

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE ROBBINS,

Plaintiff,

v

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY and BILL WELCH,

Defendants,

and

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff-Appellant,

v

RICHARD ROBBINS,

Third-Party Defendant-Appellee.

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

PER CURIAM.

Third-party plaintiff-appellant American Fellowship Mutual Insurance Company (hereinafter American) appeals of right from the trial court's grant of summary disposition to third-party defendant-appellee Richard Robbins under MCR 2.116(C)(10). We affirm.

Richard Robbins applied for automobile insurance with American. Michelle Robbins, Richard Robbins' wife, was involved in an automobile accident and applied for benefits. American denied the

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

claim on the ground that Richard Robbins had misrepresented his driving record on the application. Michelle Robbins filed suit seeking payment of benefits. American filed a third-party complaint against Richard Robbins seeking judgment against him in the event that it was determined to be obligated to pay benefits to Michelle Robbins. In the principal action, the trial court concluded that Michelle Robbins was entitled to benefits because she was an innocent third party. American does not challenge that decision on appeal.

Richard Robbins and American filed motions for summary disposition pursuant to MCR 2.116(C)(10) in the third-party action. The trial court granted Robbins' motion and denied American's motion. The trial court found that the language of the policy indicated that available remedies for the furnishing of false or incomplete information included the charging of a higher premium or the cancellation of the policy. In addition, the court found that Richard Robbins received no benefit as a result of his misrepresentations.

American argues that the trial court erred by denying its motion for summary disposition and granting the motion filed by Richard Robbins. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

The language of a contract of insurance is clear if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Stark*, 437 Mich 175, 182; 468 NW2d 498 (1991). If the language of a contract of insurance is clear, its construction is a question of law for the court. *Taylor v Blue Cross & Blue Shield*, 205 Mich App 644, 649; 517 NW2d 864 (1994). The language of the contract at issue unambiguously indicated that if it was discovered that the insured gave false or incomplete statements when applying for insurance, the insurer's remedies included payment of a higher premium, cancellation, or recession. The contract did not state that the insurer could also pursue a claim for reimbursement.

We also reject American's contention that the evidence supports a claim for reimbursement under the doctrine of innocent misrepresentation. Under the innocent misrepresentation doctrine, the loss suffered by the party who relied on the misrepresentation must inure to the benefit of the party who made the misrepresentation. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 116; 313 NW2d 77 (1981); *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). While payment of benefits to Michelle Robbins was, practically speaking, beneficial to Richard Robbins, he was not paid benefits under the contract of

insurance. In other words, any injury suffered by American did not inure to the benefit of Richard Robbins.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette