

STATE OF MICHIGAN
COURT OF APPEALS

CHINITA ROBINSON,

Plaintiff-Appellant,

v

MICHIGAN MUTUAL INSURANCE
COMPANY, a/k/a AMERISURE COMPANIES,

Defendant-Appellee.

UNPUBLISHED

January 4, 2000

No. 210443

Wayne Circuit Court

LC No. 97-716311 NF

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition in this no fault insurance action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 22, 1996, plaintiff was a passenger in an uninsured automobile that was involved in a traffic accident. Plaintiff applied to the Assigned Claims Facility for no fault insurance benefits, stating that she resided at 252 Beechwood in River Rouge, and that she had no available no fault coverage through anyone in her household.

Plaintiff's claim was assigned to defendant. In a deposition taken in this action, plaintiff testified that on the date of the accident, she lived with her father and stepmother at 15171 Harrison in Romulus. Plaintiff testified that she never lived at her grandmother's house at 252 Beechwood, and only used it as a mailing address. Plaintiff acknowledged that the inconsistent declarations in her application and affidavit were erroneous. Defendant moved for summary disposition, asserting that plaintiff had coverage available through a no fault policy issued to her stepmother at the time of the accident. The stepmother provided an affidavit stating that she had no fault insurance, and that plaintiff resided in her household at the time of the accident. The trial court granted defendant's motion.

Plaintiff asserts that the court erred in granting summary disposition because plaintiff's inconsistent testimony in this case and another third party action raises a genuine issue of fact regarding her actual place of residence. We disagree. A party may not create an issue of fact by submitting an

affidavit that contradicts her deposition testimony. *Atkinson v Detroit*, 222 Mich App 7, 11; 564 NW2d 473 (1997). A plaintiff's deposition testimony, given in a clear, intelligent, and unequivocal manner, is binding in the absence of an explanation, even though it contradicts allegations in the complaint. *Henderson v Sprout Brothers, Inc*, 176 Mich App 661, 670; 440 NW2d 629 (1989). Plaintiff clearly testified in this matter that she resided with her father and stepmother at the time of the accident. There is no genuine issue of material fact regarding her residence. Plaintiff was required to seek no fault benefits from her stepmother's insurance carrier, as provided by MCL 500.3114(1); MSA 24.13114(1).

Affirmed.

/s/ Henry William Saad
/s/ Gary R. McDonald
/s/ Hilda R. Gage