district court on all issues.

AFFIRMED.