

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 19, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1293

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**JOHN MOILANEN AND
CHERYL MOILANEN,**

Plaintiffs-Appellants,

v.

**ROBERT NIPPOLDT AND
KATHLEEN NIPPOLDT,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Burnett County:
JAMES TAYLOR, Judge. *Affirmed.*

MYSE, J. John and Cheryl Moilanen appeal a judgment awarding them \$800 plus costs as damages for defects in a home purchased from Robert and Kathleen Nippoldt. The alleged defects were not disclosed on the property condition report the Nippoldts signed at the time of the sale. The Moilanens contend that the cost of repairing the undisclosed defects existing at the time of sale was \$4,065 and that the entry of an \$800 judgment was error. Because this court concludes that the trial court could have reasonably concluded that the Moilanens should have known of the open and obvious defects and that reliance on the property condition report was unreasonable in light of those defects, or that some of the defects existing at the time of sale were

not known by the Moilanens at the time they executed the property condition report, the judgment is affirmed.

The Moilanens purchased a home from the Nippoldts. At the time of the sale, the Moilanens signed a real estate condition report indicating they had no notice of any defects in the electrical system, plumbing system or any structural defects in the property. After the sale was completed, the Moilanens contend that there were sags in the floor, signs of water leakage, an inoperable electrical unit, rotten casements around the patio doors and that the patio doors did not work. The Moilanens contend that based upon the property condition report they are entitled to the reasonable repair costs of these defects. The trial court, however, found that the total amount of damages to which the Moilanens were entitled was \$800 together with statutory attorney fees and costs.

In the argument portion of their brief, the Moilanens claim that they are entitled to recover the repair cost for each of the claimed defects not disclosed on the property condition report. The Moilanens' brief does not identify each claimed defect and the cost of repair for that defect. Without such a listing of specific defects, the amount of damage claimed for each and the trial court's disposition as to each claimed defect, this court cannot address the individual claims. This court will not search the record to identify each of the claimed defects and the claimed cost of repair. See *Prelonzik v. City of Madison*, 113 Wis.2d 112, 120, 334 N.W.2d 580, 584 (Ct. App. 1983). Issues not raised on appeal are deemed waived and will not be considered on appellate review. See *W.H. Pugh Coal Co. v. State*, 157 Wis.2d 620, 637, 460 N.W.2d 787, 792 (Ct. App. 1990).

Rather, the court will limit its discussion to the issue the Moilanens identified in their brief, which is as follows: "Whether the trial court erred in not awarding a judgment in favor of Appellants for their full amount of damages rather than only a portion thereof." As framed, the issue raises a question of law as to whether the trial court could properly disallow a portion of the Moilanens' claimed damages. Questions of law are reviewed without deference to the trial court's determination. *Newhouse v. Citizens Sec. Mut. Ins. Co.*, 176 Wis.2d 824, 837, 501 N.W.2d 1, 5 (Ct. App. 1990). Because the Moilanens have waived any issue as to the findings of fact by failing to make specific challenges to any of the court's findings, the findings of fact upon which the conclusions of law are based are accepted as true for the purpose of this

appeal. See *Englewood Community Apts. v. Alexander Grant & Co.*, 119 Wis.2d 34, 39 n.3, 349 N.W.2d 716, 718-19 n.3 (Ct. App. 1984); see also § 805.17(2), STATS.

This court concludes there are two bases upon which the court could refuse to grant damages for alleged defects existing in the property and not included on the property condition report. The first involves defects that are open and obvious and should have been observed by the Moilanens at the time they inspected the property. The Moilanens may not close their eyes to obvious defects and then assert a claim for failure to identify the defects in the property condition report. *Ritchie v. Clappier*, 109 Wis.2d 399, 404, 326 N.W.2d 131, 134 (Ct. App. 1982). Those defects that are open and obvious, and that a reasonably diligent buyer would observe at the time of the inspection of the property, will not support a claim for damages even though the condition was not reflected on the property condition report. See *id.* A representation made upon which no reasonable reliance may be placed will not support an action for misrepresentation. *Id.* In this case, if the claimed defect was open and obvious and should have been observed by the Moilanens, they may not rely on the property condition report denying the existence of the defect. Because reliance on the property condition report would be unreasonable under these circumstances, no claim for obvious defects can be successfully asserted.

Because each of the defects have not been individually identified by the Moilanens, this court will not do more than note that the trial court was entitled to find that some of the defects, such as the sagging floor, the functioning of the patio doors and the rotted casement around the patio doors, were obvious defects. The court's discussion in regard to the obvious nature of a door that does not work and their inability to rely on the condition report reflects its determination that at least some of these defects should have been known by the Moilanens. Because this court agrees with the trial court that open and obvious defects will not support a claim, notwithstanding their failure to disclose the defects in the real estate condition property report, we conclude that the court could grant only a portion of the claimed damages based upon this finding.

A second basis that would permit the court to grant only a portion of the Moilanens' claimed damages is a finding that the Nippoldts were unaware of the defect at the time of sale. The record discloses, for example, that the electrical outlet that did not function was never used by the Nippoldts and

they were unaware of its defective condition. If the trial court found that the Nippoldts were unaware of the existence of these defects, the failure to identify the defects in the condition property report would not support a claim for damages. This court therefore concludes that the trial court could have reasonably concluded that a portion of the defects were unknown by the sellers at the time of sale. The court could therefore allow only a portion of the damages based upon such findings.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.