03/22/94 WALKABOUT v. TRENCHERS PLUS

1994 | Cited 0 times | Court of Appeals of Minnesota | March 22, 1994

NORTON, Judge

Trenchers Plus, Inc., appeals from a judgment entered for respondent, Walkabout, Inc. Trenchers contends undisputed testimony established that the trenching equipment it sold to Walkabout was suitable in the ordinary course of business for installing sprinkler systems. Therefore, Trenchers argues the evidence did not support the trial court's findings and conclusions that Trenchers breached express and implied warranties of quality and/or fitness for equipment sold to Walkabout's primary shareholder, even if it knew he had no previous experience or knowledge of trenching equipment. We affirm.

FACTS

Appellant, Trenchers Plus, Inc., sells and services equipment used in the digging and laying of underground piping and cable. Respondent, Walkabout, Inc., was formed by Bruce Kleckner to install residential lawn sprinklers. Kleckner purchased a previously-owned Case Mini-Sneaker Model B Cable Plow (Mini-Sneaker) from Trenchers to use in his new business.

During his negotiations for purchase of the Mini-Sneaker, Kleckner explained to Brian Folkman, a co-owner of Trenchers, that he was just starting his business, that he knew nothing about what equipment he needed to install residential sprinklers, and that Walkabout was essentially a part-time venture with his nine-year-old son. Folkman encouraged Kleckner to purchase the used Mini-Sneaker and told him it would serve all his needs.

On Kleckner's first installation job, the drive chain on the Mini-Sneaker broke and various gears were stripped, rendering it inoperable. The Mini-Sneaker was removed to Trenchers' shop for repairs; Trenchers loaned Kleckner a Maxi-Sneaker to finish the installation.

Kleckner noted that, unlike the Mini-Sneaker, the replacement machine had dual tires, was quite stable, and was able to make turns at an angle on a hill. Kleckner talked to Trenchers about his concerns that the Mini-Sneaker was unstable and tippy, and was told he could modify the Mini-Sneaker to make it more stable at a cost of approximately $1000.

Kleckner performed three more sprinkler installations using the Mini-Sneaker. The first two jobs were on relatively flat terrain and were completed uneventfully. On the last job, however, while attempting to pull underground cable on a hillside, the Mini-Sneaker became unstable and began to

tip over; it was necessary for both Kleckner and the customer to stand atop a platform of the Mini-Sneaker to counterbalance its tendency to roll over.

Kleckner immediately returned the Mini-Sneaker to Trenchers, advised Folkman that it did not perform as promised and demanded the return of his purchase amount, or that amount less $1200 for his use of the unit. The trial court found that this rejection, approximately one month after purchase of the Mini-Sneaker, was within a reasonable time and that Kleckner had operated the unit for approximately fifteen (15) hours during that time. Folkman refused Kleckner's demands and instead offered to sell the Mini-Sneaker for him or to repurchase the unit for $5000, approximately fifty (50) percent of its purchase price.

Walkabout brought this action to recover the cost of the Mini-Sneaker based upon breach of express and implied warranties. The trial court ruled in Walkabout's favor after a court trial, both parties having waived their right to a jury trial.

DECISION

Trenchers complains the trial court's judgment is not supported by the evidence. On appeal, this court must view the evidence in the light most favorable to the prevailing party and may not set aside the trial court's findings unless clearly erroneous. Schalow v. Mason, 370 N.W.2d 475, 476 (Minn. App. 1985), pet. for rev. denied (Minn. Sept. 13, 1985). We give due regard to the opportunity of the trial court to judge the credibility of witnesses. Minn. R. Civ. P. 52.01.

1. Express Warranty.

Citing Minn. Stat. § 336.2-313 (1992) in its memorandum, the trial court concluded that Trenchers had breached express warranties of quality and fitness for the use of the Mini-Sneaker in Walkabout's purpose of installing residential lawn sprinkler systems. Minn. Stat. § 336.2-313, entitled "Express Warranties by Affirmation, Promise, Description, Sample," states in part:

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

When determining what representations constitute an express warranty, Minnesota courts have held:

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No particular words are required to constitute an express warranty, and the representations made must be interpreted as an ordinary person would understand their meaning, with any doubts resolved in favor of the user.

Crothers by Crothers v. Cohen, 384 N.W.2d 562, 564 (Minn. App. 1986) (injured buyer won suit against a used car dealer for breach of express warranty) (quoting McCormack v. Hankscraft Co., 278 Minn. 322, 336, 154 N.W.2d 488, 498 (1967)), pet. for rev. denied (Minn. June 13, 1986).

Kleckner presented uncontroverted testimony regarding his conversation with Trenchers when negotiating the purchase of the Mini-Sneaker; Trenchers failed to provide testimony of Brian Folkman. Instead, Trenchers offered testimony regarding the ordinary purpose and use of the Mini-Sneaker unit in irrigation businesses. The issue here is not merchantability, for which evidence of fitness for the "ordinary purposes for which such goods are used" would be relevant. See Minn. Stat. § 336.2-314 (1992). Instead, the issue here is fitness for Walkabout's particular purpose, a purpose the trial court found was explained to Trenchers during the purchase negotiations and for which Trenchers warranted the equipment's use.

The trial court made extensive findings regarding negotiations between Kleckner and Brian Folkman for the sale of the Mini-Sneaker. The court noted Kleckner's complete lack of prior experience in the trenching business and his plan to install residential lawn sprinklers with only the assistance of his nine-year-old son, both facts which the court found Kleckner had explained to Folkman. The trial court found that Trenchers "advertised as underground equipment specialists," a fact which is supported, among other things, by Kleckner's testimony that Folkman represented to him that Trenchers handled 30-60% of the market for irrigation machinery. The trial court found Folkman knew Kleckner intended to do his work on both level and hilly terrain, a fact readily inferred from the location of Trenchers' business and Kleckner's residence, and supported by evidence in the record.

The trial court found that Folkman, on behalf of Trenchers, made express warranties to Kleckner of the quality of the Mini-Sneaker unit which had been rebuilt and refurbished by Trenchers; Folkman warranted that this unit would serve Kleckner's purpose of installing residential lawn sprinkler systems on level and hilly terrain with the assistance of his nine-year-old son. The trial court noted in its analysis that the gear system of the Mini-Sneaker malfunctioned on its first use and that Kleckner later found the unit to be unstable, dangerous and unsafe for his use. The trial court found that the Mini-Sneaker was defective for the use to which Kleckner had intended it, citing Farr v. Armstrong Rubber Co., 288 Minn. 83, 89, 179 N.W.2d 64, 69 (1970) ("defect" is "any condition not contemplated by the user which makes the product unreasonably dangerous to him").

Trenchers argues the trial court erred in finding the Mini-Sneaker defective because three witnesses testified that the unit is safe and fit for use in the ordinary course of residential irrigation businesses. These three witnesses are dissimilar to Kleckner in that they were professionals who had been in the residential irrigation business for years, whereas Kleckner had no previous experience in the

irrigation business or with irrigation equipment. Further, only two of Trenchers' witnesses had personally used a Mini-Sneaker unit similar to Walkabout's unit and none performed residential irrigation work with only the use of a Mini-Sneaker. Leo Poole testified that he had been in the irrigation business for twenty years and that he hand-digs trenches on occasion because of his concern of the Mini-Sneaker's ability to operate on certain terrain. He testified:

If I'm pulling the pipe across a large, steep embankment, I don't do it. If I'm pulling down it looks a little precarious that is, if I'm pulling down the bank, I normally back the machine up with the blade as low as possible to the ground to create a lower center of gravity. And I usually pull down a hill. And pull up a hill but I wouldn't pull across a steep embankment.

This testimony supports, rather than undermines, the trial court's finding that the Mini-Sneaker was unstable and unsuitable for Walkabout's purpose. The testimony regarding the ordinary purpose and use of the Mini-Sneaker was of little relevance here; we find no error in the trial court's failure to refer to that testimony.

Upon review of the entire evidence, we are not convinced that the trial court made a mistake in finding that Trenchers breached its express warranty to Walkabout; we will not, therefore, disturb the trial court's findings. See Hollom v. Carey, 343 N.W.2d 701, 704 (Minn. App. 1984) (citing City of Minnetonka v. Carlson, 298 N.W.2d 763, 766 (Minn. 1980)).

2. Implied Warranty.

At the outset, we note that Trenchers' analysis of Minn. Stat. § 336.2-314 regarding implied warranty of merchantability and fitness for the ordinary purpose is not relevant. In a joint statement, the parties submitted to the trial court the issue of implied warranty: fitness for a particular purpose, as provided by Minn. Stat. § 336.2-315 (1992). The trial court based its decision upon that statute when it concluded:

2. Defendant Trenchers Plus, Inc., breached its implied warranty for the fitness of the unit for the particular purpose of its use in installing residential sprinkler systems. Because of his inexperience, plaintiff clearly relied on defendant's judgment to provide a unit reasonably suited for his business needs and that it would be free of defects.

Minn. Stat. § 336.2-315 provides:

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Trenchers does not claim any exclusion or modification under Minn. Stat. § 336.2-316 (1992). It did not provide any written or oral exclusionary language to Walkabout. Instead, Trenchers argues that the evidence in the record does not support the trial court's finding that an implied warranty existed. We disagree.

The trial court, in its memorandum, set forth the following law to guide its analysis:

The fundamental basis for the implied warranty theory is that the buyer has purchased the item in justifiable reliance on the seller's assertions and on his skill and judgment. [Kopet v. Klein, 275 Minn. 525, 531-32, 148 N.W.2d 385, 390-91 (1967).] An implied warranty

is imposed by law for the protection of the buyer and does not depend upon the affirmative intention of the parties. * * * Its origin and use are to promote high standards in business and to discourage sharp dealings. * * * The doctrine of implied warranty is favored by this court, and such warranties should be given effect when it is possible to do so.

Id. [ ]. The doctrine of an implied warranty "is to be liberally construed * * * The rule is an equitable one." Id. [at 532, 148 N.W.2d] at 391; see also Dougall v. Brown Bay Boat Works & Sales, Inc., [287 Minn. 290,] 178 N.W.2d 217 (1970).

Kopet is particularly relevant to our analysis. In that case, a buyer of a water softening unit sued the seller for breach of implied warranty of fitness. The supreme court determined that the jury could properly find a breach of an implied warranty for fitness based on evidence that the buyer had serious difficulty in using the water softener, the buyer had never previously owned a water softener, and the buyer did not know how to install or operate one. Kopet, 275 Minn. at 530, 148 N.W.2d at 390.

Similar to Kopet, evidence here established that Kleckner had serious difficulty operating the Mini-Sneaker safely on hilly terrain and that he was a novice with no prior experience operating trenching equipment. Kleckner relied on Folkman's representation of expertise and his recommendation that the Mini-Sneaker was suitable for his needs. The trial court noted indicia of sharp dealings by Trenchers: it offered to repurchase the Mini-Sneaker for only fifty percent of its sale price after one month and only fifteen hours of use; it altered the return receipt for the Mini-Sneaker to add the words "on consignment"; and it "handled the matter in a circuitous fashion, to avoid [Walkabout]'s claim and provide a full refund of his money, instead of acting promptly to take the defective unit back as [Walkabout] demanded." Finally, Kleckner's uncontroverted testimony supports the trial court's finding that Folkman knew the purpose for which Walkabout was purchasing the Mini-Sneaker, knew Kleckner was "new and inexperienced with regard to lawn sprinkler installation equipment," and knew he was depending on Folkman's recommendation.

On the record here, we cannot find error in the trial court's conclusion that it must "heed[] the directive of the Minnesota Supreme Court to liberally construe the implied warranty theory and give[]

it effect in application to this case."

Affirmed.

Fred C. Norton

3-15-94