

RENDERED: AUGUST 4, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001667-MR

JEANETTE WIGGINTON AND
RICHARD WIGGINTON

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 08-CI-00130

DANIEL BOONE LOG HOMES;
TIMBERLINE VILLAGE LOG HOMES
AND PATRICIA LYNN CORUM

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, J. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Jeanette Wigginton and Richard Wigginton appeal from an order of the Bullitt Circuit Court granting a directed verdict after the close of their evidence in a fraud action against Patricia Lynn Corum. The circuit court

ruled that the Wiggintons did not produce sufficient evidence of damages as required in an action for fraud to submit the case to the jury. We agree and affirm.

The Wiggintons pursued multiple claims against various defendants arising from the construction of a log home. However, based on an order of the Federal Bankruptcy Court for the Western District of Kentucky, the only remaining claim to be tried in state court was the fraud claim against Patricia.

The Wiggintons' evidence at trial consisted of Jeanette's testimony and Richard's testimony. Jeanette testified that the Wiggintons contacted Patricia to purchase a log home from Daniel Boone Log Homes. Jeanette testified that she had researched log homes and concluded that Daniel Boone Log Homes were of superior quality, which she attributed to the kiln drying of the logs.

According to the Wiggintons, Patricia represented herself as an agent for Daniel Boone Log Homes, including giving them a copy of a booklet printed by and distributed by Daniel Boone Log Homes indicating Patricia was a dealer for Daniel Boone. From that booklet, the Wiggintons selected a Daniel Boone home known as the Lenoir and, Jeanette testified, contracted with Patricia for the construction of the home using Daniel Boone Log Home products. A contract proposal between the parties was entered as an exhibit. However, after the home was built and the Wiggintons became aware of the defects in the home, they learned Patricia had written a check for the material used in the construction of their home to Boone Custom Forest Products.

As stated by the Wiggintons in their appellate brief, the proof presented of damages caused by Patricia's fraudulent representation as to the use of Daniel Boone Log Home products was as follows:

At trial, [Jeanette] introduced a check that had been produced by [Patricia] in the discovery process written to Boone Custom Forest Products, in the amount of \$20,663.05. This is the business entity from which the logs used to build the Wigginton's house had actually been purchased.

Thereafter, [Jeanette] testified as to the monies that had been paid to [Patricia] for material which were thought to be Daniel Boone Log Home products. [Jeanette] testified that they had paid approximately \$105,000.00; the summary introduced by [Jeanette] of the monies paid actually amounted to \$103,118.

With no proof introduced by the Wiggintons as to the difference in value between the log home that was built and one built with Daniel Boone Log Home products or the cost of repairs to make the log home meet the criteria of a Daniel Boone Log Home, Patricia moved for a directed verdict at the close of the Wiggintons' evidence. The Wiggintons argued in opposition that Jeanette's testimony and the documents submitted demonstrated that the Wiggintons paid \$103,118 for what they believed were Daniel Boone products and that they unknowingly received inferior quality products from Boone Custom Forest. They argued they were entitled to the difference between what they thought they were buying, Daniel Boone products, and the products received, Boone Custom Forest Products, or \$82,454.95.

The trial court ruled there was sufficient evidence on which a reasonable juror could find that the Wiggintons and Patricia entered into a contract for Patricia to either build or provide a package for the construction of a Daniel Boone Log Home and the Wiggintons had not received a Daniel Boone Log Home. However, the trial court ruled that the Wiggintons did not produce any evidence to demonstrate damages either by showing the difference between the actual value of property received and the value of the property had there been no false representation or the cost of making the home the same as one built with Daniel Boone Log Home products. It directed a verdict in Patricia's favor.

“[A] trial judge cannot enter a directed verdict unless there is a complete absence of proof on a material issue or if no disputed issues of fact exist upon which reasonable minds could differ.” *Bierman v. Klapheke*, 967 S.W.2d 16, 18-19 (Ky. 1998). “A motion for directed verdict admits the truth of all evidence which is favorable to the party against whom the motion is made.” *Nat'l Collegiate Athletic Ass'n By and Through Bellarmine Coll. v. Hornung*, 754 S.W.2d 855, 860 (Ky. 1988).

The present action is limited to one for fraud. In Kentucky, “the party claiming harm must establish six elements of fraud by clear and convincing evidence as follows: a) material representation b) which is false c) known to be false or made recklessly d) made with inducement to be acted upon e) acted in

reliance thereon and f) causing injury.” *United Parcel Serv. Co. v. Rickert*, 996 S.W.2d 464, 468 (Ky. 1999).

While it is not necessary to prove the amount of damages with certainty, *id.* at 469, in cases involving property, to survive a motion for directed verdict by the defendant the plaintiff must come forth with proof of the diminution in fair market value or a reasonable cost of repair. *Young v. Vista Homes, Inc.*, 243 S.W.3d 352, 366 (Ky. App. 2007). The Wiggintons did not present any testimony regarding the difference in value between a Daniel Boone Log Home and that which they received. While Jeanette testified that the home was repaired and to the cost of some of those repairs, there was no testimony regarding the cost to make the home the same as one built using Daniel Boone Log Home products.

Based on the forgoing, the order of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

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