

IN THE COURT OF APPEALS OF IOWA

No. 6-693 /05-2043
Filed December 13, 2006

**SCOTT BAIRD and GREG BAIRD, d/b/a
BAIRD PAINT CONTRACTING CO., and
CHARLES BAIRD and DORIS BAIRD,**
Plaintiffs-Appellants,

vs.

DANIEL OLDFIELD,
Defendant-Appellee.

Appeal from the Iowa District Court for Wapello County, James Q. Blomgren, Judge.

Charles and Doris Baird appeal the district court's denial of their motion for summary judgment and subsequent dismissal of their claim alleging Daniel Oldfield violated Iowa's Door-to-Door Sales Act, Iowa Code chapter 555A.

AFFIRMED.

Richard C. Bauerle, Orsborn, Bauerle, Milani & Grothe L.L.P., Ottumwa,
for appellants.

William J. Cahill, Hirsch, Adams, Putnam, Cahill, Rashid & Wiley P.L.C.,
Burlington, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Charles and Doris Baird appeal the district court's denial of their motion for summary judgment and subsequent dismissal of their claim alleging Daniel Oldfield violated Iowa's Door-to-Door Sales Act, Iowa Code chapter 555A (2001). We affirm.

In July 2001 Daniel Oldfield agreed to build a pond for Charles and Doris Baird (the Bairds) on their property. No written contract was prepared regarding the agreement. Oldfield did not furnish the Bairds with a written "Notice of Cancellation" form, and did not inform them in any other way that they had a right to cancel the agreement. Oldfield proceeded to build the pond and the Bairds paid Oldfield a total of \$30,685 for the work. On August 5, 2003, the Bairds sent a notice of cancellation to Oldfield requesting a refund of all payments made under their agreement. Oldfield did not refund any of the payments.

On June 7, 2004, the Bairds filed a three count petition against Oldfield. Count III, the only count at issue in this appeal, alleged the relationship between the Bairds and Oldfield was such that Iowa Code chapter 555A applied to their agreement and Oldfield had violated its provisions. On June 29, 2005, the Bairds filed a motion for summary judgment with respect to Count III. The district court denied the motion for summary judgment as to Count III, concluding chapter 555A does not provide a private civil remedy for its violation. Based on that conclusion, the court determined it was not necessary for it to decide whether the statute applies to the facts of this case.

Oldfield filed a motion to enlarge or amend the court's ruling on the motion for summary judgment, asking the court to dismiss Count III based on its prior ruling on the summary judgment motion. On September 12, 2005, the court granted Oldfield's motion and dismissed Count III of the Bairds' petition. Thereafter, the Bairds dismissed Counts I and II with prejudice but retained the right to appeal what had been an interlocutory ruling denying their motion for summary judgment as to Count III. They now appeal the court's dismissal of Count III of their petition, contending the court erred in concluding chapter 555A does not provide for a private civil cause of action.

Our review of a district court's grant or denial of summary judgment is for correction of errors at law. Iowa R. App. P. 6.4; *LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 306 (Iowa 1998). This case presents a purely legal question of whether, assuming Chapter 555A applies to the facts, it provides a private cause of action. There are thus no material facts in dispute. When, as here, there are no material facts in dispute, "[o]ur role is simply to decide whether we agree with the district court's application of the law to the undisputed facts before us." *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999) (citation omitted).

A review of chapter 555A reveals nothing which expressly provides a private cause of action for failure to comply with its terms. Therefore, a four factor test must be applied to determine whether a private cause of action may be implied for the benefit of a person who claims to be aggrieved by a violation of

the statute. *Meinders v. Dunkerton Cmty. Sch. Dist.*, 645 N.W.2d 632, 635-36 (Iowa 2002). The four factors to be considered are:

1. Is the plaintiff a member of the class for whose benefit the statute was enacted?
2. Is there any indication of legislative intent, explicit or implicit, to either create or deny such a remedy?
3. Would allowing such a cause of action be consistent with the underlying purpose of the legislation?
4. Would the private cause of action intrude into an area over which the federal government or a state administrative agency holds exclusive jurisdiction?

Id. at 636. “There is no implied cause of action if *any* one of these factors is not satisfied.” *Id.* (emphasis in original). Because the fourth factor is not implicated here, it plays no part in our analysis.

If the statute applies to the facts of this case, the Bairds clearly might be able to show the first factor is satisfied. However, the district court determined it need not decide whether the statute applies to the facts, because the legislative history of the statute shows that the legislature has implicitly denied a private cause of action for its violation. For the following reasons, we agree with the district court that the language and legislative history of chapter 555A demonstrate an intent to deny a private cause of action for a violation of this statute. Thus we, like the district court, do not determine whether the statute applies to the facts of this case or, in turn, whether the first factor is satisfied. Our analysis begins and ends with the second factor.

Chapter 555A provides certain remedies for a buyer to whom the act applies if there has been a violation of the statute. More specifically, section 555A.5 provides that a failure to provide a copy of the contract to the buyer “shall void any contract, note, instrument, or other evidence of indebtedness executed

or entered into in connection with the contract and shall constitute a complete defense in any action based on the contract . . . brought by the seller” Section 555A.6 also provides that a seller who violates the chapter is guilty of simple misdemeanor.

In *State ex. rel. Miller v. Santa Rosa Sales and Mktg., Inc.*, 475 N.W.2d 210, 218 (Iowa 1991) our supreme court determined that a violation of chapter 555A was not a violation of the Iowa Consumer Fraud Statute as set forth in section 714.6(2)(a). Apparently in response to the *Santa Rosa* decision, the legislature amended chapter 555A to specifically provide that a violation of that chapter is a violation of the Iowa Consumer Fraud Statute. In making this amendment the legislature clearly could have provided for a private cause of action at that time but apparently chose not to do so. Legislative intent is expressed by omission as well as by inclusion, and “[t]he express mention of certain conditions of entitlement implies the exclusion of others.” *Id.*; *Barns v. Iowa Dep’t of Transp.*, 385 N.W.2d 260, 263 (Iowa 1986).

We conclude the fact the legislature expressly provided for both a potential criminal sanction as well as another remedy through enforcement by the Iowa Attorney General’s Office for violations of this statute, while not including any mention of a private cause of action for violations, reveals an intent by the legislature to exclude a private remedy. See *Meinders*, 645 N.W.2d at 636-37 (holding that by providing specific remedies for violating a requirement of a statute, and not including a money damage remedy based on tort, the legislature intended not to provide a private cause of action); see also *Santa Rosa*, 475

N.W.2d at 218 (holding that by providing self-contained enforcement mechanisms in the Door-to-Door Sales Act and Iowa's lottery statute the legislature impliedly intended not to provide for enforcement by the Iowa Attorney General through the Iowa Consumer Fraud Act, Iowa Code section 714.16).

Finally, the Bairds argue Iowa Code section 611.21 provides them with a civil cause of action here because it "provides for a civil cause of action in all cases where there has been a violation of a criminal statute." Section 611.21 specifically provides, "The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former." We disagree with the Bairds' interpretation of this statute. We believe the language of the statute is clear. While it *prevents merger* of a civil remedy in a public offense and thus *avoids preclusion* of a civil cause of action for a public offense, it does not *create* a civil cause of action for violation of a criminal statute. Thus, section 611.21 does not itself provide the Bairds with a civil cause of action.

We conclude the district court was correct in concluding that chapter 555A neither expressly nor impliedly provides a private cause of action for violation of its provisions. We further conclude section 611.21 does not create a private cause of action for a violation of chapter 555A. Thus, the district court did not err in denying the Bairds' motion for summary judgment and ultimately dismissing their claim alleging a violation of chapter 555A.

AFFIRMED.