

IN THE COURT OF APPEALS OF IOWA

No. 7-145 / 06-0934
Filed April 25, 2007

JOLENE CLAUS,
Plaintiff-Appellee,

vs.

RONALD DEAN WOOD,
Defendant-Appellant.

Appeal from the Iowa District Court for Jones County, David L. Baker,
Judge.

Ronald Wood appeals the district court's judgment in favor of Jolene
Claus in a breach of warranty action. **AFFIRMED.**

John C. Wagner of John C. Wagner Law Offices, P.C., Amana, for
appellant.

Matthew G. McQuillen of Remley, Willems, McQuillen & Voss, L.L.P.,
Anamosa, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ., Baker, J.
takes no part.

VAITHESWARAN, J.

Ronald Dean Wood built and sold a home to Jolene Claus. The home was installed with a conventional gravel septic system rather than a sand filter system.

After taking possession, Claus noticed a wet area in her yard. The water in the area was green or brownish and had a “sewage-type smell.”

Claus complained to county officials. In response, the Jones County Board of Health issued Wood a civil citation for “failure to install an approved on-site wastewater system.” Following a hearing, the district court ruled in favor of Wood.

Claus subsequently sued Wood, alleging he breached express and implied warranties. The district court rejected the express warranty claim but entered a \$9185 judgment in favor of Claus on the implied warranty claim.

On appeal, Wood contends (1) Claus failed to prove “there was any defect in her septic system” and (2) the doctrine of issue preclusion barred re-litigation.

1. At the close of Claus’s case, Wood moved for a directed verdict on the implied warranty claim, arguing that the seepage of sewage resulted from erosion rather than the installation of the septic system. The district court denied the motion. Wood argues this was error.

The primary standard we apply in reviewing this argument is the substantial evidence standard. *Stover v. Lakeland Square Owners Ass’n*, 434 N.W.2d 866, 873 (Iowa 1989). “[W]here no substantial evidence exists to support each element of a plaintiff’s claim, directed verdict . . . is proper.” *Id.* The record contains substantial evidence to support the key contested element of

Claus's implied warranty claim: "[T]hat when sold, the house was not reasonably fit for its intended purpose or had not been constructed in a good and workmanlike manner." *Kirk v. Ridgway*, 373 N.W.2d 491, 496 (Iowa 1985).

A Jones County environmental health specialist, Sue Ellen Hosch, testified she reviewed the results of soil percolation tests performed on the Claus property before the septic system was installed. She recommended a sand filter system, "[b]ased on the soil conditions, the clay content, and the variability of the perk rate." Wood installed a gravel system instead. After Claus noticed effluent in her yard, Hosch inspected the property and conducted a water analysis. The water sample contained high levels of fecal matter. Hosch concluded it was "pretty much straight sewage."

In addition to this testimony, there was evidence from the owner of a septic services company with twenty-eight years of experience in the septic business. He testified that the Claus property was not suitable for the installation of a conventional septic system. While he conceded that conventional septic systems could fail due to erosion across the sewer lines, reasonable minds could disagree on whether the sewage runoff was caused by this erosion factor or the unsuitability of a conventional system for this property. *Stover*, 434 N.W.2d at 873 ("Where reasonable minds could differ on an issue, directed verdict is improper and the case must go to the jury."). *Cf. Semler v. Knowling*, 325 N.W.2d 395, 399 (Iowa 1982) ("It is not necessary for plaintiff to prove the specific defect which caused the sewer to malfunction. The 'defect' was the failure of the installation to perform the particular purpose.").

We conclude the district court did not err in denying Wood's motion for directed verdict.

2. Prior to trial, Wood filed a "motion in favor of res judicata." He sought to preclude "any litigation of the issue of whether or not the on-site waste water system was approved, thereby prohibiting . . . Claus from providing or asserting that . . . Wood, did fail to install an approved on-site waste water system." The district court denied the motion, reasoning that "the issues are not identical and therefore . . . there is no preclusive effect." See *Treimer v. Lett*, 587 N.W.2d 622, 625 (Iowa Ct. App. 1998) ("The issue must be identical in the two actions.").

We discern no error in this ruling. Wood framed the issue in the first action as "whether it was appropriate for [him] to install a traditional septic system on the real estate at issue without a permit." In contrast, Wood characterized the issue in the present action as whether "Ms. Claus proved by the preponderance of the evidence that there was any defect in her septic system." These issues are not identical. Therefore, application of the issue preclusion doctrine was foreclosed.

AFFIRMED.