

STATE OF MICHIGAN
COURT OF APPEALS

CARVAN WILLIAMS,

Plaintiff-Appellant,

v

CONTINENTAL INSURANCE COMPANY,
a/k/a CNA INSURANCE,

Defendant-Appellee.

UNPUBLISHED

April 23, 2002

No. 229183

Wayne Circuit Court

LC No. 00-000194-CK

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is an action to recover underinsured motorist benefits under a no-fault insurance policy issued to plaintiff by defendant. Plaintiff sustained neck and back injuries in a February 19, 1997, collision. On February 6, 1998, he filed suit against defendant for first party no-fault benefits. On July 1, 1998, plaintiff's attorney sent defendant a letter stating that plaintiff had been advised that the other driver's no-fault policy limits were only \$20,000 and he was therefore claiming entitlement to underinsured motorist benefits. When defendant failed to respond, plaintiff brought this action. Defendant then moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), contending that the claim for underinsured motorist benefits was untimely under the provision of the parties' underinsured motorist coverage endorsement stating that a "[c]laim or suit must be brought within 1 year from the date of the accident." The trial court agreed and dismissed the action.

On appeal, plaintiff contends that the trial court erred in granting summary disposition in favor of defendant. This Court reviews a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The construction and interpretation of an insurance contract is a question of law that is also reviewed de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

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

Plaintiff first argues that his suit for first party benefits served as notice of the potential for additional claims, including a claim for underinsured motorist coverage. A similar argument was rejected by our Supreme Court in *Morley v Automobile Club of Michigan*, 458 Mich 459; 581 NW2d 237 (1998). There, the plaintiffs were involved in a collision in November 1987, they filed an action for first-party benefits in April 1990, and they claimed entitlement to coverage under an uninsured motorist endorsement in August 1991. Their insurer informed them that they were not entitled to uninsured motorist benefits because they had not claimed them within three years of the date of the accident as required by the policy. *Id.* at 462-463. The Court rejected the plaintiffs' argument that their report of the accident and notice to the insurer under the general no-fault provisions of the contract was sufficient to qualify as a claim for uninsured motorist benefits, reasoning that the no-fault claim procedure did not inform the insurer of the fact that insureds believed the tortfeasor was uninsured. *Id.* at 468. Similarly, in this case, plaintiff's suit for first-party benefits made no mention of a possible underinsured motorist claim. Under *Morley*, plaintiff's argument that he timely notified defendant of a possible underinsured motorist claim fails.

Plaintiff also argues that it is unreasonable to expect an injured driver to file a claim for underinsured motorist coverage within a year of the accident and urges this Court to adopt an interpretation of the provision that would allow coverage when a claim is filed within a year of discovering that the allegedly negligent driver was underinsured. We decline to do so. *Sallee v Auto Club Ins Ass'n*, 190 Mich App 305, 307-308; 475 NW2d 828 (1991). Moreover, we conclude that because the policy requires filing a claim of entitlement to underinsured motorist coverage within the one-year period, and not necessarily a lawsuit for failure to provide such coverage, the one-year claims period is not so unreasonable as to be unenforceable.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth