STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF GENEVA M. CARTWRIGHT, by her Conservator and Guardian, IRENE PASSMORE, Plaintiff-Appellee,	UNPUBLISHED January 10, 2008
v	No. 275152 Wayne Circuit Court
DAIRYLAND INSURANCE COMPANY, Defendant-Appellant.	LC No. 04-424091-NF

Before: Saad, P. J., and Owens and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition. We affirm.

I. Basic Facts and Proceedings

Tyrone Austin purchased a no-fault automobile insurance policy from defendant in Colorado for himself and his wife, Geneva M. Cartwright, who were both were living in Colorado. In November 1991, Cartwright was involved in an accident in Michigan, and she filed a claim. Defendant paid this claim, which involved 1-½ years of treatment for neck, back, and temporomandibular joint injuries. In December 1991, Cartwright and her son moved to Royal Oak to be near family while Austin was overseas serving in the military, and Cartwright obtained a Michigan driver's license. In paying the 1991 claims, defendant corresponded with Cartwright at her Michigan address. The insurance policy with defendant was renewed on December 27, 1992, but Austin and Cartwright never changed their policy from a Colorado policy to a Michigan policy.

In January 1993, while Austin was stationed in Kuwait, Cartwright was involved in an automobile accident and sustained a closed-head injury. Cartwright requires medical care, attendant care, and is unable to maintain employment. Cartwright was declared disabled by the Social Security Administration and began receiving benefits. Because of Cartwright's injuries, she was deemed incapacitated, and plaintiff, Irene Passmore, was appointed guardian and conservator. Defendant paid no-fault benefits, totaling $136,597.11 in medical benefits, until February 1995. In February 1995, after conducting independent medical examinations, defendant notified Cartwright that it had determined that her closed-head injury was not a result

of the 1993 accident and it would therefore not be making any further payments. Plaintiff attempted to obtain additional no-fault benefits, but defendant denied these requests.

In 2004, plaintiff filed a complaint against defendant, alleging breach of contract, statutory duty, and fiduciary duty for non-payment of no-fault benefits. Nearly two years later, defendant moved for summary disposition, arguing for the first time that the policy did not provide for Michigan no-fault benefits and relying on *Frost v State Farm Mut Automobile Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2006 (Docket No 266504). The trial court applied equitable estoppel and found that, even though Cartwright was a resident of Michigan, there was an issue of fact regarding whether she had relied on defendant's payment of the 1991 claim. The trial court denied defendant's motion for summary disposition.

II. Analysis

Defendant argues that the trial court erred in denying summary disposition. We disagree.

A. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Zsigo v Hurley Medical Ctr*, 475 Mich 215, 220; 716 NW2d 220 (2006). When reviewing a decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and other evidence in the light most favorable to the party opposing the motion. *Id*. Summary disposition is appropriately granted if, except for the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*.

We also review de novo a trial court's application of the doctrine of equitable estoppel. *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 309; 583 NW2d 548 (1998). Reversal is warranted if the trial court's findings were clearly erroneous, or if this Court concludes that it would have reached a different result had it occupied the lower court's position. *Id.* at 310.

B. Equitable Estoppel

Defendant argues that the trial court erred in finding that there was a factual issue regarding whether Cartwright relied on defendant's representations that she was entitled to unlimited Michigan personal injury protection benefits. We disagree. Pursuant to MCL 500.3101 and MCL 500.3102 of the Michigan no-fault act, a Michigan resident is required to maintain no-fault insurance for any vehicle that she owns and operates in the state. However, a non-resident may receive no-fault benefits for an accident occurring in Michigan without maintaining Michigan no-fault insurance if her insurer is authorized to transact insurance in Michigan and has filed the appropriate certification. MCL 500.3163; MCL 500.3113. In the instant case, defendant is essentially attempting to deny benefits on the basis that Cartwright is not a non-resident and her failure to maintain Michigan no-fault insurance precludes no-fault benefits. See *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38, 40; 592 NW2d 395 (1998); MCL 500.3163. The trial court found that Cartwright was a Michigan resident but denied defendant's motion for summary disposition because it concluded that the doctrine of

equitable estoppel applied and there was a genuine issue of material fact regarding whether Cartwright had relied on defendant's payment of her 1991 claim. Defendant argues that the trial court erred because there was no evidence that it knew Cartwright was a Michigan resident when it paid the 1991 claim and it had no duty to know that Cartwright's residency had changed.

The doctrine of equitable estoppel operates as follows:

> Estoppel arises where a party, by representations, admissions or silence, intentionally or negligently induces another party to believe facts, and the other party justifiably relies and acts on this belief, and will be prejudiced if the first party is permitted to deny the existence of the facts. [*Casey v Auto Owners Ins Co*, 273 Mich App 388, 399; 729 NW2d 277 (2006) (internal quotation and citation omitted); see also *Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW 2d 776 (1998).]

In support of its argument, defendant relies on *Mate v Wolverine Mut Ins Co*, 233 Mich App 14; 592 NW2d 379 (1998). In *Mate*, the son of the insured's ex-wife was killed in an automobile accident and sought underinsurance motorist benefits. *Id*. at 17. The decedent was not related to the insured, was not living with the insured, and was not covered by the policy; his only connection to the policy was that he was living with the insured's ex-wife, who kept the insured vehicle. *Id.* at 17, 20. This Court held that equitable estoppel did not apply because neither the insured nor his ex-wife ever informed the insurer that the decedent was living at the household of either the insured or his ex-wife. *Id.* at 22-23.

Here, defendant, the insurer, was informed of Cartwright's change of address and residency and renewed her policy in December 1992. Cartwright corresponded with defendant about her 1991 accident as early as December 1991, using her Michigan address. Cartwright underwent treatment, and defendant paid her claims for 1-½ years, corresponding with her at her Michigan address. Defendant renewed the policy in December 1992, and Cartwright used her Michigan address. The claim log notes and report of Michael Splinter, the claims adjuster who initially handled plaintiff's claim, reflect that he was aware of Cartwright's residency change and this information had been sent to the underwriting department.

Further, defendant's normal procedure upon learning that an insured vehicle is being garaged in a state other than the one where it is insured is to send out a non-renewal notice and inform the insured that it must transfer the policy to the state where the vehicle is located. Defendant never sent a notice of non-renewal or denied a claim until February 1995. Rather, Splinter applied unlimited Michigan personal injury protection benefits, even after learning that Cartwright was a Michigan resident, and defendant paid more than $136,000 in benefits.

In his affidavit, Austin averred that Cartwright informed defendant of their Michigan address and defendant paid claims in 1991 and 1992, which led him to believe that all aspects of their policy "were being honored by the fact that [Cartwright's] claims were accepted, acknowledged and paid and all mailed transactions were either sent to or from a Michigan

address." The trial court properly found that a question of fact existed regarding whether plaintiff relied on defendant's representations that she was entitled to unlimited Michigan personal injury protection benefits, and accordingly did not err in denying defendant summary disposition.[1]

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly

[1] Although the trial court indicated that *Frost*, *supra*, was applicable, it did not specifically address defendant's argument that Michigan no-fault benefits were unavailable under MCL 500.3163(1) because Cartwright was not a non-resident. During oral arguments before this Court, defendant's counsel conceded that it was authorized to transact automobile liability insurance and personal and property protection insurance in Michigan in December 1992, when it renewed Cartwright's policy. Therefore, defendant conceded that it would be liable under MCL 500.3163 if Cartwright were a non-resident.