STATE OF MICHIGAN

COURT OF APPEALS

TAMIKA WILSON,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

and

DUSHAUN STEWART,

Defendant.

UNPUBLISHED
May 27, 2021

No. 353278
Wayne Circuit Court
LC No. 18-001534-NI

Before: MARKEY, P.J., and M. J. KELLY and SWARTZLE, JJ.

SWARTZLE, J. (*concurring*).

I concur in full with the majority's opinion affirming summary disposition in favor of defendant Titan Insurance Company. I write separately to point out that this application, in its current form, should have never been accepted in the first place. Plaintiff Wilson failed to answer whether she had sought treatment for any prior condition, but then she inexplicably listed the address of a healthcare provider in answer to the same question. She then stated that she did not take any medications prior to the accident, but then inexplicably listed "Xanax, Norco," again in answer to the same question. Even more concerning, Wilson failed to indicate that she had read the "Fraud Warning" or that she had reviewed the application and attested to its truth and accuracy. A minor misstatement here or there on an application is one thing; the wholesale failure to provide information critical to a claim is another.

Under the express terms of the application—and, frankly, common sense—either the Michigan Assigned Claims Plan or Titan should have returned the application to Wilson to clarify and complete the application. This was not done, and we are left to review a hash of incomplete and contradictory information provided in the application.

Although Wilson bore responsibility for completing the application, the Plan and Titan also bore responsibility for accepting the application and failing to seek clarification of the facially incomplete and contradictory information. How these respective responsibilities might have borne out on the question of the statutory-fraud exclusion (e.g., would the assigned insurer be estopped from asserting fraud when the applicant, like here, never attested to the truth or accuracy of the application) was not a question raised on appeal. While our "raise-or-waive" rule in civil cases is not absolute, this case does not present the type of exceptional circumstance that would justify reaching an unpreserved matter. *Napier v Jacobs*, 429 Mich 222, 233; 414 NW2d 862 (1987).

Accordingly, I concur in full with the majority's opinion.

/s/ Brock A. Swartzle