STATE OF MICHIGAN

COURT OF APPEALS

BRIAN KOLK, Individually and as Personal Representative of the ESTATE OF LINDA I. KOLK,

Plaintiff-Appellant,

v

HOUSEHOLD FINANCE CORPORATION III, HSBC CONSUMER LENDING SERVICE, and PAVONIA LIFE INSURANCE CORP, also known as HOUSEHOLD LIFE INSURANCE, and also known as HSBC INSURANCE SERVICES,

Defendants-Appellees.

UNPUBLISHED
January 23, 2018

No. 337178
Newaygo Circuit Court
LC No. 15-020131-CK

Before: METER, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

In this action involving a breach of contract claim and a claim under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, plaintiff Brian Kolk, acting both in his individual capacity and as personal representative of the estate of the decedent, Linda I. Kolk, appeals as of right the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants, Household Finance Corporation III (Household Finance), HSBC Consumer Lending Services (HSBC Lending),[1] and Pavonia Life Insurance Corp (Pavonia), also known as Household Life Insurance and HSBC Insurance Services (Pavonia).[2] For the reasons set forth in this opinion, we affirm.

[1] According to the affidavit of Dana J. St. Clair-Hougham, Vice President and Assistant Secretary of the Administrative Services Division of Household Finance, HSBC Lending is not an existing corporate entity. The parties do not dispute this matter, and it is not material to our resolution of the issues on appeal. Therefore, we will refer to defendants Household Finance and HSBC Lending collectively as "Household Finance."

[2] Pavonia Life Insurance was formerly known as Household Life Insurance. Because Pavonia was still operating as Household Life Insurance during the time that the relevant events leading

I. FACTS

This case arises out of the decedent's 2004 mortgage transaction that included the simultaneous procurement of mortgage disability and mortgage life insurance policies, and the foreclosure on the residence that subsequently occurred after the decedent's death.

On September 14, 2004, the decedent entered into an agreement with Household Finance in which Household Finance granted the decedent a loan, and the decedent granted Household Finance a mortgage on her property in Fremont, Michigan. Additionally, the decedent simultaneously obtained mortgage insurance from Household Life Insurance in the form of optional credit life and credit disability insurance. The premium payment for this insurance coverage was due on the same day each month as the monthly loan payment and was to be included with the total monthly payment of interest and principal. At this time, plaintiff, who is the son of the decedent, also lived with the decedent at the residence.

The notice of proposed group mortgage disability insurance that the decedent signed indicated that the disability insurance would "pay monthly disability benefits if you become totally disabled while this insurance is in force, subject to the terms of the group policy." According to the notice of proposed group mortgage disability insurance and the notice of proposed group mortgage life insurance, the insurance coverage would end in certain circumstances, including as pertinent to the instant case, on "the payment due date you are two months delinquent in making the required monthly premium payment." The notice of proposed group mortgage disability insurance also indicated that the "Maximum Sum of Disability Benefits" was "$100,000," that the "Maximum Disability Insurance Term" was "180 months," and that there was a "Critical Period" of "24 months." The notice of proposed group mortgage disability insurance further explained the critical period as follows:

> **Critical Period** is the number of months benefits are payable during one period of disability. There is no limit to the number of Critical Periods for which benefits are payable.

The decedent was also issued a certificate of group mortgage disability insurance, which stated that it was "subject to the provisions of the Group Policy under which it was issued and contains all details about the insurance as it applies to you." This certificate also provided that the effective date of the insurance was September 20, 2004, that the "Term of Insurance" was 180 months, that the "Maximum Disability Insurance Term" was 180 months, and that the "Scheduled Termination Date of Insurance Disability" was September 20, 2019. The certificate noted that the loan term was 360 months and that the "Scheduled Maturity Date of Loan" was September 20, 2034. The certificate also stated, "Critical Period: 24 months." Furthermore, the certificate of group mortgage disability insurance definition section defined the "Maximum Disability Insurance Term" as the "maximum term in months of the credit transaction that the

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up to this litigation occurred, we will refer to this entity as "Household Life Insurance" in setting forth the underlying facts.

Insured Mortgagor may be insured" under the policy. This same definition section also contained the following definition of the critical period:

> **Critical Period.** This is the number of months for which monthly benefits are payable *during any period of disability*. There is no limit to the number of Critical Periods for which benefits may be payable during the Term of Insurance. [Emphasis added.]

The certificate contained a notice that stated, "*CRITICAL PERIOD DISABILITY PAYS A LIMITED BENEFIT WHICH MAY NOT BE ENOUGH TO PAY OFF YOUR ACCOUNT." This certificate also addressed when payment of disability benefits would stop, stating as follows:

> Payment of Monthly Disability Benefits will stop on the earliest of: (i) the date you are no longer disabled, (ii) the *date you have received the number of monthly benefits in the Critical Period*, or (iii) the date this insurance ends, as explained under the **Termination of Insurance** Provision.
>
> [If][3] payment of benefits ends because you are no longer disabled or because you have been paid the number of benefits in the Critical Period, your insurance is not terminated and a new Critical Period will be effective as described in the Definitions Section of this Certificate.
>
> *Successive periods of disability due to the same or related causes shall be considered one continuous period of disability unless you have been actively employed full-time for six consecutive months or, if not actively employed, have engaged in normal activities for six consecutive months*. [Italicization added.]

Like the corresponding notices, both the certificate of group mortgage disability insurance and the certificate of group mortgage life insurance stated that the insurance would "end automatically and without notice" in certain circumstances, including on "the payment due date you are two months delinquent in making the required Monthly Premium payment." Monthly premiums were due on the same day as the monthly loan payment. The decedent authorized automatic debits to be made from her checking account in order to pay her monthly loan payment to Household Finance.

In November 2005, the decedent filed a claim for disability benefits under her credit disability insurance policy, indicating that her disability began on August 30, 2005. Subsequently, on approximately September 5, 2007, the decedent contacted Household Finance to find out if she could lower her interest rate, noting the expiration of the 24-month critical period of her credit disability insurance policy benefits. On October 31, 2007, the decedent

[3] This word is not legible on the copies of this document included in the lower court record, but it appears likely that the missing word is "if."

signed a form authorizing monthly debits from her checking account to resume paying her monthly payment.

On June 12, 2009, the decedent's mortgage loan payment for that month was voided for insufficient funds in her checking account. The decedent's July 12, 2009 mortgage loan payment was successfully processed and applied to her delinquent June 2009 payment, pursuant to the terms of her mortgage loan. As of July 2009, the decedent was still one month delinquent on her mortgage loan payment and her insurance premiums. The decedent's July 2009 billing statement noted her past due amount and stated as follows:

> Protect your valuable coverage – You are past due in making your monthly insurance payment. *Unless you bring all of your insurance premiums up to date all of your insurance coverage will be terminated as of the payment due date shown on this statement.* The Amount Past Due includes past due insurance premiums of $249.42. [Emphasis added.]

The decedent's August 12, 2009 monthly mortgage loan payment was voided for insufficient funds in her checking account, making her two months delinquent. Household Life Insurance terminated her credit life and disability insurance policies, and the decedent's monthly payment was reduced to $817.03 to account for the lack of continuing insurance premiums. The decedent's August 2009 billing statement indicated that "[a]ll insurance coverage on your account is terminated due to non-payment of premium." The decedent subsequently continued to make mortgage payments.

On August 1, 2010, the decedent died unexpectedly of natural causes. The last mortgage loan payment received by Household Finance occurred on June 28, 2010. Household Life Insurance sent a letter dated September 24, 2010, to the decedent's estate regarding the decedent's mortgage account and mortgage life insurance. Household Life Insurance informed the family that it had received the family's notice of claim and indicated that it could not pay the claim for the following reasons:

> Information in our claim file indicates the life insurance on this account was cancelled on 08/20/09 due to non-payment of premiums. It also indicates the insured borrower died after that date. Since there was no life insurance in effect on the date of death, the terms of the policy do not permit payment of this claim.

Subsequently, a foreclosure notice was issued in November 2013, indicating that the mortgage was in default. Household Finance ultimately purchased the property at the Sheriff's sale, and the redemption period subsequently expired.

On November 4, 2015, plaintiff initiated the instant action, alleging breach of contract and violation of the MCPA. Plaintiff essentially claimed that Household Life Insurance was obligated under the policies to pay all of the decedent's mortgage and insurance premium payments from the time her disability began in 2005 and the remaining amount due on the home loan. According to plaintiff, Household Life Insurance's failure to pay disability benefits led to the delinquency in insurance premiums.

The trial court granted defendants' motions for summary disposition. The trial court concluded that the critical period provision in the mortgage disability insurance policy unambiguously limited the amount of benefits payable to a maximum of 24 months. Next, the trial court ruled that the disability insurance policy did not violate the Insurance Code provisions in MCL 500.3402 involving requirements for the format of exceptions in disability insurance policies, reasoning that the policy in this case satisfied the statute because the critical period limitation was included within the benefits provision of the relevant insurance documents. Next, the trial court ruled that the decedent's mortgage life insurance policy had been effectively terminated at the time of her death by the decedent's conduct, even if the statutory notice provision in MCL 500.4012 had not been fulfilled. Finally, the trial court ruled that MCL 445.904 exempted the transactions relevant to this lawsuit from the purview of the MCPA. This appeal followed.

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision on a summary disposition motion to determine if the moving party was entitled to judgment as a matter of law." *Bergman v Cotanche*, 319 Mich App 10, 15; 899 NW2d 754 (2017). In doing so, we review the entire record. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 474-475; 776 NW2d 398 (2009). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*.

Issues involving the interpretation of a contract and whether contract language is ambiguous are reviewed de novo as questions of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). To determine the meaning of contractual language, an appellate court must "give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

Issues of statutory interpretation are also reviewed de novo as a question of law. *McCausey v Oliver*, 253 Mich App 703, 705; 660 NW2d 337 (2002). "When interpreting statutes, our primary goal is to ascertain and give effect to the intent of the Legislature." *Averill v Dauterman*, 284 Mich App 18, 22; 772 NW2d 797 (2009). The intent of the Legislature is determined by considering the language of the statute, and "[i]f the plain and ordinary meaning of the language is clear, judicial construction is normally not permitted." *McCausey*, 253 Mich App at 706.

III. ANALYSIS

First, plaintiff argues that the critical period provision was misleading and ambiguous. "[I]nsurance policies are subject to the same contract construction principles that apply to any other species of contract." *Rory*, 473 Mich at 461. "In interpreting a contract, our obligation is

to determine the intent of the contracting parties." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). An appellate court "determine[s] the parties' intent by examining the language of the contract according to its plain and ordinary meaning." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 174; 848 NW2d 95 (2014). "[C]ourts must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp*, 468 Mich at 468.

"An ambiguous provision in an insurance contract is construed against the insurer and in favor of coverage." *Auto Owners Ins Co v Seils*, 310 Mich App 132, 146; 871 NW2d 530 (2015). But "[i]f the contractual language is unambiguous, courts must interpret and enforce the contract as written . . . ." *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016) (quotation marks and citation omitted; alteration in original). "[A] contract is ambiguous when two provisions 'irreconcilably conflict with each other,' or 'when [a term] is equally susceptible to more than a single meaning[.]' " *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527; 791 NW2d 724 (2010) (citation omitted; second alteration in original). Mere disagreement between the parties over the meaning of the language in their agreement does not, by itself, create ambiguity. *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 540; 549 NW2d 612 (1996).

In this case, the decedent signed the notice of proposed group mortgage disability insurance, which indicated that the "Maximum Disability Insurance Term" was "180 months" and that there was a "Critical Period" of "24 months." Immediately below these terms, the notice indicated in three successive provisions (1) that the amount or term of insurance might not cover the full amount or term of the loan; (2) that the disability insurance would "pay monthly disability benefits if you become totally disabled while this insurance is in force, subject to the terms of the group policy"; and (3) that the "**Critical Period** is the number of months benefits are payable during one period of disability," with there being "no limit to the number of Critical Periods for which benefits are payable." Additionally, the certificate of group mortgage disability insurance provided that the effective date of the insurance was September 20, 2004, that the "Term of Insurance" was 180 months, that the "Maximum Disability Insurance Term" was 180 months, that the "Scheduled Termination Date of Insurance Disability" was September 20, 2019, and that there was a 24-month critical period. Furthermore, the certificate of group mortgage disability insurance definition section defined the maximum disability insurance term as the "maximum term in months of the credit transaction that the Insured Mortgagor may be insured" under the policy, and the definition section defined the critical period as "the number of months for which monthly benefits are payable during any period of disability." The certificate also indicated that payment of monthly disability benefits would stop on "the date you have received the number of monthly benefits in the Critical Period."

In order to ascertain the meaning of the contractual provisions at issue in this case, these two insurance documents may be considered together because they both involve the terms of decedent's mortgage disability insurance. *Omnicom of Mich v Giannetti Investment Co*, 221 Mich App 341, 346; 561 NW2d 138 (1997). Based on the plain meaning of the language used in these documents, *Rory*, 473 Mich at 464, it is apparent that the maximum disability insurance term of 180 months provided that the decedent was purchasing mortgage disability insurance coverage for a period of 15 years lasting from September 20, 2004, until September 20, 2019,

and which was subject to the terms of the insurance policy. It is also clear that for any *one period of disability*, the insured could receive monthly disability benefits for the duration of the "Critical Period." The critical period was unequivocally defined as being 24 months long. Moreover, the certificate stated that "successive periods of disability due to the same or related causes shall be considered one continuous period of disability unless you have been actively employed full-time for six consecutive months or, if not actively employed, have engaged in normal activities for six consecutive months." While the agreement provided that a person could receive disability benefits during multiple critical periods over the course of the insurance term, it is readily apparent that in order to qualify for a new critical period, an insured must have either incurred a disability based on a different cause or engaged in six consecutive months of full-time employment or normal activities between critical periods. There is no evidence that the decedent ever applied for a new critical period to start. Finally, it is clear from the insurance documents that payment of benefits would end once an insured had received benefits for the critical period—24 months in this case—during a single period of disability. This is the only reasonable meaning of this language when considered as a whole, and the critical period provision is therefore not ambiguous. *Klapp*, 468 Mich at 468; *Holland*, 287 Mich App at 527. The mere fact that the parties disagree about the meaning of this language is insufficient to lead to a conclusion that the critical period provision is ambiguous. *Gortney*, 216 Mich App at 540.

In this case, the decedent received disability benefits under her policy for a disability that began on August 30, 2005, and those benefits expired 24 months later. Because the mortgage disability insurance agreement is unambiguous, it must be enforced as written; ceasing to pay disability benefits to the decedent after the 24-month critical period expired was in compliance with the clear terms of the agreement and did not constitute a breach of the agreement. *Innovation Ventures*, 499 Mich at 507. Therefore, the trial court did not err by ruling that the critical period language was unambiguous and provided only a 24-month period of benefits for the decedent's single period of disability. *Klapp*, 468 Mich at 463.

Next, plaintiff argues that the critical period provision violated § 3402 of the Insurance Code of 1956, MCL 500.100 *et seq.* At the time that the decedent obtained her mortgage disability insurance policy, MCL 500.3402 provided in pertinent part:

> No policy of disability insurance, as defined in section 3400(1), shall be delivered or issued for delivery to any person in this state unless:
>
> * * *
>
> (5) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 3406 through 3454, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS", or "EXCEPTIONS AND REDUCTIONS": Provided, That if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies . . . . [MCL 500.3402 (West 2004).]

However, the statute was subsequently amended, and Subsection (5) was omitted. 2016 PA 276. The amendment took effect on July 1, 2016, after plaintiff filed this action but before summary disposition was granted. Nonetheless, defendants concede the application of the former version of MCL 500.3402 and do not argue that the amended version could be applied retroactively.

Assuming without deciding that the prior version of MCL 500.3402 is applicable in this case, there was no violation of the statute because the critical period provision is not an exception or reduction in indemnity. MCL 500.3402 does not define the phrase "exceptions and reductions of indemnity." If a word or phrase is not defined in a statute, then it is permissible to consult a dictionary to determine the common, ordinary meaning of the word or phrase. *McCausey*, 253 Mich App at 706. The word "exception" means "the act of excepting: EXCLUSION." *Merriam-Webster's Collegiate Dictionary* (11th ed). "Reduction" means "the act or process of reducing," and "reduce" means "to diminish in size, amount, extent, or number." *Id*. "Indemnity" means "security against hurt, loss, or damage." *Id*. Thus, the phrase "exceptions and reductions of indemnity" means an exclusion from, or the diminishment of, the benefits provided by the policy. In contrast, the critical period provision merely defines the nature of the benefit to be provided during the policy term: disability benefit payments for up to 24 months for any one period of disability. The provision does not operate to *exclude* or *diminish* any of these benefits to be provided. Clearly delimiting the amount of benefits to be provided is not the same as creating an exclusion or reduction from that benefit once the boundaries for the benefit have been defined.[4] Therefore, former MCL 500.3402(5) is not implicated by the critical period provision in the insurance agreement at issue. Furthermore, even if the critical period provision were to be considered an exception or reduction, its operation is explained within the description of insurance benefits section of the certificate, along with the explanation of the disability benefit, which satisfies the requirements of former MCL 500.3402(5). The trial court did not err by concluding that the insurance agreement in this case satisfied the statute. *McCausey*, 253 Mich App at 706.

Next, plaintiff essentially argues that the decedent's delinquency in her credit disability insurance and credit life insurance premiums was caused by the failure of Household Life Insurance to continue paying the disability benefits due under the policy. However, we reject this argument because, as previously discussed, the decedent was not entitled to any further disability benefits after the expiration of the critical period, and Household Life Insurance therefore could not have caused the decedent to become delinquent in her payments almost two years after her disability benefit had expired.

[4] Notably, the certificate of group mortgage disability insurance does explicitly provide three specific "Disability Exclusions," which are set forth as follows: "No disability insurance benefit will be paid for disability caused by or resulting from normal pregnancy or childbirth, intentionally self-inflicted injury or, a pre-existing condition, as defined in definitions." The critical period provision is not among these exclusions.

Next, plaintiff argues that summary disposition was improper because defendants failed to comply with the notice provision of MCL 500.4012(b) before terminating the decedent's mortgage life insurance policy and that the life insurance policy remained in effect until the decedent's death as a result of this alleged noncompliance with the statute. This particular appellate argument is directed solely at the propriety of the termination of the decedent's mortgage life insurance policy. MCL 500.4012(b) provides as follows:

> Each life insurance policy shall contain the following provisions:
>
> * * *
>
> (b) That written notice shall be sent by the insurer to the policyowner's last known address at least 30 days prior to termination of coverage. This subdivision does not apply to an insurer that collects a majority of its annual premium in person.

In this case, the decedent's July 2009 billing statement for her mortgage and insurance premium payments indicated that she was past due in making her monthly insurance premium payments and that her insurance coverage would be terminated on the due date of her next payment—August 20, 2009—unless she brought her premium payments up to date. According to this billing statement, the closing date was July 28, 2009, but it is unclear from the record when the decedent actually received the billing statement. The statement appears to have been generated by Household Finance, and it does not include any reference to Household Life Insurance or its successors in interest. There is no dispute that the decedent failed to make the necessary insurance premium payments in August 2009, that she was two months delinquent on her mortgage insurance premium payments at that point, and that her mortgage life and mortgage disability insurance policies were terminated as a result. There is also no dispute that the decedent made subsequent mortgage payments, but did not make any further mortgage insurance premium payments, during the time leading up to her death approximately one year later.

On appeal, plaintiff argues that MCL 500.4012(b) was violated, and that the mortgage life insurance policy necessarily remained in effect until the decedent's death as a result, because (1) any notice that the decedent received was sent by Household Finance rather than the *insurer*, Household Life Insurance; and (2) the decedent did not receive notice of the policy's potential termination 30 days before the policy was terminated.

Assuming without deciding that MCL 500.4012 applies to mortgage life insurance policies such as the one at issue in this case,[5] MCL 500.4012(b) requires life insurance policies to "contain" a provision indicating that "written notice shall be sent by the insurer to the policyowner's last known address at least 30 days prior to termination of coverage." The certificate of mortgage life insurance in this case did not contain a provision identical to the language of MCL 500.4012(b), but it did provide that the insurance would "end automatically

[5] We operate under this presumption because defendants have not challenged the applicability of this statute on appeal.

and without notice" in certain circumstances, including on "the payment due date you are two months delinquent in making the required Monthly Premium payment." The certificate also contained the following provision:

> **Conformity with State Statutes.** Any provision of this Certificate which, on its effective date, is in conflict with the statutes of the state in which the Insured Mortgagor resides on such date is hereby amended to conform to the minimum requirements of such statutes.

However, as stated above, it is not clear that the decedent received notice from her insurer regarding the potential termination of her mortgage life insurance policy 30 days before the policy was actually terminated.

Nonetheless, MCL 500.4012 does not indicate any consequence for failing to include the mandated provision in a policy or for an insurer's failure to actually send written notice to the policyowner 30 days before terminating the policy, and plaintiff cites no authority for the proposition that the failure to strictly comply with the 30-day notice provision of MCL 500.4012(b) results in keeping the life insurance policy in effect indefinitely despite the insured's continued failure to pay the premiums. Thus, even assuming *arguendo* that a violation of MCL 500.4012(b) occurred, that does not dictate that plaintiff should receive the remedy he seeks. There is no contention in this case that the decedent did not actually have notice that her mortgage life insurance policy would be terminated. Furthermore, there is no dispute that the decedent was two months delinquent on her mortgage life insurance premiums at the time that the policy was terminated and that she did not pay any further insurance premiums from that point until her subsequent death. There also is no claim that she did not understand that her insurance policy was no longer in effect during this time that she was being billed for lower monthly payments that reflected her lack of mortgage insurance coverage. The crux of the matter in this case is that the decedent failed to pay her premiums on the insurance policy at issue for approximately one year—a period of time that extended well more than 30 days after the notice contained in the July 2009 billing statement.

Accordingly, the resolution of this issue on appeal turns on the application of fundamental principles of contract law. It is clear from the decedent's continued failure to pay premium payments, despite having been informed that her coverage would be terminated as a result, that she repudiated the insurance contract. Repudiation is available to an injured party to a contract when the other party "has committed a material breach." *Walker & Co v Harrison*, 347 Mich 630, 635; 81 NW2d 352 (1957). However, "the injured party's determination that there has been a material breach, justifying his own repudiation, is fraught with peril, for should such determination, as viewed by a later court in the calm of its contemplation, be unwarranted, the repudiator himself will have been guilty of material breach and himself have become the aggressor, not an innocent victim." *Id*. Our Supreme Court has explained:

> In determining the materiality of a failure fully to perform a promise the following circumstances are influential:
>
> (a) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated;

(b) The extent to which the injured party may be adequately compensated in damages for lack of complete performance;

(c) The extent to which the party failing to perform has already partly performed or made preparations for performance;

(d) The greater or less hardship on the party failing to perform in terminating the contract;

(e) The wilful, negligent or innocent behavior of the party failing to perform;

(f) The greater or less uncertainty that the party failing to perform will perform the remainder of the contract. [*Id*. (quotation marks and citation omitted).]

Here, there is no indication that the decedent challenged the sufficiency of the termination notice or that the decedent sought *at any time* following the July 2009 notice to pay her premiums and have the insurance coverage continue. There is also no indication that the decedent's motivation for ceasing to pay her insurance premiums was any alleged deficiency in the notice of termination that she received. Moreover, it is significant to note that if the decedent had paid her insurance premiums on the normal due date for her monthly payment in response to the notice contained in the July 2009 billing statement, her insurance coverage would have continued. Therefore, even if there was a violation of MCL 500.4012(b), it did not constitute a material breach of the insurance contract that would justify the decedent in repudiating the contract. *Walker & Co*, 347 Mich at 635.

In contrast, an insured's failure to pay insurance premiums justifies the insurer's cancellation of the insurance policy pursuant to the terms of that policy, even if there may not have been strict compliance with a statutory notice provision, so long as there are no other public policy considerations that would warrant voiding the insurer's attempt to terminate the policy. *O'Neill v Auto Club Ins Ass'n*, 175 Mich App 384, 390; 438 NW2d 288 (1989). A determination of Michigan's public policy "must ultimately be clearly rooted in the law." *Rory*, 473 Mich at 470-471 (quotation marks and citation omitted). Here, plaintiff has not cited any authority to support the untenable notion that Michigan public policy favors requiring an insurer to provide indefinite coverage to an insured who has knowingly failed to pay insurance premiums—thereby neglecting the insured's most basic and fundamental obligation under the insurance contract—for approximately one year. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012) (quotation marks and citation omitted). While this case may have presented a closer question had the decedent actually paid the insurance premiums within 30 days of receiving notice or died within 30 days of receiving notice of the impending termination of the policy, neither of those scenarios occurred in the instant case. Instead, the decedent's failure to pay insurance premiums constituted a material breach of the insurance contract that warranted termination of the policy by the insurer. *Walker & Co*, 347 Mich at 635; *O'Neill*, 175 Mich App at 390.

Next, plaintiff argues that he asserted a valid claim under the MCPA. Under the MCPA, "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful . . . ." MCL 445.903(1). However, MCL 445.904(1)(a) provides that the MCPA does not apply to "[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." In determining whether a claim is barred by MCL 445.904(1)(a), "the relevant inquiry is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited." *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 208, 212; 732 NW2d 514 (2007) (quotation marks and citation omitted). Additionally, MCL 445.904(3)(a) provides that "[t]his act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, if . . . [t]he method, act, or practice occurred on or after March 28, 2001."

Here, plaintiff's appellate arguments are solely confined to the insurance transactions.[6] MCL 500.200 provides that there "is hereby established a separate and distinct state department which shall be especially charged with the execution of the laws in relation to insurance." MCL 500.202(1) provides that the "chief officer of the department shall be known as the commissioner of insurance" and that the commissioner of insurance "shall personally superintend the duties of his office." Furthermore, under MCL 500.210, the commissioner of insurance has the ability to "promulgate rules and regulations in addition to those now specifically provided for by statute as he may deem necessary to effectuate the purposes and to execute and enforce the provisions of the insurance laws of this state" in accordance with the Administrative Procedures Act. MCL 500.210; MCL 24.312. Additionally, a "person shall not act as an insurer and an insurer shall not issue a policy or otherwise transact insurance in this state except as authorized by a subsisting certificate of authority granted to it by the director under this act." MCL 500.402. The director refers to the commissioner of insurance. MCL 500.102(a) and (c). " 'Insurer' means an individual, corporation, association, partnership, . . . or other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts." MCL 500.106(b). Furthermore, MCL 500.402a provides that

> [i]n this state, the following transactions of insurance, whether effected by mail or otherwise, require a certificate of authority:
>
> (a) The issuance or delivery of insurance contracts to residents of this state.

[6] Because plaintiff has not argued that he has any valid claims under the MCPA based on Household Finance's actions related to the mortgage loan, any such claim is abandoned. "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

(b) The solicitation of applications for insurance contracts from residents of this state.

(c) The collection of premiums, membership fees, assessments, or other consideration for insurance contracts from residents of this state.

(d) The doing or proposing to do any act in substance equivalent to subdivisions (a) to (c).

Based on the above statutory authority, insurance transactions clearly constitute conduct that is "specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States," and plaintiff's claim under the MCPA is therefore barred because it is solely focused on conduct related to an insurance transaction. MCL 445.904(1)(a); *Liss*, 478 Mich at 208, 212; see also *Smith v Globe Life Ins Co*, 460 Mich 446, 465; 597 NW2d 28 (1999) (concluding that MCL 445.904(1)(a) "generally exempts the sale of credit life insurance from the provisions of the MCPA, because such "transaction or conduct" is "specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States").[7]

Plaintiff also argues in relation to his other claims that he is entitled to interest pursuant to MCL 500.2006, which is contained within the Uniform Trade Practices Act (UTPA), MCL 500.2001 *et seq.* As an initial matter, to the extent that he relies on this claim, which is undisputedly based on conduct that occurred after March 28, 2001, to justify an action under the MCPA, that claim is also barred. MCL 445.904(3)(a).[8]

Turning to plaintiff's substantive claim under the UTPA, MCL 500.2006(1) provides:

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[7] Although *Smith*, 460 Mich at 465 n 12, involved credit life insurance that was subject to the Credit Insurance Act, MCL 550.601 *et seq.*, the credit life insurance at issue in the instant case is not subject to that act because it was obtained in conjunction with the decedent's 30-year home loan, MCL 550.602 ("All life insurance and all accident and health insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this act except such insurance sold in connection with loans on dwellings or mobile homes where the term of the loan is in excess of 5 years.").

[8] Although the *Smith* Court held that MCL 445.904(2) provided an exception to the general exemption in MCL 445.904(1), 460 Mich at 467, the statute was subsequently amended, 2014 PA 251. The Legislature gave the amendment to MCL 445.904 retroactive effect, making it effective March 28, 2001. 2014 PA 251. In *Dell v Citizens Ins Co of America*, 312 Mich App 734, 742; 880 NW2d 280 (2015), this Court explained that "[i]n response to *Smith*, our Legislature amended MCL 445.904 to provide that without exception, the MCPA does not apply to conduct 'made unlawful by chapter 20 of the insurance code." Therefore, the exception to the exemption described in *Smith* is not applicable to the instant case.

> A person must pay on a timely basis to its insured, a person directly entitled to benefits under its insured's insurance contract, or a third party tort claimant the benefits provided under the terms of its policy, or, in the alternative, the person must pay to its insured, a person directly entitled to benefits under its insured's insurance contract, or a third party tort claimant 12% interest, as provided in subsection (4), on claims not paid on a timely basis. Failure to pay claims on a timely basis or to pay interest on claims as provided in subsection (4) is an unfair trade practice unless the claim is reasonably in dispute.

In other words, this subsection simply "requires insurance claims to be paid on a timely basis, or penalty interest will be imposed under the UTPA." *Nickola v MIC Gen Ins Co*, 500 Mich 115, 123; 894 NW2d 552 (2017). However, as previously discussed, the decedent in the instant case was paid all of the benefits to which she was entitled under her insurance policies, and there is no evidence that she was not timely paid these benefits. Therefore, defendants are not liable for any interest payment pursuant to MCL 500.2006(1) because the decedent was not entitled to any benefit that was not timely paid. *Nickola*, 500 Mich at 123.

In sum, the trial court did not err by granting summary disposition in favor of defendants on plaintiff's claims pursuant to MCR 2.116(C)(10). *West*, 469 Mich at 183.[9]

Affirmed. Defendants, having prevailed, may tax costs. MCR 7.219(A).

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra

[9] With respect to Household Finance's additional arguments that are premised on its contention that it was not a party to the insurance contract, the trial court did not issue a ruling on whether Household Finance was a party to the insurance agreement. Generally, "[a]ppellate review is limited to issues actually decided by the trial court." *Allen v Keating*, 205 Mich App 560, 564; 517 NW2d 830 (1994). Moreover, resolution of this issue is not necessary because summary disposition was proper for the reasons stated above, regardless of whether or not Household Finance was a party to the insurance contracts.