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UNPUBLISHED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.

MURPHY, C.J. (*concurring*).

I agree with the majority that the law of the case doctrine requires us to apply the renewal rule, taking into consideration all of the policies of insurance issued from 1966 forward. See *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (discussing the parameters of the law of the case doctrine). I also agree with the majority that the trial court properly ruled that there was no issue of fact that defendant USAA added the family member exclusion at some point after plaintiff and her husband Jay Ruzak left Wisconsin, thereby implicating the need under the renewal rule to provide notice of the exclusion. Furthermore, I agree with the majority that USAA failed to show, as a matter of law, that it provided the requisite notice. I write separately to voice my disagreement with the majority's position that the renewal rule should not apply here and that, absent the law of the case doctrine, reversal would be appropriate. Accordingly, I respectfully concur.

The core issue presented on appeal concerns the scope of the renewal rule. In *Koski v Allstate Ins Co*, 213 Mich App 166, 170-171; 539 NW2d 561 (1995), rev'd on other grounds 456 Mich 439 (1998), this Court explained the rule:

> An insured is obligated to read the insurance policy and to raise questions concerning coverage within a reasonable time after issuance of the policy. However, an exception to this rule exists "where a policy is renewed without

> actual notice to the insured that the policy has been altered." 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. The rule that attention must be called to the reduction in coverage, and not merely to the fact that a policy has been revised, is consistent with *Giles v St Paul Fire & Marine Ins Co*, 405 F Supp 719, 724 (ND Ala, 1975), in which it was held that an "insurer should be able to enforce only those changes in coverage as to which the insured has been reasonably informed." [Citations omitted; see also *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140, 145; 314 NW2d 453 (1981); *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 395-396; 256 NW2d 607 (1977).]

The majority, while properly recognizing that it is bound by the law of the case doctrine with respect to the scope of the renewal rule, posits that this Court's previous ruling in the case at bar applied the renewal rule far too expansively. The majority opines that the renewal rule should not apply where an insured makes an interstate move and obtains a policy in the new state that contains a reduction in coverage, even though the insurer remains the same and there is no break in the continuing insurer-insured relationship. The majority concludes "the prior panel grossly misapplied the renewal rule as it has traditionally been recognized in Michigan." *Ante* at __. The majority reasons that the purpose of the renewal rule is to prevent insurers from changing policy terms to the detriment of an unwitting insured. But when an insured moves to another state, he or she should expect some variation in the insurance law and thus in the extent of the coverage, giving rise to an obligation to read the policy applicable to the new venue. The majority additionally reasons that the opinion of the prior panel failed to give due deference to the laws of the jurisdictions in which the Ruzaks lived, and in particular Indiana, where the Ruzaks actually had less coverage than in Michigan.

I first note that there is no language in the Michigan cases suggesting that application of the renewal rule is limited to intrastate policy renewals; there is no indication that the rule is inapplicable following an interstate move by the insured. There is also no caselaw support for the majority's position that the rule should not be implicated when an insured might reasonably expect a change in coverage, assuming that such an expectation exists in the first place. Principles of equity and estoppel lie at the heart of the renewal rule. *Industro Motive*, 76 Mich App at 395 (the plaintiffs were not apprised of the change in insurance coverage and the "defendants are estopped to deny liability," as "the essential elements of estoppel have been satisfied"); see also *Koski*, 213 Mich App at 171 ("defendant has entirely failed to recognize that it had an affirmative obligation to call its insured's attention to a reduction in coverage"). Given that many insurers, including USAA, operate nationwide on an interstate basis, providing ongoing insurance coverage to insured loyal customers despite the crossing of state lines, the onus should be on the insurers to keep their insureds apprised of any policy changes decreasing coverage. I note that there was evidence that USAA's "products and services are only available to members of the military community," which, in my opinion, provides an even greater equitable need to place the responsibility on USAA to give notice, where military personnel are known to relocate regularly, often moving great distances as part of their service obligations. The burden should not be on the premium-paying insured to review complex insurance policies and to compare them against each other for purposes of detecting modifications. Considering the intricacies of insurance law, the seasoned insurer is in the best position to be aware of the

governing state insurance laws and to be aware of policy changes caused by an interstate move, such that an obligation arises to make an insured aware of any modifications that could be detrimental.

Because I cannot join in on the majority's attack on the prior panel's analysis, I respectfully concur.

/s/ William B. Murphy