COURT OF APPEALS
DECISION
DATED AND FILED

January 18, 2012

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP435 **Cir. Ct. No. 2010SC2761**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

JUDY MARTIN,

PLAINTIFF-RESPONDENT,

V.

EXTREME AUTO SALES PLUS, INC. AND JASON GARRETT,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed*.

¶1 NETTESHEIM, NEAL, Reserve Judge.[1] Extreme Auto Sales Plus, Inc. (Extreme) and Jason Garrett (Garrett) appeal from a judgment entered in favor of Judy Martin following a bench trial in a small claims action.[2]

¶2 The dispute concerns the sale of a used motor vehicle to Martin by Extreme, acting through its agent, Garrett. Because of various defects, the vehicle cannot be legally operated on a Wisconsin highway. As a result, Martin sued Extreme and Garrett for the estimated repair costs necessary to bring the vehicle into conformity with Wisconsin law. Based on Garrett's failure to obtain Martin's signature on the paperwork documenting the transaction, the trial court rejected Garrett's argument that the "as is/warranty disclaimer" language in the parties' motor vehicle purchase contract precluded Martin's claim.

¶3 We agree with the trial court that Garrett cannot rely on the "as is/warranty disclaimer" language, but we do so on a different basis: the contract fails to recite the warning mandated by WIS. ADMIN. CODE § TRANS 139.04(5)(b) (Aug. 2008) that when a used motor vehicle cannot be legally operated on a Wisconsin highway, the purchase contract must "conspicuously" state a warning to that effect and must further recite that the vehicle may not be safe. On this slightly different basis, we affirm the judgment.[3]

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] Martin appeared pro se in the trial court and continues her self-representation in these appellate proceedings.

[3] We will affirm a ruling if the trial court reaches the correct result, even if for the wrong reason. *See* ***State v. Alles***, 106 Wis. 2d 368, 392, 316 N.W.2d (1982).

BACKGROUND

¶4 The relevant facts of this case are not in material dispute. Martin enlisted the assistance of her daughter, Amber George, and Amber's husband, Eric George, in her quest for a used motor vehicle. Eric knew Garrett, a representative of Extreme, and told him of Martin's wish to purchase a used vehicle. Garrett located a wrecked former police vehicle on the Internet. Garrett and Eric struck an agreement whereby Extreme would perform certain repairs on the vehicle, and Eric would then arrange for follow-up repairs. The cost of the vehicle purchase, plus Extreme's repairs and registration fees, totaled $10,634.50. Martin, acting through Amber and Eric, agreed to this price and purchased the vehicle. All of the discussions and negotiations regarding the transaction were conducted by Garrett on behalf of Extreme and Eric or Amber on behalf of Martin. Garrett and Martin never had any direct contact or discussions.

¶5 When Eric and Amber arrived to pay for and pick up the vehicle, Garrett advised that Martin's signature was necessary on the closing documents. Because Martin was not present, Garrett had Amber sign the documents on Martin's behalf. Eric and Martin then delivered the vehicle to Martin.

¶6 The used motor vehicle purchase contract included the following language:

> AS IS—NO WARRANTY. DEALER DISCLAIMS ALL WARRANTIES INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The Wisconsin Buyers Guide provided to Eric and Amber by Garrett repeated this "AS IS—NO WARRANTY" provision.

¶7 At the time of the sale, the vehicle did not have working rear seat belts. In addition, the center console was missing and the air bag light was constantly illuminated. In addition, the Wisconsin Buyers Guide issued to Eric and Amber listed a host of items that were checked as "Not Legal."[4] However, the used motor vehicle purchase contract made no reference to these items. Nor did the contract recite any warning that the vehicle could not be legally operated on Wisconsin highways and might not be safe.

¶8 Shortly after delivery of the vehicle, Martin learned that the vehicle could not be legally operated on Wisconsin highways. She obtained an estimate of the cost for the necessary repairs in the amount of $3603.72. Her instant action sought recovery of this amount. Extreme and Garrett defended on the basis of the "as is/warranty disclaimer" provisions in the motor vehicle purchase contract and the Wisconsin Buyers Guide.

THE TRIAL COURT'S RULING

¶9 The trial court ruled in favor of Martin on two grounds. First and foremost, the court rejected the defense based on the "as is/warranty disclaimer" provisions in the purchase contract and the Wisconsin Buyers Guide because, in the court's words, the "car was sold to somebody who didn't sign the contract." Explaining further, the court said, "[T]he representations and the paperwork done by Extreme Auto Sales, indicating what was and wasn't working, was inadequate

[4] These items included: Parking brake, service brakes, bumpers, doors, hoods and trunk lid, emission equipment, exhaust system, fenders, firewall and floor pan, frame or structural portion of unibody, fuel system, horn, lights, restraining devices and seats—airbags, belts, speedometer and odometer, steering components, suspension, tires and wheels, windshield, windows and mirrors, windshield defroster, wipers and washers.

vis-à-vis Ms. Martin." In essence, the court determined that Eric and Amber either were not acting, or could not act, as Martin's agents when signing the closing documents.

¶10 Second, and to a lesser extent, while not citing chapter and verse, the court also stated that the "contract probably does not square with … the administrative code, under the dealer's license requirements."[5]

¶11 As our ensuing discussion will reveal, we disagree with the trial court's agency ruling, but nonetheless agree with the court that the contract violated the administrative code.

DISCUSSION

¶12 Martin enlisted Eric and Amber to find a used vehicle for her. Eric explained this to Garrett when they first met. When the deal was closed, Eric and Amber tendered Martin's payment to Garrett, and Garrett accepted the payment. Garrett further explained to Eric and Amber that Martin's signature was required on the closing documents. But since Martin was not present, Garrett had Amber sign the documents on Martin's behalf.

¶13 An agency is established when: (1) the principal engages in conduct showing that the agent is to act for him or her, (2) the agent engages in conduct showing that he or she accepts the undertaking, and (3) the parties understand that the principal controls the undertaking. WIS JI—CIVIL 4000. The undisputed

[5] The trial court's failure to cite "chapter and verse" is understandable since Martin, proceeding as a pro se litigant, did not provide the court with any specific cite to any provision of the administrative code.

evidence in this case clearly demonstrates that Eric and Amber were acting on Martin's behalf. Moreover, all of these facts were made known to Garrett. As such, all the elements of an agency were established. Therefore, we disagree with the trial court's holding that Martin's direct and personal participation in the closing of the deal was essential. We know of no law that precludes a motor vehicle purchaser from using an agent to conduct the purchase, including the signing of the closing documents.

¶14 Our holding, however, does not save the day for Extreme and Garrett. Although Garrett revealed all of the vehicle defects in the Wisconsin Buyers Guide as required by WIS. ADMIN. CODE § TRANS 139.04(6) (Aug. 2008), the used motor vehicle purchase contract utilized by Garrett failed to comply with the warning provisions of subsection WIS. ADMIN. CODE § TRANS 139.04(5)(b). This provision states in relevant part:

> (b) If a vehicle is inoperable in such a manner as to make compliance impossible to determine, or if the dealer licensee does not correct all defects which prohibit its legal operation prior to delivery of the vehicle to a retail purchaser, the dealer and salesperson licensee shall:
>
> 1. Make the following disclosure conspicuously on the face of the motor vehicle purchase contract prior to its execution:
>
> "WARNING!
>
> This vehicle cannot be legally operated on Wisconsin highways and may not be safe."

Id.

¶15 Here, it is undisputed that the used vehicle purchased by Martin could not be legally operated on a Wisconsin highway at the time of the sale. In fact, the understanding between Garrett and Eric was that Garrett would perform

the initial repairs, and Eric would arrange for follow-up work on the vehicle. Given those facts, Extreme and Garrett's obligation under WIS. ADMIN. CODE § TRANS. 139.04(5)(b) (Aug. 2008) was to "conspicuously" note the prescribed warning in the motor vehicle purchase contract. However, the contract recites no such warning, conspicuously or otherwise. As such, we agree with the trial court's ultimate holding that Extreme and Garrett cannot assert the "as is/warranty disclaimer" provisions in the contract as a defense to Martin's claim.

¶16 We stress that our holding does not void the contract in terms of Martin's ability to recover for Garrett's breach. Our holding only restricts Garrett from relying on contractual provisions that might otherwise have afforded a defense. The provisions of WIS. ADMIN. CODE § TRANS. 139.04(5)(b) (Aug. 2008) are for the protection of the consumer, not the dealer, and the enforcement of the provision is the decision of the purchaser, not the dealer.[6] As such, Martin was entitled to pursue her claim.[7]

By the Court.—Judgment affirmed.

[6] The court of appeals echoed this same reasoning in the unpublished decision of ***Lester's Materials Service, Inc., Ronald Lester & Steven Lester v. Manley Abrans, d/b/a Wholesale Used Truck***, No. 1986AP1279, unpublished slip. op. (WI App Jan. 22, 1987). There, the court held that a provision of the administrative code requiring dealers to provide purchasers with written contracts did not bar a purchaser from suing on an oral contract with the dealer. We recognize, of course, that we are not bound by an unpublished opinion of the court of appeals. *See* WIS. STAT. RULE 809.23(3). We cite to ***Lester's Materials*** merely to note that another court has similarly concluded that certain provisions of the administrative code governing motor vehicle transactions exist for the protection of the purchaser, not the dealer.

[7] Garrett also challenges the sufficiency of Martin's proof relative to her damages. However, Garrett did not raise this issue in the trial court, and we do not address it further. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (The appellate court has the discretion not to review on appeal issues not raised or considered in the trial court and then raised for the first time on appeal.), *superseded on other grounds by* WIS. STAT. § 895.52.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.