

STATE OF MICHIGAN
COURT OF APPEALS

NADINE SHARP, as Next Friend of JAMES
SHARP, a Minor,

UNPUBLISHED
April 21, 2000

Plaintiff-Appellant,

v

VERA LOGWOOD, ROBERT LOGWOOD,
BOBBY LOGWOOD, and FARM BUREAU
INSURANCE COMPANY,

No. 214322
Washtenaw Circuit Court
LC No. 92-043603-CZ

Defendants-Appellees.

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court granting summary disposition in favor of defendant Farm Bureau Insurance Company pursuant to MCR 2.116(C)(10). The claims regarding the remaining defendants were subsequently dismissed by stipulation and without prejudice. We affirm the trial court's order granting summary disposition in favor of Farm Bureau.

This case arises out of sexual assaults perpetrated on the minor plaintiff between 1982 and 1989 at the Logwoods' in-home day care center by Bobby Logwood, the son of Vera and Robert Logwood. Plaintiff filed suit against the Logwoods alleging assault and battery, intentional infliction of emotional distress, nuisance, and premises liability. Later, Farm Bureau was added as a defendant under a third-party beneficiary theory, because Farm Bureau issued a homeowners' insurance policy to the Logwoods. The insurance policy contained a business pursuit exception which Farm Bureau relied upon to deny coverage. The trial court ultimately granted summary disposition in favor of Farm Bureau, ruling that the business pursuit exception precluded coverage.

Plaintiff first argues that the trial court erred in granting summary disposition in favor of Farm Bureau based on the business pursuit exclusion under the Logwoods' homeowners' insurance policy. We review de novo a trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10). *Harts v Farmers Ins Exchange*, 461 Mich 1, 5; 597 NW2d 47 (1999). In reviewing a motion for summary disposition under MCR 2.116(C)(10), the court must consider the pleadings,

affidavits, depositions, and other documentary evidence filed in the action or submitted by the parties in a light most favorable to the nonmoving party to determine if any genuine issue of a material fact exists to warrant a trial. *Harts, supra*, p 5.

The business pursuit exclusion in the homeowners' policy states:

Personal Liability and Coverage F—Medical Payments to Others do not apply to bodily injury or property damage:

1. arising out of business pursuits of an insured or the rental or holding for rental any part of any premises by an insured.

Plaintiff does not argue that the Logwoods' day care was not a business pursuit for the purposes of the homeowners' policy. Rather, plaintiff argues that Farm Bureau should be estopped from denying coverage based on the business pursuit exclusion in this case because of acts of fraud and misrepresentation. Plaintiff relies exclusively on the case of *United States Fidelity & Guaranty Co v Black*, 412 Mich 99; 313 NW2d 77 (1981), to support her contention that Farm Bureau committed silent fraud by not informing the Logwoods that they needed to purchase a business pursuit endorsement in order for their day care business to be covered under their homeowners' policy. In order to prove a claim of silent fraud, plaintiff must show that Farm Bureau's insurance agent made some type of representation that was false or misleading and that there was a legal or equitable duty of disclosure. *Id.*, pp 125, 127; *M&D, Inc v McConkey*, 231 Mich App 22, 31; 585 NW2d 33 (1998).

Plaintiff argues that Farm Bureau committed fraud by not informing the Logwoods that their homeowners' policy would not cover their in-home day care business. This argument fails on several grounds. First, in *Harts, supra*, p 2, the Supreme Court held that, except under very limited circumstances, an insurance agent does not owe a duty to advise or counsel an insured about the adequacy or availability of coverage. Moreover, the insurance agent, Keith Dezwaan, had no actual knowledge that the Logwoods were operating a day care business in their home. Vera Logwood testified at her deposition that she did not tell Dezwaan or anyone associated with Farm Bureau that she was operating an in-home day care business. Furthermore, Robert Logwood testified at his deposition that he could not remember mentioning to Dezwaan that they were operating an in-home day care business. Robert Logwood also stated that he probably told Dezwaan that Vera was a homemaker. Plaintiff has presented no evidence that anyone associated with Farm Bureau had actual knowledge that the Logwoods were operating a day care business in their home.

Plaintiff, however, argues that a claim made by the Logwoods under their homeowners' policy in 1986 establishes a genuine issue of material fact regarding whether Farm Bureau had actual knowledge that defendants Logwood were operating a day care business in their home. Farm Bureau's coverage sheet described the claim as follows:

Insured was watching boy for mother. He was running around in front yard near driveway fell and cut his stomach requiring six stiches [sic] at Beyer Hospital, Ypsilanti.

It cannot be reasonably inferred from this description that Farm Bureau had actual knowledge of the fact that the Logwoods were operating a day care business in their home. There is no indication in the description that Farm Bureau knew, or even suspected, that the Logwoods were watching the child as part of a business enterprise. Thus, there being no duty on behalf of Dezwaan to advise the Logwoods regarding the adequacy of the homeowners' policy coverage, and no identifiable exception to this rule¹, plaintiff's claim of silent fraud must fail.

Accordingly, the trial court did not err in ruling that the minor plaintiff's injuries arose out of a business pursuit of the Logwoods and that the business pursuit exclusion, by its clear and unambiguous terms, precludes coverage by Farm Bureau. Plaintiff failed to establish that there is a genuine issue of material fact regarding whether Farm Bureau had actual knowledge of the fact that the Logwoods were operating a day care business in their home. Because we find that the trial court properly granted summary disposition for Farm Bureau based on the business pursuit exclusion under the homeowners' policy, we need not address plaintiff's arguments regarding the trial court's interpretation of the policy's intentional acts exclusion.

Affirmed.

/s/ Peter D. O'Connell

/s/ William B. Murphy

/s/ Kathleen Jansen

¹ The exceptions identified by the Supreme Court include: (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 gives inaccurate advice, or (4) the agent assumes an additional duty by either express agreement with or promise to the insured. *Harts, supra*, pp 10-11. These circumstances are not present in this case.