IN THE COURT OF APPEALS OF IOWA

No. 7-068 / 06-0454
Filed April 11, 2007

GEORGE GARDNER and DEBRA GARDNER,
Plaintiffs-Appellants,

vs.

LLOYD A. WANDERSEE and MARILYN L. WANDERSEE, RUHL & RUHL REALTORS, INC., and MISSISSIPPI VALLEY REALTORS, INC.,
Defendants-Appellees.

Appeal from the Iowa District Court for Louisa County, Cynthia Danielson, Judge.

The plaintiffs appeal the district court's denial of their requested jury instruction. **AFFIRMED.**

Barry S. Kaplan of Kaplan & Frese, L.L.P., Marshalltown, for appellants.

James W. Affeldt and Robert M. Hogg of Elderkini & Pirnie, P.L.C., Cedar Rapids, for appellee Mississippi Valley Realtors, Inc.

John E. Wunder, Muscatine, for appellees Lloyd & Marilyn Wandersee.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

George and Debra Gardner appeal from the judgment rendered in favor of defendants on the Gardners' claims for fraudulent nondisclosure and violation of Iowa Code chapter 558A (2003). They contend the district court erred in denying their request to instruct the jury that a hog confinement unit is an environmental concern requiring disclosure in the sale of real estate. Because we find the requested jury instruction is not an accurate statement of the law, we affirm.

I. Background Facts and Proceedings. On July 31, 2003, the Gardners entered into a contract to purchase forty acres of real estate and a home in Louisa County from Lloyd and Marilyn Wandersee. The parties closed on the real estate on August 14 and the Gardners moved in on August 16.

On September 10, 2003, the Gardners became aware a hog confinement unit was being planned on the property across the road from their home. They learned the neighbors to the hog confinement had petitioned against this hog confinement, and the Wandersees had signed the petition contesting it on May 21, 2003. The Wandersees did not disclose the hog confinement in the seller disclosure of property conditions signed on February 1, 2003, and presented to and signed by the Gardners on July 12, 2003.

On December 8, 2003, the Gardners filed suit against the Wandersees, the realtor who represented the Gardners in the sale, Ruhl & Ruhl, Inc., and the realtor for the Wandersees, Mississippi Valley Realtors, Inc. The suit arose from the alleged failure to disclose the known existence of the hog confinement unit. The Wandersees filed a motion for summary judgment, which was denied on the

basis that "it will be for a jury to decide whether a potential hog facility, to be constructed on nearby property, should have been disclosed as an 'area environmental concern' on the disclosure statement."

The case was tried to a jury in February 2006. The Gardners sought a jury instruction stating "that a hog confinement unit is an environmental concern to be disclosed in a disclosure statement." The trial court denied the instruction on the basis that it "is not technically an accurate statement of the law" and because the rest of the jury instructions correctly stated the law. The jury returned a verdict finding the defendants were not liable to the Gardners.

II. Scope and Standard of Review. Our standard of review on examination of claims that the trial court erred in submitting a jury instruction is for correction of legal errors. *Greenwood v. Mitchell,* 621 N.W.2d 200, 204 (Iowa 2001). We review jury instructions to decide if they are a correct statement of the law and are substantially supported by the evidence. *Bride v. Heckart,* 556 N.W.2d 449, 452 (Iowa 1996). The evidence substantially supports a requested jury instruction when a reasonable mind would accept it as adequate to reach a conclusion. *Id.* Error in giving or refusing to give a particular instruction does not warrant reversal unless the error is prejudicial to the party. *Sonnek v. Warren,* 522 N.W.2d 45, 47 (Iowa 1994).

III. Analysis. Iowa Code chapter 558A requires a seller of real estate to complete a disclosure statement informing the purchaser of "the condition and important characteristics of the property and structures located on the property . . . ." Iowa Code § 558A.4(1). It also imposes liability on a transferor, broker, or

salesperson if "that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information." *Id.* § 558A.6(1). The standard of reporting is one of good faith:

> All information required by this section and rules adopted by the commission shall be disclosed in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, an approximation of the information may be used.

Id. § 558A.3(1). The disclosure statement must be amended if information disclosed in the statement becomes inaccurate or misleading. *Id.* § 558A.3(2).

The disclosure form utilized by the Wandersees contained additional disclosures beyond those contained in the Real Estate Commission's sample disclosure statement. Specifically, it contained a disclosure for "area environmental concerns." The Gardners claim the Wandersees were required to disclose the hog confinement unit as an area environmental concern.

The Gardners' argument hinges on our supreme court's ruling in the case of *Worth County Friends of Agriculture v. Worth County*, 688 N.W.2d 257 (Iowa 2004). In that case, the court determined that Iowa Code section 331.304A preempted a county ordinance that regulated hog confinement units and that section 331.304A was constitutional. *Worth County*, 688 N.W.2d at 265. In its background facts, the court stated:

> While the impact of hog production on the Iowa economy is substantial, its recent growth has engendered many concerns over its impact on the environment, the health of its workers, and the quality of life of nearby residents and Iowans in general. Large confinements generate a staggering amount of animal waste, which gives rise to legitimate concerns about air quality and contamination of lakes and streams, as well as underground water.

Id. at 260. The case in no way finds as a matter of law that hog confinement units are environmental concerns that require disclosure pursuant to chapter 558A. We conclude the district court was not required to give the requested instruction as it was not an accurate statement of the law.

Furthermore, we cannot conclude the Gardners were prejudiced by the district court's refusal to give the requested instruction. There was evidence presented to the jury that the Wandersees did not believe the hog confinement was being built. Although they learned of the hog confinement in April 2003, their subsequent inquiries yielded no information that the neighbor had ever filed an application for the hog confinement unit. Marilyn Wandersee testified that when she called the courthouse to find out if the hog confinement unit was going forward, she was told that no hog confinement unit had been approved. In fact, Randy Cook, the neighbor building the hog confinement unit, testified that he did not receive written notice of the Iowa Department of Natural Resources's approval of his plan until September 5, 2003, over one month after the real estate transaction occurred. On this basis, the jury could have concluded the Wandersees did not have knowledge of any area environmental concerns to disclose, even if we are to assume the existence of a hog confinement unit is an area environmental concern. Furthermore, jury instructions number nine, eleven, and fourteen were all correct statements of the law and allowed the jury to consider the Gardners' claims.[1] *See Bossuyt v. Osage Farmers Nat. Bank*, 360

[1] These jury instructions read as follows:

INSTRUCTION NO. 9

FRAUDULENT NONDISCLOSURE - WANDERSEES

The plaintiffs must prove all of the following propositions against Defendants Lloyd and Marilyn Wandersee by clear, satisfactory, and convincing evidence:

1. Special circumstances existed which gave rise to a duty of disclosure between the plaintiffs and the defendants. You can find such special circumstances arise from the duty to provide a written real estate disclosure as explained in Instruction No. 14.

2. While such relationship existed, they were aware of the following facts:

a) that a neighboring farmer, Randy Cook, was seeking permission to establish a hog confinement operation on his property.

3. While such relationship existed, defendants concealed or failed to disclose the knowledge alleged to have been withheld.

4. The undisclosed information was material to the transaction.

5. The defendants knowingly failed to make the disclosure.

6. The defendants intended to deceive the plaintiffs by withholding such information.

7. The plaintiffs acted in reliance upon the defendants' failure to disclose and were justified in such reliance.

INSTRUCTION NO. 11

VIOLATION OF CHAPTER 558A – WANDERSEES

The plaintiffs must prove all of the following propositions against defendants Lloyd and Marilyn Wandersee by a preponderance of the evidence:

1. The Wandersees sold real estate to the plaintiffs.

2. The Wandersees provided a disclosure statement regarding the property to the plaintiffs.

3. The Wandersees:

a) Had actual knowledge of an inaccuracy in their disclosure statement, or

b) Failed to exercise ordinary care in obtaining information.

4. The inaccuracy was material to the sale of the property.

5. The Wandersees intended to deceive the plaintiffs by withholding or providing inaccurate information.

6. The plaintiffs acted in reliance on the Wandersees' disclosure statement and were justified in relying on the disclosure statement.

7. The inaccuracies or nondisclosure were the proximate cause of the plaintiffs' damages.

8. The amount of damage.

If the plaintiffs have failed to prove any of these propositions, the plaintiffs cannot recover damages against defendants Wandersees. If the plaintiffs have proved all of these propositions, the plaintiffs are entitled to recover damages in some amount.

INSTRUCTION NO. 14

Iowa law requires a seller of real estate to complete a disclosure form which informs the purchaser of the condition and important characteristics of the property and structures located on the property.

N.W.2d 769, 774 (Iowa 1985) ("A trial court may of course draft jury instructions in its own way if it fairly covers the issues.").

Because the requested jury instruction did not accurately state the law, and because the Gardners did not suffer prejudice from the district court's failure to give the requested instruction, we affirm.

AFFIRMED.

> Iowa law further requires a real estate agent to deliver to the purchaser the sellers' disclosure statement. The disclosure statement must be prepared in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, all that is required is that the person has acted in good faith.
>
> A seller is required to amend a disclosure statement, if information disclosed in the statement is or becomes inaccurate or misleading. However, the statement is not required to be amended by the seller if either of the following applies:
>
> 1. The information disclosed is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement; or
>
> 2. The information is based on information of a public agency. The information shall be deemed to be accurate and complete, unless the seller or the broker or salesperson has actual knowledge of an error, inaccuracy, or omission, or fails to exercise ordinary care in obtaining the information.