

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA SCHMID,

Plaintiff-Appellee,

v

FARM BUREAU LIFE INSURANCE
COMPANY,

Defendant-Appellant,

JOSEPH L. KNOWLES

Defendant-Appellee,

and

JOSEPH L. KNOWLES INSURANCE
COMPANY,

Defendant.

UNPUBLISHED

April 16, 2009

No. 282030

Mason Circuit Court

LC No. 06-000320-CK

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant Farm Bureau Life Insurance Company (Farm Bureau) appeals the trial court's October 31, 2007 order denying its motion for summary disposition under MCR 2.116(C)(10). After this Court denied Farm Bureau's application for leave to appeal,¹ Farm Bureau sought leave to appeal to the Michigan Supreme Court. The Supreme Court, in lieu of granting leave, remanded the case back to this Court "for consideration as on leave granted."² Because we conclude that the trial court erred in denying Farm Bureau's motion for summary disposition on

¹ *Schmid v Farm Bureau Life Ins Co*, unpublished order of the Court of Appeals, entered January 22, 2008 (Docket No. 282030).

² *Schmid v Farm Bureau Life Ins Co*, 480 Mich 1106; 745 NW2d 512 (2008).

plaintiff's claims for breach of the life insurance policy and of the conditional receipt, we reverse and remand for entry of an order granting summary disposition to Farm Bureau.

I. Facts and Procedural History

On May 27, 2005, David Schmid (David), the 49-year-old husband of plaintiff Sandra Schmid (plaintiff), submitted an application for life insurance with Farm Bureau.³ David applied for a \$500,000 20-year term policy, and he remitted \$1,180 with his application. It is undisputed that \$1,180 is the amount of the annual premium for a \$500,000 20-year term policy for a 49-year-old man issued on a super-preferred basis. The insurance application, a copy of which was left with David and plaintiff, provided:

I (We) have read all the questions and answers in this application. All responses are true and complete to the best of my (our) knowledge and belief. No policy shall take effect, unless and until: the policy has been manually delivered to and received by me (us); and the first premium is paid during the lifetime and continued good health of the Proposed Insured(s). Any coverage will be subject to the terms and conditions of the policy. Temporary coverage may be provided under the terms and conditions of the Conditional Receipt, if executed.

A conditional receipt, under which coverage was not to exceed \$250,000, was executed. It provided in pertinent part:

THIS RECEIPT MUST NOT BE GIVEN TO PROPOSED INSURED, UNLESS
REQUIRED PREMIUM IS PAID WITH THIS APPLICATION. . . .

* * *

Received from David Schmid, applicant, the sum of \$1180.00, date 5-27-05, which is tendered as a deposit to be applied as premium for a life insurance policy, in the event such policy is approved and issued by Farm Bureau Life Insurance Company of Michigan (hereinafter referred to as the "Company"). NOTICE: The Company requires the above deposit to be at least equal to a full month's mode premium before any coverage under this receipt will be effective.

It is understood and agreed that this deposit is made and accepted subject to the following conditions:

* * *

3. That a modified life insurance policy will take effect seven (7) days after the date of the Company approval, if:

³ Plaintiff also submitted a life insurance application, but her application is not a subject of this appeal.

- A. The Company does not approve the application as applied for but does approve it subject to modifications either as to amount, plan, premium rate, and/or for disallowance of any supplementary benefit applied for; and
- B. The Owner accepts delivery of such life insurance by paying the full first premium or balance thereof:
 - 1) during the lifetime and continued insurability of the Proposed Insured(s); and
 - 2) within thirty (30) days after the date of the Company approval.

Farm Bureau approved David's application for life insurance, but, because of David's "build and blood cholesterol," only on a preferred basis. The annual premium for a \$500,000 20-year term policy issued on a preferred basis is \$1,335.

Farm Bureau issued a life insurance policy for David, and sent the policy to Joseph Knowles, the insurance agent who solicited David's application. The policy, which named plaintiff as the prime beneficiary, provided that it "takes effect on the policy date," which was August 3, 2005. The policy also provided that the first annual premium was \$1,335. Upon receiving the policy, Knowles spoke with plaintiff over the telephone on August 11, 2005, informing her that an additional \$155 premium was needed for David's policy. Plaintiff did not believe that payment of the additional \$155 premium was needed to place the life insurance policy in force. She believed that, because David had already paid the \$1,180, the policy was in force.

David died on August 21, 2005, in a boating accident. It is undisputed that the life insurance policy issued by Farm Bureau was never delivered to David. It is also undisputed that the additional \$155 premium was not paid during David's lifetime. Plaintiff remitted \$155 to Farm Bureau on August 26, 2005, but Knowles returned the check to plaintiff, explaining that Farm Bureau "cannot accept payment on David's policy."

In February 2006, Farm Bureau returned to plaintiff the \$1,180 that David had remitted with his application. It explained that, because the policy had not been delivered and the additional premium had not been paid during David's lifetime, coverage was not available under the life insurance policy. It also explained that coverage was not available under the conditional receipt because the "full first premium" of the modified policy, i.e., the policy issued by Farm Bureau, had not been paid during David's lifetime.

Plaintiff sued Farm Bureau for breach of the insurance contract and for breach of the conditional receipt.⁴ Farm Bureau moved for summary disposition on the claims pursuant to

⁴ Plaintiff also sued Knowles and the Joseph L. Knowles Life Insurance Company for breach of contract and negligence. The trial court granted summary disposition to these defendants pursuant to MCR 2.116(C)(10), and plaintiff has not appealed that order.

MCR 2.116(C)(10).⁵ The trial court denied the motion. First, regarding the life insurance policy, the trial stated that “there are issues of fact as to the understanding of the parties and the language of the contract and what provisions govern this situation.” Second, it concluded that the “gist” of the conditional receipt was to cover situations such as what occurred in the present case.

II. Analysis

On appeal, Farm Bureau argues that the trial court erred in denying its motion for summary disposition on plaintiff’s claims for breach of the life insurance policy and of the conditional receipt.

A. Standard of Review

This Court reviews de novo a trial court’s decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is proper under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We must view the pleadings, affidavits, depositions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

This Court also reviews de novo the interpretation of an insurance contract. *Brown v Farm Bureau Gen Ins Co of Michigan*, 273 Mich App 658, 660; 730 NW2d 518 (2007). Similarly, whether contract language is ambiguous is a question of law that is reviewed de novo. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 394; 729 NW2d 277 (2006).

B. Life Insurance Policy

Farm Bureau argues that, because the life insurance policy was never delivered to David and because the first premium for the policy was not paid during David’s lifetime, as required by the application, there was no contract of insurance in force on August 21, 2005, the date of David’s death. We agree.

“Like any other contract, an insurance policy is an agreement between the parties.” *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 444; 761 NW2d 846 (2008). The insurance policy, the policy application, and the declarations page constitute the parties’ agreement. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). Insurance contracts are subject to the same rules of contract interpretation that apply to any other species of contract. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005).

The primary goal in contract interpretation is to honor the intent of the parties. *Royal Prop Group, supra* at 714. The language of the contract is the best way to ascertain the parties’

⁵ This was the second motion for summary disposition brought by Farm Bureau.

intent, *id.*, and an unambiguous contract must be enforced as written, *Rory, supra* at 468. The fact that the parties dispute the meaning of a contract does not, by itself, establish an ambiguity. *Genesee Foods Services, Inc v Meadowbrook, Inc*, 279 Mich App 649, 655; 760 NW2d 259 (2008). A contract is ambiguous if two provisions irreconcilably conflict. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). A court may not ignore a portion of a contract to avoid finding an ambiguity or to find an ambiguity. *Id.* Rather, a court must give every word, phrase, and clause effect, and avoid an interpretation that renders any part of a contract surplusage or nugatory. *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 638; 734 NW2d 217 (2007).

An application for insurance is an offer to buy insurance. See *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 106; 577 NW2d 188 (1998). A person offering to buy insurance is presumed to have read the application and to be fully acquainted with its contents. *Stitt v Locomotive Engineers' Mut Protective Ass'n*, 177 Mich 207, 214; 142 NW 1110 (1913). The application submitted by David provided that no insurance policy “shall take effect” until two conditions are met: (1) the policy is manually delivered to and received by David, and (2) the first premium is paid during David’s lifetime and continued good health.

“The conditions in the application that the parties have mutually agreed to must be met before a contract of insurance will become effective.” *G P Enterprises, Inc v Jackson Nat’l Life Ins Co*, 202 Mich App 557, 564; 509 NW2d 780 (1993); see also *Bowen v Prudential Ins Co of America*, 178 Mich 63, 68-69; 144 NW 543 (1913). Here, it is undisputed that one of the conditions in the application to which the parties mutually agreed—delivery of the insurance policy to David—was not met. Nonetheless, plaintiff contends that, because the insurance policy stated that it takes effect “on the policy date,” which is August 3, 2005, there is a genuine issue of material fact regarding whether delivery of the policy was necessary to place the policy in force.⁶

The provision in the life insurance policy providing that the policy takes effect on August 3, 2005, does not irreconcilably conflict with the provision in the application requiring delivery of the policy and payment of the first premium. Thus, there is no ambiguity regarding the necessity of delivery of the life insurance policy. *Klapp, supra*. The application provision contains two specific requirements that must be met before an insurance policy takes effect. If those two requirements are met, i.e., an insurance policy is delivered to and received by David and David pays the first premium during his lifetime, the policy takes effect. Pursuant to the language of the policy that was issued by Farm Bureau, the policy is then effective as of August 3, 2005. In other words, the policy provides the date that the policy is to be effective if and when the two requirements set forth in the application are met. This interpretation of the two

⁶ Plaintiff also relies on the delivery memorandum, which accompanied the policy when it was sent from Farm Bureau to Knowles, to establish a genuine issue of material fact regarding whether delivery of the policy was required. Plaintiff’s reliance on the delivery memorandum, which did not expressly instruct Knowles to deliver the policy to David, is misplaced. The delivery memorandum is not part of the insurance contract and, therefore, it cannot be relied upon to create an ambiguity. *G P Enterprises, supra* at 562.

provisions gives effect to both provisions; neither is rendered surplusage or nugatory. *Laurel Woods Apartments, supra*. Accordingly, we reject plaintiff's argument that the language of the life insurance policy creates an ambiguity regarding whether the policy was required to be delivered to David before it took effect.

Because the insurance policy was never delivered to and received by David, a requirement contained in the application, and because the language of the policy did not render this requirement ambiguous, there was no contract for life insurance in effect on the date of David's death.⁷ The trial court erred in denying Farm Bureau's motion for summary disposition on plaintiff's claim for breach of the life insurance policy.

C. Conditional Receipt

Farm Bureau argues that, because David never paid "the full first premium or balance" of the modified life insurance policy that was issued by Farm Bureau during his lifetime, there was no coverage under the conditional receipt. We agree.

Plaintiff does not dispute Farm Bureau's assertion that, if coverage is afforded under the conditional receipt, it is under section 3 of the receipt. Section 3 of the conditional receipt provides, in part, that a modified life insurance policy will take effect seven days after the date of approval if the proposed insured "accepts delivery of such life insurance by paying the full first premium or balance thereof" during his lifetime. The first premium for the modified insurance policy that was issued by Farm Bureau was an annual premium of \$1,335. It is undisputed that this amount was not paid by David during his lifetime.

Plaintiff, however, claims that the "full first premium" is the equivalent of the "required premium," which David had paid. The conditional receipt, by its own terms, was not to be given to the proposed insured unless the "required premium" was paid. The required premium was a deposit that was "at least equal to a full month's mode premium." Plaintiff incorrectly equates the "full first premium" with the "required premium."

There is no coverage under the conditional receipt unless the deposit is "at least equal to a full month's mode premium." Thus, whether Farm Bureau approved David's application for insurance as applied for or whether Farm Bureau approved the application but subject to modifications, there is no coverage under the conditional receipt unless the deposit was at least equal to a full month's mode premium. However, if Farm Bureau approved David's application but subject to modifications, section 3 of the conditional receipt provides more specific requirements that must be met before coverage is afforded under the receipt. Pursuant to section 3(B) of the conditional receipt, there is no coverage unless David "accept[ed] delivery of such life insurance policy by paying the full first premium or balance thereof" during his lifetime. The phrase "the first full premium" clearly refers to the first full premium of "such life insurance

⁷ Based on this conclusion, we need not address the parties' arguments regarding whether the additional premium of \$155 needed to be paid during David's lifetime to place the policy in effect.

policy,” which is the “modified life insurance policy” referred to in the first sentence of section 3. Moreover, if the “first full premium” referred to the “required premium,” then the conditions in section 3(B) would be rendered nugatory, because the “required premium” must be paid before the proposed insured is given the conditional receipt. No provision of a contract is to be rendered surplusage or nugatory. *Laurel Woods Apartments, supra*.

The full first premium of the modified life insurance policy that was issued by Farm Bureau was \$1,335, and David never paid this amount during his lifetime. Therefore, because the requirements of section 3 of the conditional receipt were not met, there was no coverage under the conditional receipt at the time of David’s death. The trial court erred in denying Farm Bureau’s motion for summary disposition on plaintiff’s claim for breach of the conditional receipt.

Reversed and remanded for entry of an order granting summary disposition to Farm Bureau on plaintiff’s claims for breach of the life insurance policy and breach of the conditional receipt. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra