

**IN THE COURT OF APPEALS OF IOWA**

No. 9-386 / 08-1555  
Filed July 22, 2009

**BECKY LYNN FOX,**  
Plaintiff-Appellant,

**vs.**

**MELISSA SHEA CLARK,**  
**a/k/a MELISSA PETERSEN,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Pottawattamie County, Gordon  
Abel, Judge.

Becky Fox was granted discretionary review of a district court appeal  
decision that reversed a judgment in her favor and against the defendant in a  
small claims action. **REVERSED AND REMANDED.**

Jon Jacobmeier, Council Bluffs, for appellant.

Anthony Tauke, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

**VOGEL, J.**

Becky Fox was granted discretionary review of a district court appeal decision that reversed a judgment in her favor and against the defendant, Melissa Clark, in a small claims action. We reverse the district court appeal decision and remand for entry of judgment.

**I. Background Facts and Proceedings.**

In December 2006, Fox purchased a residential home from Clark. Prior to closing, and pursuant to statute, Clark completed and gave Fox a real estate disclosure statement. See Iowa Code § 558A.4 (2005). On that form, Clark indicated there was no “structural damage or physical problems such as: settling, flooding, drainage, or grading problems.” Fox had a property inspection completed; however, it was winter and the inspector did not inspect the yard or grading of the property. In the spring of 2007, Fox discovered that after it rained, water would accumulate in her backyard resulting in standing water.

On June 13, 2008, Fox filed a small claims action against Clark for failing to disclose the water drainage problem and seeking damages to correct the situation. In a written statement, Fox stated that her “backyard sits in water after any rainfall . . . . With the recent heavy rains I am already seeing water in my garage from the water in my backyard.” In a written response, Clark stated “we did get some standing water once in awhile after a heavy rain, but it would go away after a few hours. If we got a really bad rain, or if it had rained hard for multiple days, then it would take a little bit longer for the water to dissipate into the ground.”

A hearing was held, during which both Fox and Clark testified.<sup>1</sup> Fox introduced evidence that it would cost \$2955 to install catch basins and drain tile to remedy the drainage problem. On July 23, 2008, the small claims court found:

During the spring of 2007, Fox noticed that water would accumulate in her backyard after heavy rains, causing a “soggy yard” and standing water for days . . . .

At trial, [Clark] admitted standing water after heavy rains but did not consider it a problem. [Clark] seemed to think that the standing water and resulting soggy yard was more of a mere inconvenience at mowing time, than any real problem that needed to be addressed. In past years, by [Clark’s] own acknowledgement, standing water in the yard was not unusual during heavy rains. Surrounding neighbors all experienced similar water accumulation but the water would dissipate within a few days. The water was away from the house, did not get into the basement or garage and would only last a few days and evaporates.

A neighbor testified that she had a conversation with [Clark] (while she was living there) about the water in the yards and the need to find some way to resolve it.

. . . In this case, the characteristic of this property is that it has a drainage/grading issue, which results in standing water, lasting several days to a week.

After finding Clark should have disclosed standing water and the drainage issue to Fox, the small claims court entered judgment in favor of Fox and against Clark in the amount of \$2955 plus court costs of \$88.

Clark appealed to the district court. On September 9, 2008, the district court found:

The standing water in the backyard after a heavy rain was not considered to be a problem by [Clark]. From reviewing the pictures submitted as exhibits it appears the standing water was in the back part of the back yard of the residence and would only be there for a short period of time. It is not a condition causing such a problem for which a seller would reasonably and in good faith believe was of such nature or importance to have required that it be disclosed on the property disclosure form. . . . Based on these findings the Court

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<sup>1</sup> The hearing before the magistrate was not reported; the record on appeal consists of the magistrate’s handwritten notes and some exhibits.

concludes that the standing water in the back part of the back yard after heavy spring rains is not a material condition or important characteristic of the property, which [Clark] is required to disclose on the property disclosure form.

The district court reversed the small claims judgment. Fox sought discretionary review, which our supreme court granted.

## **II. Scope of Review.**

“On discretionary review of a small claims action, our standard of review depends on the nature of the case.” *Midwest Check Cashing, Inc. v. Richey*, 728 N.W.2d 396, 399 (Iowa 2007) (quoting *Hyde v. Anania*, 578 N.W.2d 647, 648 (Iowa 1998)). This is a law action and therefore our review is for correction of errors at law. *Id.*; *Hammes v. JCLB Props., LLC*, 764 N.W.2d 552, 555 (Iowa Ct. App. 2008).

## **III. Analysis.**

Iowa’s Real Estate Disclosure Act requires a person interested in transferring real estate to deliver a written disclosure statement to a prospective buyer. Iowa Code § 558A.2. The disclosure statement must “include information relating to the condition and important characteristics of the property and structures located on the property . . . as provided in rules . . . adopted by the real estate commission.” *Id.* § 558A.4(1); see, e.g., Iowa Admin. Code r. 193E-14.1(6) (setting forth sample disclosure statement).

A person who violates the Act’s disclosure requirement is ordinarily liable for the amount of actual damage the buyer suffers. That said, the Act states: “[t]he transferor . . . shall not be liable for [any] error, inaccuracy, or omission in information required in a disclosure statement, unless that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information.”

....

The plain and unambiguous language of the statute clearly indicates a seller may be liable for something less than a knowingly inaccurate disclosure, i.e., if the seller fails to exercise ordinary care in obtaining the information to be put on the disclosure form. The Act places a limited affirmative duty upon sellers insofar as they must exercise ordinary care in obtaining the information.

*Jensen v. Sattler*, 696 N.W.2d 582, 585-87 (Iowa 2005) (internal citations and quotations omitted); see also *Hammes*, 764 N.W.2d at 555-56 (stating that proof of fraud is not required for recovery under chapter 558A).

Fox argues that the drainage/grading problem is a material condition that should have been disclosed. The district court concluded that standing water was not uncommon in the wet spring of 2008 and the standing water only lasted a short time. However, the evidence demonstrated the problem was not solely due to the wet spring of 2008, but was a longstanding problem. Clark acknowledged that there had been standing water on occasion since she purchased the home in November 2001. Prior to the sale of the home, Clark and the owner of the neighboring property discussed the standing water problem and Clark stated that she needed to find a way to solve it. In the spring of 2007, the first spring after Fox purchased the property, she discovered the standing water problem and the problem continued after rainfalls throughout 2008. Additionally, the record indicated that the standing water would last from several days to a week after a rainfall and made it difficult to grow anything in that part of the backyard. We agree with Fox that this is a material condition that, under the statute, was required to have been disclosed.

Fox further argues Clark is liable because she had actual knowledge of the inaccuracy on the seller's disclosure statement and/or she failed to exercise

ordinary care in obtaining the information to complete the disclosure form. Clark testified that she knew of the drainage/grading issue in the backyard, but did not think it was a problem that needed to be disclosed. We note that the testimony indicated otherwise. Clark had previously stated to a neighbor that the standing water was a problem that needed to be fixed. The record reveals the neighbor's testimony was, "it's a problem every year and it lasts for weeks." We agree with the small claims court, the standard is not whether Clark believed the drainage/grading issue was a problem, but whether a drainage/grading issue was a "condition and important characteristic of the property" such that it be disclosed. See Iowa Code § 558A.4(1). On the seller's disclosure form, Clark indicated there was no problem with the drainage/grading of the property when she in fact had actual knowledge of the defect. Therefore, we reverse the district court and remand for entry of judgment as set forth in the magistrate's ruling.

**REVERSED AND REMANDED.**