STATE OF MICHIGAN

COURT OF APPEALS

SHALAAN K. FISHER,

Plaintiff-Appellant,

v

JACKSON NATIONAL LIFE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 27, 2007

No. 272655
Wayne Circuit Court
LC No. 05-507623-CK

Before: Saad, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

In this insurance action, plaintiff appeals by right the trial court's grant of summary disposition in favor of defendant and the trial court's denial of her motion for reconsideration. We affirm.

Plaintiff was the owner and beneficiary of a term life insurance policy on the life of her former husband, Michael Sinutko, in the amount of $100,000. The policy originally took effect in 1995. When Sinutko died in December 2004, plaintiff sought to collect under the policy. However, defendant denied plaintiff's claim for benefits, stating that the policy had lapsed prior to Sinutko's death.

Plaintiff commenced this action in March 2005. Among other things, plaintiff sought a declaration that she was entitled to recover under the life insurance policy and alleged that defendant had breached the contract of insurance.[1] Defendant moved for summary disposition on the ground that the life insurance policy had lapsed prior to Sinutko's death because plaintiff had failed to pay the necessary premiums. The trial court granted defendant's motion.

We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[1] Plaintiff's complaint also set forth allegations of fraud and various statutory violations. In addition, plaintiff alleged that defendant should be equitably estopped from denying the requested life insurance benefits.

"The pleadings, affidavits, depositions, admissions, and other admissible documentary evidence submitted by the parties must be considered in the light most favorable to the nonmoving party." *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007). "Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and that the moving party is entitled to judgment as a matter of law." *Id*. We review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Plaintiff's arguments on appeal are simply not relevant to our resolution of this matter. She challenges defendant's billing practices and contends that she was misled through her telephone conversations and dealings with defendant's customer service department. Although the argument is never entirely fleshed out in her brief, plaintiff appears to argue that defendant misled her through its confusing bills and telephone conversations into believing that she would have more time than allowed by the plain terms of the insurance contract to make each monthly payment. Thus, plaintiff suggests that even though she had not remained current with her monthly premium payments, defendant should have been estopped from terminating the policy and denying her benefits under the insurance contract. Plaintiff further argues that because defendant accepted her late payment of $89.25 for the March 2004 premium, the insurance policy was completely revived, and defendant was not entitled to rely on the terms of its earlier lapse notice to cancel the policy.[2]

We fully acknowledge that "'[i]f the [insurance] company has, by its course of conduct, acts, or declarations, or by any language in the policy, misled the insured in any way in regard to the payment of premiums, or created a belief on the part of the insured that strict compliance with the letter of the contract as to payment of the premium on the day stipulated would not be exacted, and the insured in consequence fails to pay on the day appointed, the company will be held to have waived the requirement, and will be estopped from setting up the condition as cause for forfeiture.'" *Pastucha v Roth*, 290 Mich 1, 9; 287 NW 355 (1939), quoting *Wallace v Fraternal Mystic Circle*, 121 Mich 263, 269; 80 NW 6 (1899); see also *Hoyle v Grange Life Assurance Ass'n*, 214 Mich 603, 606; 183 NW 50 (1921). Therefore, when an insurer *unconditionally* accepts a late or untimely premium, the underlying policy is revived. *Pastucha*, *supra* at 10.

However, defendant in the case at bar did not *unconditionally* accept plaintiff's late payment of the March 2004 premium. Instead, defendant specifically conditioned its acceptance of the late premium by informing plaintiff that she would also be required to pay the April and May 2004 premiums in order to keep the policy in effect. Plaintiff did not pay these April and May premiums, nor did she make any other payments to defendant after her payment of the March 2004 premium. Defendant's cancellation of the policy for nonpayment of premiums was

---

[2] We reject plaintiff's argument that defendant violated MCL 500.4012(b) in this case. Written notice was sent to plaintiff at least 30 days prior to defendant's cancellation of her life insurance policy.

entirely consistent with what plaintiff had been told concerning her obligation to pay the April and May premiums.

Nor is there any basis to conclude that defendant should have been estopped from denying the benefits requested by plaintiff in this matter. Plaintiff was fully aware of the premiums that were due, yet failed to pay them. It is true that defendant attempted to accommodate plaintiff by giving her additional time to make certain payments. However, defendant never once indicated that future late payments would be accepted. Even viewing the record in a light most favorable to plaintiff, no reasonable mind could conclude that defendant "'created a belief on the part of [plaintiff] that strict compliance with the letter of the contract as to payment of the premium on the day stipulated would not be exacted . . . .'" *Pastucha, supra* at 9 (citation omitted). To the extent that plaintiff expected or believed that defendant would continue to accommodate her late payments and to keep the unpaid policy in effect, such an expectation or belief was wholly unreasonable because it was directly contrary to the plain terms of the insurance contract, which required timely payment of the premiums. "'[T]he expectation that a contract will be enforceable other than according to its terms surely may not be said to be reasonable.'" *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 63; 664 NW2d 776 (2003), quoting *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982). Defendant's accommodation of plaintiff's late payment did not provide a sufficient basis for estoppel in this case.

More importantly, even assuming arguendo that defendant's acceptance of the March 2004 payment revived plaintiff's policy and that defendant somehow misled plaintiff into believing that she would be routinely permitted to make late payments in the future, the fact remains that plaintiff failed to make *any* additional premium payments for the remainder of 2004. Thus, even if defendant did improperly cancel plaintiff's policy in June, it is clear that the policy nevertheless terminated according to its own terms well before the death of plaintiff's former husband in December 2004. No reasonable person could conclude that the insurance policy remained in full force and effect after plaintiff had failed to pay any premiums for approximately six months.

Defendant's potentially misleading billing practices and telephone conversations with plaintiff did not in any way excuse plaintiff's later failure to pay any premiums for six months. By the time plaintiff's former husband died in December 2004, the life insurance policy had lapsed for nonpayment of premiums and had been terminated. Summary disposition was properly granted in favor of defendant, and the trial court did not abuse its discretion by denying plaintiff's motion for reconsideration.

We decline to consider whether summary disposition was appropriate with respect to plaintiff's statutory and fraud claims. These matters have not been briefed or even addressed on appeal. MCR 7.212(7); *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001); *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane M. Beckering