COURT OF APPEALS
DECISION
DATED AND FILED

June 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2338 **Cir. Ct. No. 2011CV752**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

GERALD J. BARTH AND SUSAN J. BARTH,

PLAINTIFFS-RESPONDENTS,

V.

FORD MOTOR COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Affirmed*.

Before Brown, C.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. The issue in this case is whether Gerald and Susan Barth made their motor vehicle "available for repair" four times within one year of taking delivery of the vehicle, as required by Wisconsin's lemon law, WIS. STAT.

§ 218.0171 (2011-12).[1] A jury found that they did. Ford Motor Company appeals the judgment entered on the jury verdict awarding the Barths $138,657.20 in statutory double damages, attorneys' fees, expenses, interest, and statutory costs and disbursements. Ford contends that making a vehicle "available for repair" contemplates an express demand for inspection or repair. We disagree and affirm.

¶2 The facts are not disputed. On July 31, 2009, the Barths took delivery of a new Ford vehicle they purchased from Lochen Ford, an authorized Ford dealer. Two days later, on August 2, the Barths returned to Lochen to sign papers related to the sale. While there, they sought out the service manager and told him that the previous day the transmission had made a "[f]airly loud" "clunk" when the car was in reverse. The service manager did not drive or inspect the car but told the Barths to let Lochen know if the problem reoccurred.

¶3 In March 2010, the Barths advised Lochen that the transmission had begun periodically "clunk[ing]" when in forward. A reprogramming of the power train control module did not alleviate the problem.

¶4 The Barths returned in April complaining that the car "sh[oo]k and "shu[dd]ered" with acceleration. The transmission failed a stress test, so Lochen rebuilt it. In October, the Barths reported that the rebuilt transmission began to "clunk" loudly and "jerk[ed]" forward so hard it felt as though they had been rear-ended. More repairs followed.

¶5 In June 2011, the Barths brought the underlying action against Ford alleging a breach of Wisconsin's lemon law and the federal Magnuson-Moss

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless noted.

Warranty Act, 15 U.S.C. §§ 2301-2312. They alleged that the vehicle was subject to repair four times within one year after delivery and that warranty nonconformities kept the vehicle out of service for an aggregate of at least thirty days. *See* WIS. STAT. § 218.0171(1)(h)1., 2. The Barths later dropped the out-of-service claim and presented only the subject-to-repair claim to the jury.

¶6 Ford moved for a directed verdict at the close of the Barths' case. The court denied the motion. The jury returned a verdict in favor of the Barths on both the state and federal claims, and awarded the Barths $7,000 for the Magnuson-Moss violation.[2]

¶7 Ford renewed its motion for a directed verdict on motions after verdict, arguing that the Barths did not give it a reasonable opportunity to repair the vehicle. *See* WIS. STAT. § 218.0171(1)(h), (2)(b). Ford argued that simply mentioning the transmission noise while at Lochen on unrelated business as a matter of law did not constitute "mak[ing] the motor vehicle available for repair." The trial court ruled that the statute does not require an express request for repairs and that whether a vehicle is made available for repair on four occasions is a jury question. It entered a $138,657.20 judgment against Ford. Ford appeals.

¶8 To get relief under Wisconsin's lemon law, a consumer must give a manufacturer a "reasonable attempt to repair" a vehicle with a "nonconformity." *See* WIS. STAT. § 218.0171(1)(f), (h). As is relevant here, the consumer must report the nonconformity to "any of the manufacturer's authorized motor vehicle dealers" and must "make[] the motor vehicle available for repair" within a year of

[2] Ford does not appeal the jury's verdict or its award as either relates to the federal claim.

delivery of the vehicle. Sec. 218.0171(1)(f), (2)(a). The same nonconformity must continue despite giving the manufacturer a "[r]easonable attempt to repair" it—that is, making it "subject to repair by the manufacturer" at least four times within the statutory period. Sec. 218.0171(1)(h)1.

¶9 Ford contends that to "to make[] a motor vehicle available for repair," "it is evident that a consumer must do *something* beyond merely providing some notice of an alleged nonconformity." It argues that the Barths' August 2, 2009 "mention" of "clunking" does not satisfy the statutory requirement because they merely brought up the problem in the context of a paper-signing visit their salesman initiated and did not affirmatively request inspection or repair. As the Barths sought repairs only three other times within a year of delivery, Ford posits that they fall shy of the statutory threshold to state a lemon law claim.

¶10 Statutory interpretation presents a question of law we review de novo. ***Hartlaub v. Coachmen Indus., Inc.***, 143 Wis. 2d 791, 797, 422 N.W.2d 869 (Ct. App. 1988). Remedial statutes like the lemon law "should be liberally construed to suppress the mischief and advance the remedy that the statute intended to afford." ***Hughes v. Chrysler Motors Corp.***, 197 Wis. 2d 973, 978, 542 N.W.2d 148 (1996). We read a statute reasonably to avoid absurd or unreasonable results, and to further its purpose. *See* ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2007 WI 98, ¶27, 303 Wis. 2d 258, 735 N.W.2d 93.

¶11 Ford argues that rejecting its position will allow any passing reference a consumer makes to a manufacturer's employee about a potential nonconformity, even if the vehicle just "happens to be" at the dealership, to satisfy the consumer's reporting requirement as well as its obligation to make the vehicle available for repair. Ford asks "what if" months after purchase, the consumer

happens to bump into his or her salesperson while car-shopping with a relative, and in the course of exchanging pleasantries, makes an off-the-cuff remark about some problem with the vehicle the consumer had driven to the lot. Would the consumer still be found to have made the vehicle available for repair?

¶12 Those are not the facts here. We are asked to determine whether *the Barths* complied with the requirements of WIS. STAT. § 218.0171(2)(a) so as to have made their vehicle "available for repair" on August 2, 2009. Thus, we are concerned with applying the statute to the specific facts before us. *See* ***Garcia v. Mazda Motor of Am., Inc.***, 2004 WI 93, ¶7, 273 Wis. 2d 612, 682 N.W.2d 365.

¶13 Here, there is no dispute that, just two days after taking delivery, while at the dealership to also complete paperwork, the Barths specifically sought out the service manager to report the transmission problem. As their vehicle was physically available to the service department, Lochen could have asked to drive or inspect it. Reading the statute to impose a requirement that the consumer be at the dealership for the sole purpose of lodging a complaint and that he or she demand that action be taken entails an overly strained construction, not a liberal one. On these facts, we conclude that the Barths gave Lochen notice of the nonconformity and made their vehicle available for repair on August 2, 2009. The statute does not require more.

¶14 Ford also contends that, because the underlying facts of the August 2, 2009 visit are undisputed, whether the Barths satisfied the statutory requirement of making the vehicle available for repair was a legal issue for the court and should not have been submitted to the jury. This argument goes nowhere.

¶15 The appropriate standard of review is a question of law we decide independently. *See* ***State v. Byrge***, 2000 WI 101, ¶32, 237 Wis. 2d 197, 614 N.W.2d 477. We agree with the trial court that it was a jury question. Even so, it ultimately does not matter whether the trial court should have instructed the jury that, as a matter of law, the Barths made—or did not make—their vehicle available for repair on August 2, 2009, or left the matter for the jury to decide. As we have concluded that WIS. STAT. § 218.0171(2)(a) does not require a consumer to make an express demand for inspection or repair in order to "make[] the motor vehicle available for repair," the outcome on review would be the same.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.