

IN THE COURT OF APPEALS OF IOWA

No. 6-1012 / 05-1996
Filed February 14, 2007

**ROBERT M. SPEIGHT and
BEVERLY E. SPEIGHT,**
Plaintiffs-Appellants,

vs.

**WALTERS DEVELOPMENT
COMPANY, LTD.,**
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert Hutchison,
Judge.

Plaintiffs appeal from a district court ruling granting summary judgment to
defendant on plaintiffs' implied warranty claim. **AFFIRMED.**

Harley Erbe, West Des Moines, for appellants.

Brian Rickert and Michael Green of Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C., Des Moines, for appellee.

Considered by Zimmer, P.J., and Eisenhauer and Baker, JJ.

ZIMMER, P.J.

Plaintiffs Robert and Beverly Speight appeal from a district court ruling that granted summary judgment to defendant, Walters Development Company, Ltd., (Walters) and denied plaintiffs' motion for partial summary judgment. We affirm the district court.

In 1995 Walters acted as the general contractor for the construction of a custom-built home for Guy and Jossie Roche. The Roches purchased and took possession of the home in 1995. The Roches subsequently sold the home to Philip and Nancy Rogers. In 2000 the Rogers sold the home to Robert and Beverly Speight. In May 2005 the Speights sued Walters, claiming the home's roof and gutters were defectively constructed in 1995 and have caused water damage and mold in the residence.

The plaintiffs' petition, as amended, asserted claims based on implied warranty and general negligence. Both parties moved for summary judgment. The summary judgment record reveals the Speights did not purchase their home from Walters. They admit they do not have a written or oral contract with Walters, and they do not have a written or oral warranty with Walters for the home. Neither of the prior owners of the home has ever made a claim that the home was defectively constructed.

Following hearing, the district court concluded that under the undisputed facts material to the issues presented, the plaintiffs could not establish the elements of their implied warranty claim because they did not purchase the home from a builder-vendor. *See Flom v. Stahly*, 569 N.W.2d 135, 142 (Iowa 1997). The court declined the plaintiffs' invitation to extend the protection of an implied

warranty to a subsequent purchaser of a home. The court also concluded the Speights' claim was time-barred under Iowa Code section 614.1(4) (2005). See *Kitzinger v. Wesley Lumber Co.*, 419 N.W.2d 739, 741 (Iowa Ct. App. 1987). Because we agree with the district court's reasoning and decision, we affirm. See Iowa Ct. R. 21.29. We leave it to the legislature or our supreme court to extend the law in this area.

AFFIRMED.