

STATE OF MICHIGAN
COURT OF APPEALS

ESTHER CUNNINGHAM,

Plaintiff-Appellant,

v

JACKSON NATIONAL LIFE INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 2, 2000

No. 215601

Ottawa Circuit Court

LC No. 97-028799-CK

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's late husband was insured under a term life insurance policy issued by defendant. Plaintiff was the named beneficiary of the policy. The policy premiums were payable on a quarterly basis. When plaintiff did not make a required premium payment, defendant sent plaintiff a notice that indicated that the policy would lapse if the premium was not paid within thirty-one days. Plaintiff sent a partial payment before coverage lapsed; however, defendant returned the payment within fifteen days of receipt. Plaintiff's husband died some three years after plaintiff's unsuccessful attempts to reinstate the policy.

Plaintiff filed suit, alleging that defendant was required to pay benefits under the policy because it had accepted a partial premium payment before coverage lapsed. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that there was no dispute that the policy had lapsed because of non-payment of premiums. The trial court granted the motion, finding that defendant was entitled to summary disposition because no evidence created a genuine issue of fact regarding whether defendant accepted the partial premium payment and thereby waived its right to cancel the policy.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. 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). The language of an insurance contract is clear if it fairly admits of but one interpretation. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). In this case, the uncontroverted evidence established that plaintiff did not pay a premium when due, and that defendant returned plaintiff's partial payment. The policy stated that a premium not paid when due or within the thirty-one day grace period would be considered in default, and did not provide that payment of a partial premium would avoid a lapse in coverage. The instant case is distinguishable from *Beebe v Michigan Bankers & Merchants Fire Ins Co*, 263 Mich 151, 152; 248 NW 578 (1933), on which plaintiff relies. In *Beebe*, *supra*, the insurance company accepted the premium paid by the plaintiff. The *Beebe* Court affirmed the trial court's holding that the insurance company failed to carry its burden of establishing that it had actually canceled the policy, and that the plaintiff had received notice of same. Here, it was undisputed both that defendant promptly returned plaintiff's partial premium payment and provided actual notice to plaintiff that the policy had lapsed. No genuine issue of fact existed regarding defendant's rejection of plaintiff's partial premium payment, and the resulting cancellation of the policy. Summary disposition was proper.

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey