STATE OF MICHIGAN

COURT OF APPEALS

SHAWN COLLINS,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE COMPANY and JAYSON SCHOEBERLEIN,

Defendants-Appellees.

UNPUBLISHED
June 10, 2014

No. 314522
Genesee Circuit Court
LC No. 11-095581-CZ

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

In this insurance coverage dispute, plaintiff appeals as of the right the order granting summary disposition in favor of defendants, Farm Bureau General Insurance Company ("Farm Bureau") and Jayson Schoeberlein, pursuant to MCR 2.116(C)(10). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This appeal arises from a fire that destroyed the home owned by plaintiff on Silver Lake Road, in Linden, Michigan (hereinafter referred to as the "Silver Lake home" or "home"). In August 2008, plaintiff's girlfriend, Mary Burgner, contacted Gayle Brodsky, a representative from the Schoeberlein Agency, via email concerning a request to quote home and automobile insurance for plaintiff through Farm Bureau. Brodsky had a follow-up conversation with plaintiff, and she sent the homeowners insurance application to Burgner's email address. Plaintiff completed and signed the application forms for a homeowner's insurance policy, which covered plaintiff for losses incurred while he was residing at the Silver Lake home. Together with the application, plaintiff submitted his driver's license and proof of insurance from his then current automobile insurance policy. Plaintiff's driver's license and a motor vehicle report showed plaintiff's address as the Silver Lake home; however, his proof of insurance had Burgner's home address listed on it. Brodsky assumed that plaintiff resided at the Silver Lake home because he confirmed that he was living at the Silver Lake home, and the cover letter of the fax containing plaintiff's application for insurance had a note indicating Burgner's address should be used as the billing address because she did plaintiff's bookkeeping and paid his bills.

In September 2008, plaintiff placed an advertisement in the newspaper seeking renters for the Silver Lake home. Andrew and Davette Gryziewicz responded to the advertisement and rented the home until late 2009. During this time period, plaintiff claimed that he continued to live at the home in one of the three bedrooms. Davette Gryziewicz was apparently injured while

on the premises of the home, and filed an insurance claim through Farm Bureau. When asked if there were others living in the Silver Lake home, plaintiff told Brodsky that the individuals living in the home were there temporarily. After the Gryziewiczs moved out, plaintiff rented the home to a friend, Jay Gavalya, who moved in with his girlfriend and daughter. In February or March of 2010, Gavalya's girlfriend moved out of the home, and a friend of his, Mike Heidtman, moved in. Plaintiff moved his belongings out of the bedroom and into the detached garage. After Gavalya and Heidtman moved out around the end of May or early June 2010, plaintiff again rented the home to another couple, Jennifer and Jamie Bittner. In June 2010, the Bittners moved into all three bedrooms, and plaintiff's belongings remained in the detached garage. At no point from when Bittners moved into the home onward did plaintiff stay overnight in the home. However, he claimed that when he rented the home to the Bittners he reserved the right to sleep in the family room, and he went to the home three or four times a week to cut the grass or take tools from the garage. The fire occurred on July 16, 2010, while the Bittners were living in the home, and plaintiff filed an insurance claim for losses incurred as a result of the fire. Farm Bureau denied plaintiff's insurance claim after determining that he was not covered by the homeowner's insurance policy because he did not reside at the home at the time of the loss, and that he misrepresented and concealed material facts and circumstances relating to his residency before and after the time of the loss.

Plaintiff filed suit against Farm Bureau and Schoeberlein, alleging breach of contract, failure to settle the insurance claim, and agent negligence. Farm Bureau and Schoeberlein both filed motions for summary disposition. Farm Bureau asserted that no genuine issue of material fact existed regarding residency, and that it was entitled to judgment as a matter of law because plaintiff did not reside in the insured home at the time of the loss. Schoeberlein argued that plaintiff's negligence claim should fail because no special relationship existed between plaintiff and himself, and thus, he did not owe plaintiff a duty to advise regarding the adequacy of coverage. The trial court granted both defendants' motions for summary disposition. Plaintiff now appeals.

II. STANDARD OF REVIEW

This Court reviews de novo a lower court's decision on a motion for summary disposition. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Review is limited to the evidence that had been presented to the lower court at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). Summary disposition under MCR 2.116(C)(10) is appropriately granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake County*, 493 Mich 167, 175; 828 NW2d 634 (2013). A trial court may not make findings of fact in deciding a motion for summary disposition. *Price v Kroger Co of Michigan*, 284 Mich App

496, 500; 773 NW2d 739 (2009), citing *Jackhill Oil Co v Powell Prod, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995).

This Court reviews the applicability of equitable doctrines, such as estoppel, de novo. *Guise v Robinson*, 219 Mich App 139, 143; 555 NW2d 887 (1996).

III. IMPROPER FINDINGS OF FACT

Plaintiff first contends that the trial court improperly made findings of fact in deciding Farm Bureau's and Schoeberlein's motions for summary disposition. We disagree.

Plaintiff has abandoned his contention that the trial court improperly made findings of fact relating Farm Bureau's summary disposition motion. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012). In plaintiff's brief on appeal, he merely restated excerpts from the trial court's ruling regarding residency at the summary disposition hearing, and provided no legal authority or analysis in support of his position. Plaintiff has thus merely announced his position and has provided no legal authority in support of his generalized assertion nor articulated the basis for his claim. See *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001) ("[i]nsufficiently briefed issues are deemed abandoned on appeal").

Even if plaintiff had not abandoned this issue on appeal, a review of the record leads us to conclude that the trial court did not make improper findings of fact in granting summary disposition in favor of Farm Bureau. At the hearing on the motion for summary disposition, the trial court stated:

> the Court believes the issue of where the plaintiff resided is really taken care of by his own testimony (inaudible) cited in the brief of the defendant Farm Bureau. In the nearly two years preceding the fire he stayed overnight at the Silver Lake property only six or seven times. . . . Reside to me is where you live and stay and that means overnight and [does] not mean dropping in occasionally, storing your tools in the garage, even using it sometimes for your mail. Where you live on a regular basis, keep your clothes and your life is there.

The record reveals that the trial court merely applied plaintiff's deposition testimony to its interpretation of the term "reside," and found, as a matter of law, no genuine issue of material fact existed that plaintiff did not reside at the Silver Lake home at the time of the loss.

Plaintiff's contention that the trial court improperly made findings of fact with respect to Schoeberlein's summary disposition motion also fails. Whether a duty exists is a question of law that is an issue solely for the court to decide. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997). "Only after finding that a duty exists may the factfinder determine whether, in light of the particular facts of the case, there was a breach of the duty." *Id.* On the record, the trial court set forth the general law that an agent has no duty to disclose the adequacy of insurance, and recognized the exception to the general rule when a "special relationship" exists between the agent and the insured. See *Harts v Farmers Ins Exch*, 461 Mich 1, 8-10; 597 NW2d 47 (1999). The trial court stated that Schoeberlein did not owe plaintiff a duty unless a special relationship

existed, and analyzed whether Burgner's home address on plaintiff's proof of insurance and Davette Gryziewicz's insurance claim after the issuance of the home insurance policy, were "red flags" that created a special relationship between plaintiff and Schoeberlein. The trial court determined from the evidence whether a duty existed, rather than, as plaintiff alleges, making a factual determination with respect to whether the duty was breached. Because the determination regarding whether a duty exists is a question of law solely for the court to decide, the trial court did not improperly make factual findings in deciding Schoeberlein's summary disposition motion. *Murdock*, 454 Mich at 53.

IV. SPECIAL RELATIONSHIP — SCHOEBERLEIN

Plaintiff next contends that the trial court erred in granting summary disposition in favor of Schoeberlein because a special relationship existed between himself and Schoeberlein. We disagree.

A negligence claim requires that a plaintiff prove the following four elements: "(1) a duty owed to the plaintiff by the defendant, (2) a breach of that duty, (3) causation, and (4) damages." *Bialick v Megan Mary, Inc*, 286 Mich App 359, 362; 780 NW2d 599 (2009). Our Supreme Court, in *Harts*, 461 Mich at 9-10, held that, except in very limited circumstances, where the agent functions as simply an order taker for the insurance company, there is a "general no-duty-to–advise rule" with respect to the adequacy of coverage. The Court explained that the general rule "is subject to change when an event occurs that alters the nature of the relationship between the agent and the insured," and this alteration has been described as a "special relationship" that gives rise to a duty to advise on the part of the agent. *Id.* The Court held that the "special relationship" arises in the following circumstances:

> (1) the agent misrepresents the nature or extent of the coverage offered or provided, (2) an ambiguous request is made that requires a clarification, (3) an inquiry is made that may require advice and the agent, though he need not, gives advice that is inaccurate, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. [*Id.* at 10-11 (footnotes omitted).]

"When a special relationship exists, an agent assumes a duty to advise the insured regarding the adequacy of insurance coverage." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 28; 761 NW2d 151 (2008).

Plaintiff contends that he had a special relationship with Schoeberlein under the second *Harts* factor. In *Harts*, the Court indicated that "[a]n example of an ambiguous request for coverage that might in certain circumstances require clarification is the request for 'full coverage.'" *Harts*, 461 Mich at 10 n 11. In the instant case, no evidence supports that plaintiff requested "full coverage," or made any other ambiguous request. Instead, plaintiff specifically sought an insurance policy on his home based on his residency status at the time the policy was issued. Plaintiff had Burgner email Brodsky, a representative from Schoeberlein's agency, and requested a quote on a homeowners insurance policy. At the time of the email, plaintiff was the only person living in the Silver Lake home, and he admitted that even if Brodsky did not inquire into whether he lived at the home, he would have told her, "I occupy it as my primary residence." Moreover, the evidence supports that the request for homeowners insurance was

unambiguously a request for a policy that covered an individual who resided at the home. Plaintiff confirmed that he lived in the home, and his driver's license and motor vehicle report showed the Silver Lake home as his home address. In addition, the homeowners insurance application asked, "Do all Applicants both OWN and OCCUPY the home being insured on this policy," to which plaintiff responded, "Yes." Although Burgner's address was listed on the proof of insurance for plaintiff's then current automobile policy, the cover letter sent together with the application materials indicated that the bill should be sent to Burgner's home address because she pays the bills and does plaintiff's bookkeeping. Given that all the evidence presented indicated that the request for homeowners insurance was not ambiguous, the second *Harts* factor was not satisfied and no special relationship was created. Therefore, the trial court correctly determined that Schoeberlein owed no duty to plaintiff, and appropriately granted summary disposition in Schoeberlein's favor.

V. ESTOPPEL

Plaintiff lastly contends that Farm Bureau is estopped from asserting plaintiff's non-residency at the home as a defense. However, plaintiff failed to factually develop his argument and rationalize the basis for his claim, and has thus abandoned the issue. *Bronson Methodist Hosp*, 298 Mich App at 199; *Etefia*, 245 Mich App at 471.

In any event, there is no basis for estoppel. The elements of estoppel are:

> (1) a party, by representations, admissions, or silence, intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party will be prejudiced if the first party is allowed to deny the existence of those facts. [*Michigan Nat Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 23; 566 NW2d 7 (1997).]

Farm Bureau and Schoeberlein did not by representations or by silence negligently or intentionally induce plaintiff to believe he was being properly insured. Plaintiff was asked throughout the process of applying for the insurance whether he resided at the home. Plaintiff even admitted that if he was asked about his residency status, he would have answered that he lived at the Silver Lake home. Although plaintiff provided Schoeberlein's agency with proof of automobile insurance that listed Burgner's address, he indicated that it was for billing purposes only, and this was indicated to Brodsky, as well. Plaintiff also admitted that he informed Schoeberlein and Farm Bureau that the Gryziewiczs were only living with him temporarily and that he still resided at the Silver Lake home. Thus, Farm Bureau and Schoeberlein had no reason to believe that plaintiff was residing elsewhere, and plaintiff was not induced into believing that his insurance coverage was adequate based on any representations or omissions on the part of Farm Bureau or Schoeberlein.

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Mark T. Boonstra