STATE OF MICHIGAN

COURT OF APPEALS

SAMIR M. FADIL,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 26, 2000

No. 212805
Wayne Circuit Court
LC No. 96-646653-NF

Before: Bandstra, C.J., and Gage and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), and denying plaintiff's motion for partial summary disposition. We affirm.

Plaintiff's automobile insurance policy, obtained from defendant, stated that the period of the policy was from "10/10/95 to 11/14/95[,] 12:01 a.m. standard time at premise of named insured." On October 26, 1995, plaintiff received a letter of renewal from defendant. The renewal offer indicated a new policy period of "11/14/95 to 01/14/96[,] 12:01 a.m. standard time at premise of named insured," and stated that the premium was "due by" November 14, 1995. On November 14, 1995, at approximately 10:35 a.m., plaintiff was involved in an automobile accident. Plaintiff sustained personal injuries that resulted in his being hospitalized for three weeks and disabled from work for approximately six months. At that time, plaintiff had not paid the premium for the policy renewal. On November 16, 1995, plaintiff paid the renewal premium. Titan issued plaintiff a new policy commencing on November 16, 1995, and expiring on January 16, 1996. Thereafter, Titan refused to pay plaintiff any policy benefits stemming from the accident.

Plaintiff first argues on appeal that the trial court erred in determining that plaintiff's insurance coverage was not in effect at the time of the accident on November 14, 1995. A trial court's grant of summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Our Supreme Court has said the following about analysis of a motion for summary disposition under MCR 2.116(C)(10):

> In evaluating a motion for summary disposition brought under [MCR 2.116(C)(10)], a trial court considers affidavits, pleadings, depositions,

> admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). [*Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).]

Furthermore, interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morely v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). Whether contract language is ambiguous is also a question of law that is reviewed de novo. *Henderson v State Farm Fire and Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Plaintiff claims that at the time of his accident on November 14, 1995, his insurance policy issued by defendant was still in effect because of ambiguity between the insurance contract and the renewal offer regarding the date and time payment of the renewal premium was due. An insurance contract must be enforced in accordance with its terms. *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 206-207; 476 NW2d 392 (1991). A court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise. *Id*. Thus, the terms of a contract must be enforced as written where there is no ambiguity. *Morely*, *supra*. If ambiguity is found, the contract should be construed in the favor of the insured. *Henderson, supra* at 354.

In determining whether any ambiguity exists, a court may consider extrinsic facts, such as the parties' relations and the type of property insured. *Jones v Farm Bureau Mutual Ins Co*, 172 Mich App 24, 27; 431 NW2d 242 (1988). A court may establish the meaning of a term through a dictionary definition. See *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994). An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999).

In this case, there was no ambiguity between the insurance contract and the renewal offer. The terms of plaintiff's insurance policy with Titan expressly stated that the policy period was "10/10/95 to 11/14/95, 12:01 a.m. standard time at the premise of named insured." The terms stated on the declaration page clearly indicate that plaintiff's policy did not cover November 14, 1995. The renewal offer indicated the new policy period in the same manner as it appeared on the policy declaration page. The offer indicated that payment was "due by" November 14, 1995. Although the payment due date did not indicate any specific time of day that the payment was due, there is no ambiguity because both documents indicate the same policy period termination time.

Thus, plaintiff's original insurance policy expired at 12:01 a.m., on November 14, 1995. To continue uninterrupted insurance coverage, plaintiff was required to pay the renewal policy premium to defendant "by" November 14, 1995, which we conclude means "on or before," or "not later than," that date. See Random House Webster's College Dictionary, p 188 (1992). Had plaintiff done this, coverage would have been uninterrupted; the renewal policy would have been effective beginning 12:01 a.m. on November 14, when the original policy expired. If payment was made on November 14, its effect would have been retroactive to 12:01 a.m. on that date, in

effect providing plaintiff a short "grace period" for making payment without losing uninterrupted coverage. Plaintiff failed to pay the premium by the required time. Therefore, the policy terminated on its terms and plaintiff was not covered when he became involved in the accident at 10:35 a.m., on November 14, 1995. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 238; 507 NW2d 741 (1993). The trial court did not err in denying plaintiff's motion for partial summary disposition and granting defendant's motion for summary disposition.

Plaintiff's second issue on appeal is that the trial court failed to apply the doctrine of estoppel to prevent defendant from denying coverage to plaintiff. Generally, an issue is not properly preserved if it is not raised before and addressed by the trial court. *Alford v Pollution Control Industries of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997). Because plaintiff failed to raise this issue in the trial court, plaintiff has failed to preserve this issue for our review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1993).[1]

Finally, plaintiff argues that defendant's acceptance of his late payment of the renewal premium waived defendant's right to deny coverage for the accident. We disagree. An unconditional acceptance of an insurance premium may waive the insurer's defense of nonpayment of premium. *Weller v Manufacturer's Life Ins Co*, 256 Mich 532, 535-536; 240 NW 34 (1932). However, in this case, plaintiff did not have an existing insurance policy. In *Weller*, there was an existing insurance policy that was not terminated, and the defendant's acceptance of the plaintiff's late payment waived the defendant's defense of nonpayment. *Id*. at 536. Here, plaintiff's late insurance policy terminated on its terms at 12:01 a.m., on November 14, 1995. Unlike *Weller*, plaintiff's payment in this case was to renew his policy rather than make a payment on an existing contract.

Furthermore, plaintiff knew that defendant would not cover him for the period the policy had lapsed even after his late payment of the renewal premium. Plaintiff's previous insurance

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[1] Although plaintiff has forfeited review of this issue, we have reviewed plaintiff's contention and find it to be without merit. In order for plaintiff to benefit from the application of equitable estoppel, he had to show "(1) that defendant's acts or representations induced plaintiff to believe that the policy was in effect at the time of the accident, (2) that the plaintiff justifiably relied on this belief, and (3) that plaintiff was prejudiced as a result of his belief that the policy was still in effect." *Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW2d 776 (1998). Plaintiff's claim fails on the first two prongs of the test. First, the renewal offer made clear that the renewal would take effect on November 14, 1995 at 12:01 a.m. For plaintiff to believe that he was covered under the original policy would require believing that he would be covered by both the original and, assuming he paid the premium, the renewal policy on November 14. Nothing in defendant's actions induced plaintiff to believe that he was covered under the original policy. However, even if we assume that the first prong of the test is a "subjective" test, requiring only that plaintiff be induced by defendant's acts regardless of the meaning of those acts, a subjective belief alone is insufficient to support the application of equitable estoppel. See *Schmitt v Bretzlaff*, 208 Mich App 376, 379; 528 NW2d 760 (1995). As we have explained, in order for plaintiff to rely on the renewal notice, he would have to believe that he was covered on November 14 by both the original and, if he paid the premium, the renewal policy. Any such belief would not be reasonable, and plaintiff could not justifiably rely on the renewal notice in this fashion.

policy with defendant had been terminated for nonpayment. After defendant sent plaintiff a cancellation notice for nonpayment of premium, plaintiff failed to pay the premium until five days after payment was due. Defendant accepted plaintiff's payment, but reinstated plaintiff's policy effective the date of the payment. It is clear that defendant's prior practice with plaintiff's nonpayment was not to give plaintiff a grace period, but rather, to terminate the current policy and create a new policy with a policy period starting on the date of payment. Therefore, defendant's acceptance of plaintiff's late payment did not prevent defendant from asserting its defense of lapse of insurance coverage.

We affirm.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder