STATE OF MICHIGAN

COURT OF APPEALS

DAVID GERMAK and TERRY SCHAAF,

Plaintiffs-Appellants,

V

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee,

and

DAN FULCHER, and FULCHER COMPANIES, INC.

Defendants-Not Participating

UNPUBLISHED
December 18, 2003

No. 242870
Genesee Circuit Court
LC No. 01-069782-NF

Before: Wilder, P.J., and Griffin and Cooper, JJ.

WILDER, J. *(concurring).*

I would conclude that plaintiffs have established a genuine issue of material fact on the question whether plaintiff Terry Schaaf cancelled her Auto-Owners policy by direction to and discussion with Dan Fulcher. Schaaf's belief that coverage for the GMC Jimmy had been transferred to the Cincinnati Insurance Company policy could have plausibly been based on either an understanding that coverage would transfer once the Auto-Owners policy lapsed for non-payment of premiums or that the Auto-Owners policy was to be cancelled. In my judgment, this particular dispute about why Schaaf believed the coverage had shifted is one to be resolved by the finder of fact.

Nevertheless, I agree that summary disposition was appropriate in this case because there is no genuine issue of material fact as to whether Auto-Owners cancelled the policy and provided notice to the insured as required by MCL 500.3020(1)(b). MCL 500.3020(1) provides in pertinent part:

> A policy of casualty insurance, except worker's compensation and mortgage guaranty insurance, including all classes of motor vehicle coverage, shall not be issued or delivered in this state by an insurer authorized to do business in this state for which a premium or advance assessment is charged, unless the policy contains the following provisions:

* * *

> (b) That the policy may be cancelled at any time by the insurer by mailing to the insured *at the insured's address last known to the insurer* or an *authorized agent* of the insurer . . . . [Emphasis added.]

Here, there is no dispute that notice was mailed to the insured's address which was last known to Auto-Owners. Plaintiffs argue, however, that because Fulcher allegedly knew of a more current address for Schaaf, Fulcher's knowledge is imputed to Auto-Owners such that the cancellation notice to the prior address was ineffective. This argument is properly rejected because Fulcher was an independent agent rather than an authorized agent. "Ordinarily, an independent insurance agent or broker is an agent of the insured, not the insurer." *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 21; 592 NW2d 379 (1999) (citations omitted). Since Fulcher was not an authorized agent of Auto-Owners, I agree that the cancellation notice was sent in accord with the statute and that summary disposition was properly awarded in favor of Auto-Owners.

/s/ Kurtis T. Wilder