

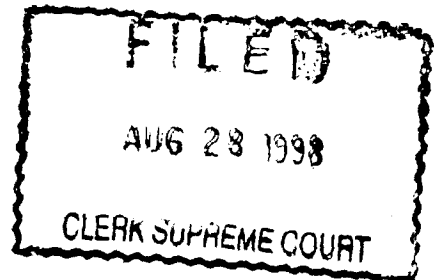
IN THE COURT OF APPEALS OF IOWA

No. 7-595 / 96-2036

STEVEN HITCHCOCK and NANCY HITCHCOCK,
Appellants,

vs.

FRANCES BURCH,
Appellee.



Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

The Hitchcocks appeal a district court order dismissing their action against Frances Burch for breach of contract and fraudulent and negligent misrepresentation.

AFFIRMED.

Kyle D. Williamson of Wells, Bowman & Smith, Davenport, for appellants.

Patrick J. Kelly, Bettendorf, for appellee.

Considered by Cady, C.J., Streit, J., and Perkins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PERKINS, S.J.

The Hitchcocks appeal a district court order dismissing their action against Frances Burch for breach of contract and fraudulent and negligent misrepresentation. They contend the district court erred in ruling no misrepresentation had occurred based upon a subjective test.

On December 3, 1993, Steve and Nancy Hitchcock offered to purchase real estate in Scott County from Frances Burch. Burch accepted the offer on December 4, 1993.

On July 7, 1993, Burch had signed a seller's disclosure of property conditions. Paragraph five of the disclosure statement contained the answer "unknown" to a question about septic tanks/drain field conditions and the answer "none" to the question, "Any known problems?" Burch furnished the Hitchcocks with a copy of the statement.

After the Hitchcocks moved in, they had troubles with the septic field and had it replaced. Burch later admitted she had to have the septic field pumped twice by Roto Rooter between the date of signing the disclosure statement and the date of closing, but had not amended her statement.

The Hitchcocks filed a petition, and an amended petition, against Burch, alleging fraudulent and negligent misrepresentation and breach of contract. At trial, Burch admitted the septic field had to be pumped on several occasions, but indicated she did not consider that a problem.

After trial, the district court entered an order dismissing the petition. The court noted Burch's testimony she did not consider the excess water to be a problem and the Roto Rooter worker's testimony the excess water did not necessarily mean the septic field had to be repaired or replaced. The court concluded the breach-of-contract claim was the same as the misrepresentation claims and determined no misrepresentation had occurred. The court later denied the Hitchcocks' Iowa Rule of Civil Procedure 179(b) motion.

The Hitchcocks appeal, contending the district court erred in dismissing their action. They contend the court should have applied an objective test in determining whether a misrepresentation had occurred.

Scope of Review

We review cases tried at law in the district court for errors of law. Iowa R. App. P. 4; *Claus v. Whyte*, 526 N.W.2d 519, 523 (Iowa 1994). We view the evidence in the light most favorable to the judgment, construing the findings of the district court liberally to uphold rather than defeat, the result reached. *Claus*, 526 N.W.2d at 523. The district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). This does not preclude inquiring into whether or not the trial court applied erroneous rules of law which materially affected its decision. *Claus*, 526 N.W.2d at 523. We are not bound by the trial court's determinations of law. *Farmers Ins. Group v. Merryweather*, 214 N.W.2d 184, 187 (Iowa 1974).

I. Issue Presented for Review

The appellants, Steven and Nancy Hitchcock contend the trial court erred when it ruled as a matter of law that the proper legal standard to be applied was the subjective knowledge of the seller and not an objective standard.

A careful reading of the trial court's ruling leads us to conclude that the trial court correctly stated, "plaintiffs had the burden of proof to establish that such representations were made. Then the plaintiffs must prove that the representations were false and then the proof must show that the seller made the representations knowing they were false." The trial court went on to find that the plaintiffs had not proven the defendant had made any misrepresentations intentionally or negligently. We agree. *Beeck v. Kapalis*, 302 N.W.2d 90, 94 (Iowa 1981).

The disclosure statement that defendant signed stated the statements were not warranties and that the seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements to the property. The disclosure statement also points out the seller has not conducted any specific or special inspections of any of the improvements to the property.

Roto Rooter Company had performed the maintenance work on the septic system from 1984 to 1995. Robert Imming, being a long-time employee of Roto Rooter, had worked on the system and was a witness in the case. His testimony was that the septic tank had to be pumped and water would flow back from the field lines

into the tank indicating the water was not evaporating. He further testified that could have been caused by excessive ground water resulting from weather conditions such as heavy rains or melting snow that saturated the ground. It did not necessarily mean a problem with the septic system. He had never told Mrs. Burch after pumping the tank that the system had a problem that required repair or replacement.

The seller, Mrs. Burch testified she knew the septic tank would need pumping when it filled with water and she did not consider that a problem with the system. She had never been informed by anyone that the system needed repairs or replacement.

There is substantial evidence in the record to support the district court ruling and we affirm.

AFFIRMED.