IN THE COURT OF APPEALS OF IOWA

No. 2-392 / 11-1754
Filed July 25, 2012

MARK GODFREDSON,
Plaintiff-Appellant,

vs.

FORD MOTOR COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer, Judge.

Plaintiff, in a claim under the federal Magnuson-Moss Warranty Act, appeals the district court's grant of summary judgment to Ford Motor Company. **AFFIRMED.**

Robert Tiefenthaler of Tiefenthaler Law Office, Sioux City, for appellant.

Jonathan C. Wilson and Jodie C. McDougal of Davis Brown Law Firm, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Miller, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.

I. Background Facts & Proceedings

This case begins with a Mustang that was manufactured by Ford Motor Company (Ford) in Dearborn, Michigan, in 2004. A shipping invoice shows the Mustang was sold to Villa Ford/Saleen Performance and shipped to Saleen Performance Parts, Inc. (Saleen), in Irvine, California. Saleen substantially modified the Mustang by adding a Saleen intercooled supercharger, Saleen "powerflash" performance calibration, Saleen exhaust system, and Saleen powertrain control module, among other items. Prior to the modifications, the Mustang had 260 horsepower and 302 lb./ft. of torque, while after the modifications it had 375 horsepower and 415 lb./ft. of torque. The exterior of the vehicle had Saleen decals applied, and a sticker on the interior stated, "This vehicle was altered by Saleen Performance, Inc."

The window sticker on the vehicle now stated it was a Saleen Mustang S281. The vehicle was traded between dealers and eventually ended up at Integrity Ford in Spearfish, South Dakota.[1] Mark Godfredson of Sergeant Bluff, Iowa, purchased the vehicle from Integrity Ford for $54,916, on July 16, 2005. In a deposition, Godfredson testified a salesman at Integrity Ford, Peter Skvicalo, told him the vehicle was covered by a Ford bumper-to-bumper warranty for three years or 36,000 miles. Godfredson received a written copy of the Ford limited warranty. He did not believe he had received a written copy of the warranty from Saleen. Godfredson was the first consumer to purchase the vehicle.

[1] The vehicle was held by Luther Family Ford in Fargo, North Dakota, then Bill Barth Ford in Mandan, North Dakota, before it was sent to Integrity Ford.

On September 15, 2005, Godfredson brought the vehicle to Sioux City Ford in Sioux City, Iowa, because the engine was running rough and the check engine light was on. The vehicle was examined by master technician, Larry Doerr, and engine technician, Ron Green, who determined the engine was running "too lean," meaning the ratio of fuel to air was incorrect, so that there was not enough fuel. The engine had a burnt spark plug and burnt valves in one of the cylinder heads. Doerr and Green stated there were no problems with the parts manufactured by Ford. They believed the problems were caused by the modifications made by Saleen.

The vehicle was subsequently examined by David Bloom, a Ford Field Service Engineer, who concluded, "the problems with the Saleen Mustang were most likely caused by air fuel ratio issues stemming from Saleen modifying the vehicle, including Saleen adding the supercharger and changing the [powertrain control module] calibration, and that the engine failure was not a Ford factory defect." Another Ford Field Service Engineer, Robert Lien, also examined the vehicle and found, "it is my professional opinion that the modifications performed by Saleen on the vehicle were directly responsible for the referenced engine damage and related cylinder performance concerns."

The Ford limited warranty provided:

> The New Vehicle Limited Warranty does not cover any damage caused by:
>
> alterations or modifications of the vehicle, including the body, chassis or components, after the vehicle leaves the control of Ford Motor Company
>
> . . . .
>
> the installation or use of a non-Ford Motor Company part . . . installed after the vehicle leaves the control of Ford Motor

> Company, if the non-Ford part fails or causes a Ford part to fail. Examples include, . . . performance-enhancing powertrain components.

Ford determined that because Godfredson's vehicle had been substantially modified by Saleen the problems with his vehicle were not covered by the limited warranty. Ford refused to repair the vehicle under the warranty.

Godfredson was also in contact with Saleen. On February 10, 2006, Saleen sent a letter to Godfredson that stated, "Since it appears that some Saleen components on your vehicle may have failed, we have decided to repair those components at our cost within ten days after the vehicle has been delivered to the repair facility." The vehicle, however, was never repaired by Saleen.

On March 20, 2006, Godfredson filed a petition against Saleen and Ford making a claim under the Iowa Lemon Law, Iowa Code chapter 322G (2005). Two years and three months after filing the petition, in June 2008, Godfredson designated an expert, but did not produce a report from the expert, and did not engage in any other discovery. The action was dismissed pursuant to Iowa Rule of Civil Procedure 1.944 for failure to prosecute.[2] The district court denied a motion to reinstate the action. The court noted Godfredson had sequentially retained three different attorneys. The court found, "the plaintiff has not engaged in reasonable diligence in prosecuting his lawsuit. As the defendants [Ford and

[2] While the action was pending, Godfredson sought a continuance to avoid dismissal under rule 1.944, stating he had not completed discovery. A continuance was granted to July 1, 2008, but Godfredson still did not engage in any formal discovery. The case apparently was not tried or further continued before July 1, 2008, and was thus dismissed by operation of law as of that date. *See Wilimek v. Danker*, 671 N.W.2d 25, 27 (Iowa 2003) (noting that dismissal pursuant to rule 1.944 is "by operation of law" and "automatic"). On July 10, 2008, the clerk of court entered a notice of the dismissal.

Saleen] pointed out, the only discovery that has occurred was conducted by the defendants."

Godfredson filed a new petition against Saleen and Ford on July 15, 2009, raising claims under the Iowa Lemon Law and the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2304, 2310. The Iowa Lemon Law claim was dismissed because it was barred by the statute of limitations. *See* Iowa Code § 322G.2(8). Ford filed a cross-claim against Saleen, seeking contribution and indemnification if Ford was found liable. Saleen never responded to the petition or cross-claim and was found to be in default.[3] The action proceeded against Ford on the claim under the Magnuson-Moss Warranty Act.

Godfredson served Ford with a set of interrogatories and a request for production of documents on April 10, 2011, more than twenty months after the second action was filed. Ford responded on May 26, 2011. Ford objected to several interrogatories on the ground they were overbroad and unduly burdensome. On other interrogatories it also claimed the request sought information that was not relevant and was not reasonably calculated to lead to the discovery of admissible evidence. Despite these objections, Ford answered the interrogatories. Ford objected to some of the requests for production of documents on the same grounds, but also produced relevant documents.[4]

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[3] In various materials both Godfredson and Ford have asserted that Saleen is no longer in business. Saleen is not a party to the present appeal.

[4] Ford produced the following documents: Ford's New Vehicle Limited Warranty, a standard Sales and Service Agreement between Ford and its dealers, miscellaneous documents regarding Godfredson's requests for service, photographs and documents from Ford's experts, documents obtained from Sioux City Ford, documents obtained from Integrity Ford, and affidavits.

On June 21, 2011, Ford filed a motion for summary judgment. Ford claimed § 2304 of the Magnuson-Moss Warranty Act applied only to full warranties, not limited warranties, like the one in this case. Ford also claimed Godfredson was not entitled to relief under § 2310 because the problems with Godfredson's vehicle had been caused by the modifications made by Saleen after the vehicle was out of Ford's control, and were not covered by the Ford limited warranty.

On July 8, 2011, Godfredson filed a motion for extension of time to file a resistance to the motion for summary judgment under Iowa Rule of Civil Procedure 1.981(6), supported by an affidavit by counsel. He claimed he was unable to file a resistance because Ford had not adequately answered his discovery requests. He also filed a motion to compel discovery. Ford resisted both of these motions, pointing out that Godfredson had not conducted any discovery in the first case, and had waited more than twenty months to begin discovery in the second case. Ford asserted that despite its objections, it had fully and completely answered the discovery requests. The district court denied the motion to compel.[5] Godfredson filed a motion to amend the ruling on the motion to compel.

Godfredson filed a resistance to the motion for summary judgment. He pointed out that the Ford limited warranty did not cover modifications "after the vehicle leaves the control of Ford Motor Company." Godfredson claimed the vehicle had remained in the control of Ford until he purchased it from a Ford

[5] The court did not explicitly state whether it was granting the motion to extend the time to respond to the motion for summary judgment, but gave Godfredson until September 9, 2011, to file a resistance, which was in fact an extension of time.

dealership, and therefore, the repairs should be covered by the Ford warranty. He also claimed that he relied on the verbal representation of Skvicalo that the vehicle was covered by a Ford bumper-to-bumper warranty for three years or 36,000 miles.

A hearing on the motion for summary judgment was held on September 20, 2011. The district court issued a decision granting the motion. The court determined Godfredson was not entitled to relief under § 2304 of the Magnuson-Moss Warranty Act because Ford had issued a limited warranty.[6] As to § 2310, the court found the clause, "after the vehicle leaves the control of the Ford Motor Company," was not ambiguous. The court determined "[i]n the context of the warranty, 'control' means the power to alter or modify the vehicle or to install parts. Once the vehicle leaves the manufacturer, Ford Motor Company no longer has that power." The court found there was no evidence of an agency relationship between Ford and the dealerships, such that the vehicles were under Ford's control when they were at the dealership. The court concluded, "[a]s the modifications by Saleen were the cause of the problem and Ford no longer retained control over the vehicle when it was sent to Saleen, Ford did not have an obligation to repair or replace the parts."

The district court filed a ruling on Godfredson's pending motion to amend the order on his motion to compel discovery. The court noted that it had granted the motion for summary judgment, and "to the extent necessary reaffirms this earlier ruling." The court denied the motion to amend its earlier ruling on the

[6] Godfredson does not appeal this finding, and therefore, we do not discuss § 2304 of the Magnuson-Moss Warranty Act.

motion to compel. The court also found, "[t]he discovery seems burdensome and designed to harass or force a settlement on facts that would not otherwise warrant a trial by jury as indicated in the ruling for motion for summary judgment." Godfredson appeals the district court rulings.

II. Motion to Compel

Godfredson claims the district court abused its discretion by denying his motion to compel and his motion to amend the order on his motion to compel. He claims Ford's numerous objections to his interrogatories and requests for production of documents were an attempt "to clearly subvert the discovery process." He asserts Ford did not state with any specificity its reasons for objecting to his discovery requests. Godfredson asks to have Ford ordered to answer his interrogatories and requests for production of documents fully and completely. He also asks for attorney fees for the costs of prosecuting the motion to compel.

Godfredson's claims are based, in part, on Iowa Rule of Civil Procedure 1.509(1), which provides, "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer." He claims that because Ford objected to the interrogatories and requests for production of documents, but then answered or produced the documents, under the rule Ford no longer had a duty to answer fully. He claims Ford's objections were made as an improper way to permit it to evade its duty to fully and completely answer his discovery requests.

We review a district court order on a motion to compel discovery for the abuse of discretion. *Keefe v. Bernard*, 774 N.W.2d 663, 667 (Iowa 2009). The court's ruling on a discovery matter may be overturned when the grounds for the court's order are clearly unreasonable or untenable. *Wells Dairy, Inc. v. American Indus. Refrigeration, Inc.*, 690 N.W.2d 38, 43 (Iowa 2004).

The motion to compel was filed in conjunction with the motion to extend the time to file a resistance to the motion for summary judgment, based on Godfredson's claim he was unable to adequately respond to the motion due to the lack of discovery. Generally, a nonmoving party should have the opportunity to conduct discovery prior to a ruling on a motion for summary judgment. *Bitner v. Ottumwa Cmty. Sch. Dist.*, 549 N.W.2d 295, 302 (Iowa 1996).

There is no abuse of discretion, however, if a court denies a request for an extension when a party "had a full opportunity to conduct discovery prior to the summary judgment hearing." *Id.* As with the plaintiff in *Bitner*, we conclude Godfredson had a full opportunity to conduct discovery prior to the hearing on Ford's motion for summary judgment. *See id.* The first action was initiated in March 2006, more than five years before the summary judgment hearing was held on September 20, 2011. The second action was filed on July 15, 2009, more than two years before the hearing. Godfredson has not alleged any reasons for failing to make any discovery requests until more than twenty months after the second suit was filed. The district court could properly conclude Godfredson had ample opportunity to conduct discovery. *See id.* at 303.

In addition, a party seeking an extension under rule 1.981(6) must set forth "what additional factual information is needed to resist the motion." *Id.* at 301. In seeking discovery, Godfredson needed to explain what facts he was seeking, and how they would be obtained. *See id.* The district court noted, "[Godfredson] has been unable to identify any item that he is aware of that was not produced or that the answers provided by [Ford] are in any way incomplete or inaccurate." The court concluded that Godfredson's "suspicion and conjecture are insufficient to support his motion to compel."

Furthermore, as the district court pointed out, even if Ford's answers had been incomplete or inaccurate, Ford had a continuing duty under rules 1.503(4) and 1.508(3) to supplement its responses. *See Hoekstra v. Farm Bureau Mut. Ins. Co.*, 382 N.W.2d 100, 108-09 (Iowa 1986). "A party is under a duty to correct an interrogatory response once that party learns that the original response was incorrect." *Kaiser Agric. Chem., Inc. v. Peters*, 417 N.W.2d 437, 439 (Iowa 1987). The court concluded, "the defendant's continuing duty to supplement their answers to interrogatories and production of documents negates [Godfredson's] theory of nondisclosure or failure to produce."

We conclude the district court did not abuse its discretion in denying the motion to compel or the motion to amend the ruling on the motion to compel. Godfredson had ample opportunity to conduct discovery prior to the hearing on summary judgment, he did not identify any information he failed to receive, and even if Ford's answers were inaccurate or incomplete, Ford had a continuing duty to supplement its answers.

III. Motion for Summary Judgment

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Frontier Leasing Corp. v. Links Eng'g, LLC*, 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008).

"The Magnuson-Moss Act created a federal remedy for breach of written and implied warranties falling within the statute." *Hyler v. Garner*, 548 N.W.2d 864, 874 (Iowa 1996). In relevant part the act provides, "a consumer who is damaged by the failure of a . . . warrantor . . . to comply with any obligation . . . under a written warranty . . . may bring suit for damages and other legal and equitable relief . . . in any court of competent jurisdiction in any State . . . ." 15 U.S.C. § 2310(d)(1)(A). In order to be successful in his claim under the federal Magnuson-Moss Warranty Act, Godfredson would need to show Ford breached the terms of its warranty. *See Hyler*, 548 N.W.2d at 874. He claims the district court erred by finding there was no genuine issue of material fact as to whether Ford breached the warranty.

A. Godfredson claims the Ford written warranty should apply because his vehicle remained in the control of Ford when it was modified. He first claims the word "control" should be interpreted in his favor because the written warranty was an adhesion contract.[7]

Ford claims this issue was not preserved for our review. The issue was briefly mentioned in Godfredson's memorandum in support of his resistance to Ford's motion for summary judgment. The district court did not address adhesion contracts at all in its ruling on the motion for summary judgment. Godfredson did not file a motion asking the court to specifically rule on the issue. We conclude the issue of whether Ford's limited warranty was a contract of adhesion has not been preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

B. In the alternative, Godfredson contends that even if the warranty is not a contract of adhesion, the term "control" as used in the warranty is ambiguous. He points out, "the ordinary dictionary definition of 'control' not only includes the exercise of restraint or influence, but the power or authority to

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[7] "A contract of adhesion has been described as being 'drafted unilaterally by the dominant party and then presented on a take-it-or-leave-it basis to the weaker party who has no real opportunity to bargain about its terms.'" *General Conference of the Evangelical Methodist Church v. Faith Evangelical Methodist Church*, 809 N.W.2d 117, 122 (Iowa Ct. App. 2011) (citation omitted). Godfredson claims it would be unconscionable to construe the term "control" to be unambiguous in a contract of adhesion, such as the warranty in this case. We note that even if the warranty was a contract of adhesion, this does not mean it is automatically unconscionable. *See Home Fed. Sav. & Loan Ass'n v. Campney*, 357 N.W.2d 613, 619 (Iowa 1984). A finding that a contract is adhesive merely alerts the court that a finding of unconscionability may be justified. *Id.*

regulate or manage."[8] *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 364 (Iowa 2000) (citing Merriam-Webster's Collegiate Dictionary 252 (10th ed. 1998)).

The interpretation of a contract involves ascertaining the meaning of the words used in the contract, while construction refers to deciding the legal effect of those words. *Peak v. Adams*, 799 N.W.2d 535, 543 (Iowa 2011). "In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and except in cases of ambiguity, this is determined by what the contract itself says." *Id.* (citing Iowa R. App. P. 6.904(3)(n)). "The cardinal rule of contract interpretation is to determine the intent of the parties at the time they entered into the contract." *Id.* at 544. The most important evidence of the parties' intentions at the time of entering the contract is to look at the words of the contract. *Id.*

The district court determined the word "control" as used in the Ford limited warranty was not ambiguous. The court found the word meant "the power to alter or modify the vehicle or to install parts." In context, the warranty provides there is no coverage for "alterations or modifications of the vehicle, including the body, chassis or components, after the vehicle leaves the control of Ford Motor Company." In addition, the warranty does not cover, "the installation or use of a non-Ford Motor Company part . . . installed after the vehicle leaves the control of Ford Motor Company . . . ."

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[8] When a term does not have a legislative definition or a particular legal meaning, we give the word its ordinary meaning. *State ex rel. Miller v. Midwest Pork, L.C.*, 625 N.W.2d 694, 699 (Iowa 2001). "[I]n searching for the ordinary meaning of undefined terms, we commonly refer to dictionaries." *Pierce v. Farm Bureau Mut. Ins. Co.*, 548 N.W.2d 551, 555 (Iowa 1996).

We find no error in the court's conclusion that the term "control" as used here means the ability of Ford to alter or modify the vehicle, or to install parts. However, even if we accept Godfredson's claim that "control" means the power or authority to regulate or manage, this does not change our subsequent conclusions in the case.

C. Godfredson claims there is a genuine issue of material fact as to whether the vehicle was in the "control" of Ford at the time it was altered or modified. He notes he purchased the vehicle from a Ford dealership and he was the first consumer to purchase the vehicle. He asserts the vehicle remained in the control of Ford up until the time he purchased it. He claims Ford retained the authority to regulate and manage the Mustang through their dealership system.

A shipping invoice shows that after manufacture, the vehicle was sold to Villa Ford/Saleen Performance. There is no evidence to show Ford retained control of the vehicle after it was sold. We have reviewed the Ford Sales and Service Agreement that was submitted as an exhibit in this case. The agreement does not provide any support for Godfredson's claim the vehicle remained in the control of Ford. The agreement specifically states:

> This agreement does not in any way create the relationship of principle and agent between the Company and the Dealer, and under no circumstances shall the Dealer be considered to be an agent of the Company. The Dealer shall not act or attempt to act, or represent himself, directly or by implication, as agent for the Company or in any manner assume or create any obligation on behalf of or in the name of the Company.

We find no error in the district court's conclusion that there was no genuine issue of material fact as to whether the vehicle remained in the control of Ford at the time it was modified by Saleen.

D. Godfredson also raises a claim that there was a genuine issue of material fact as to whether the problems with his vehicle had been caused by Ford parts, and thus the repair of those parts would come under the Ford limited warranty. He relies upon an affidavit of Larry Doerr, dated September 8, 2011, which noted the damaged parts had been manufactured by Ford. The affidavit states, "the Ford-manufactured parts specified above were not operational due to their damage and, as such, were in a defective condition at the time that Mark Godfredson brought the vehicle into the dealership."

Doerr had given an earlier affidavit, dated May 20, 2011, which stated, "During my inspection of the engine and vehicle, I found *no* evidence of any factory defect in materials or workmanship by Ford Motor Company." He concluded, "My conclusion was that the engine problem with the Saleen Mustang was most likely caused by the modifications that Saleen had made to the vehicle's engine." We note that even in the later affidavit from September 2011, Doerr does not state that the problems were caused by Ford parts, he only states that these parts were damaged. His sole statement on causation, which is in the May 2011 affidavit, supports the position of Ford. We conclude there is no genuine issue of material fact as to whether the problems with Godfredson's vehicle were caused by Ford parts. All of the affidavits and other evidence submitted in connection with the motion for summary judgment support only a

finding that the problems with the vehicle were caused by the modifications made by Saleen.

E. Godfredson raises a final claim that a salesman at Integrity Ford, Skvicalo, told him that vehicle was covered by a Ford bumper-to-bumper warranty for three years or 36,000 miles. He claims this statement created a greater warranty than that provided in the Ford written limited warranty, and that would cover the repairs to his vehicle.[9]

Ford claims the court's consideration of Skvicalo's statement is barred by the parol evidence rule. The parol evidence rule is a substantive rule of law, and is not a rule of evidence. *Top of Iowa Co-op. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000). "When an agreement is fully integrated, the parol-evidence rule forbids the use of extrinsic evidence introduced solely to vary, add to, or subtract from the agreement." *C & J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 85 (Iowa 2011). "An agreement is fully integrated when the parties involved adopt a writing or writings as the final and complete expression of the agreement." *Whalen v. Connelly*, 545 N.W.2d 284, 290 (Iowa 1996). The question of whether an agreement is fully integrated is a factual one. *Id.*

Godfredson asserts the written warranty was not the final expression of the parties' agreement, but offers no factual basis to support this claim. We agree with Ford's contention that the statement by Skvicalo should be barred by

[9] As a matter of fact, the term "Bumper to Bumper Coverage," which lasts for three years or 36,000, whichever occurs first, is specifically discussed in the Ford New Vehicle Limited Warranty. Therefore, even if we assumed the salesman's statement was made, it is not clear the statement could be interpreted to create a different warranty than the written warranty provided to Godfredson.

the parol evidence rule because the statement would vary or add to the written warranty.

Furthermore, even if the statement was not barred by the parol evidence rule, we note that Skvicalo did not have the ability to bind Ford by any statement he may have made. As noted above, under the Ford Sales and Service Agreement with its dealerships, "[t]he Dealer shall not act or attempt to act, or represent himself, directly or by implication, as agent for the Company or in any manner assume or create any obligation on behalf of or in the name of the Company." Thus, Skvicalo, who was an employee of a Ford dealership, could not create an obligation on behalf of Ford Motor Company. We conclude there is no factual basis to support Godfredson's claim that a statement by a salesman for a dealer created a greater warranty than that provided in the Ford written limited warranty.

We affirm the decision of the district court granting summary judgment to Ford.

AFFIRMED.