

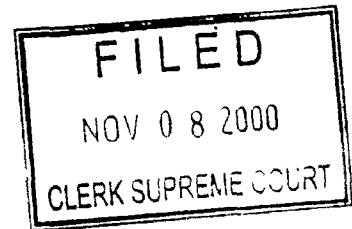
**IN THE COURT OF APPEALS OF IOWA**

No. 0-611 / 99-1799  
Filed November 8, 2000

**WAYNE NEVERS and SUE NEVERS,**  
**Plaintiffs-Appellants,**

**vs.**

**NIEHAUS MOTOR COMPANY,**  
**Defendant-Appellee.**



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Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Plaintiffs appeal from the district court ruling denying their claim for breach of express warranty. **AFFIRMED.**

Andrew S. Hoth of Hoth Law Offices, Burlington, for appellants.

Mark A. Pihart and Troy D. Venner of Lane & Waterman, Davenport, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Niehaus Motor Company installed a rebuilt engine in Wayne and Sue Nevers's motor home. The motor home broke down approximately one month later and the Nevers were forced to have another engine installed. The Nevers sued Niehaus under breach of contract, breach of express warranty and negligence theories. The district court dismissed their claims following a bench trial. On appeal, the Nevers contend the court erred in concluding Niehaus's express warranty did not cover the engine failure. We affirm.

***I. Background Facts and Proceedings***

In June 1997, the Nevers bought a non-functioning 1978 motor home from Wayne Nevers's uncle, who agreed to have the transmission and engine repaired as part of the purchase price. The Nevers contracted with Niehaus to perform the repairs. Niehaus installed a remanufactured Marshall brand engine in the motor home. The president of Niehaus gave the Nevers a Marshall engine owner's manual that contained a warranty against failure resulting from defective materials or workmanship. The warranty, by its terms, did not apply to motor homes. However, Niehaus's president agreed in writing he would apply the warranty to the Nevers's motor home for a period of three years or 50,000 miles. Both parties agreed that, except for the length of the warranty, Niehaus's warranty would contain the same terms and limitations contained in the manufacturer's warranty. One of those limitations was as follows:

Damage caused by overheating or lack of lubrication are considered abuse. All vehicles should be equipped with gauges or lights to indicate engine temperature and oil pressure. These critical engine functions can be properly monitored, and should never result in engine damage.

During the month after the engine was installed, the Nevers twice brought the motor home into Niehaus for servicing. Service invoice records reveal Niehaus repaired a vacuum leak and replaced a plug wire and gas gauge wire. According to the invoices, all other systems appeared to be in working order.

Two days after the last servicing, the Nevers drove their motor home approximately 500 miles to Ohio. In the early morning hours of their return trip, the motor home broke down. Just before the breakdown, the Nevers heard a loud bang in the vicinity of the engine. Then the lights dimmed, and the motor home filled with smoke.

When the Nevers were unable to restart their motor home, they had it towed to a nearby repair facility. Mechanics at the facility concluded the engine had "cooked" or overheated. They installed a new engine and replaced a broken fan belt, split radiator hose, alternator, water pump and temperature gauge.

The Nevers asked Niehaus to pay for the repairs. When the company refused, they sued. Following a bench trial, the district court dismissed their claims, concluding the Nevers failed to satisfy their burden of proof. This appeal followed.

## ***II. Standard of Review***

A law action is reviewed for correction of errors. Iowa R. App. P. 4. The district court's findings of fact have the effect of a special verdict and are binding on this court if supported by substantial evidence. *Etchen v. Holiday Rambler Corp.*, 574 N.W.2d 355, 358 (Iowa App. 1997). When the district court denies recovery following a bench trial because a party has failed to sustain its burden of proof, we will not interfere unless we find the party carried its burden as a

matter of law. *Schmitz v. Crotty*, 528 N.W.2d 112, 115 (Iowa 1995). To find a party carried its burden as a matter of law, the evidence must be so overwhelming that only one reasonable inference may be drawn on each critical fact. *Id.*

### **III. Express Warranty Claim**

Although the Nevers tried breach of contract, express warranty and negligence claims, they only challenge the court's dismissal of their express warranty claim. Specifically, they maintain the court should have found the motor home's engine suffered a catastrophic mechanical failure that was covered by Niehaus's warranty.

Express warranties by the seller may be created by "[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain." Iowa Code §554.2313 (1997). To recover on an express warranty claim, a plaintiff must prove:

1. The defendant sold the product and expressly warranted its fitness;
2. The plaintiff made the purchase relying on the express warranty;
3. The product did not conform to the express warranty;
4. The breach of express warranty was a proximate cause of the plaintiff's damage;
5. The amount of damages.

See II Iowa Civ. Jury Instructions 1100.1 (1987); *Peterson v. Bendix Home Systems, Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982); *Swenson v. Chevron Chemical Co.*, 234 N.W.2d 38, 42, 89 S.D. 497, 502 (S.D. 1975). The parties agree Niehaus sold and expressly warranted the engine against defective parts and workmanship.<sup>1</sup> They also agree Nevers relied on the warranty in entering

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<sup>1</sup> The record clearly indicates the parties intended to be bound by the terms of the engine warranty for three years or fifty thousand miles. Therefore, we need not determine whether an

into a repair contract with Niehaus. The fighting issues are whether the engine conformed to the express warranty and whether, if it did not, the breach was a proximate cause of the Nevers's damage. Although failure to prove either issue would result in judgment for Niehaus, we will address both.

**A. Conformity with Express Warranty.** The manufacturer's warranty and, by adoption, the Niehaus's warranty, covered the engine and only the engine against failures resulting from defective materials or workmanship. The manufacturer's warranty, however, excluded coverage for engines installed in motor homes. The Nevers apparently contend their engine did not conform to the express warranty given to them by Niehaus because (1) according to the manufacturer, the engine was not suitable for installation in a motor home and (2) the engine contained a defect in materials or workmanship.

The district court rejected the first contention, reasoning the purpose of Niehaus's warranty was precisely to extend the manufacturer's warranty to the motor home. The court also pointed to the defense expert's opinion that merely because a manufacturer's warranty does not cover a certain part does not mean the part is being used improperly. Based on this testimony and other record evidence the court ultimately found that "the Marshall engine installed by [Niehaus] was a proper and suitable engine for use in the Nevers' motor home." This finding was supported by substantial evidence. Accordingly, we reject the Nevers's first nonconformity argument.

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express warranty was created in the first instance. Cf. Iowa Code § 554.2313(2); *Flom v. Stahl*, 569 N.W.2d 135, 140 (Iowa 1997) (distinguishing between affirmations that become basis of bargain and mere opinions or commendations about goods); *Dailey v. Holiday Distributing Corp.*, 260 Iowa 859, 868, 151 N.W.2d 477, 484 (Iowa 1967)(same).

As for the Nevers's second contention, the record does not contain evidence the engine itself was defective or Niehaus or its subcontractor defectively installed the engine. *Cf. Hawkeye Sec. Ins. Co. v. Ford Motor Co.*, 199 N.W.2d 373, 382-83 (Iowa 1972)(noting plaintiff produced evidence from which jury could infer defect in brake). Therefore, the Nevers did not satisfy their burden of proof on this issue.

**B. Proximate Cause.** The express warranty contains an exclusion for damage caused by "overheating or lack of lubrication." Both parties agree the engine overheated but disagree as to the cause. The Nevers maintain it overheated as a result of a catastrophic failure of the engine itself, while Niehaus argues the failure of other parts and the negligence of the Nevers caused the overheating. The district court concluded the Nevers "failed to demonstrate, by a preponderance of the evidence, that anything covered by the express warranty caused the engine to overheat." We agree with this conclusion.

The record suggests at least six causes for the motor home's breakdown other than a failure of the engine itself: (1) a split radiator hose; (2) a broken fan belt; (3) a defective alternator (4) a defective water pump; (5) a defective temperature gauge; and (6) the Nevers's own negligence in failing to check the fluid levels in the motor home. We rule out the sixth cause in light of the Nevers's undisputed testimony they regularly checked the fluid levels during their trip and had the other items checked before leaving on their trip. We also rule out the defective temperature gauge as a cause of the overheating because it was purely a warning device designed to alert the driver to potential problems

and, if not working, bolstered the Nevers's contention that their negligence did not cause the engine to overheat.

However, we cannot rule out the remaining four causes of overheating. The Nevers's own expert conceded: (1) a split radiator hose could cause a vehicle to lose all its coolant, resulting in emission of steam; (2) a broken fan belt could result in increased engine temperature; and (3) an alternator failure could cause the lights to dim. Additionally, Niehaus's president testified a broken fan belt would cause the water pump to malfunction. Therefore, we are left with four potential causes of the overheating in addition to a possible engine malfunction.

The Ohio mechanics who examined the motor home immediately after it stopped working might have been able to narrow the cause of the overheating, but they did not testify. As the district court stated,

Without such evidence, the evidence which was offered by the Plaintiffs at trial as to what may have possibly caused the engine to overheat, was circumstantial and speculative at best. Even assuming that one or more of the possibilities offered by the Plaintiffs, including a broken fan belt, split radiator hose, defective alternator, water pump or temperature gauge, was the cause of overheating, as opposed to the Plaintiff's own neglect, none of these items were covered by the warranty offered by Niehaus. Also, as the Defendant contends, the "cooking" in all likelihood was the result of low fluid levels which may have been caused by one or more of the foregoing.

We agree with this summation of the evidence. The evidence does not allow us to conclude the Nevers satisfied their burden of proof. Accordingly, the express warranty claim fails as a matter of law and we affirm the judgment of the district court dismissing this claim.

**AFFIRMED.**