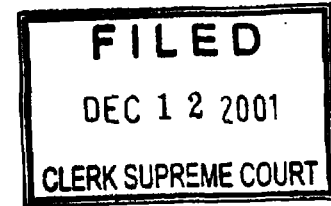


IN THE COURT OF APPEALS OF IOWA

No. 1-808 / 01-0330
Filed December 12, 2001



**RANDALL L. KUEHL and NANCY J. KUEHL,
Plaintiffs-Appellants,**

vs.

**THE ESTATE OF HENRY C. MEYER,
AMY BROSH, as Executor of the Estate
of Henry C. Meyer, PETERSEN REALTY CO.,
and MERLIN CONRAD,
Defendants-Appellees.**

Appeal from the Iowa District Court for Cedar County, Nancy S. Tabor,
Judge.

Plaintiffs appeal from the grant of summary judgment which dismissed their action against a seller of land, a real estate company, and a real estate agent for an alleged shortage in the amount of land which they actually received in the transaction. **AFFIRMED.**

Dennis J. McMenimen, Kevin Collins, and Theresa C. Davis of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellants.

James W. Affeldt and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellees-Petersen Realty and Merlin Conrad.

William Norton and Brian T. Fairfield of Norton & Norton, P.C., Lowden, for appellees-Estate of Henry C. Meyer and Amy Brosh.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

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SACKETT, C.J.

Plaintiffs-appellants Randall L. Kuehl and Nancy J. Kuehl appeal from a summary judgment dismissing their action against defendants-appellees the Estate of Henry C. Meyer, Petersen Realty Co. and Merlin Conrad. Plaintiffs contended in their suit that a tract of real estate they purchased from the estate contained fewer acres than they were led to believe they were purchasing. Defendant Petersen Realty Co. was joined in the suit as the listing broker and sales broker and defendant Merlin Conrad was joined in the suit as the listing and selling agent. We affirm.

The tract in question is located in the South $\frac{1}{4}$ of Section 2 and the North $\frac{1}{4}$ of Section 11, Township 82 North Range 1 West, of the Principal Meridian in Cedar County, Iowa. Located west of the West Top of the Bank of the Wapsipinicon River, it is described by a lengthy metes and bounds description that uses as points of reference property owned by another, found iron rods, and points at the top of the river bank.

The estate and the co-defendants listed the property for sale for the sum of \$278,000. The property listed was described as "to be taken from the abstract." Listing information provided by Petersen Realty shows 280 acres and a listing price of \$278,000. It also shows the "Per Acre" price as \$992. Plaintiffs made two offers to purchase this property described in the purchase agreement as "to be taken from the abstract." Plaintiffs' second offer for \$271,500 was accepted. The purchase agreement showed no acreage or any per-acre price.

On February 29, 2000, the money was paid, and the property described in the abstract was conveyed to plaintiffs. The description of the property in the

abstract did not give the acreage of the purchased tract. The warranty deed given did not recite the number of acres included in the tract.

On June 19, 2000, plaintiffs filed this suit alleging after the closing that they only received 259.83 acres and claiming (1) breach of contract; (2) negligence; (3) negligent misrepresentation; (4) fraudulent misrepresentation; (5) breach of warranty; and (6) unjust enrichment. Plaintiffs also claimed defendants were responsible for their attorney fees.

Defendants filed a motion for summary judgment alleging that the purchase agreement, which noted it contained the entire agreement of the parties, did not specify the number of total acres, and that plaintiffs received marketable title to the real estate described in the agreement.

The undisputed facts are recited below. Plaintiff Randall L. Kuehl is an educated car dealer who owns other farmland and was familiar with the land he purchased. He signed a purchase agreement to buy the property for \$271,500. The purchase agreement contained no reference to acres purchased or price per acre. Plaintiffs had the abstract of title to the property examined by an attorney of their choosing who cautioned them to investigate whether they were getting what they bargained for, to ascertain for themselves the boundary lines and to uncover any existing easements. Plaintiffs made no personal inquiry as to the number of acres and did not have a survey done, nor did they check with the ASCS or CRP offices or the Cedar County assessor or treasurer regarding the acreage in the tract prior to closing. The warranty deed given February 29, 2000 conveyed the real estate described in the purchase agreement.

The district court dismissed on summary judgment all the plaintiffs' claims. In doing so the district court reasoned that the real estate purchase agreement called for the sale of property as legally described in the abstract instead of a certain number of acres, and that it contained the entire agreement of the parties. The district court further found no evidence any duty to plaintiff was breached or that any representations were made that were not based on the public record, and that neither the purchase agreement, nor the deed, or abstract specified the number of acres to be sold.

On appeal plaintiffs contend there was sufficient evidence to show they believed they were buying between 278 and 280 acres of land and that the land sold is approximately 258 acres. Defendants contend that the error the plaintiffs now urge was not preserved on appeal. Without deciding the preservation of error issue we address the plaintiffs' claims.

We review a ruling on a summary judgment motion for errors at law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000). The district court properly grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Crippen*, 618 N.W.2d at 565; *Swartzendruber*, 613 N.W.2d at 649. A factual issue is material if the dispute over that issue might affect the outcome of the suit. See *Fouts ex rel. Jensen v. Mason*, 592 N.W.2d 33, 35 (Iowa 1999). The parties moving for summary judgment, in this case the defendants, bear the burden of proving the material facts are undisputed. See *Interstate Power Co. v. Ins. Co. of N. Am.*, 603 N.W.2d 751, 756 (Iowa 1999);

Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457, 464 (Iowa 1984). Consequently, in ruling on the summary judgment motion, the district court was required to look at the facts in a light most favorable to the party resisting the motion, in this case the plaintiffs. See *Crippen*, 618 N.W.2d at 565; *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 362 (Iowa 2000). The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Crippen*, 618 N.W.2d at 565. If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Swartzendruber*, 613 N.W.2d at 649; *Shivvers v. Hertz Farm Management, Inc.*, 595 N.W.2d 471, 479 (Iowa 1999).

The district court found the plaintiffs contended the disputed facts include (1) the number of acres conveyed; (2) whether defendant Conrad represented prior to the sale that the tract contained 280 acres; (3) whether the price was negotiated based on the represented acres; and (4) whether the tract was less than 260 acres as plaintiffs claim the 1948 plat and January 2001 survey indicate.

The court granted summary judgment on the contract claim, finding that any discrepancy in the acreage was not material to this claim, as the contract was for the land described in the abstract and not for a per-acre price, and that the agreement was, as it stated, the entire agreement of the parties.

An integrated agreement is one in which the parties adopt a writing or writings as the final and complete expression of the agreement. *Kitchen v. Stockman Nat'l Life Ins. Co.*, 192 N.W.2d 796, 800 (Iowa 1971). The agreement

here had an integration clause, and the plaintiffs were sophisticated business persons who employed counsel to examine the abstract and advise them on inquiries to make before closing. A per-acre price was not included in the agreement, nor was there a representation of the number of acres to be conveyed. Consequently, to succeed on a contract claim plaintiffs were required to rely on other evidence. The scant evidence plaintiffs relied on to support this claim would be inadmissible if introduced to vary the contract terms. See *Montgomery Properties Corp. v. Economy Forms Corp.*, 305 N.W.2d 470, 476 (Iowa 1981). We affirm the district court's dismissal of the contract claim.

The district court granted summary judgment for defendants on plaintiffs' negligence claim. Plaintiffs have failed to show the requisite facts to succeed on this claim. We affirm on this issue.

The district court granted summary judgment for defendants on the negligent misrepresentation claims, finding that the testimony as to number of acres and the listing statement referencing 280 acres were based on documents of public record at the office of the county assessor and the county treasurer. The court found the evidence did not support a claim of negligent misrepresentation.

In *Sain v. Cedar Rapids Comm. School Dist.*, 626 N.W.2d 115, 126 (Iowa 2001) the court, in addressing a negligent misrepresentation claim, noted that one element of the claim, namely a showing that the information was supplied "for the guidance of others in their business transactions," indicated that the tort applied predominantly in situations where the information supplied harmed the plaintiff's relations with third parties, rather than the plaintiff's relations with the

individual allegedly misrepresenting the information. In *Sain*, 626 N.W.2d at 126, the court went on to explain that the tort of negligent misrepresentation did not apply when a defendant directly provided information to a plaintiff in the course of a transaction between the two parties, and the information harmed the plaintiff only in the transaction with the defendant. See also, *Fry v. Mount*, 554 N.W.2d 263, 265-66 (Iowa 1996). There is no duty imposed on parties who deal at arm's length. *Sain*, 626 N.W.2d at 126; *Fry*, 554 N.W.2d at 265. The parties here were dealing at arm's length and the harm plaintiffs claim they suffered resulted in the course of a transaction between only the two parties. We affirm the district court's dismissal of the negligent misrepresentation claim.

The district court rejected the plaintiffs' fraudulent misrepresentation claim, finding the abstract showed the property had not been surveyed since 1948, that the 1984 survey was only of the fenced portion of the property, and that a finding the land constituted 280 acres was consistent with public records. The court found no evidence the defendants knew the information was false.

To establish their fraudulent misrepresentation claim, plaintiffs needed to prove all of the following elements (1) defendants or one of them made a representation to them; (2) the representation was false; (3) the representation was material; (4) the defendants or defendant making the representation knew the representation was false; (5) the defendants or defendant making the representation intended to deceive plaintiffs; (6) plaintiffs acted in reliance on the truth of the representation and were justified in relying on the representation; (7) the representation was a proximate cause of plaintiffs' damages; and (8) the amount of damage. *Midwest Home Distributor, Inc. v. Domco Industries Ltd.*,

585 N.W.2d 735, 738 (Iowa 1998). Plaintiff had to prove each of these elements by a preponderance of clear, satisfactory, and convincing evidence. *See Id.*

Because there was no evidence that defendants knew their discussions or representation of the land as 280 acres was false or that they were intending to deceive the plaintiffs, we affirm the district court on this ground.

The district court rejected the breach of warranty claim, finding there was no evidence of such warranty in either the purchase agreement or the deed. We agree and affirm on this issue.

The court denied attorney fees. We affirm on this issue.

AFFIRMED.