

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANNE COX	:	APPEAL NO. C-100350
	:	TRIAL NO. A-0503172
and	:	
	:	<i>DECISION.</i>
HOBERT COX,	:	
Plaintiffs-Appellees,	:	
vs.	:	
KIA MOTORS AMERICA, INC.,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: March 18, 2011

*John E. Stillpass, Attorneys at Law, and Ronna S. Lucas, for Plaintiffs-Appellees,
Dinsmore & Shohl, LLP, and H. Toby Schisler, for Defendant-Appellant.*

Please note: This case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Judge.

{¶1} Defendant-appellant Kia Motors America (“Kia”) appeals from the trial court’s judgment entered upon a jury’s verdict awarding damages to plaintiffs-appellees Hobert and Anne Cox for Kia’s violation of the Magnuson-Moss Warranty Act (“MMWA”).

{¶2} In three assignments of error, Kia now argues that the trial court erred in failing to grant summary judgment to Kia because the MMWA does not apply to limited warranties; that the jury’s award of damages was unsupported by the record; and that the trial court erred in admitting opinion testimony from Hobert and Anne Cox.

{¶3} We find no merit in Kia’s assignments of error, and we affirm the judgment entered by the trial court.

Factual Background

{¶4} In 2002, the Coxes purchased a new Kia Spectra from a Kia dealership in Cincinnati. The vehicle came with a 60-month/60,000-mile warranty. Shortly after the purchase, the Coxes began to experience problems with the vehicle, particularly with their use of the cruise-control feature. Over the course of approximately two years, the vehicle was returned to Kia roughly 12 times for repairs. But the cruise control continued to malfunction. Under the warranty, each attempted repair had been performed at no cost to the Coxes.

{¶5} Due to the problems associated with the cruise control, the Coxes notified Kia that they intended to pursue remedies available under Ohio’s Lemon Law and the federal MMWA. Kia agreed to exchange the Coxes’ vehicle for a new

vehicle of comparable value. But the Coxes' Kia was involved in an accident, which their insurer later deemed a total loss, while the Coxes were on their way to return it to the dealership.

{¶6} Following the accident, Kia rescinded its offer to exchange the vehicle. The Coxes then filed the present lawsuit against Kia. In their complaint, the Coxes raised claims for violations of both implied and express warranties under the MMWA. Concluding that the Coxes did not have an available remedy under the MMWA, the trial court granted summary judgment to Kia on the Coxes' claims. But this court reversed the trial court's grant of summary judgment and remanded the case for further proceedings.

{¶7} Upon remand, Kia again filed a motion for summary judgment. The trial court granted the motion with respect to the Coxes' claim for breach of an implied warranty under the MMWA. But the claim for breach of an express warranty proceeded to a jury trial, and the jury returned a verdict of \$7,500 in favor of the Coxes.

The MMWA Applies to Limited Warranties

{¶8} In its first assignment of error, Kia argues that the trial court erred in denying its motion for summary judgment with respect to the claim for breach of an express warranty under the MMWA, because the MMWA does not apply to limited written warranties. Neither party disputes that the warranty at issue in this case is a limited warranty.

{¶9} This court reviews a trial court's ruling on a motion for summary judgment de novo.¹ A motion for summary judgment is appropriately granted when

¹ *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.

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there exists no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion that is adverse to the nonmoving party.²

{¶10} The MMWA is found in Sections 2301 through 2310, Title 15, U.S. Code. It was enacted to protect consumers and prevent the misuse of warranties.³ The MMWA “establishes a federal right of action for consumers to enforce written or implied warranties * * * [and] limits the ability of manufacturers to disclaim or modify implied warranties in cases where they have offered express warranty protection.”⁴ While the MMWA does not require consumer products to be warranted,⁵ it does set forth minimum disclosure requirements that must be met when particular warranties have been issued.⁶

{¶11} Whether the MMWA applies to limited warranties is an issue of first impression in Ohio. But many other state and federal courts have considered the issue and have reached differing conclusions. Kia has cited various decisions in which federal courts have held that the MMWA does not apply to limited warranties.⁷ For example, in *Bailey v. Monaco Coach Corp.*, a federal district court held that “[u]nder the Magnuson-Moss Act, a warrantor must specify whether a written warranty is a full or limited warranty. Only full warranties are required to meet the minimum standards set forth in 15 U.S.C. § 2304. Therefore, because the law relating to limited warranties is not expressly modified, limited warranties, such as

² *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

³ *Curl v. Volkswagen of America, Inc.*, 114 Ohio St.3d 266, 2007-Ohio-3609, 871 N.E.2d 1141, ¶10.

⁴ *Id.*

⁵ *Mydlach v. DaimlerChrysler Corp.* (2007), 226 Ill.2d 307, 312, 875 N.E.2d 1047.

⁶ *Bailey v. Monaco Coach Corp.* (N.D.Ga.2004), 350 F.Supp.2d 1036.

⁷ *Id.* See, also, *Henson v. Allison Transmission* (2008), S.D.Fla. No. 07-80382-CIV.

Monaco Coach's, are not governed by Magnuson-Moss but by the Uniform Commercial Code.”⁸

{¶12} The Coxes, in turn, have cited various cases in which courts have determined that the MMWA governs limited warranties as well as full warranties.⁹ For instance, the Ninth Circuit Court of Appeals has specifically stated that “whether the written warranty is full or limited makes no difference. Although the Magnuson-Moss Warranty Act distinguishes between full and limited warranties, it nonetheless refers to each as a written warranty. Likewise, Section 2301(6) defines a ‘written warranty’ without limiting it to either full or limited warranties, and Section 2310(d)(1) does not limit its application to either full or limited warranties.”¹⁰ The Ninth Circuit clarified that while Section 2304 of the MMWA contains the minimum disclosure requirements for full warranties and is clearly applicable only to full warranties, Section 2310(d) of the MMWA provides a private cause of action for violations relating to both full and limited warranties.¹¹

{¶13} As we have already noted, no Ohio courts have directly addressed the issue of whether the MMWA is applicable to limited warranties. But in *Iams v. DaimlerChrysler Corporation*, the Third Appellate District analyzed the validity of an alleged MMWA violation pertaining to a limited warranty.¹² The *Iams* court recognized that, to present a valid claim under the MMWA, a plaintiff must establish the following: “(i) the item at issue was subject to a warranty; (ii) the item did not conform to the warranty; (iii) the seller was given reasonable opportunity to cure any

⁸ Id. at 1042, (internal citations omitted).

⁹ See *Milicevic v. Fletcher Jones Imports, Ltd.* (C.A.9, 2005), 402 F.3d 912. See, also, *Mydlach v. DaimlerChrysler Corp.*, supra, 226 Ill.2d 307.

¹⁰ Id. at 918.

¹¹ Id. at 919, fn. 4.

¹² 174 Ohio App.3d 537, 2007-Ohio-6709, 883 N.E.2d 466.

defects; and (iv) the seller failed to cure the defects within a reasonable time or a reasonable number of attempts.”¹³ The court held that while the plaintiffs had met three of these requirements, they had failed to establish the second element, that the vehicle was nonconforming.¹⁴ Accordingly, the court determined that no MMWA violation had occurred. Notably, the court did not even consider the threshold issue of whether the MMWA applied to limited warranties. But from the court’s analysis, it can reasonably be inferred that, had the vehicle suffered a nonconformity, the court would have determined that the plaintiff had established a valid claim for a violation of the MWAA in relation to a limited warranty.

{¶14} Following our review of the MMWA and the relevant case law, we hold that the MMWA is applicable to limited warranties. The language of the MMWA clearly indicates that while only full warranties must comply with the minimum disclosure requirements contained in Section 2304, Title 15, U.S.Code, the act itself applies to both full and limited warranties. Section 2301, Title 15, U.S.Code defines a written warranty as “any written affirmation of fact or written promise made in connection with the sale of a consumer product * * *.” This definition includes *any* written affirmation without distinguishing between a full or a limited warranty.

{¶15} Further, Section 2310, Title 15, U.S.Code clearly paves the way for private causes of action pertaining to limited warranties. Section 2310(d)(1) states that “[s]ubject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—(A) in any court of

¹³ Id. at ¶57.

¹⁴ Id. at ¶60.

competent jurisdiction in any State or the District of Columbia; or (B) in an appropriate district court of the United States.” In succinct terms, this section states that a lawsuit may be brought for failure to comply with any written warranty. Again, the language does not distinguish between full and limited warranties.

{¶16} It is common knowledge that most warranties issued are limited rather than full. If the MMWA only applied to full warranties, the act would be quite limited in its applicability. Equally supportive of our determination is the actual language that Kia itself included in the specific warranty issued in this case. The warranty provides that “[y]ou must use the BBB AUTO LINE prior to seeking remedies available to you through a court action pursuant to the Magnuson-Moss Warranty Act.” It is somewhat disingenuous for Kia to argue that the MMWA is inapplicable to limited warranties, when the limited warranty issued by Kia in this case specifically states that it is subject to remedies available under the MMWA.

{¶17} Kia makes the alternative argument that, if this court should determine that the MWMA applies to limited warranties, the Coxes’ claim for breach of express warranty still must be dismissed because Kia fully complied with its obligations under the act. Citing Section 2304, Title 15, U.S.Code, Kia argues that it had agreed to provide a replacement vehicle for the Coxes, but that the Coxes had been unable to deliver their damaged Kia as part of the replacement transaction. Kia asserts that its offer of a replacement was enough to satisfy its legal obligations under the MMWA.

{¶18} Kia’s argument is misplaced. Section 2304 of the MMWA concerns full warranties, and it provides that a consumer may elect either a refund or a

replacement as a remedy for a breach of that type of warranty.¹⁵ But Section 2304 is inapplicable in this case because Kia issued a limited warranty to the Coxes. In their complaint, the Coxes raised a claim under Section 2310(d), not Section 2304, for breach of that limited warranty. As discussed in greater detail in our response to the next assignment of error, the measure of damages for the breach of warranty in this case is found in R.C. 1302.88(B) and does not involve a replacement or a refund. Consequently, Kia's offer of a replacement vehicle was of no legal effect.

{¶19} Because the MMWA applies to limited warranties, the trial court did not err in failing to grant summary judgment to Kia on the Coxes' claim for breach of an express warranty. The first assignment of error is overruled.

Damages Were Appropriate

{¶20} In its second assignment of error, Kia argues that the jury's award of \$7,500 in damages was inconsistent with and unsupported by the evidence presented at trial.

{¶21} Pursuant to R.C. 1302.88(B), the measure of damages for a breach of warranty is "the difference at the time and place of acceptance between the value of goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount." R.C. 1302.88(C) further provides that incidental and consequential damages may also be recovered.

{¶22} The jury was instructed in accordance with these provisions. It was further instructed that "special circumstances" included "a refund of the total purchase price for the vehicle, or any loss resulting from the breach that is

¹⁵ See Section 2304(a)(4), Title 15, U.S.Code.

determined in any manner which is reasonable.” The trial court additionally instructed the jury that “[i]f you find that Defendant has breached a written warranty, and the warranty failed of its essential purpose, plaintiffs are also entitled to incidental and consequential damages. Incidental and consequential damages include all losses resulting from Defendant’s breach and all losses resulting from general or particular requirements and needs of the buyer that could not reasonably be prevented. When calculating the measure of damages available to the plaintiff for any breach of warranty, you do not need to be mathematically precise. Any reasonable basis for proving damages may be used. Any loss resulting from the breach may be recovered and may be determined in any manner which is reasonable.”

{¶23} Anne Cox testified that the selling price of her Kia had been \$14,474, which, coupled with sales tax, license fees, and title fees, resulted in a total purchase price of \$15,884. Anne had paid an additional \$1,750 in finance charges.¹⁶ Of further relevance to establishing damages was Anne’s statement that, in hindsight and with an awareness of all the unsuccessful repairs to the vehicle’s cruise control, she would have been willing to pay \$11,000 for the car. In addition to her valuation testimony, Anne testified about the numerous times that the Coxes’ vehicle had been taken to the Kia dealership for repair. Following each repair, the cruise control continued to malfunction. It would sporadically engage even when not in use, and it would shut down during use, only engaging again when the car was restarted. On a few occasions, the Coxes were left without a vehicle for several days while the unsuccessful repairs were performed.

¹⁶ Because Anne and Hobert Cox share the same surname, we refer to them individually by their first names.

{¶24} Hobert Cox additionally provided testimony concerning the vehicle's valuation. He testified that, in hindsight and with knowledge of the problems that he had experienced with the vehicle's cruise control, he would have been willing to pay between \$10,000 and \$12,000 for the Kia at the time of purchase.

{¶25} Following our review of the record, we conclude that the jury's award of \$7,500 in damages was supported by the evidence presented at trial. With \$14,474 used as a selling price, the collective testimony of Anne and Hobert indicated that they believed that the difference between the value of their vehicle as accepted and its value if it had actually been as warranted was \$3,474 to \$4,474. Kia argues that, as the result of a \$2,000 rebate, the Coxes only paid \$12,474 for their vehicle. But the fact that a rebate was issued had no effect on the value of the goods accepted.

{¶26} As we have stated, the jury was instructed that it could award additional damages for special circumstances, as well as incidental and consequential damages. And the jury was instructed that special circumstances could include a refund of the total purchase price. When awarding these types of damages, the jury could reasonably have considered the additional taxes and fees paid upon purchase, the inconvenience suffered by the Coxes due to the repeated malfunctioning of their vehicle, and the loss of the use of their vehicle during repairs.

{¶27} The jury was instructed to calculate damages in any reasonable manner. Given the difference in value as testified to by the Coxes, as well as all applicable damages for special circumstances and incidental and consequential damages, we conclude that an award of \$7,500 was supported by the evidence.

Opinion Testimony

{¶28} In its third assignment of error, Kia argues that the trial court erred in admitting opinion testimony from Anne and Hobert concerning their vehicle's value. As discussed in the previous assignment of error, both Anne and Hobert stated what they believed to be the true value of their vehicle at the time of purchase.

{¶29} Evid.R. 701 concerns opinion testimony by lay witnesses. It states that “[i]f the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.” The Ohio Supreme Court has considered whether, under this rule, owners may testify as to the value of their possessions or whether expert testimony is necessary to establish value.¹⁷ The court has held that owners are generally permitted to testify to the value of their possessions “because it is presumed that owners are generally quite familiar with their property and its value.”¹⁸ But owners do not have an automatic right to give an opinion regarding the value of their property. Whether an owner is qualified to provide valuation testimony depends on the circumstances surrounding the ownership and must be determined by the trial court.¹⁹

{¶30} Here, the trial court did not abuse its discretion in allowing Hobert and Anne to provide opinion testimony on the value of their vehicle. They had owned the vehicle for approximately two years. And as a result of the problems with the cruise control and their numerous trips to the Kia dealership, they were

¹⁷ *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 605 N.E.2d 936.

¹⁸ *Id.* at 625.

¹⁹ *Id.* at 628.

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intimately familiar with the vehicle and its issues. No error occurred in the admission of this testimony, and the third assignment of error is overruled.

{¶31} Having overruled Kia's assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

SUNDERMANN, P.J., and CUNNINGHAM, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.