STATE OF MICHIGAN

COURT OF APPEALS

COLLEEN PUTNEY,

Plaintiff-Appellant,

v

QBE INSURANCE CORPORATION,

Defendant-Appellee,

and

ASSIGNED CLAIMS FACILITY,

Defendant.

UNPUBLISHED
October 14, 2008

No. 279800
Genesee Circuit Court
LC No. 06-083068-NF

Before: Meter, P.J., and Talbot and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in favor of defendant, QBE Insurance Corporation. We affirm.

This appeal involves a dispute pertaining to the cancellation of automobile insurance coverage. On August 4, 2004, defendant, QBE Insurance Corporation ("QBE"), issued an automobile insurance policy (QBE 0320419) to Phillip P. Putney (Putney). The policy was for a 1990 Chevy Beretta and was effective from August 4, 2004, to February 4, 2005. At the initiation of the policy, Putney paid $105 deposit with an agreement to remit four additional payments. Putney paid an additional $135.60 on September 3, 2004, for this vehicle, but failed to remit any additional premium payments for the Beretta.

On October 1, 2004, plaintiff, Colleen Putney (a/k/a Whitman), added a 1998 Chevrolet Malibu to the insurance policy (QBE 0320419). Notably, at this time, plaintiff and Putney were not married and plaintiff was not listed as a driver or an insured on the policy. Although plaintiff contends that she intended to remove the Beretta from the insurance policy, the paperwork submitted in the trial court indicates that the Beretta remained as an insured vehicle and the

Malibu was an "add-on" vehicle to the policy. On October 1, 2004, plaintiff paid $316 as the initial premium down payment for the Malibu. In total, $857.40 was paid toward the $1723 premium owed for the two vehicles. According to QBE's agent, Christine Perez, the amounts paid on the policy provided coverage, for both vehicles, through November 5, 2004.[1]

On October 25, 2004, defendant mailed a reminder notice, dated October 22, 2004, to Putney regarding the need to remit his policy installment payment. The reminder specifically indicated, in bold typeface, that failure to pay the premium would result in cancellation of the policy on November 5, 2004. The notice also contained the following language: "You are hereby notified in accordance with the terms and conditions of the above mentioned Policy that your Insurance will cease at 12:01 A.M. on the date shown above due to Non-Payment of Premium." Although the notice specifically referenced policy number QBE 0320419, the only vehicle listed on the notice was the Beretta. Neither Putney, nor plaintiff, submitted any additional payments. On November 10, 2004, QBE forwarded a document indicating "CONFIRMATION OF CANCELLATION" and stating, "[Y]our insurance coverage with QBE INSURANCE CORPORATION has been cancelled due to non payment of premium" and citing to policy number QBE 0320419.

Plaintiff was involved, while driving the Malibu, in an automobile accident on January 25, 2005. Plaintiff's complaint was filed with the court on January 9, 2006, but not served on QBE until January 23, 2006. The initial complaint named only QBE as a defendant.[2] Although QBE filed a timely answer on February 14, 2006, the statute of limitations had run against defendant, the Assigned Claims Facility ("ACF"), because more than a year had elapsed since the accident. Because plaintiff filed the complaint in her name and did not name the insured, Putney, or provide the policy number in the pleading, QBE answered that no coverage was available to plaintiff and included the absence of coverage as part of its affirmative defenses. QBE forwarded discovery requests, including a request for production of documents and interrogatories, to plaintiff's counsel concurrent with the filing of its answer. Plaintiff did not respond to the request for production for over one year and did not submit interrogatory answers until almost 18 months after the discovery was sent.

The ACF filed a motion for summary disposition, pursuant to MCR 2.116(C)(7), on October 23, 2006. The ACF asserted plaintiff's claim was time barred due to her failure to provide the ACF with notice of the claim within the one-year limitations period. QBE filed a separate motion seeking summary disposition pursuant to MCR 2.116(C)(10), asserting Putney's failure to pay the insurance contract premiums resulted in a lapse of the policy more than two months before plaintiff's accident. QBE contended it had provided a proper and timely notice of cancellation to the insured, Putney, by mailing the document to his residence. On May 29, 2007, plaintiff filed a motion for partial summary disposition asserting QBE failed to comply with

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[1] QBE applied $162.40 of the $316 down payment on the Malibu to the October outstanding installment due on the Beretta.

[2] Plaintiff filed an amended complaint on September 21, 2006, which named the Assigned Claims Facility ("ACF") as an additional defendant.

MCL 500.3020(1)(b) because it did not provide a timely notice of cancellation of the insurance policy. Plaintiff contends the October 25, 2004, document forwarded by QBE was not a notice of cancellation because it did not specifically list the Malibu on the document and that the confirmation of cancellation, dated November 10, 2004, did not comprise timely notice because it was sent after the effective date of cancellation. In the alternative, plaintiff argued QBE should be equitably estopped from asserting lack of coverage because the October 25, 2004, document induced plaintiff to believe that only the coverage on the Beretta was subject to cancellation. Plaintiff further asserted that she relied on this representation by QBE and that the failure of QBE to assert an affirmative defense or other response in its pleadings regarding the lack of coverage precluded plaintiff from filing a claim with the ACF within the required one-year time frame.

At the hearing, the trial court initially found that "when the original complaint was filed, there was no reference to the policy or under who's [sic] name the car might have been insured, or the agency, or any numbers or any way for the defendant to research and to come up with what policy we're dealing with." The trial court determined that the notice mailed by QBE to Putney's home address on October 25, 2004, listing the amount due and the policy number "was timely and sent to the proper party" and supported the grant of summary disposition in favor of QBE. Addressing plaintiff's claim of equitable estoppel, the trial court noted that plaintiff, because she was not the named insured on the policy, was not entitled to receive any form or notice of cancellation from QBE. The trial court refused to engage in assumptions that plaintiff either had access to or would routinely be aware of the content of mail received by Putney. In addition to rejecting plaintiff's claim of equitable estoppel on this basis, the trial court determined that it would not hold QBE responsible or find that it had waived its defenses based on the failure of plaintiff and her counsel to provide any information regarding the policy number, name of the insured or any other identifying information to QBE until late in the litigation. The trial court entered separate orders granting the motions for summary disposition of QBE and the ACF and denying plaintiff's request for summary disposition.

This Court reviews a trial court's decision on motions for summary disposition de novo. *Nowell v Titan Ins Co*, 466 Mich 478, 481; 648 NW2d 157 (2002).

On appeal, plaintiff asserts the trial court improperly granted summary disposition in favor of QBE. Plaintiff denies having received a proper and timely notice of cancellation from QBE, pursuant to MCL 500.3020, which provides, in pertinent part:

> (1) A policy of casualty insurance, except worker's compensation and mortgage guaranty insurance, including all classes of motor vehicle coverage, shall not be issued or delivered in this state by an insurer authorized to do business in this state for which a premium or advance assessment is charged, unless the policy contains the following provisions:
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> * * *
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> (b) [T]hat the policy may be canceled at any time by the insurer by mailing to the insured at the insured's address last known to the insurer or an authorized agent of the insurer, with postage fully prepaid, a not less than 10

> days' written notice of cancellation with or without tender of the excess of paid premium or assessment above the pro rata premium for the expired time.

Contrary to plaintiff's contention, we note that MCL 500.3204 through MCL 500.3262 governs the process of canceling a no-fault insurance policy, while MCL 500.3020 governs the contents of an insurance policy. Specifically, MCL 500.3212 provides:

> The provisions of this chapter are not applicable to cancellations occasioned by nonpayment of premiums and no hearings on appeals or other statutory provisions within this chapter are to be binding on any policy of insurance coverage that lapses due to nonpayment of premium.

Consequently, any issue pertaining to notice for cancellation of a policy of insurance for nonpayment is misplaced.

Regardless, plaintiff has failed to rebut the evidence proffered by QBE that it mailed to Putney, at his undisputed residential address, a notice that policy number QBE 0320419 would be cancelled. QBE demonstrated that the notice was mailed more than ten days before the cancellation was to be effective. Plaintiff's assertion that she did not receive this notice is irrelevant because she was not the named insured and QBE was obligated, using the statute cited by plaintiff, only to notify the "insured." Plaintiff's assertion that she did not see or receive this document is not the equivalent of proof that QBE did not provide or send the notice. In accordance with Michigan law, it is presumed that a letter is received that is mailed in the due course of business. *Good v Detroit Automobile Inter-Ins Exch*, 67 Mich App 270, 274-275; 241 NW2d 71 (1976). Plaintiff's contention that the notice of cancellation is defective because it only lists the Beretta is disingenuous given that it referenced the one policy number under which both the Beretta and Malibu were insured. Plaintiff's subjective understanding or interpretation of this document is irrelevant and inconsistent with the unrebutted documents provided by QBE, which clearly reference cancellation of the one insurance policy maintained by Putney for the vehicles. To the extent that plaintiff implies that agents or representatives of Swain Insurance Company, from which the insurance policies were procured, were negligent in failing to remove the Beretta from coverage or misrepresented to plaintiff that no further premiums on the Malibu would be due until February 2005, we reject these assertions as hearsay. In addition, plaintiff has failed to assert a claim of negligence or to demonstrate the existence of a special relationship, altering the duties of an insurance agent.[3]

Plaintiff also contends that QBE should be equitably estopped from denying coverage because the notice of cancellation listed only the Beretta. To support a claim of equitable estoppel, a plaintiff must demonstrate "(1) that the defendant's acts or representations induced plaintiff to believe that the policy was in effect at the time of the accident, (2) that the plaintiff

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[3] The role of an insurance agent is construed to be narrow because it is the duty of the insured to read his or her own insurance policy and "raise questions concerning coverage within a reasonable time after the policy has been issued." *Harts v Farmers Ins Exch*, 461 Mich 1, 8 n 4, 9-10; 597 NW2d 47 (1999).

justifiably relied on this belief, and (3) that plaintiff was prejudiced as a result of his belief that the policy was still in effect." *Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW2d 776 (1998). However, neither plaintiff nor Putney, proffered any evidence that they contacted defendant for clarification or attempted to remit a delinquent premium payment even after receiving the November 10, 2004, confirmation of cancellation, which specifically referenced policy number QBE 0320419 and unequivocally indicated that "your insurance coverage with QBE . . . has been cancelled due to non payment of premium." Hence, any purported reliance on the notice of cancellation's listing of only the Beretta is inherently unreasonable over the intervening months preceding the accident. In addition, plaintiff's assertions are inconsistent. Although plaintiff contends she detrimentally relied on the notice of cancellation, she also asserts she "never received any cancellation notice from the Defendant." Plaintiff's receipt of a notice of cancellation is not dispositive of this issue because *she* was not the named insured and QBE was under no obligation to provide her with notice of cancellation.

Finally, plaintiff contends that QBE should be precluded from asserting lack of coverage based on their failure to plead this as an affirmative defense. Contrary to plaintiff's assertion, in its answer to the complaint and within its affirmative defenses, QBE indicated that no coverage was available for plaintiff. Hence, plaintiff was aware at the initiation of her lawsuit that QBE was denying the existence of coverage. As noted by the trial court, the blame for any lack of specificity in asserting this defense is actually attributable to plaintiff's failure to identify the policy number or name of the insured to QBE until more than a year after the filing of her complaint.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Christopher M. Murray