STATE OF MINNESOTA
IN COURT OF APPEALS
A09-563

Steven Graffunder, et al.,
Appellants,

vs.

Toyota Motor Sales U. S. A., Inc.,
Respondent.

Filed January 26, 2010
Reversed and remanded
Johnson, Judge

Hennepin County District Court
File No. 27-CV-07-20013

Todd E. Gadtke, Hauer, Fargione, Love, Landy & McEllistrem, P.A., Minneapolis, Minnesota (for appellants)

Carrie L. Hund, Bassford Remele, Minneapolis, Minnesota; and

Bruce S. Terlep, pro hac vice, Swanson, Martin & Bell, LLP, Lisle, Illinois (for respondent)

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

After Steven and Mary Graffunder purchased a new 2007 Toyota Highlander, they noticed an unusual noise coming from the area of the brake pedal. The noise persisted

even after the dealership replaced a part. But the dealership and Toyota Motor Sales U.S.A., Inc., refused a second request by the Graffunders to attempt to eliminate the noise, stating that the noise was normal and that nothing could be done. The Graffunders sued Toyota under Minnesota's Lemon Law statute. At trial, after the Graffunders' case in chief, the district court granted Toyota's motion for judgment as a matter of law. On appeal, the Graffunders argue that their evidence is sufficient to allow a reasonable jury to find in their favor. We agree and, therefore, reverse and remand for a new trial.

FACTS

In January 2007, the Graffunders test-drove several 2007 Toyota Highlanders at three dealerships before deciding to purchase one from Burnsville Toyota. During the test drive of the particular vehicle they eventually purchased, Ms. Graffunder noticed a noise coming from near the brake pedal. The dealership's salesperson told her that the noise was due to ice. When she took delivery of the vehicle two days later, on January 22, 2007, she did not notice the noise. But she noticed it again the following morning.

On February 7, 2007, Ms. Graffunder brought the vehicle back to the dealership and requested a repair to alleviate the noise. The dealership's service technician determined that the noise was coming from the brake booster check valve. The dealership replaced that part without charge pursuant to the vehicle's limited warranty. But when Ms. Graffunder left the dealership, the noise persisted.

On February 14, 2007, Ms. Graffunder returned to the dealership and requested that another attempt be made to alleviate the noise. The dealership, in consultation with the manufacturer, refused to replace the part again. The dealership informed Ms.

Graffunder that the noise is normal. The service repair ticket states that no fix is available from Toyota.

In February 2007, the Graffunders filed an arbitration claim, pursuant to Toyota's new vehicle warranty, seeking to require Toyota either to repurchase the vehicle or replace it. After an arbitration hearing in April 2007, the arbitrator denied the Graffunders' claim.

In May 2007, Ms. Graffunder took the vehicle to Leighton's Garage, a service station that is not affiliated with Toyota. A service technician, Dana Guard, and the service manager, Christopher Johnson, examined the vehicle. Both men drove the vehicle and determined that the noise was coming from the brake booster. They recommended that, "as a starting point," Ms. Graffunder take the vehicle to a Toyota dealership for replacement of the brake booster under the new vehicle warranty.

In September 2007, the Graffunders commenced this action against Toyota. They originally alleged six causes of action: (1) a violation of Minn. Stat. § 325F.665, subd. 2 (2006), the provision of Minnesota's Lemon Law that concerns a manufacturer's duty to repair; (2) a violation of Minn. Stat. § 325F.665, subd. 3 (2006), the provision of Minnesota's Lemon Law that concerns a manufacturer's duty to refund or replace; (3) a violation of 15 U.S.C. 2301 to 2312 (2006), the Magnuson-Moss Warranty Act; (4) breach of express warranty pursuant to Minn. Stat. § 336.2-607 (2006); (5) revocation of acceptance pursuant to Minn. Stat. § 336.2-608 (2006); and (6) breach of express warranties pursuant to Minn. Stat. § 625G.19 (2006). The Graffunders later voluntarily dismissed all but the two Lemon Law claims.

At trial in January 2009, Mr. Graffunder and Ms. Graffunder testified on their own behalf, and they called two other witnesses, the two employees from Leighton's Garage. Mr. Graffunder testified that the vehicle has made an unusual noise since they purchased it. He described the noise as "kind of a grinding, vibrating, kind of buzz . . . when you push the brake pedal down . . . and also when you let the brake pedal off." He testified that the noise is louder "when it's colder outside and . . . when the vehicle is cold." He also testified that his "hearing is not that good, but I can hear it very plainly, especially when . . . the temperature is cold or the vehicle itself is cold." In addition, he testified that he has "never driven any [other] vehicle that had that kind of a noise." Furthermore, he testified that none of the other five vehicles of the same model that the Graffunders test-drove had the same noise.

Ms. Graffunder testified that the noise "sounds kind of like err, err, err" and that it is "kind of a jackhammer sound." She also testified that the noise is "louder in . . . cold weather." In addition, she testified that the noise is very noticeable when she first drives the car in the morning and that the noise never goes away.

Guard, the service technician from Leighton's Garage, testified that the noise is "[a]lmost a rattle." He testified that the antilock brake system was not causing the noise and that the noise was coming from the area of the brake booster. He confirmed that the noise occurs only when the brakes are applied. He further testified that if he were to attempt to fix the noise, he would replace the brake booster. Johnson, the service manager at Leighton's Garage, similarly testified that the noise comes from the brake pedal area. He also testified that "I've never heard a brake booster make noise before."

He further testified that Leighton's Garage "would start by replacing the brake booster to cure the noise and recheck after" but that, because the vehicle was under warranty, he recommended to Ms. Graffunder that she return to the Toyota dealership for that repair.

When the Graffunders rested their case in chief, Toyota moved for judgment as a matter of law (formerly known as a directed verdict) pursuant to Minn. R. Civ. P. 50.01. After the parties presented arguments and caselaw to the district court, the district court granted the motion. In its oral ruling from the bench, the district court stated, "I can't say that the plaintiff has shown a specific problem with the vehicle due to a defective part which is covered by the warranty." The district court later issued a one-page order granting Toyota's motion. The Graffunders appeal.

D E C I S I O N

The Graffunders argue that the district court erred by granting Toyota's motion for judgment as a matter of law after their case in chief. Such a motion is proper when "there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). The motion should be granted

> "only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case."

Jerry's Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd., 711 N.W.2d 811, 816 (Minn. 2006) (quoting *J.N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co.*, 304 Minn. 334, 336, 231 N.W.2d 87, 89 (1975)). We apply a *de novo* standard of review to a grant of a motion for judgment as a matter of law. *Anderson-Johanningmeier v. Mid-*

Minnesota Women's Ctr., Inc., 637 N.W.2d 270, 273 (Minn. 2002). We view the evidence in the light most favorable to the nonmoving party, and we "make[] an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *Jerry's Enters.*, 711 N.W.2d at 816.

The Graffunders' first claim is based on a provision of Minnesota's Lemon Law statute providing that if a vehicle does not conform to an express warranty, the manufacturer must repair the vehicle so that it does conform to the warranty:

> *If a new motor vehicle does not conform to all applicable express warranties*, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the applicable express warranties or during the period of two years following the date of original delivery of the new motor vehicle to a consumer, whichever is the earlier date, *the manufacturer*, its agent, or its authorized dealer *shall make the repairs necessary to conform the vehicle to the applicable express warranties*, notwithstanding the fact that the repairs are made after the expiration of the warranty term or the two-year period.

Minn. Stat. § 325F.665, subd. 2 (emphasis added). The Graffunders' second claim is based on a provision of the Lemon Law statute providing that if the manufacturer is unable to cause the vehicle to conform to the express warranty, as required by subdivision 2, after a reasonable number of attempts, the manufacturer must either replace the vehicle or refund the purchase price upon the customer's return of the vehicle. Minn. Stat. § 325F.665, subd. 3(a). These two provisions essentially provide a statutory mechanism that bolsters a consumer's means of enforcing a manufacturer's express warranty. These provisions do not establish a new or different standard for the condition of a new vehicle, unlike the lemon laws of some other states, *see, e.g.*, Cal. Civ. Code

§ 1790-1797.96 (West 2008). These provisions do not displace any other means of enforcing a warranty or any other legal right; the statute states, "Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law." Minn. Stat. § 325F.665, subd. 11 (2006).

Because subdivision 2 of the statute refers to and depends on a vehicle's express warranty, we begin our analysis there. The Graffunders' vehicle is subject to Toyota's "New Vehicle Limited Warranty." The warranty "covers repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, subject to the exceptions indicated" in the warranty. The warranty does not cover "damage or failures resulting directly or indirectly" from certain events or causes, such as "Fire, accidents or theft," "Abuse or negligence," "Misuse," and "Water contamination." The warranty also does not cover "Noise, vibration, cosmetic conditions and other deterioration caused by normal wear and tear."

The Graffunders contend that, in their case in chief, they presented a "legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." Minn. R. Civ. P. 50.01(a). More specifically, they contend that their own testimony about the noise and the testimony of the two independent mechanics show that there is a "defect[] in materials or workmanship" and that the defect is traceable to a "part supplied by Toyota," namely, the brake booster check valve. The Graffunders' argument is supported by the evidence. They and their witnesses consistently identified an unusual and unexpected noise that they considered to be a problem, and the evidence points to the brake booster check valve as the source of the noise. In addition, the documentary

evidence shows that the Toyota dealership identified the brake booster check valve as the source of the noise when Ms. Graffunder first brought the vehicle back for service soon after the purchase. Thus, the Graffunders presented sufficient evidence that their vehicle "does not conform to all applicable express warranties," Minn. Stat. § 325F.665, subd. 2, because of a "defect[] in materials or workmanship of [a] part supplied by Toyota."

Toyota makes two arguments in defense of the district court's ruling. First, Toyota contends that the Graffunders "offered no evidence of a warrantable defect in the vehicle" because they "have no technical experience" and because, Toyota asserts, the two employees of Leighton's Garage testified that no defect existed. Toyota has not identified any caselaw holding that the testimony of a lay vehicle owner is not competent evidence of nonconformance with an express warranty. In reply, the Graffunders cite to caselaw holding that a plaintiff may, without expert testimony, prove that a defect in a new vehicle constitutes a breach of an implied warranty. *See Nelson v. Wilkins Dodge, Inc.*, 256 N.W.2d 472, 475-76 (Minn. 1977). Even though *Nelson* does not involve a claim under the Lemon Law (and, in fact, predates the Lemon Law, *see* 1983 Minn. Laws ch. 108, § 1, at 291), there is no logical reason why the rule should apply to a claim of breach of an implied warranty but not apply to what is essentially a claim of breach of an express warranty.

In addition, the testimony of the Leighton's Garage employees supports the Graffunders' case. When asked whether "there was any defect with [the] brake booster," Johnson testified, "Aside from the noise there's no defect." This testimony does not foreclose a finding of liability because it recognizes that the Graffunders' vehicle may be

defective because of the existence of an unusual noise that can be traced to the brake booster check valve.

That leads to Toyota's second argument, that the Graffunders did not introduce sufficient evidence because "the noise has never affected the performance of the brakes" and because there was no "operational problem with the vehicle" because "the vehicle, including the braking system, always worked appropriately." Toyota's brief further states, "The only evidence adduced at trial was that the Highlander made an unfamiliar noise" but that the Graffunders "offered no evidence that this unfamiliar noise constituted a warrantable defect."[1] In essence, Toyota contends that noise alone cannot be a defect of the type necessary to prove a Lemon Law claim. Toyota's argument comports with the district court's observation that "[n]obody says that the brakes don't work or they might fail because of the noise." At oral argument, the Graffunders' counsel conceded that noise alone cannot be a defect, except in an extreme case. The Graffunders' counsel frames the issue as whether the evidence is sufficient to prove the existence of a defect in the brake booster check valve that is indicated by an unusual noise.

[1]At oral argument, Toyota's counsel hinted that the brake booster check valve in the Graffunders' 2007 Highlander is a relatively new type of part and that experienced drivers simply may not recognize its noise but will, over time, become accustomed to it. Toyota's counsel suggested that he was prepared to introduce evidence to that effect, but he acknowledged that such evidence was not part of the trial record inasmuch as the district court granted Toyota's motion for directed verdict at the close of the Graffunders' case in chief. This opinion is, of course, based on the evidentiary record created at the January 2009 trial. In light of the procedural posture of this appeal, we cannot make any determination whether, after all parties have had an opportunity to be fully heard, there would be a "legally sufficient evidentiary basis for a reasonable jury to find for" the Graffunders. Minn. R. Civ. P. 51.01(a).

Toyota cites cases from other states that are concerned generally with the question whether a noise, either by itself or in connection with other flaws, may be a breach of warranty or a defect warranting relief under a lemon law statute. For example, Toyota cites two Illinois cases in which plaintiffs failed to prove breaches of express warranties arising from unusual noises. In *Tokar v. Crestwood Imports, Inc.*, 532 N.E.2d 382 (Ill. App. Ct. 1988), the plaintiff complained of a grinding noise in the transmission of a Subaru station wagon, which was covered by an express warranty that covered "defects in material or workmanship." *Id.* at 384. The trial court directed a verdict for the defendant after the plaintiff's case in chief. *Id.* The court of appeals affirmed the directed verdict on that claim. *Id.* at 391. The basis of the affirmance is somewhat unclear, but it appears to have been based on the plaintiff's failure to identify the part that caused the grinding noise. *See id.* The court of appeals noted the failure of the plaintiff's expert to inspect the transmission and the defendant's evidence that the noise was caused by the vehicle's four-wheel-drive system, not the transmission's synchronizers, as the plaintiff had argued. *See id.*

Similarly, in *Hasek v. DaimlerChrysler Corp.*, 745 N.E.2d 627 (Ill. App. Ct. 2001), the plaintiffs complained of a "knocking noise" in their Jeep vehicles. *Id.* at 630. The manufacturer's warranty covered "any Chrysler supplied item . . . that proves defective in material, workmanship or factory preparation." *Id.* at 635. The trial court found, after a bench trial, that the plaintiffs had failed to satisfy their burden of proof. *Id.* at 634. On appeal, the plaintiffs argued that the noise was due to "piston slap," which was caused by a defective engine block. *Id.* at 634. The court of appeals affirmed on the

ground that the trial court's findings and conclusions were "not against the manifest weight of the evidence." *Id.* at 636. The court of appeals noted the defendant's evidence that noises are inherent in any vehicle, that piston slap may be a design defect but not a defect in materials or workmanship, and that piston slap does not damage the engine. *Id.* at 635-36. The court of appeals also noted that the vehicles did not "exhibit[] any reliability and durability problems." *Id.* at 636.

Toyota also cites a Michigan case in which the court held that the plaintiff had failed to prove that a "wind noise" was a defect under that state's lemon law. *See Computer Network, Inc. v. AM General Corp.*, 696 N.W.2d 49, 62 (Mich. Ct. App. 2005). But Michigan's lemon law requires proof that a defect "impairs the use or value of the new motor vehicle," Mich. Comp. Laws § 257.1402, and the court reasoned that "[t]he wind noise clearly did not impair the use of the vehicle" because the plaintiff continued to use the vehicle, *Computer Network*, 696 N.W.2d at 62. In contrast, another court affirmed a trial court's finding that a "continuing and uncorrected clicking noise" that was audible whenever the vehicle's brakes were applied was a nonconformance with an express warranty and, thus, a violation of that state's lemon law. *Taylor v. Volvo N. Am. Corp.*, 451 S.E.2d 618, 623-25 (N.C. 1994). The court rejected the defendant's argument that the plaintiff had failed to "link[] any specific mechanical defect . . . to the clicking." *Id.* at 625. The court reasoned that, even though the plaintiff did not identify "the precise mechanical defect," he nonetheless proved that a defect existed in the braking system. *Id.* at 626.

As stated above, to prevail on their Minnesota Lemon Law claim, the Graffunders must prove that their vehicle "does not conform to all applicable express warranties." Minn. Stat. § 325F.665, subd. 2. To prove a nonconformity with Toyota's express warranty, they must prove the existence of a "defect[] in materials or workmanship of [a] part supplied by Toyota." Their claim hinges, at least in part, on the meaning of the term "defect." In some states, the term "defect" is defined within a lemon law statute. *See, e.g., Computer Network*, 696 N.W.2d at 62. In this case, however, the term "defect" appears in Toyota's express warranty, without a definition. A written warranty is interpreted in the same manner as a contract. *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 916-17 (Minn. 1990). If the plain language of a warranty is unambiguous, its meaning can be determined as a matter of law. *Id.* But if a warranty is ambiguous, it may be necessary to refer to other methods of contract interpretation or parol evidence to prove its meaning. *Id.* Ultimately, "[w]hether an express warranty has arisen . . . and whether such warranties have been breached, are jury questions." *Id.* at 917.

The common definitions of the word "defect" are a "deficiency," *Webster's New International Dictionary* 686 (2d ed. 1946), "[t]he lack of something necessary or desirable for completion or perfection," "[a]n imperfection that causes inadequacy or failure," or a "shortcoming," *The American Heritage College Dictionary* 370 (4th ed. 2007). In light of the express warranty in this case, these dictionary definitions are broad enough to encompass a defect consisting of or indicated by noise, so long as the defect is "in materials or workmanship of [a] part supplied by Toyota." There is no basis in either the text of the Lemon Law or the language of the Toyota warranty to limit the meaning of

the word "defect," as a matter of law, to only those conditions that impair the operational or functional capability of a vehicle's part. The district court's requirement of such evidence was unwarranted in light of the evidentiary record before it.

The caselaw on which Toyota relies is distinguishable. In *Tokar*, the plaintiff failed to identify the part that allegedly caused the grinding noise. *See* 532 N.E.2d at 391. In contrast, the Graffunders introduced evidence that the noise was caused by the brake booster check valve. In *Hasek*, the court of appeals, applying a deferential standard of review, affirmed factual findings made by the trial court after a full trial; the court of appeals did not hold that the plaintiff's claim was legally insufficient to allow a reasonable jury to find for the plaintiff. 745 N.E.2d at 634. In contrast, the Graffunders' Lemon Law claims were rejected by the district court without consideration of Toyota's evidence. In *Computer Network*, the plaintiff failed to present sufficient evidence because the lemon law statute required proof that a defect "impaired the use or value of the vehicle," 696 N.W.2d at 62. But such proof is not required of the Graffunders' claim under subdivision 2 of Minnesota's Lemon Law statute. Thus, the caselaw cited by Toyota does not justify the district court's interpretation of Toyota's express warranty.

In sum, the Graffunders presented evidence that they heard an unusual noise from the time of their purchase to the time of trial. They presented evidence that the noise was caused by the brake booster check valve. This evidence is capable of persuading a reasonable jury that the Graffunders' 2007 Highlander did not "conform to all applicable express warranties." Minn. Stat. § 325F.665, subd. 2. At the time of Toyota's motion for judgment as a matter of law, the evidentiary record did not support the conclusion that the

Graffunders' claim could not "under the controlling law be maintained . . . without a favorable finding."[2] Minn. R. Civ. P. 50.01(a). Thus, the district court erred by granting the motion. Accordingly, we reverse the judgment of the district court and remand for a new trial.

Reversed and remanded.

[2]We note that the theory of breach of implied warranty of merchantability may provide a more appropriate basis for a claim concerning a noisy vehicle. *See*, *e.g.*, Minn. Stat. § 336.2-314 (2008); *Nelson*, 256 N.W.2d at 476-78 (holding that owner of Toyota Hilux pickup may pursue claim of breach of warranty of fitness for ordinary purposes); *Pfeiffer v. Ford Motor Co.*, 517 N.W.2d 76, 78-80 (Minn. App. 1994) (holding that owner of Ford F-250 pickup may pursue claim of breach of implied warranty despite failure of Lemon Law claims). Nonetheless, the existence of a remedy under another statute does not preclude a remedy under the Lemon Law statute.