STATE OF MICHIGAN

COURT OF APPEALS

BETTY A. WILEY,

Plaintiff-Appellant,

v

PRIME UNDERWRITERS, GARY J. GUNDLE, and ESTATE OF CURTIS D. GUNDLE,

Defendants,

and

AUTO OWNERS INSURANCE CO,

Defendant-Appellee.

UNPUBLISHED
July 10, 1998

No. 198083
Wayne Circuit Court
LC No. 95-508384-NI

Before: Holbrook, Jr., P.J., and Young, Jr. and J.M. Batzer*, JJ.

PER CURIAM.

This is a no-fault insurance case involving two separate accidents. Plaintiff appeals as of right from an order granting defendant Auto Owners' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff settled her claims against Prime Underwriters and the Gundles following mediation. We affirm.

On March 10, 1994, plaintiff approached Prime Underwriters to procure no-fault insurance coverage through the Michigan Automobile Insurance Placement Facility (MAIPF or the "Facility"). Plaintiff paid Prime Underwriters a $260.00 premium, signed an insurance application, and received a receipt and a certificate of insurance dated March 10, 1994. The certificate identifies Auto Owners as the insurer. On April 27, 1994, plaintiff was involved in an auto accident for which she requested benefits under her no-fault insurance policy. On April 28, 1994, a cancellation notice was issued by Prime Underwriters, not by Auto Owners. Plaintiff then

* Circuit judge, sitting on the Court of Appeals by assignment.

paid an additional $98.00 to Prime Underwriters on May 12, 1994. On July 21, 1994, Auto Owners denied plaintiff's claim on the grounds that her insurance coverage did not take effect until May 4, 1994, when it issued her policy. Apparently, Prime Underwriters did not date or submit plaintiff's application for insurance to the MAIPF and Auto Owners until May 4, 1994.

On August 19, 1994, plaintiff was the victim of a hit and run accident. Auto Owners denied plaintiff's claim for this accident because it had issued her a cancellation notice on June 9, 1994, effective June 23, 1994, for nonpayment of premiums. Auto Owners mailed the cancellation notice to 16301 Lawton, Detroit, Michigan 48208, which is the address listed on the May 4, 1994, application for insurance submitted by Prime Underwriters. Plaintiff claims, however, that she has never lived at that address and that it is not the address she gave to Prime Underwriters when she initially purchased the policy. She also notes that the cancellation notice issued by Prime Underwriters on April 28, 1994, was mailed to her correct address, not the address written on the application.[1]

The trial court initially denied Auto Owners' motion for summary disposition as to the August accident, finding a question of fact regarding the June cancellation notice. The trial court granted the motion as to the April accident because it found no agency relationship between Prime Underwriters and Auto Owners, and therefore Auto Owners was not responsible for plaintiff's no-fault insurance until it received her application on May 4, 1994. Upon reconsideration, the trial court decided that Auto Owners was also not obligated to pay benefits for plaintiff's August accident because Auto Owners was not responsible for Prime Underwriters submitting the wrong address and thus the June cancellation notice was effective.

On appeal, plaintiff contends that the trial court erred in granting summary disposition regarding her April 27, 1994, because an agency relationship existed between Prime Underwriters and Auto Owners and thus Auto Owners was bound by its agent's representations regarding coverage. Alternatively, plaintiff argues that coverage became immediately effective under the MAIPF's rules when she purchased the policy on March 10, 1994, even if the application was not forwarded to Auto Owners until much later. We disagree on both counts.

A trial court's decision to grant summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1996). On review, this Court considers the affidavits, depositions, admissions, pleadings, and any other evidence submitted below in the light most favorable to the nonmoving party and determines whether a genuine issue of fact exists and whether the moving party is entitled to judgment as a matter of law. *SSC Associates v General Retirement System*, 192 Mich App 360, 365; 480 NW2d 275 (1991).

Auto Owners issued plaintiff's policy through the MAIPF. The MAIPF is a statutorily mandated program whose goal is to guarantee automobile insurance coverage to those who are unable to procure insurance through ordinary methods. *Auto-Owners Ins Co v Mich Mut Ins Co*, 223 Mich App 205, 208 n 1; 565 NW2d 907 (1997); see also MCL 500.3301(1); MSA 24.13301(1). Every insurer authorized to write insurance in Michigan is required to participate in the MAIPF and to adhere

to its plan of operation. MCL 500.3301(1); MSA 24.13301(1); MCL 500.3310(5); MSA 24.13310(5).

Pursuant to the Policy Administration and Service Standards of the MAIPF User's Manual, Section III (G)(1)(a)-(c), a producer such as Prime Underwriters may effect "[i]mmediate certification" of a risk if it certifies the date and time the application was written, forwards the application and fee to the MAIPF by the next working day, gives the applicant a copy of the certification, maintains a record of "all risks so certified" and agrees to allow the insurer or the MAIPF to inspect and copy those records if coverage is in question due to an accident or claim. Under Section III (G)(1)(d), the producer is encouraged to establish a "tickler file" and to contact the MAIPF if no placement notice is received within thirty days. The closing paragraph of Section III (G)(1) provides that, if no effective date is specified on the application and no certificate is issued by the producer, coverage becomes effective "at 12:01 A.M. on the day after placement notice is mailed from the Facility." Section III (G)(1)(e) further states that "[i]n no event shall coverage be effective prior to the time and date shown on the application."

As seen above, the MAIPF's plan of operation gives Prime Underwriters authority to effect immediate coverage subject to various conditions. However, there is no evidence that Prime Underwriters transmitted plaintiff's application to the MAIPF by the next day as required by the plan. Therefore, pursuant to the plan's provisions, Auto Owners' no fault coverage did not become effective until the date and time shown on the insurance application, May 4, 1994, a week after plaintiff's first accident.

As to the claim of agency, we note that the application for insurance appears to bear plaintiff's signature on the certification section. That section states that Prime Underwriters is not an agent of Auto Owners:

> . . . I understand that the Producer of Record for this insurance is not acting as an agent of any company or of the Michigan Automobile Insurance Placement Facility for the purposes of this transaction and any other transaction with respect to this insurance, but is acting as an agent for me.

Further, the producer's statement portion of the application, which Prime Underwriters signed, states that:

> I do hereby certify that I am an agent appointed by American Fellowship to transact automobile insurance in the State of Michigan and am presently authorized to solicit, negotiate, or effect automobile insurance for a member of the Facility.

An independent insurance agent is ordinarily an agent of the insured, not the insurer. *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 254; 535 NW2d 207(1995); *Auto-Owners Ins Co*, *supra*, 223 Mich App 215. The certification portion of the application merely restates this common law

principle. The application also states that Prime Underwriters has the authority to effect automobile insurance "for a member of the Facility." *Auto-Owners Ins Co, supra,* 223 Mich App 216. We ackowledge that the language in the producer's statement of the application could lead a lay person to believe that Prime Underwriters had the authority to bind the insurance company. However, in law, the general language of the application did not give Prime Underwriters the specific authority to bind Auto Owners. *Auto-Owners Ins Co, supra,* 223 Mich App 216-217.

Plaintiff concedes that Prime Underwriters was an independent agent but she contends that there was an implied agency relationship between Prime Underwriters and Auto Owners, such that the certificate issued by Prime Underwriters should bind Auto Owners. We again disagree.

> The authority of an agent to bind a principal may be either actual or apparent. *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). Actual authority may be either express or implied. Implied authority is the authority that an agent believes the agent possesses. *Id.* Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists. However, apparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent. *Id.*, pp 698-699. [*Alar v Mercy Memorial Hospital*, 208 Mich App 518, 528; 529 NW2d 318 (1995).]

Along with its motion, defendant produced an affidavit of a representative of the MAIPF stating that the producer does not act as an agent of the MAIPF or of the insurance company who issues the policy. This is consistent with the application itself. The representative also stated that the producer is the insured's agent as set forth in the insurance application. Thus, there is no evidence that Prime Underwriters had actual authority, express or implied, to bind Auto Owners.

As to the claim of apparent authority, plaintiff concedes that the only representations, acts, conduct, and appearances regarding the alleged agency relationship between Prime Underwriters and Auto Owners came from Prime Underwriters. Thus, they were not "traceable" to Auto Owners as required by the caselaw. See *Alar, supra,* 208 Mich App 528. Plaintiff therefore failed to create a question of material fact regarding agency.

Plaintiff next argues that the trial court erred in granting summary disposition to Auto Owners regarding her August accident because, although Auto Owners mailed the June notice of cancellation to the address last known to it, the notice did not comply with MCL 500.3020; MSA 24.13020, because it was mailed to the wrong address and she did not receive it. We disagree.

The process of canceling a no-fault insurance policy is governed by MCL 500.3201-500.3262; MSA 24.13201-24.13262. An insured must ordinarily receive actual notice of cancellation before the cancellation is effective. *Causin v AutoClub Ins Ass'n*, 211 Mich App 369, 372; 536 NW2d 247 (1995); see also MCL 500.3020; MSA 24.13020 (mailing to last known address creates rebuttable presumption of notice). However, the procedural protections of the act

do not apply to cancellations due to nonpayment of premiums such as this one. MCL 500.3212; MSA 24.13212. Thus, although plaintiff may have rebutted the statutory presumption of notice, she has failed to create an issue of *material* fact.[2]

Affirmed.

/s/ Donald E. Holbrook, Jr
/s/ Robert P. Young, Jr.
/s/ James M. Batzer

[1] It is impossible to tell from the copies contained in the lower court file whether the address was written on the application by plaintiff or by someone else.

[2] Auto Owners also argues that plaintiff has no standing to assert a claim for benefits resulting from the August 19, 1994, accident because her medical bill were paid by another insurer pursuant to the assigned claims provisions of the act. See MCL 500.3171-500.3176; MSA 24.13171-24.13176. We decline to review this issue because it was not addressed by the trial court, and therefore was not properly preserved, and also because it has not been adequately developed or briefed. *Alford v Pollution Control Inds*, 222 Mich App 693, 699; 565 NW2d 9 (1997).