IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

FILED

September 25, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

DAVID COLEMAN AND PAULENE A. COLEMAN,	)	
Plaintiffs/Appellees,	)	Shelby Law No. 38887-7 T.D.
vs.	)	
PRYOR OLDSMOBILE/GMC,	)	Appeal No. 02A01-9503-CV-00066
Defendant/Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE

THE HONORABLE ROBERT A. LANIER, JUDGE

For the Plaintiffs/Appellees:	For the Defendant/Appellant:
William D. Massey Price Harris Memphis, Tennessee	Warren D. McWhirter Memphis, Tennessee

AFFIRMED

HOLLY KIRBY LILLARD, J.

CONCUR:

ALAN E. HIGHERS, J.

HEWITT P. TOMLIN, JR., SR. J.

OPINION

This is a case involving the Tennessee Consumer Protection Act. David and Paulene Coleman claim that Pryor Oldsmobile/GMC violated the Act by not informing them that the new demonstrator car it sold them had received damage to the exterior paint and had been repainted. The trial court found for the Colemans. We affirm.

In May 1990, Appellees David and Paulene Coleman (the Colemans) went to Appellant Pryor Oldsmobile/GMC (Pryor) to buy a new car. The Colemans told the Pryor salesman, Willie Smith (Smith), that they wanted a new car. After showing the Colemans an array of new cars, none of which interested them, Smith directed the Colemans to a 1989 demonstrator model with 5,987 miles on it. The Colemans inspected this vehicle twice, both times at night, and purchased it for $18,794. They picked up the car on a rainy day.

After taking the car home and observing it in better lighting, the Colemans discovered that the car's paint contained imperfections on the trunk and right rear fender and door. When Pryor refused to remedy the imperfections, the Colemans filed suit against Pryor, alleging rescission of contract, breach of both express and implied warranties, and violation of the Tennessee Consumer Protection Act.

At trial, records established that Pryor, for undisclosed reasons, had done $225 worth of paint work on the vehicle in order to "refresh" it sometime prior to its sale to the Colemans. The Colemans presented proof that it would cost $1,484.25 to restore the car to "like new" condition. The Colemans withdrew their claim for rescission of the contract, and the trial court ruled against them on their breach of warranty claims. The trial court, however, found that Pryor violated the Tennessee Consumer Protection Act, specifically Tenn. Code Ann. § 47-18-104(b)(6), when it did not reveal to the Colemans that paint repair work had been done on the vehicle. The court also found that Pryor's violation was "knowing" because Pryor knew the vehicle had been damaged and repainted and failed to disclose this fact to the Colemans. Consequently, the court doubled the damage award. Even though treble damages could have been awarded under the statute, Tenn. Code Ann. § 47-18-109(a)(3)-(4) (1995), the trial court only doubled the award because the Colemans had been "singularly careless about examining the car or the documents which they signed before taking the car away." Finally, the court awarded the Colemans $500 in

attorney's fees. Pryor now appeals the trial court's finding that it violated the Tennessee Consumer Protection Act.

Since this case was tried by the court sitting without a jury, we review the case ***de novo*** upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. Tenn. R. App. P. 13(d).

The Tennessee Consumer Protection Act provides that it is unlawful and a violation of the Act to represent "that goods are original or new if they are ***deteriorated, altered to the point of decreasing the value, reconditioned***, reclaimed, used or secondhand." Tenn. Code Ann. § 47-18-104(b)(6) (1995) (emphasis added). "New passenger car" is defined elsewhere as "any passenger car which has never been the subject of a sale at retail to the general public." Tenn. Code Ann. § 55-5-106(e)(5) (1993). This definition is applicable under the Consumer Protection Act: "For the purposes of § 47-18-104(b)(6), any passenger motor vehicle which meets the requirements of the definition for a new passenger car in § 55-5-106(e)(5) shall be construed to be new." Tenn. Code Ann. § 47-18-119 (1995). It is well established that the Tennessee Consumer Protection Act should be liberally construed in order to protect consumers. ***Morris v. Mack's Used Cars***, 824 S.W.2d 538, 540 (Tenn. 1992) (citing ***Haverlah v. Memphis Aviation, Inc.***, 674 S.W.2d 297, 305 (Tenn. App. 1984)).

Pryor argues that it had no duty to disclose to the Colemans that the vehicle's paint had been damaged and that the paint job had been "refreshed," citing ***Patton v. McHone***, 822 S.W.2d 608 (Tenn. App. 1991). In ***Patton***, a consumer bought a used car which had extensive latent damages due to an earlier accident. ***Id.*** at 611-12. In discussing the duty a used car dealer owes its customer to inform him of defects in a car, this court stated:

> A used car dealer's duty to disclose information concerning a car's condition is tempered by the buyer's corresponding responsibility to inspect the car before purchasing it. Sellers need not disclose inconsequential information or conditions that would be discovered by anyone examining the car. A dealer need only disclose the defects or conditions that it has no reason to believe the buyer will discover.

Id. at 616. Pryor contends that the defective paint was clearly visible upon inspection and should have been discovered by the Colemans. Thus, under the holding in ***Patton***, Pryor maintains that it had no duty to disclose the fact that the car had been damaged and then partially repainted.

It is important to note that ***Patton*** deals with the sale of a ***used*** car. Pryor argues that it made no representation to the Colemans that the car was new; it is undisputed that the vehicle had nearly 6,000 miles on it when it was purchased. The Colemans respond that they thought they were purchasing a new car because it had not previously been titled. Under the Tennessee Consumer Protection Act, a vehicle is deemed new if it has not previously "been the subject of a sale at retail to the general public." Tenn. Code Ann. § 55-5-106(e)(5) (1993); Tenn. Code Ann. § 47-18-119 (1995). Despite the fact that the car had nearly 6,000 miles on it and was stated to be a "demonstrator," we are bound by the statutory definition of a new car. ***See Storey v. Bradford Furniture Co.***, 910 S.W.2d 857, 859 (Tenn. 1995); ***Kendrick v. Kendrick***, 902 S.W.2d 918, 923 (Tenn. App. 1994). In prior cases, demonstrator vehicles have been treated as new cars in suits under the Consumer Protection Act. ***Seaton v. Lawson Chevrolet-Mazda, Inc.***, 821 S.W.2d 137 (Tenn. 1991); ***Seaton v. Lawson Chevrolet-Mazda, Inc.***, No. CA 144, 1990 WL 130810 (Tenn. App. Sept. 13, 1990), ***rev'd on other grounds***, 821 S.W.2d 137 (Tenn. 1991); ***Leake v. Airport Toyota of Memphis, Inc.***, No. 02A01-9208-CV-0023, 1993 WL 360443 (Tenn. App. Sept. 14, 1993).

Paty v. Herb Adcox Chevrolet Co., 756 S.W.2d 697 (Tenn. App. 1988), is instructive in this case. In ***Paty***, the plaintiff purchased a "new" demonstrator car with 3,200 miles on it. ***Id.*** at 698. The car had previously been damaged in a wreck and repaired, and the dealer did not disclose this fact to the plaintiff. ***Id.*** Upon discovering the prior damage and repair, the plaintiff sued under the Tennessee Consumer Protection Act and won a jury verdict. ***Id.*** On appeal, this Court found that it was deceptive and a violation of the Act for the defendant to sell a previously wrecked and repaired car as new without informing the purchaser. ***Id.*** at 699.

Pryor seeks to distinguish ***Paty*** by arguing that the car in that case had ***internal*** damage, while the car the Colemans bought had a defect which was clearly visible. In ***Paty***, however, there is no indication whether the damage was visible upon inspection or how the plaintiff learned of it. In this case, the trial court found that the defective paint "was visible on a careful inspection, but the plaintiffs saw the car in dim light" prior to purchase and "the defect was not easily visible at that time."

The trial court found that Pryor's failure to tell the Colemans about the repairs to the vehicle violated Tenn. Code Ann. § 47-18-104(b)(6):

> This was a violation of § 47-18-104(6) [sic] of the Tennessee Consumer Protection Act which forbids the representation that goods are original or new if they are deteriorated, altered to the point of decreasing the value, or reconditioned. This car fell in all of those categories . . . .

We agree with the decision of the trial court.

Affirmed. Costs on appeal are assessed against Appellant, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, J.

CONCUR:

ALAN E. HIGHERS, J.

HEWITT P. TOMLIN, JR., SR. J.