STATE OF MICHIGAN

COURT OF APPEALS

MARY ELIZABETH AASTAD,

Plaintiff-Appellant,

V

HARVEY JESSIE-LEE EDWARDS, CHERRYL ARDENIA SANDERS, and AUTO OWNERS INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
November 18, 2010

No. 293101
Ingham Circuit Court
LC No. 07-001506-NI

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Plaintiff appeals an order that granted Auto Owners Insurance Company's motion for summary disposition. For the reasons set forth below, we affirm.

I. FACTS

On June 29, 2005, plaintiff sustained injuries because Harvey Edwards struck her car with a sport utility vehicle owned by Cherryl Sanders. AAA insured the SUV with a policy limit of $50,000 per injured person. Plaintiff had an automobile policy with Auto Owners that included underinsured motorist coverage. On October 24, 2007, plaintiff filed a complaint against Edwards and Sanders and alleged negligence claims against Edwards and asserted that Sanders is also liable as the owner of the vehicle. Plaintiff and defendants accepted the case evaluation award of $50,000, and the trial court entered a final judgment reflecting that award on January 27, 2009.

Thereafter, on March 3, 2009, plaintiff filed a motion to amend her complaint to add Auto Owners as a defendant. Specifically, plaintiff alleged that her damages were in excess of $50,000, but that the $50,000 award exhausted the AAA policy limits and Auto Owners refused to pay additional underinsured motorist benefits. The trial court granted plaintiff's motion to amend the complaint and, thereafter, Auto Owners filed a motion for summary disposition. Specifically, Auto Owners maintained that plaintiff's claims fall outside the limitations period in the insurance policy and that a motion to amend a complaint to add a new party does not relate back to the original filing date of the action. In response, plaintiff contended that allegations against a new party may relate back to the original complaint but, in any case, Auto Owners should be equitably estopped from relying on the limitations defense because Auto Owners

induced plaintiff to believe that it would not enforce the limitations period. After oral argument, the trial court granted summary disposition to Auto Owners.[1]

II. ANALYSIS

Plaintiff's Auto Owners policy states that, for an underinsured motorist claim, the insured must present a claim for compensatory damages according to the conditions of the policy and the insured must "conform with any applicable statute of limitations for bodily injury claims in the state in which the accident occurred." (Emphasis removed.) Pursuant to MCL 600.5805(10), a party must file a bodily injury claim in Michigan within three years of the injury. Accordingly, plaintiff had to file her claim no later than June 29, 2008.

A. Relation Back Doctrine

As noted, plaintiff filed a motion to amend her complaint to add Auto Owners as a defendant on March 3, 2009. As a preliminary matter, and as the trial court recognized, it should not have granted plaintiff's motion to amend her complaint because a final judgment had already been entered in the case. The judgment entered on January 27, 2009 constituted a final order that disposed of all of the claims in plaintiff's original complaint and the court's file was closed. Plaintiff did not move for relief from judgment under MCR 2.612, but merely sought, in an ex parte motion, to amend the complaint to add a claim against Auto Owners more than a month after the final judgment was entered. Accordingly, the trial court should have denied plaintiff's motion as untimely.

Nonetheless, were we to assume the trial court's ruling to allow the amendment was legally correct, we hold that the trial court correctly granted summary disposition to Auto Owners. Contrary to plaintiff's claim, the addition of a party to the complaint does not relate back to the original complaint plaintiff filed against Edwards and Sanders on October 24, 2007. MCR 2.118(D) provides that "[a]n amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of

---

[1] As this Court explained in *Ligons v Crittenton Hosp*, 285 Mich App 337, 342: 776 NW2d 361 (2009):

> This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(7). *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000). If there are no factual disputes and reasonable minds cannot differ regarding the legal effect of the facts, the decision whether a plaintiff's claim is barred is a question of law. *Terrace Land Dev Corp v Seeligson & Jordan*, 250 Mich App 452, 455; 647 NW2d 524 (2002).

the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." However, our courts have repeatedly held that "the relation-back doctrine does not extend to the addition of new parties." *Employers Mut Cas Co v Petroleum Equipment, Inc*, 190 Mich App 57, 63; 475 NW2d 418 (1991), citing *Gardner v Stodgel*, 175 Mich App 241, 249; 437 NW2d 276 (1989). And, contrary to plaintiff's citation to *Hayes-Albion Corp v Whiting Corp*, 184 Mich App 410; 459 NW2d 47 (1990), our Supreme Court again ruled in *Miller v Chapman Contracting*, 477 Mich 102, 105-108; 730 NW2d 462 (2007), that an amendment that adds an additional party does not relate back to the original filing of the complaint. Because the amendment would not and does not relate back to the earlier suit and because plaintiff did not file a claim against Auto Owners by the three-year statutory deadline, her claim is barred by the limitations period in the policy.

B. Equitable Estoppel

In the trial court, plaintiff argued that Auto Owners should be equitably estopped from relying on the statute of limitations defense because Auto Owners induced her to believe that it would not enforce the limitations period policy provision. It is well settled that, "unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written." *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23, 26 (2005). Moreover, to the extent plaintiff urges this Court to adopt a form of "equitable tolling," this Court has specifically opined that "[a]pplication of the doctrine of equitable tolling to contractual limitations periods would be inconsistent with the deference afforded to parties' freedom to contract, including the freedom to avoid, by contract, what might otherwise be an applicable rule of law." *Liparoto Const, Inc v General Shale Brick, Inc*, 284 Mich App 25, 31-32; 772 NW2d 801 (2009). Again, the Auto Owners policy explicitly states that the time limit for filing an underinsured motorist claim is three years from the date of the accident, as set forth in MCL 600.5805(10). Under an equitable estoppel theory, plaintiff was required to establish that "(1) defendant's acts or representations induced plaintiff to believe that the limitations period clause would not be enforced, (2) plaintiff justifiably relied on this belief, and (3) she was prejudiced as a result of her reliance on her belief that the clause would not be enforced." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 204-205; 747 NW2d 811 (2008). Here, not only was the contract language clear and unambiguous, Auto Owners clearly stated in a letter to plaintiff's counsel dated June 18, 2007 that the time limitation for plaintiff to bring an action was three years from the date of the accident, and the letter specifically set forth the filing deadline of June 29, 2008.[2] That Auto Owners continued to communicate with plaintiff about a potential claim for underinsured motorist benefits throughout the underlying litigation is quite beside the point because Auto

[2] Indeed, Auto Owners explicitly identified the filing deadline in direct response to an inquiry by plaintiff's attorney. Specifically, the letter from Auto Owners stated that "[t]he time limitation for Ms. Aastad to either settle her underinsured claim with Auto-Owners Insurance Company or to bring action against Auto-Owners Insurance Company will be 3 years from the date of accident which would be June 29, 2008."

Owners clearly and straightforwardly advised plaintiff precisely when the limitations period would expire and plaintiff simply failed to file a claim within that time. Accordingly, the trial court correctly granted summary disposition to Auto Owners.[3]

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad

[3] For the first time on appeal, plaintiff contends that the limitations period should be judicially tolled, starting from the time she notified Auto Owners of a potential claim for underinsured motorist benefits. Plaintiff cites *Tom Thomas Org, Inc v Reliance Ins Co*, 396 Mich 588; 242 NW2d 396 (1976) to support her assertion. We need not address plaintiff's claim because she did not raise it in the trial court. *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008). We note, however, that the Michigan Supreme Court rejected the judicial tolling theory. See *McDonald*, 480 Mich 197-201.