

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN L. WATT,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 9, 1998

No. 197714

Wayne Circuit Court

LC No. 95-530999 NF

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the summary dismissal of his breach of contract action. MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased a no-fault automobile insurance policy from defendant. Defendant canceled the policy effective August 9, 1994, as a consequence of plaintiff's failure to pay his premium. Plaintiff was involved in an automobile accident on August 10, 1994. This suit resulted after defendant refused to provide coverage to plaintiff for the accident.

Plaintiff's insurance policy continued in effect until it was canceled. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 238; 507 NW2d 741 (1993). The cancellation of plaintiff's policy was valid in light of his failure to pay his premium and in light of his receipt of the required written notice of cancellation. *O'Neill v Auto Club Ins Ass'n*, 175 Mich App 385, 389-390; 438 NW2d 288 (1989). Plaintiff argues, however, that defendant should be estopped from enforcing the cancellation because his insurance agent told him that if he paid the late premium on August 11, 1994 his coverage would continue without lapse and because plaintiff and his agent had made similar arrangements in the past. *O'Neill, supra*, 391.

As the party opposing the motion for summary disposition, plaintiff had the burden of coming forward with evidence to establish the existence of a genuine issue of material fact. *O'Neill, supra*, p 391. On the record provided, the proofs fail to establish any factual issue as to the effectiveness of the cancellation where plaintiff failed to present any documentation from which it could be inferred that his

insurance agent told him that upon receipt of a late premium payment the policy would be renewed retroactively to the date of cancellation.

Additionally, assuming without deciding that plaintiff's insurance agent's initial acceptance of the late premium payment on the day after plaintiff's accident resulted in the reinstatement of plaintiff's former insurance policy, the policy was not in effect at the time of the accident and defendant may not be looked to as a source of recovery for any losses suffered by the individual struck by plaintiff's vehicle. *Auto-Owners Ins Co v Johnson*, 209 Mich App 61, 62-63; 530 NW2d 485 (1995).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra