STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0582

Susan Lammle, et al.,
Appellants,

and

State Farm Fire and Casualty Company, et al., plaintiff intervenors,
Appellants,

Product Alternatives, Inc.,
Plaintiff Intervenor,

vs.

Gappa Oil Company, Inc., et al.,
Defendants,

Ellingson Plumbing, Heating and Air Conditioning,
Respondent,

Trane U. S., Inc., f/k/a American Standard, Inc. and d/b/a Trane Corporation,
Respondent,

Ferrellgas, Inc.,
Respondent,

Enterprise Products Operating, L. P.,
Respondent.

Filed January 13, 2009
Affirmed
Bjorkman, Judge

Otter Tail County District Court
File No. 56-C3-06-001031

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Crippen, Judge.*

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellants challenge the district court's grant of summary judgment dismissing their negligence, strict liability, and breach-of-warranty claims related to a propane gas explosion. Because there are no genuine issues of material fact and the district court properly applied the law, we affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Appellant Susan Lammle was severely injured on November 16, 2005, when an explosion leveled her home, which was in the process of being renovated. The blast also damaged the neighboring residences of appellants Ryan Truax and Richard Lee.

In September 2004, as part of her home renovation, Lammle had respondent Ellingson Plumbing, Heating and Air Conditioning (Ellingson) install a new propane furnace manufactured by respondent Trane U.S., Inc. (Trane). Ellingson employee Alan Svec installed the furnace in the basement and altered the propane supply lines within the house to fuel a stove upstairs in the kitchen. Svec ran a gas line from a manifold connection at the furnace up through the kitchen floor for the stove. Because the kitchen was still under construction, Svec did not connect the new line directly to the stove, but instead installed a safety shut-off valve toward the end of the line, near the kitchen floor and capped the end of the line at the valve outlet. Svec then pressure-tested the entire system and performed soap tests on all of the fittings, finding no evidence of leaks. Sometime later, another person involved in the renovation project connected the stove to the kitchen propane line. Subsequently, someone disconnected the stove without recapping the gas line.

Defendant Gappa Oil Company, which is not a party to this appeal, supplied Lammle with propane[1] at all relevant times. Gappa Oil installed a 325-gallon propane

[1] In its natural state, propane is an odorless, colorless gas that is heavier than air. Because propane is highly flammable and dangerous, industry standards require suppliers to add an odorant, commonly ethyl mercaptan, to alert propane users of its presence. Although ethyl mercaptan can fade and fail as a warning system, the parties do not dispute that the

tank in Lammle's yard in September 2004. At the time of the explosion, the propane tank had been filled at least four times since it was installed, and it contained propane that Gappa Oil purchased from respondent-wholesale suppliers Ferrellgas, Inc. and Enterprise Products Operating, L.P. (EPO). Ferrellgas and EPO did not have a direct retail relationship with Lammle or any contact with the propane tank located on her property.

Lammle's renovation project was nearly completed by November 2005. On November 16, Lammle's father asked Terry Iverson of Miltona Electric Company to start the furnace in Lammle's home. Iverson installed a thermostat and started the furnace that afternoon. In order to do so, Iverson turned on the propane supply at the outside tank. When Iverson reentered the house, he smelled propane but thought it was from the furnace trying to light. He noted that the furnace was running, set the thermostat at 62 degrees, and left the house. Iverson was not aware that the gas line at the stove connection was uncapped.

That evening, Lammle stopped by the house to feed her cat. As Lammle entered the house, something, possibly her act of flipping the light switch, ignited the propane that had been leaking from the uncapped gas line at the stove connection. Lammle has no distinct recollection of arriving at her home that evening and remembers only that she saw blue.

Lammle and the neighboring property owners brought this lawsuit against Ferrellgas, EPO, Gappa Oil, Miltona Electric, Ellingson, and Trane alleging claims of

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propane in Lammle's tank at the time of the explosion was adequately odorized at more than five times the required level.

negligence, strict liability, and breach of warranty. Ferrellgas, EPO,[2] and Ellingson moved for summary judgment. The district court granted their motions, and certified the judgments pursuant to Minn. R. Civ. P. 54.02. Trane also moved for summary judgment and the district court directed entry of judgment in Trane's favor under rule 54.02. Based on the stipulations of appellants and the remaining defendant, Gappa Oil, the district court stayed trial pending this appeal.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

> A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.

Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn.

[2] EPO captioned its motion as seeking partial summary judgment because EPO alleges a cross-claim against Gappa based on contractual indemnity that is not subject to the summary-judgment motion.

1997). "A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

I. Negligence and strict liability claims.

Appellants' complaint alleges negligent failure to warn, negligent design, and strict liability based on defective design and failure to warn against respondents.

To prevail on a negligence claim, the plaintiff must show (1) a duty; (2) a breach of that duty; (3) that the plaintiff did in fact suffer an injury; and (4) that the breach is the proximate cause of the plaintiff's injuries. *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). Negligence and strict liability merge into a single products-liability theory in design-defect and failure-to-warn cases, both requiring proof of a manufacturer or supplier's duty of care. *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 622-23 (Minn. 1984). Appellants acknowledge the merger of these claims, arguing that the product defect claims at issue here are based on the alleged failure to warn.

Whether a manufacturer or distributor has a legal duty to warn of dangers related to the use of its product is a question of law for the court to decide. *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 924 (Minn. 1986). To determine whether a duty to warn exists,

> the court goes to the event causing the damage and looks back to the alleged negligent act. If the connection is too remote to impose liability as a matter of public policy, the courts then hold there is no duty, and consequently no liability. On the other hand, if the consequence is direct and is the type of occurrence that was or should have been

> reasonably foreseeable, the courts then hold as a matter of law a duty exists.

Id. Thus, whether a duty to warn exists depends on the foreseeability of the alleged danger and the resulting injury. *Westbrock v. Marshalltown Mfg. Co.*, 473 N.W.2d 352, 358 (Minn. App. 1991), *review denied* (Minn. Sept. 13, 1991).

Here, the district court found that respondents could not have reasonably foreseen the events leading up to the explosion in Lammle's home and, therefore, the connection between respondents' conduct and the accumulation of propane in the residence resulting from the uncapped line that caused the explosion was too remote to impose liability as a matter of public policy. Accordingly, the district court held that respondents owed no duty to appellants with respect to the explosion.

The district court also granted summary judgment because appellants failed to establish that any act of respondents proximately caused appellants' injuries as a matter of law. Negligence issues such as causation are "usually a question of fact and seldom can be disposed of on a motion for summary judgment." *Hamilton v. Indep. Sch. Dist. No. 114*, 355 N.W.2d 182, 184 (Minn. App. 1984); *see also Ill. Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 633-34 (Minn. 1978). But the district court may grant summary judgment to the defendant in a negligence action "when the record reflects a complete lack of proof on any of the four elements necessary for recovery," including causation. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

We address appellants' arguments regarding respondents' respective duties to warn and causation in turn.

A. The district court did not err in granting summary judgment to Ferrellgas and EPO on appellants' negligence and strict liability claims.

Minnesota law requires a supplier "to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use." *Gray v. Badger Mining Corp.*, 676 N.W.2d 268, 274 (Minn. 2004). This duty to warn includes the corresponding duty to provide "adequate instructions for the safe use of the product." *Id.* (stating that when "the manufacturer or seller of the product has actual or constructive knowledge of danger to users, the seller or manufacturer has a duty to give warnings of such dangers" (quotation omitted)).

Appellants argue the district court's assessment of the foreseeability component of the duty analysis as to Ferrellgas and EPO focused too much on the particular leak in this case "without considering the duty to warn how to avoid an explosion in the event of a leak, *regardless of its source*." Appellants appear to advocate for a "super warning" requirement under which propane suppliers would be required to warn against all potential propane risks, including explosions, not just those that are reasonably foreseeable. In other words, appellants assert that the highly flammable nature of propane alone is sufficient to impose a blanket duty to warn on wholesale propane sellers of all conceivable risks and possible harm. We disagree.

The fact that a certain event, such as a propane gas explosion, is conceivable does not mean it is foreseeable in the legal sense. By its literal meaning, "to foresee is to know beforehand." *Foss v. Kincade*, 746 N.W.2d 912, 915–16 (Minn. App. 2008)

(citing *The American Heritage Dictionary* 689 (4th ed. 2000)), *review granted* (Minn. June 18, 2008). But the concept of foreseeability does not take a strictly literal meaning in jurisprudence; rather, it also encompasses policy considerations. *Id.* at 916 (citing *Black's Law Dictionary* 676 (8th ed. 1999) (defining foreseeability as "the quality of being reasonably anticipatable")); *see also Germann*, 395 N.W.2d at 924 (observing that "it would be carrying the duty of a manufacturer too far to require it to anticipate every injury that might occur").

To accept appellants' position would be to take a more expansive approach to potential tort liability than Minnesota law permits. The district court properly focused on whether it was reasonably foreseeable that any acts or omissions of Ferrellgas or EPO could have caused the explosion at Lammle's home. *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 884 (Minn. App. 1993), *review denied* (Minn. Apr. 20, 1993). While propane gas is a dangerous product and explosions are conceivable, public policy does not support imposing a duty on wholesale suppliers with respect to every conceivable explosion that could occur at any point in the supply chain. The connection between the wholesale supply of propane to the retailer and an unknown party's flawed decision to leave a propane line uncapped—and yet another party's decision to ignore the odor warning and leave propane flowing into a home—is simply too attenuated, factually and as a matter of public policy, to impose liability on the wholesalers. On the undisputed facts of this case, the district court correctly

determined that Ferrellgas and EPO, as wholesale suppliers, did not have a duty to warn appellants of the unforeseeable risk that resulted in harm.

Appellants further argue that the propane itself was defective because the odorant is not a sufficient warning agent. They assert that "the only proper design of the warning system is the combination of an odorant and a gas detector, which [Ferrellgas and EPO] failed to advise or require."

But the undisputed evidence shows there was nothing wrong with the propane in Lammle's tank at the time of the explosion. It was sufficiently odorized. The assertion that gas detectors are required in the same manner as smoke and carbon monoxide detectors is unavailing.[3] There are no controlling statutes or regulations that require propane wholesalers to warn about or provide an alternative propane detection device or system. Appellants offer no direct support for the proposition that propane sold without a propane gas detector is a defective product. The district court did not err in granting summary judgment to Ferrellgas and EPO on appellants' negligence and strict liability claims.

B. The district court did not err in granting summary judgment to Trane on appellants' negligence and strict liability claims.

As to the duty owed by Trane, the district court stated:

> In looking at the event causing the damage (the leakage of [propane] into the Lammle residence and the ignition of such) and the alleged negligent act (failure to apply warnings to [propane] appliances and/or incorporate/supply a built-in [propane] gas detector), the Court finds that such a

[3] *See* Minn. Stat. §§ 299F.362 (outlining requirements for smoke detectors), .51 (outlining requirements for carbon monoxide alarms) (2008).

> connection is too remote to impose liability as a matter of public policy. . . . [T]he furnace was installed in the Lammle residence in September 2004; the explosion occurred in November 2005. There is no evidence of an ongoing relationship or duty between Trane and . . . Lammle. It was simply not foreseeable that an unidentified individual would leave [a propane] gas line uncapped, which would allow for the accumulation of [propane] gas inside the Lammle home that was eventually ignited.

Appellants argue that the district court erred because, as the manufacturer of the furnace, Trane had a duty to warn about all dangers associated with the use of its product and that the furnace was defective in its design because it lacked a gas detector.

Appellants' claims fail because Trane satisfied its duty to warn, was not obligated to warn of all conceivable risks, and manufactured a furnace that was not defective. The evidence is undisputed that Trane, through Ellingson, provided Lammle with appropriate warnings about the use of a propane furnace. Appellants do not dispute that Ellingson left a copy of Trane's user information guide with the furnace. The front page of the user's guide warns: "Do not rely on smell alone to detect leaks. Due to various factors, you may not be able to smell fuel gases. . . . [F]uel gas and CO detectors are recommended in all applications." A warning label on the furnace informed furnace operators to "smell all around the appliance area for gas" and if they detect gas for more than five minutes to "[i]mmediately call your gas supplier from a neighbor's phone."

We conclude Trane owed no duty to warn about the risk created by an uncapped gas line leading to a different propane appliance. Trane did not have additional duties to warn about, or install a safety device to warn of, every conceivable risk that may result in harm, no matter how remote or tenuous the risk. *See Garman v. Magic Chef, Inc.*, 117

Cal. App. 3d 634, 638 (Cal. Ct. App. 1981) ("The use of any product can be said to involve some risk because of the circumstances surrounding even its normal use. Nonetheless, the makers of such products are not liable under any theory, for merely failing to warn of injury which may befall a person who uses that product . . . in conjunction with another product which because of . . . improper use is itself unsafe."). Because a product manufacturer is not required to give a "super warning" as to all conceivable risks and the event that caused the harm here was not reasonably foreseeable, the district court properly granted summary judgment dismissing appellant's failure-to-warn claim against Trane.

Appellants' argument that the Trane furnace was defective because it did not have a built-in gas detector likewise fails. There are no statutes, regulations, or industry standards that impose such a requirement. Appellants instead rely on three expert reports they submitted to the district court and the fact that Trane itself recommends gas detectors. Review of these reports supports the district court's determination that appellants did not come forward with competent evidence to defeat Trane's summary-judgment motion.

First, the expert opinions are in the form of reports and are thus inadmissible hearsay. *See* Minn. R. Civ. P. 56.05 (requiring that affidavits supporting and opposing summary judgment "shall set forth such facts as would be admissible in evidence"); Minn. R. Evid. 803(6) (excluding from the definition of admissible business records "[a] memorandum, report, record, or data compilation prepared for litigation"); *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991)

("Evidence offered to support or defeat a motion for summary judgment must be such evidence as would be admissible at trial.").[4]

Second, even if we consider the substance of the expert reports, they do not create a genuine issue of material fact. None of the experts indicate gas detectors are a required component of a propane furnace or that a furnace designed without an incorporated gas detector is defective. And all of the experts' opinions flow from a speculative chain of events. In other words, the experts assume both that the presence of a gas detector on the furnace located in the basement would have been activated by a leak in the kitchen gas line and that Lammle would have heeded the alarm.

Finally, while Trane recommends the use of a gas detector and may have the capability to design a furnace with one built-in, Trane is under no requirement to do so. *See Crook v. Kaneb Pipe Line Operating P'ship, L.P.*, 231 F.3d 1098, 1103 (8th Cir. 2000) (holding that the fact "there was a gas detector on the market the [plaintiff's employer] did not utilize, as unfortunate as that may have been, does not create liability"). Moreover, the issue of whether gas detectors should be required presents policy questions that are best left to the legislature to resolve. The district court did not err in granting summary judgment to Trane on appellants' strict products-liability claim.

C. The district court did not err in granting summary judgment to Ellingson on appellants' negligence and strict liability claims.

The district court found "that Ellingson satisfied its duty to properly and safely install the [propane] furnace and gas piping system and its duty to leave a copy of the

[4] We note that it appears one of appellants' experts was deposed under oath, and his testimony taken during that deposition would be admissible evidence.

owner's manual near the furnace." And the district court concluded "that Ellingson owed no additional duties to [appellants] beyond its duty to properly and safely install the LP furnace and gas piping system and its duty to leave a copy of the owner's manual near the furnace." Appellants contend that Ellingson did not discharge its duty to properly install the furnace and propane system because "a safely installed propane system . . . must include a propane gas detector."

While the record reflects that propane gas detectors are available and recommended for safety reasons, as noted above, there is no evidence that installation of such a detector is mandated by the propane industry, state or federal regulations, or the common law. Indeed, appellants do not cite a single case in which a court recognized or announced a duty to place such a device on propane appliances or systems.[5] It is otherwise undisputed that Svec properly installed the furnace and gas lines and the explosion occurred nearly 14 months later, after an unknown individual disconnected the stove from the gas line, leaving the gas line in the kitchen uncapped.

Moreover, it is undisputed that Svec left Lammle a copy of Trane's user guide, which contains extensive warnings about the potential hazards associated with propane gas, when he finished his work. The user guide provides information on the proper use and maintenance of the furnace and the dangers of propane. Trane's user guide addresses and warns against each of appellants' concerns regarding the use of propane, including:

[5] Appellants further contend that Ellingson, as an intermediary, should be strictly liable for the furnace design and manufacture because it knew of the defect, citing Minn. Stat. § 544.41, subd. 3(b) (2004). Because neither the propane nor the furnace was in any way defective, however, the district court did not err in granting summary judgment to Ellingson on appellants' strict liability claims.

the risk of explosion, fallibility of the odor warning, what to do if one smells gas, and the use of gas detectors. The district court did not err in finding that Ellingson fully discharged its duties to appellants and that it owed no additional duty to warn of the risk that resulted in the harm in this case.

D. The district court did not err in finding that appellants failed to establish causation as a matter of law.

The parties do not dispute the fact that the explosion was caused by propane that leaked from the uncapped gas line leading to the kitchen stove. The district court determined that the explosion was not caused by defects in the propane or furnace or defective installation, "but rather due to an uncapped gas line that allowed [propane] to leak and collect in the Lammle residence." There is no evidence that any of respondents were involved in the decision to disconnect the stove and leave the kitchen gas line uncapped. Nor does the evidence show respondents had any knowledge of the renovations in Lammle's kitchen and the existence of the uncapped line.

Appellants' argument that respondents' failure to provide effective warnings, or to provide a gas detector, caused the explosion is both speculative and attenuated. *See Abbett v. County of St. Louis*, 474 N.W.2d 431, 434 (Minn. App. 1991) ("A causal connection between the alleged negligence and the injury must be established beyond the point of speculation or conjecture."). The connection between respondents' alleged failure to warn and the risk that resulted in harm is simply too remote to meet the causation requirement. In effect, appellants would have this court hold the furnace manufacturer and installer and propane wholesale suppliers responsible for: a third-

party's act of disconnecting a different propane appliance located on a different floor of the house without capping the gas line; an electrician's failure to see the uncapped line and activation of the furnace and main propane line; and the electrician's decision not to investigate the source of the propane odor he detected in the home. Appellants also, in effect, ask us to ignore the 14 months between Ellingson's installation of the Trane furnace and the explosion. We decline to do so. The causal connection between respondents' conduct and the event that resulted in harm is too remote as a matter of fact and public policy.

Not only is the causal link between respondents' actions and the explosion speculative, but Lammle's own conduct defeats appellants' causation theory. A negligence claim based on an inadequate product warning requires the product user to have read and relied on the warning. *J & W Enters., Inc. v. Economy Sales, Inc.*, 486 N.W.2d 179, 181 (Minn. App. 1992). "Absent a reading of the warning, there is no causal link between the alleged defect and the injury[,]" and a district court may properly grant summary judgment under such circumstances. *Id.* Lammle conceded that she did not read the labels on the Trane furnace or the invoice slips she received from Gappa Oil that contained propane-safety warnings. She acknowledged receiving Trane's user guide but she never read the warnings it contained.

We thus decline to disturb the district court's sound application of established law to these undisputed facts. Appellants cannot establish causation between any alleged conduct of respondents based on inadequate warnings or defective design as a matter of law.

II. Breach-of-warranty claims.

To establish a breach-of-warranty claim, a party must show the existence of a warranty, a breach of that warranty agreement, and evidence of a causal connection between the breach and the damages suffered. *Peterson v. Bendix Home Sys., Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982). An express warranty arises when a seller makes an "affirmation of fact or promise" about a product to a purchaser. Minn. Stat. § 336.2-313(1)(a) (2004). A warranty of merchantability is implied in a contract for the sale of goods "[u]nless excluded or modified." Minn. Stat. § 336.2-314(1) (2004). For goods to be merchantable, they must be "fit for the ordinary purposes for which such goods are used." Minn. Stat. § 336.2-314(2)(c) (2004). We again address appellants' arguments with respect to each respondent in turn.[6]

A. The district court did not err in granting summary judgment to Ferrellgas and EPO on appellants' breach-of-warranty claims.

Appellants argue that because Ferrellgas and EPO are national merchants in propane who know their product is sold for residential use, they both breached the implied warranty of merchantability by selling propane that was unfit for its intended purpose. Appellants assert that the propane Ferrellgas and EPO sold to Gappa Oil was "unfit for its intended residential use," solely because they did not "requir[e] propane gas detectors for every residential application."

[6] Although appellants' complaint alleges that respondents breached "expressed and/or implied warranties," appellants' brief on appeal argues only that respondents breached the implied warranty of merchantability.

The district court correctly rejected this argument. The district court noted the undisputed evidence that the propane Ferrellgas and EPO sold was odorized at five times the recommended odorant levels, concluding that "[appellants] have failed to present evidence that the [propane] was not safe for . . . Lammle to use in her home, as the [propane] was more than sufficiently odorized to be fit for the intended and/or ordinary purpose." Appellants cite no authority for the proposition that propane is not fit for its intended use unless a propane gas detector is present. The district court did not err in dismissing the warranty claims against Ferrellgas and EPO on these undisputed facts.

B. The district court did not err in granting summary judgment to Ellingson and Trane on appellants' breach-of-warranty claims.

Appellants also assert that Ellingson and Trane breached the implied warranty of merchantability because they "knew the propane furnace would be used in a basement residential application . . . [and] knew that basement installations are particularly dangerous because the odorant in propane dissipates more rapidly and people in another part of the house will not smell it." Appellants argue that because the furnace was not designed or installed with a propane gas detector, it was not safe for residential use.

With respect to Trane, the district court found no genuine issue of material fact regarding whether the "furnace functioned as designed and was fit for the ordinary purpose for which it was used." The district court further found "that Trane properly disclaimed any and all implied warranties through the . . . language contained in the User's Information Guide." Trane's user's guide provides a limited five-year warranty for the furnace, and states:

> The limited warranty and liability set forth herein are in lieu of all other warranties and liabilities, whether in contract or in negligence, express or implied, in law or in fact, including implied warranties of merchantability and fitness for particular use, and in no event shall warrantor be liable for any incidental or consequential damages.

This language is set forth in bolded, capital letters.

With respect to Ellingson, the district court concluded "that no warranties were created in Ellingson's installation of the furnace and gas piping system to . . . Lammle," and that Ellingson had not breached the implied warranty of merchantability because "[n]o evidence was presented that the furnace or gas piping system was in a defective condition through its installation by Ellingson, nor was evidence presented that the furnace itself was in a defective mechanical condition."

We agree with the district court's analysis. There is no authority supporting appellants' argument that Trane and Ellingson had a duty to design and install the furnace with a propane gas detector, nor is there any evidence suggesting that they made a promise to do so. A propane gas detector is a recommended safety device but it is not required. Without evidence of a broken promise or defective product, there is no question of material fact regarding any express or implied warranties made by Trane or Ellingson. Thus, because appellants failed to establish the existence of any element of their warranty claims, the district court did not err in granting summary judgment to respondents on this issue.

III. Deposition testimony.

Appellants argue the district court erred when it excluded deposition testimony from a prior unrelated case as hearsay. Rulings on evidentiary matters rest within the sound discretion of the district court and will not be disturbed absent an abuse of discretion. *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990).

Trane objected to the admission of certain exhibits appellant submitted in opposition to Trane's motion. The district court granted Trane's motion. On appeal, appellants challenge only one of the stricken exhibits: the deposition testimony of J.P. Langmead, a former president of the Gas Appliance Manufacturer's Association (GAMA), taken in the unrelated matter of *Stoffel v. Thermogas Co.*, 998 F. Supp. 1021 (N.D. Iowa 1997).

Appellants argue that Langmead's deposition testimony is admissible under Minn. R. Evid. 804(b)(1), which provides an exception to the hearsay rule for deposition testimony in a former proceeding:

> In a civil proceeding testimony given as a witness at another hearing of . . . a different proceeding, or in a deposition taken in compliance with law in the course of . . . another proceeding, if the party against whom the testimony is now offered or a party with substantially the same interest or motive with respect to the outcome of the litigation, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

The district court did not address this hearsay exception specifically, noting only that Langmead's deposition was taken "for unrelated litigation involving unrelated parties and counsel." Appellants assert that the key issue with regard to evidence admissible under rule 804(b)(1) "is whether the party against whom the testimony is offered would be

prejudiced by its admission," and that Trane has provided no evidence of prejudice. Appellants argue that Langmead has been involved in GAMA, of which Trane is a long-time member, for many years and that he is well informed about the propane gas industry. Appellants contend that the testimony they sought to admit "discussed general knowledge and expectations with regard to propane safety in the industry . . . not specific to the facts in *Stoffel* any more than they were specific to this case."

But appellants did not provide the district court with evidence as to the motives of the parties who developed Longmead's testimony in *Stoffel* or provide any assurance that a party with "substantially the same interest" as Trane has here had an opportunity to develop Langmead's testimony. Appellants also do not explain how the outcome of the summary judgment motion would have been different if Langmead's testimony had been considered. We conclude that the district court did not abuse its discretion in excluding the deposition testimony.

Affirmed.