STATE OF MICHIGAN

COURT OF APPEALS

JAMES H. YOUNG,

Plaintiff-Appellant,

v

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 8, 1998

No. 201295
Saginaw Circuit Court
LC No. 96-014877 CK

Before: Hood, P.J., and Markman and Talbot, JJ.

PER CURIAM.

Plaintiff alleges that defendant breached its contract of insurance by denying certain retroactive benefits. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm.

Defendant insured plaintiff under a disability policy. Plaintiff began to experience debilitating fatigue in 1989. In November 1993, plaintiff's physician diagnosed plaintiff's condition as sleep apnea. Upon further testing he concluded that plaintiff's sleep apnea was secondary to degenerating pulmonary obstructive disease, and that plaintiff was one-third disabled from 1989 until June 1992, one-half disabled from June 1992 to April 1994, and two-thirds disabled by April 1994. On November 19, 1993, plaintiff filed a claim seeking disability benefits beginning with the onset of symptoms in 1989. Plaintiff initially submitted written proof of disability on December 13, 1993.

Defendant did not dispute plaintiff's disability, but relied upon policy language to deny plaintiff's claim for certain retroactive benefits. The provision of the policy at issue is § 4.3, entitled "Proof of Disability:"

> Written proof of disability must be given to the company at its home office. It must be given within ninety days after termination of the period for which the company is liable. Failure to give proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time; however, proof

must be given not later than one year from the time proof is otherwise required except in the absence of legal capacity.

Section 4.3 of the policy is consistent with the requirements for disability insurance policies mandated by § 3414 of the Insurance Code of 1956, MCL 500.100 *et seq.*; MSA 24.1100, *et seq.*[1] Provisions such as these, which require insured parties to provide notice of claims, are designed to give insurers the opportunity to make timely investigations in order to defend against fraudulent or excessive claims. See *Wendel v Swanberg*, 384 Mich 468, 477; 185 NW2d 348 (1971).

Defendant paid benefits retroactive to June 1992, but denied plaintiff's claim for retroactive benefits for the period January 1989 through June 1992. Finding the language of § 4.3 to be unambiguous, the trial court granted defendant's motion for summary disposition. MCR 2.116(C)(10). The trial court explained that, under § 4.3, assuming it was not reasonably possible for plaintiff to give proof of disability as required, the earliest time for which the policy would require defendant to pay benefits was October 1992 (one year and ninety days prior to plaintiff's submission of proof of disability).

On appeal, plaintiff again argues that the language in § 4.3 of the policy is ambiguous and that, as such, it should be construed in favor of coverage. We agree with the trial court's conclusion that the subject policy language is not ambiguous. This Court reviews a trial court's decision regarding a motion for summary disposition de novo. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). Summary disposition may be granted under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Foster v Cone-Blanchard Machine Co*, 221 Mich App 43, 48; 560 NW2d 664 (1997).

An insurance policy is a contract between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Courts must enforce an insurance contract according to its terms. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). A clause in an insurance contract is valid so long as it is clear, unambiguous, and not in contravention of public policy. *Auto-Owners*, *supra* at 567. A court may not read ambiguities into a policy where none exist. *Michigan Millers*, *supra* at 567. An insurance contract is ambiguous when its provisions may reasonably understood in differing ways. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). Ambiguities are to be construed against the insurer, who is the drafter of the contract. *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

Plaintiff first contends that the phrase, "termination of the period for which the Company is liable," in the first sentence of § 4.3 is ambiguous because that "period" could be understood as being either (1) the monthly period for which particular benefits are due, or (2) the "maximum benefit period" over which the company might be potentially liable for paying disability benefits. In plaintiff's case, the "maximum benefit period" provided for in the policy terminated at plaintiff's sixty-fifth birthday, in the year 2007. Plaintiff suggests that this portion of § 4.3 should have been construed in his favor to permit

submission of proof of disability ninety days after his sixty-fifth birthday. We disagree. Section 4.3 speaks of "the period for which the company is liable" (i.e., the monthly period for which particular benefits are due), not of the period for which the company may be potentially liable (i.e., the maximum benefit period). The plain language of the policy is not ambiguous, and we will not create an ambiguity where none exists. Moreover, if this Court were to accept plaintiff's unreasonable assertion that the company's period of liability is synonymous with "the end of the policy," there would be virtually no time limitation on seeking retroactive benefits.

Plaintiff also contends that the last sentence of § 4.3, "however, proof must be given not later than one year from the time proof is otherwise required," is ambiguous because that "time" could be understood as being either (1) the end of the ninety day period referred to earlier in § 4.3, or (2) the end of time at which it was reasonably possible to give such proof. Plaintiff suggests that this portion of § 4.3 should have been construed in his favor to permit submission of proof of disability one year after the time at which it was reasonably possible to give such proof. Again, we disagree. Plaintiff's suggested construction disregards the policy's use of the word "otherwise," which indicates that the one year period referred to in that sentence is a limitation on the time during which a reasonable failure to submit proof of disability within the ninety period is excusable.

Affirmed.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ Michael J. Talbot

[1] Section 3414 provides:

> There shall be a provision as follows:
>
> > PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required. [MCL 500.3414; MSA 24.13414.]