STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA C. RUZAK,

Plaintiff-Appellee,

v

USAA INSURANCE AGENCY, INC.,

Defendant-Appellant,

and

JAY D. RUZAK,

Defendant.

UNPUBLISHED
April 27, 2010

No. 288053
Grand Traverse Circuit Court
LC No. 06-025177-NI

Before: MURPHY, C.J., AND JANSEN AND ZAHRA, JJ.

PER CURIAM.

Defendant[1] appeals as of right from the trial court's order granting plaintiff's motion for summary disposition. We affirm because we are required to do so under the law of the case doctrine. Were we not bound by the opinion issued in this case by a prior panel of this Court, we would reverse the judgment of the trial court and remand for entry of judgment in favor of defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case is before this Court for a second time. See *Ruzak v USAA Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2008 (Docket No 274993). Plaintiff was injured when her husband, Jay Ruzak, drove their vehicle into a tree. Plaintiff and Jay had an automobile insurance policy through defendant, with general liability coverage limits of $300,000 per person with a maximum of $500,000 per accident. According to their affidavits, they had obtained automobile insurance through defendant since 1966, including the time they lived in Wisconsin in the early 1990s. Just before moving to Michigan, the Ruzaks lived in Indiana. The Michigan policy, initiated in 1997, contained the following provision in the exclusion subsection of the liability coverage section:

[1] "Defendant," as used in this opinion, refers to USAA Insurance Agency, Inc.

> There is no coverage for [bodily injury] for which a covered person becomes legally responsible to pay a member of that covered person's family residing in that covered person's household. This exclusion applies only to the extent that the limits of liability for this coverage exceed $20,000 for each person or $40,000 for each accident.

This limit was actually an increase from the Indiana policy, which provided no coverage at all in the same situation. Wisconsin law, on the other hand, did not allow such exclusions for family members at the time plaintiff filed suit.

Based on this exclusion, defendant informed plaintiff that her claim was limited to $20,000. As the prior panel of this Court summarized:

> Plaintiff then sued Jay and defendant, alleging breach of contract, fraud, and negligent and innocent misrepresentation against defendant. She also sought declaratory relief concerning the limits of Jay's insurance policy. Subsequently, defendant and plaintiff filed cross-motions for summary disposition. While the trial court found that the challenged provision was unambiguous and complied with the coverage required by the no-fault act, MCL 500.3101 *et seq*., it ultimately refused to enforce the challenged provision. According to the trial court, the challenged provision was "repugnant," "reprehensible," and unconscionable. [*Ruzak*, *supra* at 2 (footnote omitted).]

The prior panel concluded that the policy was not only unambiguous, but also not unconscionable and not in violation of public policy. *Ruzak*, *supra* at 2, 3-4. Rather than reversing the trial court's original judgment and remanding the matter for entry of judgment in favor of the defendant as a matter of law, the prior panel noted the existence of a narrow exception to the rule that the unambiguous terms of an insurance contract must be enforced as written. This exception is known as the renewal rule and may apply "where 'a policy is renewed without actual notice to the insured that the policy has been altered.'" *Id*. at 4, citing *Koski v Allstate Ins Co*, 213 Mich App 166, 170; 539 NW2d 561 (1995), rev'd on other grounds 456 Mich 439 (1998); *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981). The prior panel further quoted *Koski*: "Where a renewal policy is issued without calling the insured's attention to a reduction in coverage, the insurer is bound to the greater coverage in the earlier policy." *Id*. Although this issue was not preserved for appellate review, the prior panel of this Court nonetheless remanded the case to the trial court for a determination of when the contested provision was added to the Ruzaks' policy and what notice, if any, of any changes to the policy was provided to the Ruzaks.

On remand, the parties filed cross-motions for summary disposition. The trial court found that plaintiff had presented evidence showing defendant had failed to notify her of the reduction in coverage she once enjoyed while a resident of Wisconsin. Citing *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 395-396; 256 NW2d 607 (1977), and *Gristock v The Royal Ins Co*, 87 Mich 428, 430; 49 NW 634 (1891), the court found, "USAA intentionally or through culpable negligence induced the Ruzaks to believe that they had $300,000 per person and $500,000 per accident bodily injury liability insurance coverage. The Ruzaks rightfully relied on such belief and will be prejudiced if USAA is permitted to deny the existence of such coverage." The trial court denied defendant's motion and granted plaintiff's motion.

In this appeal, there exists a fundamental dispute between the parties over the scope of the renewal rule, as interpreted by the prior panel. Defendant highlights that the prior panel correctly identified the rule as a "narrow exception" that exists "where 'a policy is renewed.'" Defendant maintains that the instant policy was issued when the Ruzaks moved to Michigan and canceled their Indiana policy. Further, the insurance provision limiting payment of insurance proceeds to family members was *always* included in the Ruzaks' Michigan policy, and he policy was not changed during the course of a policy renewal. Thus, defendant argues, the trial court erred by concluding that the renewal rule has application to the present case.

Plaintiff argues that the renewal rule applies from the date the original policy was issued to the Ruzaks in the 1966. Plaintiff notes that no one knows whether the original policy, issued in 1966, contained a family member exclusion clause like the one at issue here. However, the provision would have been illegal in Wisconsin, so it must have been added some time after the Ruzaks left that state in 1992. And even if defendant sent the Ruzaks a copy of the Michigan policy, there was no evidence that it sent anything additional that in any way highlighted the changes in coverage. Sending the new policy and declarations page is insufficient, and did not provide *actual notice*, as required by this Court's remand, of either a change in their coverage or of the fact the policy was a new one. *Ruzak, supra* at 5.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Generally, determination whether notice of a policy change was adequate is a question of law for the court. *Koski, supra* at 170. Questions of law are reviewed de novo. *Anzaldua v Band*, 457 Mich 530, 533; 578 NW2d 306 (1998).

We reluctantly reject defendant's argument that the Michigan insurance policy is the only policy pertinent to these proceedings. We do so because the law of the case binds us to this conclusion. "The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the determination by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same." *Grace v Grace*, 253 Mich App 357, 362, 655 NW2d 595 (2002). Defendant's remedy, if any, rests with the Supreme Court. Simply put, the prior panel of this Court directed the trial court to apply the renewal rule to all policies of insurance issued to the Ruzaks by defendant from 1966 forward:

> The record does not establish whether *the original policy Jay purchased from defendant in the late 1960s contained the contested provision*. Further, even if defendant added the contested provision to the insurance policy after it was originally bought by Jay, the record does not establish what information, if any, was provided by defendant to plaintiff and Jay notifying them of the contested provision. . . .We therefore, remand for a determination regarding the application of the renewal rule to the present case. The trial court shall determine whether defendant added the contested provision to the insurance policy after the policy was *initially purchased* by Jay and, if so, whether defendant provided actual notice of the reduction in coverage to plaintiff and Jay. [*Ruzak, supra* at 4-5 (emphasis added, citation and footnotes omitted).]

Notwithstanding our conclusion that the law of the case doctrine requires us to apply the renewal rule to all policies issued to the Ruzaks by defendant, we find merit to the persuasive argument advanced by defendant that the renewal rule does not apply to policies that are cancelled once a party changes residences from one state to another. Insurance regulation is a matter of state law that varies from jurisdiction to jurisdiction. Each policy of insurance must conform to the laws of the state in which it is to be applied. When one changes residence from one state to another, he should expect some variation in the laws and the insurance coverage available in his new venue. The policy behind the renewal rule is to prevent insurers from changing policy terms to the detriment of an unwitting insured. However, when an insured crosses state lines he should expect there to be variations in the automobile insurance coverage available to him. Accordingly, the policy behind the renewal rule is not advanced by application of this rule under these circumstances. To the contrary, if the renewal rule applied in such instances, insureds would be encouraged to refrain from reading their insurance policies knowing their ignorance will benefit from any increases in coverage but not be bound by any decreases in coverage.

Additionally, the opinion of the prior panel of this Court fails to give due deference to the laws of the various jurisdictions in which the Ruzaks resided. There exists no question of fact that there was not a decrease in the Ruzaks' coverage resulting from their move from Indiana to Michigan. While residing in Indiana plaintiff had no coverage for injuries sustained as a result of her husband's negligent operation of a motor vehicle. However, in Michigan plaintiff enjoyed the minimum coverage required under Michigan law. Thus, upon "renewing" their policy after moving to Michigan, plaintiff actually enjoyed an increase in coverage. By its very terms the renewal rule does not apply to increases in coverage. Yet, for purposes of applying the renewal rule, the prior panel of this Court instructed the trial court to consider policies issued for nearly 40 years and in various jurisdictions as a single policy repeatedly renewed for purposes of applying Michigan's "narrow" renewal rule. This directive from the prior panel grossly misapplied the renewal rule as it has traditionally been recognized in Michigan.

Our criticism of the prior panel's ruling aside, we must determine whether the trial court properly resolved the two issues presented on remand. The parties provide little evidence regarding the first question the trial court was expressly ordered to consider, whether defendant added the provision after the policy was initially purchased in 1966. The only record evidence presented on remand established that while residing in Wisconson, the Ruzaks enjoyed full coverage with no reduction or exclusion for family members. Thus, consistent with the trial court, we conclude there is no factual dispute that at some point after leaving Wisconsin, defendant added the family member exclusion that reduced plaintiff's coverage. Having concluded there was a reduction in coverage, we must determine whether defendant adequately notified the Ruzaks of this change.

Even assuming the facts are as defendant states and that defendant sent the new policy in full, case law requires more. Actual notice is required. *Parmet Homes, Inc*, *supra* at 145. The insured's attention must be called to the reduction in coverage, and not merely to the fact that a policy has been revised, in order that the insured may remain reasonably informed of the contents of the policy. *Koski*, *supra* at 171. Defendant appears to have made no effort to call attention to the change in coverage, or at least defendant provides no evidence conflicting with

the Ruzaks' affidavits that no notice was given. This is not sufficient to give actual notice of the change in coverage.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra