

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-001821-MR

WALTER B. ANDERSON and
GLORIA J. ANDERSON

APPELLANTS

V. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAN CORNETTE, JUDGE
ACTION NO. 95-CI-0042

FORD MOTOR COMPANY

APPELLEE

AND

NO. 1996-CA-001869-MR

FORD MOTOR COMPANY

CROSS-APPELLANT

V. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAN CORNETTE, JUDGE
ACTION NO. 95-CI-0042

WALTER B. ANDERSON
A/K/A WALTER BOYD
ANDERSON III, GLORIA
J. ANDERSON and SAM H.
WHITEHEAD

CROSS-APPELLEES

OPINION

DISMISSING 1996-CA-001821-MR

REVERSING AND REMANDING 1996-CA-001869-MR

** ** * * *

BEFORE: BUCKINGHAM, GARDNER and SCHRODER, JUDGES.

GARDNER, JUDGE. Appellants, Walter B. Anderson and Gloria J. Anderson (the Andersons), appeal from a judgment of the Muhlenburg Circuit Court awarding them damages of \$4,853.33 from Ford Motor Company (Ford) for breach of expressed and implied warranties for a 1993 Ford pickup truck. The Andersons claim (1) that the court erred by giving improper instructions when resubmitting the verdict to the jury, and (2) that the court's failure to award attorney fees to the Andersons was error. On cross-appeal, Ford contends that Mr. Anderson's admission of misusing the truck precludes his ability to enforce any warranty against Ford and that the court erred by rejecting a motion for a directed verdict citing in part that admission.

On January 20, 1993, the Andersons purchased a new 1993 Ford F-250 pickup truck. The warranty booklet that accompanied the truck provides for bumper to bumper coverage of the vehicle for thirty-six months or 36,000 miles, whichever comes first. The warranty also limits the duration of any implied warranty of merchantability or fitness to the duration of the express warranty.

From March 31, 1993 until April 20, 1994, the Andersons' truck required repairs from Ford dealers under this warranty on

thirteen occasions. These repairs were for a variety of problems including problems with the transmission. By May of 1994, the truck had exceeded 36,000 miles. All repairs were done at no cost to the Andersons.

In April 1995, the Andersons detected further problems with their truck. They parked the vehicle and it was driven no longer. At that time the vehicle had been driven 49,236 miles. An inspection by a Ford mechanic on May 20, 1996 revealed damage to the transmission, right rear axle seal and right rear brakes. There was atypical water damage to the front brakes and rear axle assembly and an inordinate amount of mud and grass on top of and around the transmission; the right side of the truck had been repainted; there were signs the truck had suffered a significant rear impact and the rear universal joint had been replaced with a part not manufactured by Ford. A Field Service Engineer for Ford testified that the vehicle showed evidence of misuse and abuse.

At trial, Mr. Anderson admitted that the truck had been wrecked on one occasion and as a result, it had required a new front bumper and paint on the right side. Mr. Anderson also admitted that he had used the truck to haul a 10,500 pound trailer. The owners manual for this truck informs buyers that towing weight limits are listed on a sticker on the door of the vehicle. According to this sticker, the maximum recommended towing capacity for the vehicle is 6,300 pounds.

Mr. Anderson further admitted that in 1995, sometime after the 36,000 mile warranty had elapsed and before the time of

the inspection of the truck by Ford, he had entered his truck in a "truck pull" contest, in which he came in first place.¹ He testified that he realized using his truck in a "truck pull" would void the vehicle's warranty. Ford testified that use of the truck to haul loads in excess of the recommended weight capacity was consistent with the type of transmission damage that was found during its inspection.

The jury returned a verdict in favor of the Andersons with a damage award of \$7,500. However, the first computation of damages was inconsistent with the court's instructions, and the jury was sent back. It returned with a second award for \$4,853.33. There were no further motions or objections, and the court entered judgment in favor of the Andersons.

The Andersons claim error in the manner and amount of the jury's award. Ford's cross-appeal asserts that its motion for a directed verdict following Mr. Anderson's admission of misusing the vehicle prior to his claim of breach of warranty should have been sustained since such misuse violates the "normal use" condition of the warranty. If Ford is correct, then any issue with the manner and amount of the jury award and issues concerning the awarding of attorney fees becomes moot. We therefore turn our attention to

¹This competition consisted of Mr. Anderson using his truck to pull sleds of increasing weights. The contest winner is the person whose truck can pull the greatest amount of weight. The sleds used in these competitions have no wheels and create much more friction with the ground than a trailer one would normally pull behind a truck. Pulling a wheelless sled of 10,000 pounds is appreciably more demanding than pulling a typical trailer of the same weight.

whether or not a buyer's misuse of a good, as defined by the warranty, precludes his right to damages under that warranty.

It is undisputed that the truck was covered by a warranty and that the transmission has been and remains inoperative. We find problematic, however, the Andersons' assertion that Ford's actions or inactions, during and after the term of the warranty, resulted in any breach of that warranty. To restate the issue: will the uncontroverted evidence of the Andersons' unreasonable use or misuse of the vehicle defeat their claim for breach or warranty?

The court faced a similar question in Black Motor Company v. Foure, 266 Ky. 431, 99 S.W.2d 177 (1936), wherein a truck owner maintained that his vehicle was not as warranted. The truck's expressed warranty stated that it would not cover vehicles which had "been subjected to misuse, . . . or loaded beyond the factory rated load capacity." Id., at 178. Evidence at trial demonstrated that the truck on a number of occasions had been operated with loads well in excess of the weight limits prescribed in the warranty. This Court awarded a new trial consistent with its findings which, in part, held that where a vehicle is sold under either an expressed or implied warranty the "right to recover damages for its breach [is] limited to . . . complying with the conditions named in the warranty, which it does not appear the buyer here undertook to comply with." Id., at 183.

This Court is not alone in its reasoning. In Melcher v. Boesch Motor Company, 198 N.W.2d 57 (Neb. 1972), the Nebraska Supreme Court ruled that proof of plaintiff's failure to maintain

proper oil levels in his truck and failure to notify the dealer when mechanical problems presented, as required by the owners manual, constituted misuse of the vehicle and could bar plaintiff from collecting damages under breach of warranty.

In Burrus v. Itek, Corp., 360 N.E.2d 1168, 1171 (Ill. App. 1977), and Duff v. Bonner Building Supply Inc., 666 P.2d 650, 652-53 (Idaho 1983), both courts held that misuse of a good by the buyer bars claims against seller for breach of warranty when it can not be shown that the defect was not the result of buyer's misuse.

Therefore, we hold that as a matter of law, uncontroverted evidence of a plaintiff's misuse of a good bars his ability to recover under that good's warranty when the nonconformity complained of is shown to be the possible result of that misuse. Such are the facts in the case at bar.

Mr. Anderson testified that before the vehicle was inspected by Ford he had towed a trailer whose weight exceeded the rated maximum weight for his truck and had used his truck in a "truck pull" contest. The Andersons also failed to contradict expert testimony at trial that their misuse of the vehicle was a possible cause of the defects which they claim constitutes Ford's breach.

For the foregoing reason, this case is reversed and the matter remanded to the trial court with directions to enter a judgment for Ford in conformity with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS/CROSS-
APPELLEES:

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