STATE OF MICHIGAN

COURT OF APPEALS

GANIYU AYINLA JAIYEOLA,

Plaintiff-Appellant,

v

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 19, 2017

No. 335059
Ionia Circuit Court
LC No. 2015-031627-CK

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant. We affirm.

This case arises out of a 2013 single-vehicle accident. The basic facts are not in dispute. Plaintiff had owned three motor vehicles, two 2011 Kias and a 1996 Toyota Camry, which was insured through defendant. The Kias had collision coverage and the Camry did not. On September 29, 2013, plaintiff contacted defendant and requested that coverage be dropped from one of the Kias because plaintiff no longer owned the vehicle. What is in dispute is whether, during the course of that phone call, plaintiff also requested that collision coverage be added for the Camry. Plaintiff claims that he had so requested.

It also undisputed that defendant emailed plaintiff a new declaration page on September 30 reflecting the change. But the new declarations page did not include collision coverage for the Camry. In his deposition, plaintiff admits to receiving the email on September 30, but states that he did not read it until after the accident. The accident occurred approximately two months later, on November 25. Plaintiff promptly reported the accident to defendant and requested damages for the collision loss. Defendant denied coverage for the collision loss on the basis that there was no collision coverage for the Camry.

Two years later, plaintiff filed suit claiming breach of contract, seeking damages for the collision loss, the storage fees charged by the tow company for the Camry, replacement rental car expenses, emotional distress, and attorney fees.[1] In all, plaintiff sought $74,000 in damages. The trial court granted summary disposition in favor of defendant and plaintiff appeals. We review the grant of summary disposition de novo. *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 393; 729 NW2d 277 (2006).

Plaintiff's only argument on appeal is that the trial court erred in granting summary disposition without considering an alleged audio recording of the phone call on September 29 during which he made the requested coverage changes. Defendant denies the existence of such a recording. Plaintiff maintains that he was told at the time of the call that it was being recorded. He also claims that he subsequently received conflicting information from defendant's employees, one saying that no such recording existed and another claiming that they had a recording in which he specifically declined collision coverage.

Plaintiff, relying on two unpublished decisions of this Court (one of which is actually a dissenting opinion), focuses on the question whether an audio recording may be admitted as evidence. That, however, is not the relevant question nor the basis of the trial court's decision. The trial court's decision was, in a nutshell, that the insurance contract controls regardless of what conversation plaintiff had with defendant's agent. We agree. As this Court stated in *Casey*, 273 Mich App at 394-395:

> It is well established that an insured is obligated to read his or her insurance policy and raise any questions about the coverage within a reasonable time after the policy is issued. Consistent with this obligation, if the insured has not read the policy, he or she is nevertheless charged with knowledge of the terms and conditions of the insurance policy. [Footnotes omitted.]

Plaintiff has acknowledged receipt of the revised policy. Even assuming that plaintiff had requested that collision coverage be added to the 17-year-old Camry for which he had previously carried collision coverage, and that defendant's agent failed to process the request, plaintiff had almost two months to discover and correct the error. We believe that that represents a reasonable time for plaintiff to have discovered any error in the coverage and have it corrected.

In sum, defendant did not add collision coverage for the Camry nor did plaintiff pay a premium for that coverage. Plaintiff promptly received a revised declarations page from defendant and did not contact defendant within a reasonable time to report any perceived errors. Accordingly, the trial court did not err in granting summary disposition in favor of defendant on defendant's denial of the collision claim.

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[1] Although plaintiff proceeded in propria persona in both the trial court and this Court, he apparently hired the services of an attorney before suit was filed.

Affirmed. Defendant may tax costs.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey