FILED
FEB 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-013 / 93-169

SHIRLEY K. WALKER,

Appellant,

vs.

JAMES W. ROOKER and **BEVERLY J. ROOKER,**

Appellees.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Plaintiff appeals the district court decision for defendants on her claim defendants failed to disclose material defects in the house she purchased. **AFFIRMED.**

Max Burkey, Des Moines, for appellant.

Joseph B. Joyce of Adler, Brennan & Joyce, Des Moines, for appellees.

Heard by Oxberger, C.J., Sackett, J., and Critelli, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

CRITELLI, S.J.

In the summer of 1989, plaintiff Shirley Walker became interested in purchasing a house at 2718 48th Street in Des Moines from defendants James and Beverly Rooker. Prior to the sale, Walker inspected the property on at least three occasions and examined the basement area on at least two of these visits. The east wall of the basement had visible braces to restrain the inward movement of the wall. The north wall of the basement had similar braces which were behind a peg board wall and were not visible.

Because of concerns about the basement, the mortgage company required a structural engineer, James Fafinski, to inspect the property. On September 17, 1989, he reported no major structural defects and no significant water intrusion into the basement. Fafinski later stated he could not remember whether he inspected the north wall.

The mortgage company approved the loan, and Walker purchased the house on about September 25, 1989. Shortly thereafter she began to have problems with water coming into the basement. In particular, she noticed water coming from the north wall. She took off the peg board wall and saw the concrete wall behind was bowed and cracked. She also then saw the braces which had been installed to restrain the wall from moving inward.

Walker subsequently filed the present suit on September 25, 1991. She claimed the Rookers had failed to inform her of a material defect prior to the sale of the

property. The case was tried to the court. Walker testified that the Rookers had not informed her of the condition of the north basement wall. James testified that he had told Walker that the north wall had a restraining system similar to that on the east wall. Beverly testified she had heard her husband make this statement to Walker.

The district court found the Rookers did not conceal any material defects in their real estate. The court concluded Walker had failed to prove her allegations by a preponderance of the evidence and dismissed the suit. Walker has appealed.

In a law action, we review the district court's decision only to correct errors of law. Iowa R. App. P. 4. In reviewing a district court's findings in an action tried without a jury, we have consistently recognized that the trial court's findings of fact have the effect of a special jury verdict and should be broadly and liberally construed to uphold, rather than defeat, the judgment. Knudsen v. Chicago & North Western Transp. Co., 464 N.W.2d 439, 442 (Iowa 1990).

When the trial court in a law action tried to the court denies recovery because a party failed to carry the burden of proof on the issue, we will not interfere on appeal unless we find the party carried its burden of proof as a matter of law. Byers v. Contemporary Indus. Midwest, Inc., 419 N.W.2d 396, 397 (Iowa 1988). In that case, the evidence in the party's favor must be so overwhelming that

only one reasonable inference could be drawn. K. Carr v. Hovick, 451 N.W.2d 815, 817 (Iowa 1990). On review we examine the evidence in the light most favorable to the judgment. Roland A. Wilson & Assoc. v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976).

Walker contends that she has proved the material allegations of her petition as a matter of law and that the district court's decision is not supported by substantial evidence. She points out that when Fafinski later looked at the north wall, he concluded remedial action was needed. Walker believes this shows Fafinski did not see the north wall at his initial visit because at that time he concluded there were no major structural defects in the basement. She concludes that the Rookers did not reveal the problems with the north wall to Fafinski.

Similarly, Walker points to an appraisal obtained by the Rookers on July 11, 1989. The appraisal does not mention the north wall, although it does mention some bowing and cracking in the east wall toward the north end. Again, Walker concludes this shows the Rookers did not reveal the problems with the north wall to the appraiser.

In our review of the evidence, we determine the evidence in Walker's favor is not so overwhelming that only one reasonable inference can be drawn. The issue in this case is whether or not the Rookers informed Walker of the problems with the north wall, not whether the Rookers informed anyone else. Both James and Beverly testified

that James had told Walker that the north wall of the basement had braces similar to those on the east wall. This is sufficient evidence to support the district court's decision. Therefore, we will not interfere on appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiff Shirley Walker.

AFFIRMED.