

RENDERED: February 13, 2004; 2:00 p.m.  
NOT TO BE PUBLISHED

## Commonwealth Of Kentucky

### Court of Appeals

NO. 2003-CA-000601-MR

WILLIAM BLEVINS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 00-CI-01334

PAUL MILLER FORD, D/B/A  
PAUL MILLER FORD MAZDA,  
PAUL MILLER FORD-MAZDA, INC.,  
and PAUL MILLER FORD-MAZDA

APPELLEE

#### OPINION

#### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

EMBERTON, CHIEF JUDGE. William Blevins brought this action against Paul Miller Ford alleging fraud in the sale of a used vehicle. Finding the claim barred by the applicable statute of limitations, the trial court granted summary judgment to Paul Miller Ford. We affirm.

On January 15, 1994, Blevins purchased a 1988 Nissan Pathfinder from Paul Miller Ford. He executed a Sales Order and

Dealer Warranty Disclaimer in which Paul Miller Ford disclaimed all warranties, express or implied, as to the condition of the vehicle. Essentially, Paul Miller Ford stated in the disclaimer that the vehicle was being sold "as is." In November 1993, approximately four months prior to the transaction, Paul Miller Ford obtained a CARFAX report that listed a "clean history" and did not indicate a "salvage" title, "junk" title, or any previous damage.<sup>1</sup> Blevins alleges that the salesman told him that the Pathfinder was a one-owner vehicle used sparingly by a local police officer. Prior to its purchase, Blevins did not have the Pathfinder independently inspected and did not request that Paul Miller Ford provide him the previous owner's name, address, or telephone number.

Within six months after the purchase, the Pathfinder began to develop mechanical problems. The transmission failed as did the brakes and muffler. Problems with the electrical system developed and it was found that the wiring to the horn and headlights was corroded. Blevins continued to have the repairs made as the problems arose but apparently never investigated nor had anyone else investigate the source of the Pathfinder's problems.

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<sup>1</sup> CARFAX is a company that provides dealers and consumers with Vehicle History Reports and there is expert testimony in the record that reliance on CARFAX reports is standard policy in the used car business.

In June 1999, more than five years after its purchase and 44,000 miles later, Blevins, while at a local restaurant, asked Dan Rossette, a sales and used car manager at a Nissan dealership, to examine the Pathfinder. Rossette looked under the dashboard and found dried mud and leaves on the underside of the dash. Blevins later decided to trade in the Pathfinder on another vehicle and was informed by an employee at the Nissan dealership that the CARFAX report on the Pathfinder indicated a junk/salvage title issued out of the state of Florida. Blevins filed this action in April 2000.

An action for fraud or mistake must be commenced within five years from the date the action accrued.<sup>2</sup> Under KRS 413.130, an action for fraud, however, shall not be deemed to accrue until discovery of the fraud. The "discovery rule" is explained as follows:

It has long been the rule that in order to recover damages resulting from a recently discovered fraud, the plaintiff must allege the time and means of discovery, why earlier discovery had not occurred and the diligence exercised by the injured party to discover the fraud. 37 Am.Jur. 2d Fraud and Deceit §432. Kentucky has followed the general rule requiring that when an action is brought later than five years after the alleged perpetration of the fraud there must be an allegation and proof that the fraud was not discovered within the five years and

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<sup>2</sup> Kentucky Revised Statutes (KRS) 413.120(12).

by the exercise of ordinary care could not have been discovered within that time.<sup>3</sup>

Under the rule the plaintiff is charged not only with fraud actually discovered, but also with that which could have reasonably been discovered.<sup>4</sup> In determining whether a party has used due diligence we use the objective standard of reasonableness under the circumstances. As stated long ago in Mullins v. Jennings Guardian:<sup>5</sup>

Upon the question of the character of diligence necessary to be exercised to make the discovery we said: "One so situated may not sit supinely by and exercise no diligence to discover the wrong perpetrated upon him. He must bestir himself, and, if he could have discovered the fraud or mistake by the exercise of reasonable diligence, it is his duty to do so."  
(Citation omitted.)

Almost immediately after purchasing the Pathfinder, Blevins became aware that it had mechanical problems. Even after realizing the wires to the headlights were corroded and there was rust on the headlight mechanism, he took no action to investigate the source of the problem. Although he was not a mechanic, certainly everyday use of an automobile teaches that, absent some unusual event, wires do not corrode. We agree with

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<sup>3</sup> Boone v. Gonzalez, Ky. App., 550 S.W.2d 571, 573 (1977).

<sup>4</sup> If a confidential relationship exists between the parties, there is no duty to exercise due diligence to discover the fraud. Id. Here, where the sale and purchase of the Pathfinder was an arm's-length transaction, there is no such relationship.

<sup>5</sup> 273 Ky. 68, 115 S.W.2d 340, 343 (1938).

the trial court that based on the facts no reasonable conclusion can be reached other than that Blevins, after having experienced over five years of mechanical problems with the car, should have been aware of or should have been prompted to further investigate the cause of the Pathfinder's problems. We agree with the trial court that there are no material issues of fact and that, as a matter of law, the claim is barred by the statute of limitations.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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