

STATE OF MICHIGAN
COURT OF APPEALS

GORGES SALMO,

Plaintiff-Appellant,

v

STATE FARM FIRE & CASUALTY,
COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 30, 1997

No. 192162

Oakland Circuit Court

LC No. 95-497223 CK

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

In this suit on an insurance policy, defendant moved for summary disposition on the basis of plaintiff's failure to comply with a policy provision requiring plaintiff to submit to examination under oath at the request of the insurer. By its terms, the policy precludes suit thereon unless there has first been compliance with the policy provisions. At an initial hearing on the motion for summary disposition, the trial court concluded that a disputed issue of fact, apparently regarding what the attorneys for the parties said to one another prior to the filing of suit (no transcript of the hearing having been furnished), was needed to resolve the motion. At the scheduled hearing, plaintiff's counsel failed to appear; this was the second incident in which plaintiff's counsel had failed to appear for a scheduled motion hearing, and the trial court dismissed the action. Plaintiff appeals by right, after having unsuccessfully sought post-judgment relief. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court considers it unnecessary to determine whether the trial court substantively erred in dismissing the action for failure of plaintiff's counsel to appear for the hearing, because on the facts of this case such dismissal was without prejudice and does not preclude plaintiff from refiling suit after compliance with the policy provisions. The insurance policy in question does not provide that lack of compliance with its provisions shall work a forfeiture; therefore, any failure of compliance prior to the filing of the initial suit would merely suspend plaintiff's right to sue on the policy until compliance is rendered. 5A Appleman, *Insurance Law & Practice*, §3549, pp 550-552. The trial court's action therefore simply creates a temporary procedural hindrance to plaintiff's pursuit of his claim, which as a

response to plaintiff's second failure to appear for a motion hearing is not an abuse of the trial court's discretion.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald