STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER L. GELETZKE,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
April 6, 2001

No. 220430
Wayne Circuit Court
LC No. 98-800074-CK

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals by right from a judgment granting plaintiff's motion for summary disposition. We affirm.

On appeal, defendant argues that the trial court erred in granting summary disposition to plaintiff because genuine issues of material fact exist regarding whether defendant properly complied with the cancellation notification requirements of plaintiff's insurance policy. We disagree.

On appeal, an order granting or denying a motion for summary disposition regarding cancellation of an insurance policy is reviewed de novo. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). Where a party brings a motion pursuant to MCR 2.116(C)(9) and (C)(10) and the trial court fails to specify which of these sections it relied upon in reaching its determination, and where the court relied upon evidence beyond the pleadings to support its determination, this Court construes the motion as having been granted pursuant to MCR 2.116(C)(10). *Wayne Co v Plymouth Charter Twp*, 240 Mich App 479, 480 n 2; 612 NW2d 440 (2000). When evaluating a motion for summary disposition brought under MCR 2.116(C)(10), the evidence is viewed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "The opponent must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial." *Barber v SMH (US), Inc*, 202 Mich App 366, 368; 509 NW2d 791 (1993).

The present case involves interpretation of the term "or" in the parties' insurance contract. It is true, as defendant argues, that notices of cancellation for nonpayment of premium are addressed under the chapter in plaintiff's insurance policy on Termination, section (A)(2), subsection (a), which requires that defendant provide plaintiff with ten days' notice for

cancellation of plaintiff's policy. In asserting that defendant was only required to provide plaintiff with ten days' notice of the policy cancellation, however, defendant impermissibly attempts to interpret the term "or" in subsection (a) out of context as a single word rather than considering its meaning in relation to the words and phrases of which it is a part. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 356-357; 596 NW2d 190 (1999). Subsection (a) cannot be read in isolation. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 383; 591 NW2d 325 (1998). It must be read in conjunction with subsection (b) which states that twenty days' notice is required "if notice is mailed during the first 55 days this policy is in effect and this is not a renewal or continuation policy."

The term "or" is defined in relevant part as follows: "1. (used to connect words, phrases, or clauses representing alternatives): *to be or not to be*. . . . 3. (used in correlation): *Either we go now or wait till tomorrow*. . . . 6. *Logic*. the connective used in disjunction." *Random House Webster's College Dictionary* (1992) (emphasis in original). As plaintiff suggests, it is logical to interpret the term "or" in the subsections of the policy's chapter on Termination, section (A)(2), to *create an alternative* in the policy that requires ten days' notice, rather than twenty, when cancellation is due to nonpayment of a policy that is more than fifty-five days old. *Michigan Mutual, supra* at 88-89. However, for any policy that is less than fifty-five days old, excepting renewal and continuation policies, cancellation requires twenty days' notice. *Michigan Twp, supra* at 382-383.

Defendant argues that the language of the policy should be interpreted in its favor because the standard for summary disposition requires that all evidence be viewed in the light most favorable to the nonmoving party. The construction and interpretation of an insurance contract, however, is a question of law that this Court reviews de novo and not a question of fact to be analyzed under the evidentiary standard of summary disposition. *Henderson, supra* at 353. When a term in an insurance policy can reasonably be interpreted in more than one way, this Court construes the term against the insurer and in favor of providing coverage to the insured. *Michigan Twp, supra; Michigan Mutual, supra* at 88-90.

Defendant further contends that it is only required to provide plaintiff with ten days' notice because MCL 500.3020(1)(b); MSA 24.13020(1)(b) only requires ten days' notice for policy cancellations due to nonpayment. However, the statute does not prohibit an insured from contracting to additional terms that at a minimum satisfy this requirement, nor does it relieve defendant of its duty to satisfy the terms of its own policy.

As plaintiff's interpretation of the term "or" in the policy is reasonable when read in consideration of the contract as a whole, this Court holds that plaintiff is entitled to coverage. There is no dispute between the parties that plaintiff's policy was effective on January 9, 1996, making it fifteen days old at the time of defendant's mailing of the cancellation notice on January 24, 1996. There is also no question that plaintiff's policy was neither a renewal nor a continuation policy. Therefore, defendant had a duty to provide plaintiff with twenty days' notice of his policy's cancellation, and defendant breached that duty by providing only fourteen days' notice. Thus, defendant improperly canceled plaintiff's policy, and plaintiff is entitled to coverage.

On appeal, defendant also argues the cancellation of plaintiff's policy was effective because plaintiff received actual notice of the cancellation before plaintiff's collision. Therefore, plaintiff was aware at the time of the collision that the policy was ineffective. Even if plaintiff had actual notice of the cancellation, the notice was nevertheless ineffective, as defendant's failure to provide plaintiff with twenty days' notice rendered the notice defective. "[D]efects in mailing [of notices of cancellation of automobile liability insurance coverage] are not cured by the insured's receipt of the cancellation notice." *Causin v Auto Club Ins Ass'n*, 211 Mich App 369, 373; 536 NW2d 247 (1995).

We affirm.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra