

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Plaintiff/Counter-Defendant,

vs.

Case No. 13-10616-CKB

MARK RUECKERT; MARYAN PETOSKEY,

Defendants,

HON. CHRISTOPHER P. YATES

and

ROBYNN RUECKERT,

Defendant/Counter-Plaintiff
and Cross-Plaintiff,

and

ACE AMERICAN INSURANCE COMPANY,

Defendant/Cross-Defendant.

OPINION AND ORDER GRANTING SUMMARY DISPOSITION IN FAVOR
OF DEFENDANT ACE AMERICAN INSURANCE UNDER MCR 2.116(C)(10)

On May 22, 2013, pedestrian Robynn Rueckert was struck and injured by a truck insured by Defendant ACE American Insurance Company (“ACE Insurance”). At that time, Robynn Rueckert’s husband, Defendant Mark Rueckert, had automobile insurance from Plaintiff Farm Bureau General Insurance Company of Michigan (“Farm Bureau”). Although Farm Bureau had sent a cancellation notice to Mark Rueckert on April 22, 2013, that notice informed Mark Rueckert that his “coverage will end at 12:01 a.m., Standard Time on May 25, 2013.” Therefore, Farm Bureau seemed to be the

insurer responsible for covering Mark Rueckert and other members of his household for personal protection insurance (“PIP”) benefits on the date Robynn Rueckert was hit by the truck.¹ But in the wake of that incident, Farm Bureau conducted further investigation and rescinded the policy it wrote for Mark Rueckert, thereby leaving ACE Insurance on the hook for Robynn Rueckert’s PIP benefits. Farm Bureau initiated this suit seeking a declaration that it bears no obligation to furnish PIP benefits to Robynn Rueckert. Faced with competing summary-disposition motions under MCR 2.116(C)(10), the Court concludes that ACE Insurance has the better argument.

I. Factual Background

The competing insurance providers – Plaintiff Farm Bureau and Defendant ACE Insurance – have moved for summary disposition pursuant to MCR 2.116(C)(10).² “A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.” Corley v Detroit Board of Education, 470 Mich 274, 278 (2004). To resolve such a motion, the Court must consider “affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” Id. Accordingly, the Court must limn the facts underlying this dispute from the entire record.

The Rueckerts do not constitute ideal candidates for automobile insurance. Nevertheless, on February 25, 2013, Plaintiff Farm Bureau issued a family automobile policy to the named insureds, Mark Rueckert and the daughter of Robynn Rueckert, Maryan Petoskey. See Plaintiff’s Motion for

¹ The Michigan No-Fault Act expressly provides for “personal protection insurance” benefits in MCL 500.3105. Presumably because the acronym “PPI” does not readily roll off the tongue, these benefits have come to be known as “PIP” benefits instead. See, e.g., Rambin v Allstate Ins Co, 495 Mich 316, 319 (2014).

² The Rueckerts have simply taken the position that one of those two insurance companies must provide PIP benefits to Robynn Rueckert, and ACE Insurance acknowledged at oral argument that it must bear that responsibility if the Court grants Farm Bureau the declaratory relief it seeks.

Summary Disposition, Exhibit B (insurance policy). Although Robynn Rueckert was identified as Mark Rueckert's spouse on the "Michigan Farm Bureau Membership Application and Agreement," see Rueckerts' Response to Motions for Summary Disposition, Exhibit 4, Robynn Rueckert was not listed as an insured driver on the automobile policy issued by Farm Bureau, presumably because she had recently been convicted of operating while intoxicated.

Although Plaintiff Farm Bureau has conceded that Mark Rueckert paid \$183.56 and left the Farm Bureau office on February 25, 2013, with a "reasonable expectation" that automobile insurance through Farm Bureau "was in effect at that time," see Rueckerts' Response to Motions for Summary Disposition, Exhibit 2 (Deposition of Kurt Simon at 55), the Farm Bureau underwriting department subsequently raised concerns about issuance of the policy because the application "indicated Mark Rueckert was married, but did not list his spouse's name or any other required information such as her date of birth or driver license number." See Plaintiff's Motion for Summary Disposition, Exhibit E (Affidavit of Larry Clark, ¶4). Even though that information was supplied on the "Michigan Farm Bureau Membership Application and Agreement," see Rueckerts' Response to Motions for Summary Disposition, Exhibit 4, Farm Bureau sent a letter on April 22, 2013, informing Mark Rueckert that his automobile insurance would be cancelled because Farm Bureau "ha[d] received an improper or incomplete application." See id., Exhibit 5. The letter from Farm Bureau nonetheless advised Mark Rueckert: "Your present coverage will end at 12:01 a.m. Standard Time on May 25, 2013." Id.

On May 22, 2013, Robynn Rueckert was hit by a truck as she was walking, and she sustained serious injuries as a result of the collision. Defendant ACE Insurance provided insurance coverage for the truck driver. But Plaintiff Farm Bureau opened a coverage investigation "after [it] received notification of this loss." See Rueckerts' Response to Motions for Summary Disposition, Exhibit

2 (Deposition of Kurt Simon at 59). Ultimately, on October 22, 2013, Farm Bureau sent a letter to Mark Rueckert and Maryan Petoskey declaring their automobile policy “null and void” because of “material representations” in their application for insurance coverage. See id., Exhibit 1. Seeking the Court’s imprimatur for its unilateral action, Farm Bureau submitted a “Complaint for Declaratory Judgment” on November 8, 2013. In simple terms, Farm Bureau has asked the Court to declare that the automobile insurance policy issued to Mark Rueckert and Maryan Pestosky has been rescinded or declared void because of material misrepresentations in the application for insurance coverage. Defendant ACE Insurance vigorously contests Farm Bureau’s request, arguing that Farm Bureau is impermissibly attempting to shift its clear coverage obligation to ACE Insurance. In the fullness of time, both insurance companies moved for summary disposition under MCR 2.116(C)(10). Thus, the Court must decide whether Farm Bureau bears a coverage obligation under the automobile policy it issued to Mark Rueckert and Maryan Petoskey.

II. Legal Analysis

Because Plaintiff Farm Bureau and Defendant ACE Insurance have both moved for summary disposition under MCR 2.116(C)(10), the Court must determine whether there exists a genuine issue as to any material fact. “Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” Rambin v Allstate Ins Co, 495 Mich 316, 325 (2014). Our Supreme Court has held that “[a] genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” West v General Motors Corp, 469 Mich 177, 183 (2003). Thus, the Court must decide whether either of the two competing insurance companies has established the right to declaratory relief with respect to Farm Bureau’s coverage obligation.

As a general rule, the Michigan No-Fault Act makes PIP benefits available for “accidental bodily injury to the person named in the policy [and] the person’s spouse . . . if the injury arises from a motor vehicle accident.” MCL 500.3114(1). Thus, as the spouse of an insured, Robynn Rueckert seemingly had a right to PIP benefits from her husband’s insurer, *i.e.*, Plaintiff Farm Bureau. E.g., Amerisure Ins Co v Coleman, 274 Mich App 432, 436-439 (2007) (PIP benefits available to husband under wife’s automobile policy). Moreover, the fact that Robynn Rueckert was a pedestrian, rather than a passenger in a car, at the time of the collision does not diminish her right to PIP benefits. See Esquivel v American Fidelity Fire Ins Co, 90 Mich App 56, 60 (1979). Finally, our Court of Appeals has concluded that an insurer in the position of Farm Bureau here has primary responsibility for the payment of PIP benefits. Id. at 59-60, citing MCL 500.3114. Therefore, the Michigan No-Fault Act appears to place primary responsibility for Robynn Rueckert’s PIP benefits upon Farm Bureau.

Plaintiff Farm Bureau disclaims its obligation to pay PIP benefits to Robynn Rueckert on the theory that it issued a policy to Robynn Rueckert’s husband based upon material misrepresentations. That theory almost certainly would necessitate a trial to untangle Farm Bureau’s allegations and the Rueckerts’ denials. See, e.g., Meyers v Transportations Services, Inc., Nos 300043 & 303405, slip op at 8 (Mich App Sept 24, 2013) (unpublished decision).³ But Defendant ACE Insurance argues that, under Michigan law, Farm Bureau’s letter of cancellation sent on April 22, 2013, which left the coverage in place until May 25, 2013, prevents Farm Bureau from disclaiming coverage for an event that occurred on May 22, 2013.

³ Like the instant case, Meyers involved a claim for PIP benefits for injuries to a pedestrian hit by a truck. The carrier in the position of Plaintiff Farm Bureau disclaimed coverage based upon material misrepresentations and won summary disposition under MCR 2.116(C)(10), but our Court of Appeals reversed and remanded, describing the case as “replete with triable issues of fact” Meyers, Nos 300043 & 303405, slip op at 8, citing Titan Ins Co v Hyten, 491 Mich 547 (2012).

Plaintiff Farm Bureau had concerns about Mark Rueckert's wife as early as March 22, 2013, when Larry Clark – acting on behalf of the underwriting department at Farm Bureau – sent an e-mail to Jeffrey Brandt – the agent who filled out the application for Mark Rueckert – demanding “the full name, date of birth and driver license number for Mark's spouse.” See Defendant ACE American's Motion for Summary Disposition, Exhibit G. Although nearly all of that information was contained on a “Michigan Farm Bureau Membership Application and Agreement” signed by Mark Rueckert on February 25, 2013, see Rueckerts' Response to Motions for Summary Disposition, Exhibit 4, the purported lack of information prompted Farm Bureau to send a letter to Mark Rueckert on April 22, 2013, cancelling his coverage “at 12:01 a.m. Standard Time on May 25, 2013.” See id., Exhibit 5. In other words, Farm Bureau chose the remedy of cancellation, thereby keeping the premium paid by Mark Rueckert in exchange for extending his coverage only through May 24, 2013.⁴ According to Defendant ACE Insurance, that decision foreclosed Farm Bureau from changing course after Farm Bureau learned of Robynn Rueckert's catastrophic accident. The Court agrees.

In Burton v Wolverine Mutual Ins Co, 213 Mich App 514 (1995), our Court of Appeals faced a dispute concerning “an insurer's right to rescind an insurance policy for a misrepresentation made by an insured in an application for insurance following a loss by the insured and following the notice of cancellation by the insurer.” See id. at 515. Despite acknowledging “the general proposition that an insurer may rescind a policy ab initio because of a material misrepresentation in the application for insurance[,]” id. at 517, our Court of Appeals held that the insurer “waived its right of rescission

⁴ Kurt Simon conceded at his deposition that Plaintiff Farm Bureau did not refund to Mark Rueckert the money that he paid for the automobile insurance policy until November 25, 2013 – six months after Farm Bureau's cancellation ended coverage under the policy. See Rueckerts' Response to Motions for Summary Disposition, Exhibit 2 (Deposition of Kurt Simon at 58).

in this case” when it “chose, rather than issuing a letter of rescission, to issue a notice of cancellation, effective at some date in the future.” Id. Thus, the Burton decision “makes clear that the defendant’s choice to issue a cancellation notice and to retain the premium earned until the effective date of the cancellation was *in itself* sufficient to void the rescission.” See Hill v Pioneer State Mutual Ins Co, No 222646, slip op at 3 (Mich App Nov 2, 2001) (unpublished decision). In that respect, the Burton decision provides powerful authority for the proposition that Plaintiff Farm Bureau gave up its right to rescission when it issued the cancellation letter to Mark Rueckert on April 22, 2013.

Plaintiff Farm Bureau has made two arguments to overcome Burton, but neither argument carries the day. First, Farm Bureau refers to the observation in Titan Ins Co v Hyten, 491 Mich 547 (2012), that cancellation and rescission “are distinct insurance processes” that need not be mutually exclusive. Id. at 567. That observation by our Supreme Court is unassailable, as is its disagreement with the notion that “when an insurer elects *not* to reassess the risk and later uncovers fraud, it is somehow precluded from pursuing traditional legal and equitable remedies in response.” Id. Here, in contrast, Farm Bureau chose cancellation at a future date and collection of premiums, instead of rescission, when it uncovered discrepancies in Mark Rueckert’s application. That situation is a far cry from the circumstances underlying our Supreme Court’s observations in Titan Ins Co, where the insurer’s mere failure to engage in cancellation would have foreclosed rescission as well. Second, Farm Bureau contends that it cancelled Mark Rueckert’s policy based upon incomplete information, but it subsequently rescinded the policy based upon complete information about misrepresentations in Mark Rueckert’s application. As the defendants point out, however, the “Michigan Farm Bureau Membership Application and Agreement” signed by Mark Rueckert on February 25, 2013, not only identified “Rueckert, Robynn” as the “spouse” of Mark Rueckert, but also provided her date of birth.

See Rueckerts' Response to Motions for Summary Disposition, Exhibit 4. Moreover, the concerns that resulted in the cancellation letter on April 22, 2013, ultimately served as the principal bases for rescission of the policy in October of 2013. Farm Bureau simply dug deeper in the wake of Robynn Ruecker's claim for PIP benefits, see id., Exhibit 2 (Deposition of Kurt Simon at 58-59), and Farm Bureau inevitably unearthed more information once it began pursuing rescission in earnest. Nothing in that subsequent investigation, however, altered the basic fact that Farm Bureau first cancelled and later rescinded Mark Rueckert's policy based largely on concerns about his wife, Robynn Rueckert. Thus, this case falls squarely within the holding of Burton, which forecloses rescission as a remedy available to Farm Bureau under the circumstances of this case.

III. Conclusion

For all of the reasons set forth in this opinion, the Court shall grant summary disposition in favor of Defendant ACE Insurance under MCR 2.116(C)(10), deny summary disposition to Plaintiff Farm Bureau, and declare that Farm Bureau has no right to rescission of Mark Rueckert's automobile insurance policy or to a declaration absolving Farm Bureau of primary responsibility for PIP benefits payable to Robynn Rueckert.

IT IS SO ORDERED.

Dated: December 10, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge