[Cite as *Vantell v. Hume*, 2026-Ohio-4272.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

JASON A. VANTELL,

Plaintiff-Appellant,

v.

BRIAN A. HUME,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 26 MA 0011

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2023 CV 00555

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Timothy J. Cunning, Scullin & Cunning, LLC, for Plaintiff-Appellant and

Atty. Thomas J. Wilson and *Atty. Lori M. DiRenzo*, Comstock, Springer & Wilson Co., LPA, for Defendant-Appellee.

Dated: October 27, 2026

WAITE, P.J.

{¶1} Appellant Jason A. Vantell appeals the January 12, 2026 judgment entry of the Mahoning County Court of Common Pleas granting summary judgment in favor of Appellee Brian A. Hume. Appellant argues that Appellee failed to disclose knowledge of issues related to water intrusion and the condition of the roof as part of the sale of real property. Because Appellant's own inspection report raised the identical issues that Appellee's full disclosure would have revealed and because Appellant purchased the property in an "as is" condition, he cannot successfully assert that he relied on a form that did not contain Appellee's disclosure that there may have been an earlier problem with the roof. Accordingly, Appellant's argument is without merit and the judgment of the trial court is affirmed. Appellant also raises an argument regarding spoliation of evidence that is moot due to our resolution of his first issue.

FACTUAL AND PROCEDURAL HISTORY

{¶2} Appellee owned real property in Boardman, Ohio. When Appellee originally purchased the property, the interior of the house, including walls and ceilings, were covered in some sort of upholstery. After he took possession of the property, Appellee removed all of the wall covering. In 2018, his housekeeper alerted him there was a dry stain on the ceiling in the living room. He had not previously noticed any stains and could not determine if it had previously been covered by the wall covering or whether it had occurred after he purchased the property. He discussed the issue with the only roofer to have ever performed maintenance and repair work on the slate roof of the house, Dominic Nakley. Nakley then "fixed a minor leak at seam at junction of chimney and roof."

(Appellee Supplemental Affidavit). While it was unclear to all involved whether the seam was currently leaking or whether the dry stain was caused by an old, earlier repaired problem, Nakley undertook to ensure that there would be no further leak.

{¶3} In 2019, Appellee listed the property for sale and he completed a disclosure form indicating that he had "fixed a minor leak at seam at junction of chimney and roof in 2018." The house did not sell at that time. In the fall of 2020, Appellant changed realtors and completed a new disclosure form. On this form, he marked "no" on a line asking whether he knew of any "previous or current leaks or material problems with the roof . . . (but not longer than the past 5 years.)" (2020 Disclosure Form). He did so at the advice of his newly obtained realtor, who informed him that he need not disclose the repair because the issue had clearly been remediated and there was no way to know whether the problem that caused the dry stain had occurred within the past five years.

{¶4} In August of 2021, Appellant and Appellee's realtor entered into negotiations regarding the purchase of the house. Appellant did not retain his own realtor and negotiated on his own behalf. On September 1, 2021, Appellant emailed Appellee's realtor and offered to purchase the house for $600,000, but listed several contingencies. One of those was that Appellant intended to first "perform a building inspection on the roof and all mechanical systems." (Ritchie Affidavit, p. 2).

{¶5} On September 12, 2021, Appellant and Appellee entered into a real estate contract. Appellant agreed to purchase Appellee's home for $600,000. As part of the sale, on September 26, 2021 Appellee completed a disclosure form disclosing all known matters concerning the physical condition of the property and any known defects. Appellee did not state that he knew of any defects with the roof or gutters.

{¶6} On September 21, 2021, Appellant's inspector, George Basista, arrived at the property and performed an inspection. The next day, Basista provided an inspection report. The report contained boxes that were to be checked as to the condition of several areas of the home: "Acceptable," "Not Present," "Not Inspected," "Marginal," and "Defective." Relevant to this case, "Defective" is defined within the inspection report as "Item needs immediate repair or replacement. It is unable to perform its intended function." (Inspection Report, p. 2). The term "Not Inspected" is defined as "Item was unable to be inspected for safety reasons or due to lack of power, inaccessible, or disconnected at time of inspection." (Inspection Report, p. 2).

{¶7} As part of the inspection, Basista inspected the slate roof. The section of the report pertaining to the roof contained a notation stating: "Unable to Inspect: 0%." From this, it can be concluded that Basista was able to inspect 100 percent of the roof. He marked the box indicating the roof was "Defective," and then noted "Slate Clean debris out of pinch points. Recommend yearly inspection and repair." (Inspection Report, p. 5). In addition to the notations about the roof itself, the report noted signs of water intrusion, including that there was a negative slope in grading that "can cause moisture or water penetration in basement," "marginal" surface drains, "Marginal" gutter system, dampness in the basement, "Plaster Repair moisture damage" to the walls in a bedroom, "Plaster Dry stains viewef (sic)" on the dining room ceiling, "Plaster Dry stains and patching viewed" on the living room ceiling, and "Plaster Repair moisture damage" on the family room ceiling. Hence, it was readily apparent that there were at least some issues pertaining to water penetration into the house disclosed by Appellant's inspection.

{¶8} Again, according to Appellee, when he first purchased the house the walls and ceilings were covered in what he calls upholstery. After he moved in, he removed the covering and at least one stain was noticed by his housekeeper. Because of the wall coverings, Appellee explained that he had no idea when any stains occurred, as they were dry when he discovered them. He did not attempt to cover the stains in any way, which is confirmed by the inspection report.

{¶9} Based on this report, Appellant had concerns regarding the roof. At some point, Appellant reached out to Appellee's realtor with his concerns. During Appellee's deposition, he explained that his realtor asked him to reach out to Nakley, the person who regularly maintained the slate roof. To Appellee's knowledge, Nakley was the only roofer to have ever performed maintenance and repairs on this roof. During their conversation, Nakley informed Appellee that he intended to speak to Appellant and "give my honest opinion of the roof." (Appellee Depo, p. 54). He told Appellee his opinion was, "in a nutshell, with proper care and maintenance, the roof should last for decades more. With proper care and maintenance." (Appellee Depo., p. 54).

{¶10} Appellee admitted that he was not present during the later conversation between Appellant and Nakley. He assumed that Nakley gave Appellant the same information Nakley had articulated to him during their own conversation. Appellee later learned that Appellant and Nakley had a one-hour conversation where Nakley provided Appellant with the "full history of the roof even prior to [Appellee's] tenure in the home." (Appellee Depo. p. 56) Afterwards, Appellee asked Appellant if the conversation with Nakley had made him comfortable regarding the roof and Appellant said it had.

{¶11} On September 27, 2021, Appellant negotiated a release of contingency with Appellee's realtor. Appellant released all contingencies except one, which required repair of a bay window. (9/27/21 Contingency Release). The release document specified that, "[b]ased upon these repairs or corrections being completed [referring to the window], and with the full knowledge and understanding of the inspection(s) and any report(s), Buyer hearby [sic], fully and completely, accepts the property in its AS IS CONDITION with no guarantees or warranties, expressed or implied." (9/27/21 Contingency Release).

{¶12} Shortly after Appellant took possession of the house, he communicated to Appellee's realtor that he was experiencing some roof leaks. Thereafter, Appellant sent Appellee an email complaining of the leaks, claiming that he had had the gutters cleaned out as advised by his inspector and still had a water intrusion issue. He asked for Appellee to help pay for any repairs. Nakley and Tim Hardy (a caretaker at the property) informed Appellee that Appellant had allowed an ice dam to form over the front door, and that this ice dam likely caused the leak Appellant was currently experiencing. (Appellee Depo., p. 51).

{¶13} Ultimately, Appellant removed the slate roof and replaced it with a composite shingle roof. In an affidavit, Appellant claimed he spent in excess of $90,000 replacing the roof, however, this was unsupported by any evidence other than his own statement.

{¶14} On March 28, 2023, Appellant filed a complaint against Appellee asserting claims of fraud/fraudulent concealment, breach of contract, and raising a violation of R.C. 5302.30 (requirement to make certain real property disclosures). On May 30, 2023, Appellee filed an answer and a counterclaim alleging spoliation of evidence. During

discovery, Appellant produced photographs apparently taken during the replacement of the roof that he asserts show mold and extensive signs of water damage to the sheathing. Appellant produced an affidavit from his home inspector, Basista, claiming that Basista did not intend to declare in his inspection report that the roof was actually defective. Instead, his intent was merely to indicate that he could not observe the entire roof, hence could not make a determination as to its condition. Basista concluded that because the only way to determine whether a roof will leak is to observe a leak, nothing within his inspection report should have been read to place Appellant on notice of any defect in the roof. (Basista Aff., ¶ 5-7).

{¶15} On October 11, 2024, Appellant voluntarily dismissed the case without prejudice. However, the trial court granted Appellee's motion to vacate the dismissal, and the case remained pending on the court's docket. Both parties filed competing motions for summary judgment. On January 12, 2026, the court granted summary judgment in favor of Appellee. The court found that no genuine issue of material fact existed as to the fraud-based claims and that the real estate disclosure statute, standing alone, does not provide an avenue for suit. The court also dismissed the counterclaim as moot. It is from this entry that Appellant appeals.

Summary Judgment

{¶16} An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a

matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc*., 50 Ohio St.2d 317, 327 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603 (8th Dist. 1995).

{¶17} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.*, 122 Ohio App.3d 378, 386 (8th Dist. 1997).

{¶18} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

ASSIGNMENT OF ERROR NO. 1

The trial court erred when it granted summary judgment to Appellee on Appellant's claims for fraudulent concealment.

{¶19} The essence of Appellant's argument is that Appellee was required to disclose his prior knowledge of the roof seam leak in the 2020 disclosure form, as he had in the prior, 2019 disclosure form. Appellant asserts that while Appellee did disclose there had been a leak near the chimney area in the prior disclosure form, he did not make that same disclosure prior to offering the home for sale in 2020. Appellant urges that the affidavit he obtained from his inspector clarified that Appellant's inspector did not intend to conclude that the roof was defective in his report, but only that the inspector could not observe certain portions of the roof because they were covered in debris. Hence, he could not reach a conclusion as to the roofing materials. Appellant also agrees that the inspection report's notations about water intrusion, as evidenced by dry stains, does not impact his reasonable reliance on Appellee's disclosure form which contained no information about known leaks.

{¶20} Appellee denies that he concealed or misrepresented any defect in the property. Appellee urges that even if Appellant could prove that he failed in his duty to disclose, Appellant must show that he justifiably relied on Appellee's disclosure form. Appellee asserts that the record is replete with evidence that placed Appellant on notice of possible water issues, especially by means of his own inspector's report. Appellee notes that Appellant initially purchased the property contingent on a home inspection. That inspection report declared that the roof was "defective" and "unable to perform its intended purpose." Not only was the roof deemed to be defective, the gutter and "leader

systems" were declared to be "marginal" and in need of repair. That same report noted several "dry stains" on several ceilings, consistent with water intrusion. These stains were readily observable, as there had been no attempt to cover them. Hence, Appellant was placed on notice of the very issues that he now claims were concealed. Appellee argues that even if he had a duty to disclose the 2018 repair, Appellant learned of the very problem Appellee's repair addressed through his inspection report prior to his purchase of the property.

{¶21} In Ohio, R.C. 5302.30 requires a seller to make certain disclosures during the sale of real property. Where the seller fails to disclose a defect in the property with the intent to mislead the buyer, the seller may be liable for resulting injury. *Pascoe v. Detke*, 2026-Ohio-1971 (8th Dist.), citing *Nieberding v. Barrante,* 2021-Ohio-2593 (8th Dist.); *Pedone v. Demarchi*, 2007-Ohio-6809, ¶ 31 (8th Dist.).

{¶22} However, where the buyer "has had the opportunity to inspect the property, he is charged with knowledge of the conditions that a reasonable inspection would have disclosed." *Pascoe, supra,* citing *Nieberding, supra; Nunez v. J.L. Sims Co., Inc*., 2003-Ohio-3386, ¶ 17 (1st Dist.). In other words, "[u]nder the doctrine of caveat emptor, a seller has an obligation to disclose only those defects known by the seller that could not be readily discoverable by a reasonable inspection." *Bechtel v. Turner*, 2020-Ohio-4078, ¶ 35 (10th Dist.), citing *Gentile v. Ristas*, 2005-Ohio-2197, ¶ 49 (10th Dist.).

{¶23} Appellant purchased the property in "as is" condition, with no warranties or guarantee from the seller. "An 'as is' clause in a real estate purchase agreement bars suit for passive non-disclosure, but does not protect a seller from action alleging positive

misrepresentation or concealment." *Pascoe v. Detke*, 2026-Ohio-1971 (8th Dist.), citing *Pedone*, at ¶ 34; *Vecchio v. Kehn*, 1994 WL 449703, *3 (8th Dist. Aug. 18, 1994).

{¶24} To prove fraudulent concealment, a plaintiff must establish: (1) the concealment of a fact when there is a duty to disclose; (2) that fact is material to the transaction; (3) a statement furthering concealment was made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (4) the statement was made with intent to mislead another into relying on it; (5) justifiable reliance; and (6) resulting injury proximately caused by the reliance. *Montgomery v. Vargo*, 2016-Ohio-809, ¶ 8 (8th Dist.), citing *Volbers-Klarich v. Middletown Mgt., Inc*., 2010-Ohio-2057, ¶ 7.

{¶25} There are two key issues in which the trial court relied in resolving this matter. First, the very defect that Appellant claims Appellee failed to disclose is the exact defect that Appellee learned of through his own inspection. Second, the inspection report clearly gave an opinion as to the condition of the roof and Appellant could not have justifiably relied on Appellee's failure to disclose. Further, the evidence that Appellant sought to rely on in order to create a genuine issue of material fact to avoid a summary judgment cannot replace, explain, or alter the opinion contained within the report provided to Appellant prior to his purchase of the property.

{¶26} Appellant purchased the property contingent on obtaining an inspection. Appellant engaged home inspector George Basista. In Basista's report, the roof was clearly marked as "Defective," which is defined within the report, itself, to mean: "item needs immediate repair or replacement. It is unable to perform its intended function." (Inspection Report, p. 5). The report also documented "dry stains" and "moisture

damage" on interior ceilings, along with dampness in the basement and signs of gutter problems. While Basista later attempted to "clarify" the term "defective" in his affidavit prepared for summary judgment, the report obtained by Appellant on which he based his decision to purchase unambiguously defined that term.

{¶27} The marking of "defective" on the inspection report, the definition of "defective," and the evidence of water on the interior ceilings sufficiently placed Appellant on notice of the identical issue he claims Appellee should have disclosed: the roof was in a questionable condition and may not be watertight. Neither Appellee not Appellant's inspector could state definitively whether the roof would leak in the future, just that it was a possibility. The inspection report accomplished exactly this disclosure. Whatever Appellee could have disclosed was readily evident through information contained within Appellant's own inspector's report prior to purchase. This evidence included the dry stains (which Appellant did not attempt to cover), moisture damage, and signs of deterioration or other issues with the roof and gutters.

{¶28} However, after receiving this report from his inspector and clearly understanding that it raised a red flag regarding the condition of the roof, Appellant negotiated and signed a contingency release form which satisfied the inspection contingency in the purchase agreement. This release was specific, and as it included a line requiring confirmation of a bay window repair Appellant clearly knew he could add specific items of concern. At no point within this release is there any reference to the requirement to repair/replace the roof or address any water damage. Significantly, this release stated that the property had been accepted (pending the bay window repair), with

full knowledge and understanding of the inspection report, in its "as-is condition with no guarantees or warranties, express or implied."

{¶29} Pursuant to Ohio law, a buyer's reliance on a disclosure form is not justified and a defect is not considered latent where a home inspection report informs the buyer of a potential problem with a roof. *Petroskey v. Martin,* 2018-Ohio-445 (9th Dist.). In *Petroskey,* as the seller believed a roof leak had occurred seven years prior, she marked the box on the disclosure form indicating she had no knowledge of a leak within the previous five years. *Id.* at ¶ 3. During an inspection of the home prior to purchase, the inspector noted various signs of water leaks and other concerns related to the roof. He noted "evidence of past or present water damage," "elevated moisture," "wet areas," and improper grading near the foundation. *Id.* at ¶ 4. He also noted water stains on the ceilings of several rooms and other water stains. After the buyer moved into the house, the sellers provided invoices of prior repairs and included invoices related to roof repairs and water damage. The buyers filed a complaint against the sellers.

{¶30} The *Petroskey* court held that the buyers were sufficiently placed on notice prior to purchase that there were issues with the roof and water intrusion. The court relied on the fact that the property was sold in an "as is" condition and the sellers provided the buyers with unimpeded access to inspect the property, including the roof. *Id.* at ¶ 18.

{¶31} The Court explained that a buyer who obtains an inspection report which disclosed possible problems with an area of the structure cannot rely on any statements made by a seller prior to the home inspection. The evidence of water intrusion and potential roof issues contained in the inspection report sufficiently placed the buyers on

notice of these issues, and precluded them from relying on the disclosure statement. *Id.* at ¶ 24.

{¶32} *Petroskey* is virtually identical to the instant matter. While Appellant now attempts to offer a later acquired affidavit from his own inspector stating that the inspector did not intend to report that the roof was defective but merely to inform that he could not see the entire roof, this "evidence" cannot be used to create some sort of "ambiguity" in the report, which clearly stated that the roof was defective, a term defined within that very document. Further, had this been the inspector's intent, there were more appropriate boxes on his own pre-printed form that should have been checked instead.

{¶33} In an Eleventh District case, the sellers provided a disclosure form which did not disclose there had been water intrusion or roof issues. *Bencivenni v. Dietz,* 2023-Ohio-4549 (11th Dist.). However, the buyers had an inspection performed prior to purchase. The inspection report revealed signs of water intrusion, including the presence of stains and dampness, along with issues related to the roof. After their inspection, the buyers released their contingency (which was based on obtaining a home inspection) and agreed to buy the property "as is." *Id.* at ¶ 2. Sometime after the buyers took possession of the property, they experienced water intrusion and roofing issues that led them to file a complaint against the sellers.

{¶34} The *Bencivenni* court held that the purchase agreement contained a provision that the sale was contingent on a home inspection. After that inspection occurred, the buyers chose to remove the contingency and purchase the property "as is" despite the fact that their inspection report raised several red flags regarding water intrusion and the condition of the roof. *Id.* at ¶ 47. As a result, the buyers were clearly

put on notice of a possible defect and could not later claim that they relied on the seller's disclosure form.

{¶35} *Bencivenni* is strikingly similar to the instant case. The issue is what Appellant knew when he purchased the property. He made the sale contingent on an inspection. His inspection report definitely placed Appellant on notice that there was a potential problem with the roof and there were earmarks throughout the house of at least past leaks. Despite this red flag, Appellant released the contingency and purchased the property "as is." Appellant concludes that a question of material fact exists in this matter based solely on this later obtained affidavit of inspector Basista, who belatedly attempts to backtrack from the information he provided to Appellant in his own report. This affidavit was clearly self-serving. Regardless, the issue is not whether the buyer was aware of the full extent of any potential defect, but whether the buyer was simply made aware there was a potential defect. Based on Appellant's own inspection report, Appellant was well aware at the time of purchase of a potential defect in the roof.

{¶36} There was a section in the inspection report near the assessment of the roofing materials where the inspector could have indicated that he was not able to make a determination about the roof in his report. Instead, he merely reported: "Slate Clean debris out of pinch points, Recommend yearly inspection and repair." He then marked the roof as "Defective," defined by his own terms as "Item needs immediate repair or replacement. It is unable to perform its intended function." If, as he claimed in his "explanatory" affidavit, he could not completely inspect the roof, Basista could have checked a box on his original report indicating "Not Inspected: Item was unable to be inspected for safety reasons or due to lack of power, inaccessible, or disconnected at

time of inspection." (Inspection report, p. 2) However, he did not check that box. Basista marked the roof as "Defective." Any reasonable person reading this inspection report would believe that the roof had been inspected and, while there was debris on the roof, the roof was fully inspected and determined to be defective and unable to serve its purpose. The later affidavit may not improperly be used to materially alter this evidence. The inspection report constitutes the relevant evidence regarding Appellant's knowledge of the potential defect at the time of release of the contingency and purchase.

{¶37} The instant matter is nearly identical to *Petroskey* and *Bencivenni.* Appellant's inspection report placed Appellant on notice that the roof had a potential defect such that any claimed reliance on Appellee's disclosure form that failed to mention prior roof leaks would be unreasonable and unjustifiable. This inspection report put the buyer on notice of the defect, and coupled with the release of the contingency which Appellant signed, negated his ability to later make any claim against Appellee as to a defect. The self-serving affidavit later filed by Appellant attempting to explain away the clear finding made in the inspector's report does not change the relevant facts in this case. Accordingly, Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

The trial court erred when it denied Appellant's motion for summary judgment on Appellee's spoliation of evidence claim.

{¶38} Appellant argues that, not only did the court err in granting summary judgment in favor of Appellee, the court erred in failing to then grant it summary judgment on Appellee's counterclaim regarding spoliation of the evidence. Appellant urges this

Court to return the matter to the trial court for trial on the allegation in the complaint and grant it summary judgment on the counterclaim.

{¶39} As we have affirmed the trial court's decision to grant summary judgment in favor of Appellee, any issues surrounding the counterclaim are moot.

CONCLUSION

{¶40} Appellant contends that Appellee failed to disclose knowledge of water intrusion issues related to the condition of the roof as part of the sale of real property. Because Appellant's own inspection report raised the identical concerns, and because he purchased the property in an "as is" condition, he cannot successfully assert that he relied on Appellee's disclosure form which failed to alert him there were potential roof problems. Appellant's later acquired affidavit from the same inspector who provided his report prior to purchase cannot be used to create a question of fact in summary judgment, as it was clearly self-serving and does not alter the information Appellant had before him at the time of purchase. Accordingly, Appellant's argument is without merit and the judgment of the trial court is affirmed. Any issue regarding spoliation of evidence is moot due to our resolution of Appellant's first issue.

Robb, J., concurs

Hanni, J., dissents with dissenting opinion

Hanni, J., dissenting.

{¶41} With regard and respect to my colleagues, I must dissent from the majority opinion. I would find that a genuine issue of material fact exists regarding whether Appellant was put on notice of the defective roof, which I would find precluded summary judgment.

{¶42} Based on a review of the record, and construing the evidence in the light most favorable to Appellant, as we are required to do on summary judgment, I would find a genuine issue of material fact regarding Appellant's justifiable reliance on Appellee's 2020 Disclosure Form. First, Appellee points to the Inspection Report's grading of the roof material as "Defective" as putting Appellant on notice that further investigation was warranted as to the roof's condition. However, ambiguity and contradictory evidence exist on this front. The Inspection Report contained a disclaimer, stating in part:

> The foregoing is an opinion of the general quality and condition of the roofing material. The inspector cannot and does not offer opinion or warranty as to whether the roof leaks or may be subject to future leakage. This report is issued in consideration of the foregoing disclaimer. The only way to determine whether a roof is absolutely water tight is to observe it during a [sic] prolonged rainfall times, this situation is not present during the inspection.

Moreover, the inspector stated in an affidavit that the grading was given because a portion of the roof was covered in debris and he was unable to assess it. The inspector further stated, consistent with the disclaimer language in the Inspection Report that nothing in the Inspection Report was intended to give notice or assess whether the roof was leaking or would leak.

{¶43} In *Duman v. Campbell*, 2002-Ohio-2253 (8th Dist.), the Eighth District held that summary judgment was not appropriate and a triable issue of fact existed because the inspector's written report was rendered ambiguous by his contradictory verbal statements to the buyer, combined with the fact that his visual access to the defective area was limited by physical objects obstructing his view.

{¶44} Here, as in *Duman*, the inspector's physical capacity to evaluate the slate roof was limited, creating a conflict between his written report and his actual opinion of the condition of the roof. Because the inspector's access to the roof was limited, he disclaimed making any opinion on the roof's condition with regard to water leakage, and ultimately stated that the Inspection Report in no way put Appellant on notice regarding the roof leaking. Thus, I would find a genuine issue of material fact exists as to whether Appellant could justifiably rely on the 2020 Disclosure Form.

{¶45} Further, Appellee argues that the water stains cited in the Inspection Report served to put Appellant on notice of a defective roof. While the Inspection Report identified areas of moisture and dry staining on the dining room, living room, and family room plaster ceilings, as well as the north master suite walls, it never attributed those interior markings to an active roof failure. Moreover, there is no indication if these rooms are on the first or second floor. Conversely, where the inspector did explicitly identify a root cause for water penetration, specifically regarding the basement dampness, seepage, and wall efflorescence, he expressly cited ground-level defects, noting an improper exterior soil slope and gutter drainage issues. Crucially, as to the overarching structural integrity of the roof itself, the inspector refused to draw any connection to the

interior stains, instead completely disclaiming any capacity to diagnose the roof's capabilities.

{¶46} This lack of definitive attribution is analogous to the reasoning in *Waleszewski v. Angstadt*, 2004-Ohio-335, ¶ 21 (11th Dist.), where the court held that the presence of vertical cracks in a dry basement wall, coupled with an inspector's written notation that his visibility was "limited," could not establish that a severe water infiltration defect was open and obvious as a matter of law. Just as the structural wall cracks in *Waleszewski* did not automatically provide notice of a systemic flooding problem, the dry plaster stain on the living room ceiling in the present case cannot be held to provide notice of a roof failure. Because the Inspection Report explicitly connected ground-level moisture to grading and gutter drainage defects while completely disclaiming any capacity to evaluate the origin of the upper-level ceiling stains, the presence of those unattributed ceiling markings do not substitute for actual notice of a latent roof defect.

{¶47} For these reasons, I would reverse the trial court's grant of summary judgment and remand this matter for further proceedings.

For the reasons stated in the Opinion rendered herein, the first assignment of error is overruled and the second assignment of error is moot as we have affirmed the trial court's decision to grant summary judgment in favor of Appellee. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.