

COURT OF APPEALS OF KENTUCKY

Gary Gatchel v. Terry Opell and Nancy Opell

Gary Gatchel v. Terry Opell and Nancy Opell · No. 2024-CA-0882-MR · Decided January 9, 2026

SUMMARY

The Kentucky Court of Appeals affirmed a Trigg Circuit Court judgment dismissing Gary Gatchel’s claims against Terry and Nancy Opell arising from the sale of a residential lakeside property. Gatchel alleged fraudulent misrepresentation and omission concerning erosion, drainage, a wet cell septic system, roof leaks, wasps, and a boat dock. The court held that substantial evidence supported the trial court’s finding that the Opells lacked knowledge of actionable defects and had not intentionally concealed or misrepresented material conditions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Kentucky                                                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | A. Jones; Thompson, Chief Judge; Acree, Judge; A. Jones, Judge                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Kentucky Court of Appeals                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | January 9, 2026                                                                                                                                                                                                                                                                                                                                                                 |
| DOCKET                | 2024-CA-0882-MR                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Appeal from findings of fact, conclusions of law, and judgment after a bifurcated bench trial in favor of the sellers and dismissing the purchaser's claims with prejudice. The purchaser also appealed the denial of post-trial motions to amend the complaint.                                                                                                                |
| STANDARD OF REVIEW    | Under CR 52.01, factual findings after a bench trial are reviewed for clear error and will not be set aside if supported by substantial evidence, with due regard for the trial court's credibility determinations. Legal conclusions are reviewed de novo. Denial of a motion to amend is reviewed for abuse of discretion, including denial based on futility or limitations. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Gary Gatchel v. Terry Opell, Nancy Opell                                                                                                                                                                                                                                                                                                                                        |

TOPICS

fraud

real estate

motion to amend

statute of limitations

appellate procedure

## PRACTICE AREAS

real estate law

fraud and misrepresentation

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court applied the correct Kentucky legal standard to Gatchel's fraudulent misrepresentation and fraudulent omission claims arising from the sale of real property.
2. Whether substantial evidence supported the trial court's findings that the Opells did not knowingly misrepresent or conceal material defects involving erosion, drainage, the wet-cell septic system, wasps, the roof, or the boat dock.
3. Whether the trial court properly denied Gatchel's post-trial motion to amend the complaint to add fraud claims concerning the wasps, roof, and boat dock.
4. Whether the trial court properly denied amendment to add a claim under KRS 446.070 based on alleged violations of KRS 224.70-110 as untimely and insufficiently developed.

## HOLDINGS

1. Kentucky law does not impose strict liability on a seller for conditions later characterized as defects. A purchaser seeking recovery for fraudulent misrepresentation or omission must establish the required elements, including the seller's actual or constructive knowledge of the falsity or defect and conduct amounting to intentional misrepresentation, concealment, or omission; silence does not establish fraud when the condition is open, obvious, or discoverable through ordinary diligence.
2. The trial court's findings that the Opells did not knowingly misrepresent or conceal material conditions involving erosion, drainage, the wet-cell septic system, wasps, the roof, or the boat dock were supported by substantial evidence and were not clearly erroneous.
3. The trial court acted within its discretion in denying Gatchel's post-trial motion to amend to add fraud claims concerning wasps, the roof, and the boat dock because the proposed claims were futile on the merits.
4. The trial court properly denied amendment to add the proposed statutory claim because an action under KRS 446.070 for violation of a statutory right is subject to the five-year limitations period in KRS 413.120(2), and the proposed claim was untimely; the appellate argument was also undeveloped.

## KEY QUOTATIONS

*“Kentucky generally adheres to the doctrine of caveat emptor in real estate transactions when the purchaser has the opportunity to observe the property’s condition, and no representations are made.” (at 15)*

*“Nothing in the authorities Gatchel cites removes the scienter requirement or transforms Kentucky into a strict liability jurisdiction for real estate nondisclosure.” (at 16)*

*“The record does not establish that the Opells knowingly misrepresented or concealed any material condition of the property, nor does it demonstrate that they failed to disclose a defect they were legally obligated to reveal.” (at 26)*

## FACTUAL BACKGROUND

The Opells sold Gatchel residential lakeside property in Cadiz, Kentucky, in 2007 after completing a statutory seller's disclosure form. The property included steep terrain, two manufactured homes, and a wet-cell septic system. After later becoming the property's sole owner, Gatchel identified alleged problems involving erosion, drainage, the septic system, wasps, the roof, and a boat dock, and claimed that the Opells had misrepresented or concealed those conditions. The trial court credited evidence that the Opells and the property's full-time occupants had not experienced or reported material problems and that some conditions were open and observable.

## PROCEDURAL HISTORY

Gatchel filed an action in 2012 alleging fraud, misrepresentation, and failure to disclose material property defects arising from his 2007 purchase of residential property from the Opells. After extensive discovery and motion practice, the Trigg Circuit Court conducted a bifurcated bench trial on liability in October and December 2023. On April 22, 2024, the court found that Gatchel failed to prove fraudulent misrepresentation or fraudulent omission by clear and convincing evidence, entered judgment for the Opells, dismissed the claims with prejudice, and denied proposed amendments as futile and, as to the statutory claim, untimely. The Kentucky Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Fannon v. Carden, 240 S.W.2d 101 (Ky. 1951)
- Waldrige v. Homeservices of Kentucky, Inc., 384 S.W.3d 165 (Ky. App. 2011)
- Bryant v. Troutman, 287 S.W.2d 918 (Ky. 1956)
- United Parcel Service Co. v. Rickert, 996 S.W.2d 464 (Ky. 1999)
- Vinson v. Sorrell, 136 S.W.3d 465 (Ky. 2004)
- Moore v. Asente, 110 S.W.3d 336 (Ky. 2003)
- Goshorn v. Wilson, 372 S.W.3d 436 (Ky. App. 2012)
- Gosney v. Glenn, 163 S.W.3d 894 (Ky. App. 2005)
- Commonwealth v. Deloney, 20 S.W.3d 471 (Ky. 2000)
- Sawyers v. Beller, 384 S.W.3d 107 (Ky. 2012)
- Barber v. Bradley, 505 S.W.3d 749 (Ky. 2016)
- Bank One, Kentucky, N.A. v. Murphy, 52 S.W.3d 540 (Ky. 2001)
- Lambert v. Franklin Real Estate Co., 37 S.W.3d 770 (Ky. App. 2000)

- *Insight Kentucky Partners II, L.P. v. Preferred Automotive Services, Inc.*, 514 S.W.3d 537 (Ky. App. 2016)
- *Hickey v. General Electric Company*, 539 S.W.3d 19 (Ky. 2018)
- *Jones by and through Jones v. IC Bus, LLC*, 626 S.W.3d 661 (Ky. App. 2020)
- *Kaze v. Compton*, 283 S.W.2d 204 (Ky. 1955)
- *Grant v. Wrona*, 662 S.W.2d 227 (Ky. App. 1983)

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