

STATE OF MICHIGAN
COURT OF APPEALS

RONALD PIOTROWSKI and VIRGINIA N.
PIOTROWSKI,

UNPUBLISHED
March 8, 2005

Plaintiffs-Appellants,

v

No. 250898
Oakland Circuit Court
LC No. 2002-044991-CP

FOREST RIVER, INC.,

Defendant/Cross-Defendant-
Appellee,

and

GENERAL RV CENTER, INC.,

Defendant/Cross-Plaintiff-Appellee,

and

GENERAL MOTORS CORPORATION,

Defendant/Cross-Defendant.

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition to defendants Forest River, Inc. (“Forest River”), and General RV Center, Inc. (“General RV”), under MCR 2.116(C)(10). We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This action arises from plaintiffs’ purchase of an allegedly defective recreational vehicle (“RV”) from defendant General RV. The RV was manufactured by defendant Forest River, using a chassis that was manufactured by defendant General Motors Corporation (“GM”).

Plaintiffs' complaint alleged numerous theories of liability and relief against each of the defendants. After all claims against GM were dismissed,¹ defendants General RV and Forest River moved for summary disposition of all claims against them. At the hearing on defendants' motion, plaintiffs stipulated to dismiss all claims except those alleging breach of express warranty against Forest River (part of count I), violation of the federal Magnuson-Moss Warranty Act, 15 USC 2301 *et seq.*, against Forest River (count II), revocation against General RV (count IV), and violation of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, against both Forest River and General RV (count VII). The trial court determined that there was no genuine issue of material fact concerning the existence of a defect to the RV at the time it left the possession and control of defendants Forest River and General RV and, therefore, no basis for any of plaintiffs' remaining claims.

On appeal, plaintiffs argue that the trial court erred in finding that there was no question of material fact concerning the existence of a defect in the RV. We agree.

A trial court's grant of summary disposition is reviewed *de novo*. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). While defendants Forest River and General RV assert that their motion was granted under MCR 2.116(C)(8), it is clear that the court considered the documentary evidence submitted by the parties and found no question of material fact. Thus, the motion was decided under MCR 2.116(C)(10). When reviewing a motion under MCR 2.116(C)(10), the court must examine the documentary evidence presented by the parties and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). A question of fact exists when reasonable minds could differ as to the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992); see also *Quinto, supra* at 367, 371-372. Only "the substantively admissible evidence actually proffered" may be considered. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

Plaintiffs principally relied on the deposition testimony of Vincent Canzoneri to establish a defect with the various fuel and brake lines. The trial court found that Canzoneri was not qualified to provide expert testimony concerning the existence of a manufacturing defect, and further, that even if he was competent to testify as an expert, his testimony would not support a finding that the RV was defective in any way when it left the possession and control of the manufacturer. We disagree in both respects.

MRE 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testing is the product

¹ The dismissed claims against GM are not at issue in this appeal.

of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In this case, it is apparent that technical or other specialized knowledge would assist the trier of fact in understanding and determining whether the RV's various fuel and brake lines were mechanically defective. Indeed, this was not a basis of contention below. With regard to whether Canzoneri was qualified to offer expert testimony on this subject, MRE 702 allows a witness to be qualified by knowledge, skill, experience, training, or education. The evidence established that Canzoneri was an "ASE," GM, and state certified master mechanic, that he had worked for Cauley's Chevrolet for nineteen years performing GM warranty work, that he was familiar with RVs and the GM chassis used by RV manufacturers, and that he had seen other GM frames that had been lengthened. Canzoneri's testimony and background establishes that he was qualified by training and experience to offer an opinion concerning whether the various fuel and brake lines on the chassis manufactured by GM were mechanically sound. Further, in light of Canzoneri's testimony that he was familiar with the GM chassis used by RV manufacturers, that he had personally inspected plaintiffs' RV, and had observed other RVs that had been lengthened, there is no basis to conclude that his testimony was not based on sufficient facts or data, was not the product of reliable principles and methods, or that he failed to apply the principles and methods reliably to the facts of the case. Therefore, the trial court erred to the extent that it determined that Canzoneri's testimony should not be considered because he was not qualified to offer an expert opinion concerning whether the various fuel and brake lines were mechanically sound.

We further conclude that the trial court erred in determining that, even if Canzoneri's testimony is considered, it failed to support a finding that the RV was defective in any way when it left the possession and control of the manufacturer. Canzoneri testified that it is not uncommon for RV manufacturers to lengthen the frame, and that he could determine from the cuts and welds on the frame (or chassis) of plaintiffs' RV that the original GM frame was lengthened to accommodate the size of the RV body that was placed on it. Service consultant Michael Kuss, who also examined the RV, also testified that he could see that the drive shaft had been lengthened. Canzoneri testified that the fuel line, the fuel return line, the brake line, and all other lines that were originally attached to the chassis by GM should have been cut and additional length spliced in to accommodate the longer frame, keeping the lines securely attached to the frame. On plaintiffs' RV, however, it was apparent that the original GM lines were uncut and untouched, that they had been detached from the frame, and that some of the GM pre-formed bends had been straightened to accommodate the longer frame. Because the lines were detached from the frame, they dangled and moved as the RV was driven, causing added stress and wear, which could eventually lead to leaks. Kuss explained that the lines would not have necessarily leaked immediately, and both Kuss and Canzoneri noted that the brake line and the fuel return line, for example, had not yet failed.

In contrast to Canzoneri's testimony, defendants presented the testimony of Chuck Billington and Chris Dietrich, who opined that someone had damaged the fuel line while installing a generator on the RV, causing the fuel leak. Plaintiffs denied that any such work was performed on the RV after they purchased it. Neither Dietrich nor Billington addressed the lengthening issue identified by Canzoneri.

Viewed in a light most favorable to plaintiffs, *Quinto, supra*, Canzoneri's testimony established a genuine issue of material fact whether the various fuel and brake lines were defective because they were not extended when the frame was lengthened and because they were left dangling rather than securely attached to the frame. While it is undisputed that the fuel line was eventually repaired at no cost to plaintiffs, there was no evidence that the other lines were repaired.

Therefore, we reverse the trial court's decision to the extent that it dismissed plaintiffs' claims for breach of express warranty against Forest River (count I), violation of the Magnuson-Moss Warranty Act against Forest River (count II), revocation against General RV (count IV), and violation of the Michigan Consumer Protection Act against General RV and Forest River (count VII). We affirm the trial court's decision in all other respects.²

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio

² We note that, on appeal, defendants allege that, regardless of the testimony by Canzoneri, the elements of the claims brought by plaintiffs cannot be established. However, the trial court immediately excluded the testimony of Canzoneri and did not consider whether his testimony would support the elements of the claims raised by plaintiffs. Therefore, we do not address whether summary disposition of the individual elements was proper because the trial court did not decide it. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).