

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 21, 2001 Session

RICHARD S. BODIFORD
v.
JAMES T. NABORS AND CHRISTINA K. NABORS

An Appeal from the Chancery Court for McNairy County
No. 7381 Martha B. Brasfield, Chancellor

No. W2000-01548-COA-R3-CV - Filed January 15, 2002

This is a contract case. The plaintiff bought from the defendants a car advertised as a completely restored Mustang convertible. After the plaintiff purchased the car, he learned that it was not originally a convertible, but had been converted to a convertible from a coupe. The sellers refused to rescind the contract and the purchaser filed this lawsuit. The trial court found that the defendant sellers had purposefully deceived the plaintiff, ordered rescission of the contract, and awarded the plaintiff damages for amounts spent on insurance, registration, and taxes. The sellers now appeal. We affirm, finding that the sellers had a duty to disclose the information and that the award of damages for other amounts spent on the car is appropriate.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed.

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S. and ALAN E. HIGHERS, J., joined.

Kevin A. Snider, Germantown, Tennessee, for the appellants James T. Nabors and Christina K. Nabors.

Terry Abernathy, Selmer, Tennessee, for the appellee Richard S. Bodiford.

OPINION

This is a contract case. The plaintiff Richard S. Bodiford (“Bodiford”) purchased from the defendants Jim T. Nabors and Christina K. Nabors (collectively “the Nabors”) a car that had been advertised in an automobile trader magazine as a “1966 Ford Mustang Conv. . . . completely restored.” Prior to purchase, Bodiford visited the Nabors’ home to examine and drive the car. At that time, Bodiford asked Mr. Nabors about the type of work that had been done on the car. Bodiford asked Mr. Nabors whether any body work had been done, and Mr. Nabors responded “only the rear quarter panel.” The Nabors permitted Bodiford to take the car for several days, in order for

Bodiford to have his own mechanic examine the car's engine and body. After having the car inspected by a mechanic and body shop, Bodiford told the Nabors that he wanted to buy the car. The parties agreed upon a purchase price of \$12,000.

Shortly after purchasing the car, Bodiford learned that the car had not originally been a convertible, but was instead a coupe that had been converted into a convertible by cutting off its top. Bodiford then sent a letter to the Nabors requesting that the sale contract be rescinded and that they return to Bodiford the purchase price plus interest, tax, and fees. The Nabors responded that they were not interested in buying the car back from Bodiford.

Subsequently, Bodiford filed suit against the Nabors, seeking relief under the Tennessee Consumer Protection Act ("TCPA"), Tennessee Code Annotated § 47-18-101, et seq., or, in the alternative, rescission of the contract. The complaint alleged that the Nabors had willfully, knowingly, and intentionally used and employed an unfair or deceptive act or practice in the sale of the car and that the Nabors had "willfully, knowingly, and intentionally failed to disclose" the fact that the car had been converted from a coupe to a convertible.

At the time of trial, Bodiford had put approximately 1,000 miles on the car. Bodiford testified that, as soon as he learned that the car had not originally been a convertible, he parked the car in a garage and, with the exception of a broken zipper on the convertible's back window and the additional miles, the car was in the same condition as when he bought it. Mr. Nabors admitted that he did not tell Bodiford that the car had at one time been a coupe. Mr. Nabors acknowledged that the documents he gave to Bodiford detailing the alterations made to the car included no information about the conversion. Mr. Nabors said that the fact that the car had been converted might have been detectable to someone who knew a lot about Mustangs.

The trial court found that Bodiford was not entitled to relief under the TCPA because the transaction was a single transaction and the Nabors were not in the business of selling cars. The trial court found that the Nabors had purposefully and willfully deceived Bodiford in failing to inform him about the car's conversion from a coupe. The trial court held that Bodiford was entitled to rescission of the contract of sale because of the Nabors' "deceptive or fraudulent act," and ordered the Nabors to repay Bodiford the \$12,000 purchase price. In addition, the trial court awarded Bodiford damages in the amount of \$2276.48, representing the cost of insurance on the car, the cost of the vehicle registration, sales tax on the car, and interest on the judgment. From this order, the Nabors now appeal.

On appeal, the Nabors argue that the trial court erred in ordering rescission of the contract because the only cause of action Bodiford properly pled in his complaint was that the Nabors had violated the TCPA. Therefore, the trial court's finding that Bodiford was not entitled to recover under the Act left no cause of action under which the trial court could award rescission. In the alternative, the Nabors argue that, even if Bodiford had properly pled that the Nabors' failure to inform him that the car had been converted was fraud, the trial court erred in finding that the Nabors had a duty to disclose that fact. The Nabors contend that the information was readily discoverable and Bodiford had ample time and reasonable means to discover the information. The Nabors also

argue that the trial court erred in awarding Bodiford additional damages above rescission, and that the trial court also erred in not setting off against the damage award the extra miles Bodiford had placed on the car.

Since this case was tried by the trial court sitting without a jury, we review the trial court's factual findings *de novo* accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); T.R.A.P. 13(d). The trial court's legal conclusions are reviewed *de novo* with no presumption of correctness. *Campbell*, 919 S.W.2d at 35.

The Nabors first argue that the trial court erred in granting rescission of the contract because Bodiford failed to properly plead fraud. However, the complaint specifically pleads deception and seeks rescission of the contract. Consequently, we find this argument without merit.

The Nabors next argue that the trial court erred in ordering rescission of the contract based on their failure to disclose the fact that the car had been converted. A seller has a duty to give adequate answers to a buyer's questions concerning the product's condition. *Patton v. McHone*, 822 S.W.2d 608, 615 (Tenn. Ct. App. 1991). Although a seller does not have a duty to disclose "inconsequential information or conditions" discoverable upon ordinary examination, a seller must disclose "basic, material information about the product if [the seller] knows that the buyer is about to act without knowledge of the information and is without reasonable means to acquire the information." *Id.* at 616. The fact that the car was not an originally a convertible, but was instead a converted coupe, is clearly material information about the car's condition which was not open and obvious. When Bodiford inquired about the alterations made to the car, the Nabors only partially responded, giving information on the alterations made to the interior and rear quarter panel of the car. Moreover, by Mr. Nabors' own testimony, the conversion was "clean" and might be detectable by someone who knew a lot about Mustangs. Under these circumstances, we cannot conclude that the trial court erred in finding that the Nabors had a duty to disclose the fact to Bodiford and in rescinding the contract based on their failure to disclose. Since Bodiford stopped driving the car once he learned the information not disclosed by the Nabors, we also cannot conclude that the trial court erred by not setting off against the damage award the value of the 1000 miles driven by Bodiford. We also find that the trial court properly awarded Bodiford the expenses reasonably incurred in the receipt and care of the car. *See id.* at 619.

The decision of the trial court is affirmed. Costs are taxed to the Appellants James T. Nabors and Christina K. Nabors and their surety, for which execution may issue if necessary.

HOLLY K. LILLARD, JUDGE