STATE OF MICHIGAN

COURT OF APPEALS

HOWARD N. MILLER and M'REE MILLER,

Plaintiffs-Appellants,

v

BREWBAKER HOUSING COMPANY and PATRIOT HOMES, INC.,

Defendants-Appellees.

UNPUBLISHED
December 12, 2000

No. 218712
Oscoda Circuit Court
LC No. 96-002488-CH

Before: O'Connell, P.J., and Zahra and MacKenzie,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motions for involuntary dismissal and directed verdict. This case involves the purchase of a manufactured home that plaintiffs alleged was defective. We affirm.

Plaintiffs' first argument is that the trial court abused its discretion in denying their motion to amend their witness list before trial to substitute an expert. We disagree. This Court reviews for an abuse of discretion a trial court's decision whether to allow a party to add an expert witness. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992); *Butt v Giammariner*, 173 Mich App 319, 321; 433 NW2d 360 (1988).

MCR 2.401(I) provides:

> (1) No later than the time directed by the court under subrule (B)(2)(a), the parties shall file and serve witness lists. The witness list must include:
>
> (a) the name of each witness, and the witness's address, if known; however, records custodians whose testimony would be limited to providing the foundation for the admission of records may be identified generally;
>
> (b) whether the witness is an expert, and the field of expertise.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> (2) The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.

In the present case, plaintiffs learned no later than December 1997 that their expert witness had moved from the area, but they did not seek to amend their witness list until January 1999, one month before trial. In our view, the period between December 1997 and January 1999 provided plaintiffs with ample time to amend their witness list. Plaintiff did not show good cause for the delay in seeking leave to add a new expert witness, as required by MCR 2.401(I)(2). Therefore, the trial court did not abuse its discretion in denying plaintiffs' motion.

Plaintiffs' second argument is that the trial court erred in concluding that the defects to the manufactured home did not justify revocation of acceptance. The trial court granted defendants' motion for directed verdict, MCR 2.515, and for involuntary dismissal, MCR 2.504(B)(2). Because we conclude that the trial court did not err in granting defendants' motion for directed verdict, we need not review the court's granting of involuntary dismissal. This Court reviews de novo a trial court's denial of a motion for a directed verdict. *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000). Revocation of acceptance is a statutory remedy that is limited by the terms of the statute and is only available if the statutory conditions are satisfied. *Henderson v Chrysler Corp*, 191 Mich App 337, 341; 477 NW2d 505 (1991).

Because the transaction at issue involved something moveable at the time of identification to the contract for sale, Michigan's version of the Uniform Commercial Code applies. MCL 440.2105(1); MSA 19.2105(1). Under MCL 440.2608; MSA 19.2608; UCC 2-608:

> (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it
>
> (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
>
> (b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
>
> (2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
>
> (3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

MCL 440.2608(2); MSA 19.2608(2) requires the buyer to notify the seller of his revocation within a reasonable time after discovering the defect. In *Kelynack v Yamaha Motor Corp*, 152 Mich App 105, 114; 394 NW2d 17 (1986), this Court held that notice of revocation was given within a reasonable time where the plaintiff gave notice three days after the plaintiff

learned that the defendant intended to repair, rather than replace, the defective goods. Similarly, in *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 211; 457 NW2d 42 (1990), this Court held that the plaintiff gave notice of revocation within a reasonable time where the plaintiff served the defendant with a complaint less than one month after the plaintiff began storing a vehicle that continued to stall after several repairs.

In the instant case, the record indicates that plaintiffs were at least aware of the remaining defects in the home in the latter months of 1995. However, plaintiffs did not file their complaint until July 1996, at least seven months after becoming aware of the remaining problems. In light of this delay, which greatly exceeded the periods involved in *Kelynack* and *King*, *supra*, we conclude that plaintiffs did not seek to revoke acceptance of the home within a reasonable time after discovering the defects. Consequently, the trial court did not err in granting defendant's motion for directed verdict on this issue.

Finally, plaintiffs argue that the trial court abused its discretion in not viewing the home before dismissing their case. We disagree. This Court reviews the trial court's decision whether to view the scene for an abuse of discretion. *Gorelick v Dep't of State Hwy*, 127 Mich App 324, 335; 339 NW2d 635 (1983). The trial court did not immediately deny plaintiffs' motion in limine to view the scene, but instead reserved judgment until after it heard testimony. The court ultimately granted defendants' motion for directed verdict without ruling on plaintiff's motion.

MCR 2.513(B) provides that, "[o]n application of either party or on its own initiative, the court sitting as trier of fact without a jury may view property or a place where a material event occurred." In *West v Livingston Co Rd Comm*, 131 Mich App 63, 67; 345 NW2d 608 (1983), this Court affirmed the trial court's refusal to allow the jury to view the scene where the accident took place in the winter and the trial took place during the summer. Moreover, the court received numerous exhibits depicting the scene. *Id.* In *Dooms v Stewart Bolling & Co*, 68 Mich App 5, 24; 241 NW2d 738 (1976), this Court similarly held that the trial court did not abuse its discretion in refusing to view the scene where the disputed accident allegedly occurred. Changes had been made to the location after the accident, and the record was complete with photographs, blueprints, and drawings of the machine that allegedly caused the accident. *Id.*

The trial in the present case occurred approximately two and one-half to three years after plaintiffs moved out of the home. The alleged health hazards or leaking (1) may not have been apparent to the judge because the weather at the time that the trial court would have viewed the house may have been different, and (2) may have changed considerably with the passage of time. Moreover, the trial court received exhibits, including photographs of the house. Thus, even if the trial court had denied plaintiffs' motion in limine to view the scene, the trial court would not have abused its discretion.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie