

OHIO COURT OF APPEALS, NINTH JUDICIAL DISTRICT

Cadle v. Kehl

2018-Ohio-5266 (Ohio Ct. App. 2018) · No. C.A. No. 17CA011205 · Decided December 28, 2018

SUMMARY

The Ninth District Court of Appeals of Ohio reversed and remanded a judgment awarding Raymond and Nannie Cadle \$2,260 against Dwayne Kehl in a dispute concerning alleged misrepresentation of a residential property's roof condition. The court held that the evidence did not support a finding that Kehl knowingly or recklessly misrepresented the roof's condition with intent to mislead, and it declined to address the remaining assignments of error as moot.

CASE DETAILS

COURT	Ohio Court of Appeals, Ninth Judicial District
WRITING FOR THE COURT	Donna J. Carr; Teodosio, J.; Hensal, P.J.
JURISDICTION	Ohio
DECIDED	December 28, 2018
DOCKET	C.A. No. 17CA011205
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a small-claims judgment in favor of residential property buyers on a fraudulent-misrepresentation theory arising from the condition of a roof.
STANDARD OF REVIEW	Manifest-weight review requires the appellate court to weigh the evidence and reasonable inferences, consider witness credibility, and determine whether the factfinder clearly lost its way and created a manifest miscarriage of justice.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Dwayne P. Kehl v. Raymond Cadle, Nannie Cadle

TOPICS

- fraud
- real estate
- contracts
- standard of review
- appellate procedure

PRACTICE AREAS

- real estate
- fraud
- contracts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the municipal court's finding that Kehl fraudulently misrepresented the condition of the roof was against the manifest weight of the evidence.
2. Whether the remaining assignments of error concerning the 'As Is' clause, waiver or estoppel, failure to prove a legal theory, and damages should be addressed after reversal on the manifest-weight issue.

HOLDINGS

1. The judgment for the Cadles was against the manifest weight of the evidence because the Cadles failed to present evidence that Kehl knowingly or recklessly made a false statement about the roof with the intent to mislead them.
2. An 'As Is' clause does not bar a claim for fraudulent misrepresentation or concealment based on a seller's failure to disclose a known material defect on the residential property disclosure form.

KEY QUOTATIONS

“In order to prove fraudulent misrepresentation, a buyer must establish each of the following elements:” (¶ 15)

“The weight of the evidence in this case does not support the trial court’s conclusion that Kehl fraudulently misrepresented the condition of the roof.” (¶ 16)

“The judgment of the Oberlin Municipal Court is reversed and the cause remanded for further proceedings consistent with this decision.” (¶ 19)

FACTUAL BACKGROUND

Kehl purchased and renovated a house, performing substantial work on the roof, including installing plywood over portions of the roof and reshingling the entire roof. He later sold the house to Raymond and Nannie Cadle, who purchased it in 'As Is' condition and declined to obtain a home inspection. After a subsequent buyer's inspection revealed leaking and improper roof work, the Cadles sued, asserting that Kehl's notation of 'new' on the residential property disclosure form fraudulently misrepresented the roof's condition. The appellate court concluded that the evidence showed substantial but poorly performed work, not that Kehl knowingly or recklessly made a false statement with intent to mislead.

PROCEDURAL HISTORY

The Cadles purchased Kehl's house in 'As Is' condition and later sued in Oberlin Municipal Court after a prospective buyer's inspection revealed roof problems. Following a hearing, the municipal court found that Kehl misrepresented the roof's condition on the residential property disclosure form and awarded the Cadles \$2,260 plus interest. Kehl appealed, and the Ninth District sustained his manifest-weight assignment of error, reversed the judgment, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Oberlin Municipal Court for further proceedings consistent with the appellate decision.

CASES CITED

- Eastley v. Volkman, 132 Ohio St. 3d 328, 2012-Ohio-2179, ¶ 20
- Tewardson v. Simon, 141 Ohio App. 3d 103, 115 (9th Dist. 2001)
- Black v. Cosentino, 117 Ohio App. 3d 40, 44 (9th Dist. 1996)
- Layman v. Binns, 35 Ohio St. 3d 176, 178 (1988)
- Tipton v. Nuzum, 84 Ohio App. 3d 33, 39 (9th Dist. 1992)
- Arbogast v. Werley, 2010-Ohio-2249, ¶ 37 (Ohio Ct. App. 2010)
- Quintile v. Hartley, 2000 WL 372319, *1-3 (Ohio Ct. App. Apr. 12, 2000)
- Burr v. Stark Cty. Bd. of Commrs., 23 Ohio St. 3d 69 (1986), paragraph two of the syllabus
- Smith v. Cooper, 2005-Ohio-2979, ¶ 16 (Ohio Ct. App. 2005)

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