

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0323**

Nancy Wambach,  
Appellant,

vs.

Phillip D. Robley, et al.,  
Respondents.

**Filed September 12, 2022  
Affirmed in part and reversed in part  
Ross, Judge**

Clay County District Court  
File No. 14-CV-20-2061

Dan D. Plambeck, Stefanson Plambeck & Foss, PLLP, Moorhead, Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Frisch, Judge; and Florey, Judge.\*

**NONPRECEDENTIAL OPINION**

**ROSS**, Judge

Nancy Wambach bought a house that, according to her, is serviced by a well that does not sufficiently supply water. Wambach sued the sellers for failing to disclose the

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

alleged insufficient well production, failing to disclose the area's general water deficiency, and failing to disclose the well's failure to operate up to its design standards. The district court granted summary judgment to the sellers. We affirm in part because Wambach fails to provide legal support for her premise that a property seller must disclose area water conditions and because she cites no evidence to support her claim that the well failed to perform up to specifications. But we reverse in part because the district court misconstrued Wambach's civil complaint as having failed to allege a statutory nondisclosure claim and because Wambach submitted evidence that could support a jury's finding that the well does not adequately supply water and that the sellers knew about but failed to disclose the deficiency.

## **FACTS**

Phillip and Mona Robley sold their Moorhead home to Nancy Wambach in June 2017. During the pending sale, the Robleys disclosed in writing that a well served the property, and they provided information about its installation, design, and pumping capacity. After the parties closed on the sale and Wambach moved into the house, she concluded that the well provides an inadequate supply of water to the home. After complaining about the limited water supply through her real estate agent, the Robleys' realtor responded by writing that the Robleys had previously discussed with Wambach "the limited amount of water at any given time" and had told Wambach "that they just adapted to how it was."

Wambach sued the Robleys in June 2019. She alleged that the Robleys knew about but failed to disclose three material facts: that the well was not producing water at a

sufficient rate to serve the needs of the single-family home; that the property is in an area of Clay County known for poorly producing wells; and that the well was not operating according to its design standards. The Robleys denied knowing about any issues with the well. They moved for summary judgment, arguing that they did not make any knowingly false statements and that Wambach therefore could not prove fraud. Wambach opposed the motion, asserting that her claim is based not on common-law fraud but on Minnesota Statutes sections 513.52–.60 (2020), the seller-disclosure law.

The district court granted summary judgment favoring the Robleys. It reasoned that, because Wambach’s civil complaint did not refer expressly to the disclosure statute, the complaint did not include a statutory cause of action. The district court addressed the nondisclosure issue, holding that Wambach failed to provide evidence to create a triable fact dispute on the claim. Wambach appeals.

### **DECISION**

Wambach challenges the summary-judgment order, asserting that the district court mischaracterized her statutory claim as a common-law fraud claim and misapplied the summary-judgment standard. We review the district court’s summary-judgment decision *de novo*. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). Summary judgment is appropriate only if, viewing the record in the light most favorable to the nonmoving party, no genuine issue of material fact exists for trial. *Id.* The court may not weigh evidence or judge a witness’s credibility; it only determines whether evidence supports the claim. *Montemayor v. Sebright*, 898 N.W.2d 623, 628 (Minn. 2017). For the following reasons, we hold that Wambach’s complaint put the Robleys on notice of a

statutory nondisclosure claim, and we also hold that the evidence submitted creates a fact issue that precludes summary judgment.

Wambach’s complaint meets the low notice-pleading standard to put the Robleys on notice that she was making a nondisclosure claim based on the statutory disclosure requirements. Although citing the disclosure statute expressly would have provided much clearer notice of her claim, a pleading need only “give fair notice to the adverse party of the *incident* giving rise to the suit with sufficient clarity to disclose the pleader’s theory upon which his claim for relief is based.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (quoting *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)); *see also Barton v. Moore*, 558 N.W.2d 746, 749–50 (Minn. 1997) (“Although the [plaintiffs] did not specifically name their theory of liability . . . , they allege numerous facts sufficient to provide the [defendants] with notice of such a theory.”). Wambach’s complaint alleged three specific facts that it characterized as “Material Facts,” one of which is that “the well serving the [p]roperty was not producing water at a sufficient rate to adequately serve the ordinary demands of a single family residence.” The complaint then alleges that the Robleys “were aware of the Material Facts at the time of their pre-closing disclosures to [Wambach] but failed to disclose them.” This plainly identifies the incident underlying Wambach’s claim for relief—an incident that tracks the statutory cause of action against “[a] seller who fails to make a disclosure as required by sections 513.52 to 513.60 and was aware of material facts pertaining to the real property.” Minn. Stat. § 513.57, subd. 2. The statute requires a seller to disclose “all material facts of which the seller is aware that could adversely and significantly affect . . . an ordinary buyer’s use and

enjoyment of the property.” Minn. Stat. § 513.55, subd. 1(a)(1). We therefore hold, contrary to the district court’s determination, that the complaint put the Robleys on fair notice of the incident giving rise to Wambach’s statutory nondisclosure claim.

Our de novo review informs us that this claim must survive summary judgment. Wambach supported the claim by citing the email correspondence between her real estate agent and the Robleys’ agent. Construing all reasonable inferences from that email exchange in the light that most favors Wambach—the party who opposes summary judgment—we are satisfied that a material-fact dispute remains. The answer to the material questions of whether the well produces an adequate water supply and whether the Robleys were aware that it does not can be inferred from the Robleys’ statement acknowledging “the limited amount of water at any given time.” The email also inferentially answers the question of whether that condition is one that would tend to affect a buyer’s use of the property adversely and significantly, as it reveals that the Robleys “just adapted to how it was,” “it” being “the limited amount of water.” And Wambach’s sworn declaration supports her allegation that the Robleys failed to disclose the limited water supply. This evidence could support a jury verdict for Wambach under the seller-disclosure statute.

We are not persuaded otherwise on the theory that the Robleys’ alleged good faith insulates them from liability under the statute. Sellers must disclose material facts “in good faith and based upon the best of [their] knowledge at the time of the disclosure.” Minn. Stat. § 513.55, subd. 1(b). The good-faith requirement in subdivision 1(b) is in addition to the sellers’ unqualified duty under subdivision 1(a) to disclose material facts about which they are aware. *Id.*, subd. 1. Good faith is a necessary, but not sufficient, condition to satisfy

a seller's disclosure obligations under section 513.55, and good faith alone therefore does not cure the Robleys' failure to disclose that the well provided a limited amount of water at any given time. We add that, even if this were not so, summary judgment would still not be appropriate. This is because the evidence that the Robleys knew about but did not disclose the limited water supply could defeat their claim that they were acting in good faith. We emphasize that the evidence might reveal (as the email implies) that the parties had a pre-purchase discussion bearing favorably on the question of whether the Robleys communicated in good faith; but at this summary-judgment stage, we will not construe inferences favoring the moving party.

But not all of Wambach's theories overcome the summary-judgment standard. We affirm summary judgment favoring the Robleys regarding Wambach's allegation that the Robleys had a duty to disclose that the property was in an area of Clay County with a history of poorly performing wells. The statute imposes liability on a seller who fails to disclose "material facts pertaining to *the* real property." Minn. Stat. § 513.57, subd. 2 (emphasis added). We do not read the statute as requiring a seller to disclose how the area's general water supply might have historically affected wells other than those servicing "the" property that is subject to the sale. That the property sits in a general area where most or even all *other* wells performed poorly is a fact that, accurate or not, falls outside the scope of the specific disclosure duty imposed by the statute.

We also affirm summary judgment favoring the Robleys regarding Wambach's allegation that the Robleys failed to disclose that the well was not operating up to its design specifications. Wambach has identified no evidence that she submitted to the district court

during the summary-judgment proceeding to support her allegation that the well was failing in this regard.

**Affirmed in part and reversed in part.**