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

IMANI ROGERS,	:	APPEAL NO. C-170556 TRIAL NO. A-1604878
and	:	
PAMELA ROGERS,	:	
Plaintiffs-Appellants,	:	*JUDGMENT ENTRY.*
vs.	:	
FORD MOTOR COMPANY,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Imani Rogers ("Rogers") purchased a 2012 Ford Edge on January 29, 2016. Plaintiff-appellant Pamela Rogers cosigned the loan agreement. The truck was manufactured by defendant-appellee Ford Motor Company and was sold as a "factory-certified" used vehicle. Shortly after the purchase, Rogers claimed to have experienced problems with the brakes. She brought the truck back to the dealership, was given a loaner vehicle to drive, and the truck was repaired after five days. The repairs were not covered by the limited warranty, but Rogers was not charged for the repairs. Two weeks later, Rogers returned with the vehicle claiming that there was a different issue with the brakes rubbing. The dealership replaced the pads the same day at no charge.

On April 18, 2016, the vehicle was towed to the dealership. Rogers told employees that the brakes were "applying themselves." She was again given a loaner vehicle while the repairs were made. Initially, technicians were unable to replicate the malfunction. The technicians contacted Ford's support hotline, which indicated

that it had nothing in the database matching that particular set of symptoms. The technicians made several adjustments to the braking system—replacing the master cylinder and bleeding the system. Testing after the work was done revealed no further problems. The repairs were completed after 29 days, and Rogers was not charged. While the work had been completed in May, Rogers did not pick up the vehicle until September 7, because she had not been contacted by the dealership and had assumed that they were still working on the truck.

Because she continued having problems with the vehicle, Rogers later hired an expert to inspect the vehicle. The expert found no major defects with the vehicle, noting that any issues with the vehicle were attributable to "normal rust and corrosion." The vehicle was later inspected by an expert hired by Ford, who similarly found no defects with the vehicle that could not be attributed to wear and tear.

Imani and Pamela Rogers (hereinafter "appellants"), however, claimed the truck still had issues with the brakes making rubbing sounds and the vehicle producing white smoke. They filed suit against Ford claiming that Ford had breached express and implied warranties, violated the Magnusson Moss Warranty Act and the Ohio Consumer Sales Practices Act, and committed tortious breach of warranty. The trial court granted Ford's motion for summary judgment on all claims. In one assignment of error, appellants argue that the trial court improperly granted the motion for summary judgment.

An appellate court reviews a trial court's ruling on a motion for summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996); *Riverhills Healthcare, Inc. v. Guo*, 1st Dist. Hamilton No. C-100781, 2011-Ohio-4359, ¶ 12. Summary judgment is appropriate if (1) no genuine issue of material fact exists for trial, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, who is entitled to have the evidence construed

most strongly in his or her favor. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977); *Alexander v. Motorists Mut. Ins. Co.*, 1st Dist. Hamilton No. C-110836, 2012-Ohio-3911, ¶ 16 .

Appellants first argue that the trial court erred when it determined that they failed to create a genuine issue of material fact as to whether the vehicle was defective. But appellants presented no testimony that a defect existed that breached the warranty. The warranty covered limited issues with the manufacture and design of the vehicle and its parts. Appellants presented no evidence that the problems with the vehicle fell within the parameters of the warranty. The experts for both appellants and Ford opined that the issues were the result of wear and tear on the vehicle, not a defect in "factory-supplied materials or workmanship," as would be required to be covered by the warranty.

The claims also fail because the issues were cured in a reasonable time. Generally, a seller must "be given at least two chances to remedy an alleged defect." *Temple v. Fleetwood Ent., Inc.*, 133 Fed.Appx. 254, 268 (6th Cir.2005). Each of the issues with the vehicle was different and was addressed in a single attempt. This was sufficient. *See Kuns v. Ford Motor Co.*, 543 Fed.Appx. 572, 576 (6th Cir.2013).

Appellants also claim that the trial court improperly concluded that their Consumer Sales Practices Act claim failed, because there was an issue as to whether Ford engaged in a deceptive practice by describing the vehicle as "factory-certified." But, appellants neither received nor relied on any Ford advertisements, a Ford certification, or any other Ford documentation when making the decision to purchase the vehicle. *See Reeves v. PharmaJet, Inc.*, 846 F.Supp.2d 791, 798 (N.D.Ohio 2012) (a CSPA claim for deceptive practices fails when the consumer did not see or rely upon any alleged misrepresentations). We overrule appellants' sole assignment of error, and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MILLER and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on September 26, 2018

per order of the court _____.

Presiding Judge