

STATE OF MICHIGAN
COURT OF APPEALS

ANNETTE L. HEDQUIST, Personal Representative
of the Estate of ROBERT W. HEDQUIST, deceased,

Plaintiff–Appellant/
Cross-Appellee,

v

DONALD MURPHY, JR., and EASTMAN
INSURANCE AGENCY, INC.,

Defendants–Appellees/
Cross-Appellants.

UNPUBLISHED

August 13, 1996

No. 180955

LC No. 93-465864

Before: Young, P.J., and Corrigan and Callahan,* JJ.

PER CURIAM.

In this action for fraudulent misrepresentation involving an insurance contract, plaintiff appeals by right the order granting summary disposition in favor of defendants under MCR 2.116(C)(10). Defendants cross appeal the order denying their motion for summary disposition under MCR 2.116(C)(7). We affirm the grant of summary disposition under MCR 2.116(C)(10) and thus need not address the denial of the summary disposition motion under MCR 2.116(C)(7).

In October, 1987, defendant Donald Murphy, an officer of defendant Eastman Insurance Agency, sold decedent, plaintiff's husband, a \$500,000 life insurance policy. Jackson National Life Insurance Company (JNL) issued the policy. Decedent signed the policy and tendered a check to JNL. The policy provided that it would become effective as of "the date of completion of the medical or medically related examination(s) required by [JNL's] established underwriting rules."

* Circuit judge, sitting on the Court of Appeals by assignment.

Before decedent completed the requisite medical requirements, JNL returned his check to the Eastman Agency because the application materials he had signed were outdated. On November 11, 1987, updated forms were completed and returned to JNL with decedent's check. Plaintiff alleged that decedent's signature was forged on the second application, which provided that the policy would become effective on its date of issue.

On November 17, 1987, JNL again returned decedent's check to Eastman. Plaintiff alleged that defendants fraudulently altered and converted decedent's check by placing the words "Eastman Agent or" above the name of the original drawee, JNL, and depositing it into Eastman's account. Defendants claimed that they had decedent's permission to do so. When decedent's policy was delivered on March 2, 1988, defendants submitted a check to JNL as a premium payment.

On November 30, 1989, decedent committed suicide.

JNL refused payment to plaintiff and her two children, the beneficiaries. JNL denied payment because the policy's terms explicitly precluded payment if death by suicide occurred within two years from the date of issue, March 2, 1988.

Plaintiff first filed suit in her individual capacity against Donald Murphy and JNL in circuit court, claiming that they intentionally misled decedent to believe that he was fully insured as of November 11, 1987. Furthermore, plaintiff alleged that Murphy wrongfully converted decedent's premium payment and neglected to inform him that he was not insured during the period from application to receipt of the JNL policy. The circuit court granted defendants' motion for summary disposition under MCR 2.116(C)(10), finding that plaintiff failed to submit evidence to support her allegations that Murphy was an agent of JNL and that decedent believed himself to be insured at the time of his death.

In 1993, plaintiff filed the present suit against defendants Murphy and Eastman. Plaintiff brought her claims of misrepresentation against defendants in her individual capacity and her capacity as representative of decedent's estate. Plaintiff alleged that defendants misled decedent to believe that his insurance became effective in November, 1987. The circuit court found that no special relationship existed between decedent and defendants that would excuse decedent's failure to read his insurance contract. Hence, decedent was bound by the terms and conditions of his policy, which precluded payment if suicide occurred within two years of the date of issue. This appeal and cross-appeal followed.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The court gives the benefit of any reasonable doubt to the nonmoving party and determines whether a record might be developed that might leave open an issue upon which reasonable minds could differ. *Jackhill Oil Co v Powell Productions, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). This Court reviews grants of summary disposition de novo. *Id.* When reviewing summary disposition under MCR 2.116(C)(10), this Court considers the pleadings, depositions, affidavits, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

Plaintiff argues that the circuit court improperly granted defendants' motion for summary disposition because she established a genuine issue of material fact. She asserts that decedent and defendants had a special relationship that excused decedent from reading the terms and conditions of his policy and permitted him to rely on the representations of his insurance agent concerning the effectiveness and scope of his coverage. We disagree.

An insurance policy is an agreement between the parties; in ruling on contract issues, a court determines what the agreement was and effectuates the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Absent ambiguities, courts enforce insurance contracts as written. *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 759-760; 514 NW2d 150 (1994). The parties to an insurance contract are obligated to read the contract of insurance, familiarize themselves with the terms and conditions of their coverage, and raise questions concerning coverage within a reasonable time after issuance. *Bruner v League General Ins Co*, 164 Mich App 28, 31; 416 NW2d 318 (1987). While an insurer or an agent does not have an affirmative duty to advise a client regarding the adequacy of a policy's coverage, a duty to advise may arise when a special relationship exists between the policy holder and the insurer or the agent of the insurer. *Id.* at 31-32. Something more than a standard relationship is necessary to give rise to a duty to advise the insured on the issue of coverage. *Id.* at 34. Instead, "[t]here must be, in a long-standing relationship, some type of interaction on a question of coverage, with the insured relying on the expertise of the insurance agent to the insured's detriment." *Id.*

Plaintiff failed to submit sufficient evidence to establish a triable issue regarding the existence of a special relationship that would obligate defendants to advise decedent on the scope of his coverage. In *Bruner, supra*, this Court contemplated the necessity of an actual exchange of communication between the insurer and the insured on a specific question of coverage to establish the existence of an "interaction" on a question of coverage. *Id.* at 34. Plaintiff presented no evidence that decedent inquired of defendants about the effectiveness of his policy or the contestability clause in general. We do not agree with plaintiff that defendants' alleged forgery constituted interaction on a question of coverage. Moreover, plaintiff failed to present evidence, beyond her own speculation, to support her allegation that defendants forged decedent's signature on his second JNL life insurance application. Speculation and conjecture are insufficient means by which to establish a material fact. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Because plaintiff failed to establish a triable issue concerning the existence of a special relationship between decedent and defendants, we affirm the circuit court's grant of summary disposition in defendants' favor.

Next, defendants cross appeal the circuit court's denial of their motion for summary disposition pursuant to MCR 2.116(C)(7) on the issue of res judicata. Given our resolution of the previous issue, we need not address this point.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Maura D. Corrigan

/s/ Michael J. Callahan