STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA C. RUZAK,

Plaintiff-Appellee,

V

USAA INSURANCE AGENCY, INC.,

Defendant-Appellant,

and

JAY D. RUZAK,

Defendant.

UNPUBLISHED
December 1, 2011

No. 288053
Grand Traverse Circuit Court
LC No. 06-025177-NI

ON REMAND

Before: MURPHY, C.J., and JANSEN and WILDER, JJ.

PER CURIAM.

This case returns to this Court on remand from the Supreme Court for further proceedings. *Ruzak v USAA Ins Agency, Inc*, 489 Mich 865; 795 NW2d 154 (2011).

In this Court's most recent opinion, *Ruzak v USAA Ins Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued April 27, 2010 (Docket No. 288053) ("*Ruzak II*"), the trial court's granting of summary disposition in favor of plaintiff was affirmed. Central to the *Ruzak II* majority's analysis was the belief that it was bound by the original opinion from this Court, *Ruzak v USAA Agency, Inc*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 2008 (Docket No. 274993) ("*Ruzak I*"), and, therefore, foreclosed from entertaining USAA's challenges to the validity of using the "renewal rule." The Supreme Court reversed that portion of *Ruzak II*, holding that the ruling in *Ruzak I* was not the "law of the case" with respect to the renewal rule, and remanded for this Court to consider USAA's two arguments: (a) that the renewal rule does not apply when a new insurance policy is issued pursuant to an insured's move to a new state and (b) that the renewal rule does not apply where the last change in the insurance policy did not produce a decrease in coverage, but an increase.

Thus, our task on remand is to consider whether the trial court correctly granted summary disposition in favor of plaintiff in light of these two arguments. We reverse the trial court and hold that the renewal rule does not apply when the "renewal" policy is a new policy that was created as a result of moving that coverage to a new state.

I. BASIC FACTS

In 1966, Jay Ruzak first acquired an automobile insurance policy from USAA and continued to be insured by USAA over the next 40 years. Jay asserted that he had lived in Michigan since 1997 and that, before moving to Michigan, he had lived "in Indiana, Minnesota, Wisconsin, California, and Illinois." Plaintiff and Jay married in 1987, and plaintiff averred in her affidavit that she became eligible for USAA insurance coverage upon marriage and continually carried such coverage through the date of the accident.[1] Plaintiff further averred that she and her husband were living in Illinois when they wed in 1987, that they moved to Wisconsin in approximately 1990, that they then lived in Minnesota and Indiana,[2] and that they lived in Michigan from 1997 forward. There is no dispute that the couple lived in Indiana immediately before moving to Michigan. Taking into consideration all of the affidavits, it appears that Jay may have been living in either Illinois or California in 1966 when he first obtained a USAA policy, but ultimately the record is unclear regarding Jay's residency in 1966.

On October 21, 2004, with plaintiff as a passenger, Jay lost control while driving a truck and collided with a tree. The Michigan USAA policy in effect at the time generally provided liability coverage limits of $300,000 per person with a maximum of $500,000 per accident. However, the policy also contained the following exclusion:

> There is no coverage for [bodily injury] for which a covered person becomes legally responsible to pay a member of that covered person's family residing in that covered person's household. This exclusion applies only to the extent that the limits of liability for this coverage exceed $20,000 for each person or $40,000 for each accident.

Defendant informed plaintiff that, because of the exclusion, her claim was limited to $20,000.

Plaintiff filed an action against Jay and USAA, arguing that the family-member limitation could not be applied and alleging claims of breach of contract, fraud, and negligent and innocent misrepresentation. On cross-motions for summary disposition, the trial court denied USAA's motion and granted plaintiff's motion, finding that, although the limitation provision was unambiguous and complied with the no-fault act, MCL 500.3101 *et seq*., it was nonetheless

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[1] The accident occurred in October 2004, and the Ruzaks subsequently cancelled their USAA policy in 2006.

[2] Subsequent affidavits executed by plaintiff and Jay revealed that they lived in Wisconsin from 1990 to 1992. Based on arguments below, it appears that the Ruzaks lived in Minnesota from 1992 to 1994 and then resided in Indiana from 1994 to 1997.

repugnant, unconscionable, and reprehensible. *Ruzak I*, unpub op at 1. The *Ruzak I* panel reversed the trial court's grant of summary disposition on the basis that the family-member limitation was unconscionable and otherwise violated public policy as a repugnant and reprehensible provision. *Id.* at 3. However, the panel chose to entertain plaintiff's unpreserved argument related to the "renewal rule" and concluded that the record was insufficiently developed with respect to application of the renewal rule:

> We, therefore, remand for a determination regarding the application of the renewal rule to the present case. The trial court shall determine whether [USAA] added the contested provision to the insurance policy after the policy was initially purchased by Jay and, if so, whether [USAA] provided actual notice of the reduction in coverage to plaintiff and Jay. [*Id.*]

On remand, the trial court once again denied USAA's motion for summary disposition and granted plaintiff's competing motion. The trial court found that plaintiff had presented evidence establishing that USAA failed to notify the Ruzaks of the reduction of coverage that they allegedly had while living in Wisconsin, inducing the Ruzaks to believe that they had the $300,000/$500,000 coverage for residual liability. *Ruzak II*, unpub op at 2. The majority in *Ruzak II* believed it was error to consider all of the policies issued since 1966 when determining the applicability of the renewal rule, and they opined that only the Michigan policies issued over the years should be examined. *Id.*[3] Nevertheless, the panel concluded that, in light of the ruling on *Ruzak I*, it was bound by the law of the case doctrine to consider the full policy history between USAA and the Ruzaks. *Id.* This Court affirmed the trial court, determining that (1) "the Ruzaks enjoyed full coverage with no reduction or exclusion for family members" while living in Wisconsin, (2) USAA never notified the Ruzaks that the coverage was reduced when they moved from Wisconsin,[4] and (3) accordingly, the renewal rule nullified the addition of the family-member exclusion in the Michigan policy. *Id.* at 4.

As indicated above, our Supreme Court ruled that *Ruzak I* did not create law of the case requiring application of the renewal rule in the instant case and remanded for this Court to consider the two arguments that the *Ruzak II* panel thought it was precluded from considering: (a) whether the renewal rule does not apply when a new insurance policy is issued pursuant to an insured's move to a new state and (b) whether the renewal rule does not apply where the last change in the insurance policy did not produce a decrease in coverage, but an increase.

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[3] For a discussion of the reasons why the Court found analytical error, see *Ruzak II*, unpub op at 3.

[4] The Ruzaks' coverage was initially reduced upon their move from Wisconsin to Indiana because the Indiana policy contained a full, family-member exclusion. Notably, however, when the Ruzaks moved from Indiana to Michigan, their coverage increased from that provided in Indiana because the Michigan policy contained $20,000/$40,000 coverage for family members.

II. THE RENEWAL RULE

USAA first argues that Michigan's "renewal rule" should not apply when an insured moves into the state of Michigan from another state and a new, Michigan insurance policy is issued to the insured as a result of the relocation. We agree.

A.

The scope of the applicability of the renewal rule presents a question of law, and questions of law are reviewed de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994).

Likewise, a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

B.

Generally, "[a]n insured is obligated to read the insurance policy and to raise questions concerning coverage within a reasonable time after issuance of the policy." *Koski v Allstate Ins Co*, 213 Mich App 166, 170; 539 NW2d 561 (1995), rev'd on other grounds 456 Mich 439 (1998). However, the "renewal rule" is an exception to this. When a policy is a renewal, the insured is not obligated to read the entire policy to ensure that the terms have not changed. *Id.* Instead, "[w]here a renewal policy is issued without calling the insured's attention to a reduction in coverage, the insurer is bound to the greater coverage in the earlier policy." *Id.* The rationale behind the rule is that "[w]hen a renewal policy is issued, it is presumed, unless a contrary intention appears, that the parties intended to adopt in the renewal policy, the terms, conditions and coverage of the expiring policies." *Gov't Employees Ins Co v United States*, 400 F2d 172, 175 (CA 10, 1968). Consequently, "it is inequitable to require an insured to search the fine print of each renewal policy" for any adverse modifications that the insurer may have inserted without the insured's knowledge. *Id.*

The renewal rule is a distillation of principles of equity and estoppel. *Industro Motive Corp v Morris Agency, Inc*, 76 Mich App 390, 395; 256 NW2d 607 (1977). The undeniable basis for the rule is that if the insured has no reason to believe that the coverage is changing, then he should not be obligated to review the actual language of the subsequent contracts, and therefore is not bound by, what are essentially, unilateral insurer modifications to the policy. See *Gaston-Lincoln Transit, Inc v Md Cas Co*, 201 SE2d 216, 220-221 (NC App, 1973), citing 91 ALR 2d 546, 549 (1963). Conversely, when an insured should have reason to believe that the insurance coverage was modified, then he cannot avail himself of the renewal rule. See *Casey v Auto Owners Ins Co*, 273 Mich App 388, 396; 729 NW2d 277 (2007) (insured could not invoke

renewal rule when he was informed that his coverage was reduced, even though no actual dollar amounts were provided); *Am Cas Co v Beranek*, 862 F Supp 322, 327 (D Kan, 1994) (insured had no right to assume that policy was unchanged when there were numerous conspicuous changes to the policy).

Plaintiff is correct in identifying that, even though this principle typically applies to true "renewal" situations, as long as the insured has a reasonable basis to believe that the policy, in its entirety, is remaining unchanged, the rule still applies irrespective of the presence of an actual policy "renewal."[5] Merely believing that a particular term will remain the same in the new policy is insufficient; the insured must have a reasonable belief that the *entire* policy is remaining unchanged for it to be considered a "renewal." As this Court noted,

> [R]enewals, although amounting to a new contract, in no way change[] the terms and conditions of the policy, except as they continue[] it in force. The rights of both parties, no matter how often a policy of insurance may have been renewed, are still bound by the provisions of the policy as originally issued.[6] Its terms are neither enlarged, restricted or changed. [*Russell v State Farm Mut Auto Ins Co*, 47 Mich App 677, 680; 209 NW2d 815 (1973), quoting *Aurora Fire & Marine Ins Co v Kranich*, 36 Mich 289, 295 (1877) (footnote added).]

Both *Industro Motive* and *Parmet Homes, Inc v Republic Ins Co*, 111 Mich App 140; 314 NW2d 453 (1981), reinforce this premise. However, plaintiff fails to address why she had any reasonable basis to believe that *all of the terms* of the Michigan policy would be identical to the terms of any previous policy, including the Wisconsin one.

The insurance industry is highly regulated by each state. See *Teel v Meredith*, 284 Mich App 660, 665 n 1; 774 NW2d 527 (2009) (noting that insurance is "comprehensively regulated by the Legislature"); *Klapp v United Ins Group Agency*, 259 Mich App 467, 473; 674 NW2d 736 (2003) (noting that insurance industry is "highly regulated" in Michigan as well as other states); *Johnson Controls, Inc v Employers Ins of Wausau*, 665 NW2d 257, 299 (Wisc, 2003) (Wilcox, J., dissenting) ("[T]he insurance industry is one of the most heavily regulated business sections

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[5] Generally, however, "[r]enewal implies a fixed contract and the expiration of the original coverage." *Attorney General v Lapeer Farmers Mut Fire Ins Ass'n*, 297 Mich 174, 183; 297 NW 232 (1941). Typically, an insurance policy is renewed at the time that the then current policy expires. That is not the situation here, where the Ruzaks cancelled their existing Indiana policy and entered into a new agreement for the Michigan policy. While this fact is not dispositive, as discussed, *infra*, it is relevant.

[6] The original policy in this instance was not the Wisconsin policy. So, contrary to plaintiff and the dissent's view, we do not see how the Wisconsin policy's terms should be inserted into the Michigan policy. The original policy is either the 1966 policy or, more likely, the 1987 Illinois policy, which was the first policy to name plaintiff as an insured. Regardless, nothing in the record indicates what either of these policies contained, which is another reason why plaintiff cannot avail herself of the renewal rule in this situation.

in [Wisconsin].”). Thus, in the context of the present case, the dispositive question is whether it is reasonable for an insured to assume that *all of the terms* of an insurance policy purchased in a successor state will remain identical to the terms of the policy purchased in the preceding state simply because the insured purchased policies with identical *coverage limits* in each of the states. Absent some affirmative act or declaration on the insurer’s part, we answer in the negative. The sheer amount of differing regulations from state to state makes such an assumption facially not reasonable. See *Equip Mfrs Inst v Janklow*, 300 F3d 842, 859 (CA 8, 2002) (noting that heavy regulation of an industry may reduce contractual reasonable expectations). Similarly, in discussing no-fault automobile insurance law, this Court has found that “[i]t is common knowledge that Michigan ‘no-fault’ automobile insurance policies are generally more expensive than automobile insurance policies from states such as Indiana that do not have ‘no-fault’ laws.” *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38, 43; 592 NW2d 395 (1998).

We find that *Industro Motive* and *Parmet Homes* are distinguishable from the present case because of the lack of any representations to plaintiff on behalf of USAA. In *Industro Motive*, an insurance agent informed the plaintiff that coverage “identical” to that provided under another insurance company’s policy could be obtained at a lower cost. *Industro Motive*, 76 Mich App at 392. The plaintiff was given a written binder by the defendant’s agent describing protection *identical* to that provided under the insured’s current policy. *Id.* at 392-393. The insured relied on the agent’s representations, cancelled its existing policy, and purchased the new coverage through the agent. *Id.* However, when the defendant later issued the policy, the coverage for business interruption was under an 80-percent contribution factor rather than the 50-percent contribution that the plaintiff had before. *Id.* In refusing to enforce the contract as written, this Court invoked principles of estoppel and the renewal rule because, irrespective of the fact that the defendant was not the same company who issued the previous policy, the “plaintiffs had a right to rely on the synopsis they furnished [the] defendants and on the binder they received.” *Id.* at 395-396. In other words, based on representations by the defendant’s agent, the plaintiffs had no reason to believe that the issued policy was different in any aspect to its previous coverage.

In *Parmet Homes*, the plaintiff, a building contractor, filed suit seeking to recover fire loss benefits under a builder’s risk policy. *Parmet Homes*, 111 Mich App at 143. Shortly before the plaintiff’s prior policy expired, the defendant, an independent insurance agency, had switched insurance companies to “better meet the needs of [the] plaintiff.” *Id.* The plaintiff was not consulted about the change, but instead was simply mailed a copy of the new policy with premium invoices bearing the new insurance company’s name and letterhead. *Id.* While the plaintiff’s former policy required reports of construction starts every 90 days, the new policy required notice of construction starts every 30 days. *Id.* The defendant insurance company denied coverage for a fire loss, relying on the 30-day notice provision. *Id.* at 143-144. This Court found that it was reasonable for the plaintiff to believe that it was a renewal. *Id.* at 145. Once again, the actual status of the policy (true renewal or new policy) or the status of the insurer (same insurer as previous policy or different insurer as previous policy) was not decisive. Rather, the pertinent factor was that the insured had no reason to think that the new policy would be any different from the prior policy.

Plaintiff also relies on *Liberty Mut Fire Ins Co v Sanderman*, 286 So 2d 254 (Fl App, 1973), as support for the renewal rule applying to interstate policy “renewals.” However,

Sanderman also is distinguishable from the instant case. In *Sanderman*, the insureds had a homeowners' insurance policy in New Jersey that contained a $1,000 limit per item for the theft of unscheduled items. *Id.* at 255. When they moved to Florida, they informed the insurance company that they wanted to have the same coverage. *Id.* The insurance agent informed the insureds that she was not certain that she could obtain the same $1,000 limit per item. *Id.* Nevertheless, the court ruled that, because the insurance company did not notify the defendants pursuant to its usual practice of placing warning stickers[7] on policies that have materially changed, the defendants could rely on their application to the company. *Id.* at 256.

The *Sanderman* court relied on an aspect of Florida law that allows insureds to rely on their application for coverage when an insurance company does not "specifically" inform the insured that the ultimate policy or coverage differs in any respect from the application for coverage. Importantly, the Florida court did not give any appreciable weight to the fact that the agent informed the insureds that the desire coverage was probably not attainable. The fact that the insureds admitted that the agent "was not certain she could obtain the same . . . coverage," is distinguishable from *Industro Motive*, where the insurance agent made affirmative representations that the coverage would be the same. Hence, this situation is more analogous to *Casey*, 273 Mich App at 396, where the insured could not invoke the renewal rule when he was informed that his coverage was reduced, even though no specific dollar amounts were provided. Thus, we do not see how *Sanderman* has any application to how the renewal rule should be applied in Michigan.

Because each state heavily regulates the insurance industry within its own borders, we hold that, absent any affirmative acts or assertions on behalf of the insurance company, an insured has no reasonable basis to believe that all terms of an insurance policy will be identical when purchasing that policy in a new state, even if, for example, the insured continues to maintain the same coverage liability limits in the new policy. Because application of the renewal rule is dependent upon the insured's reasonable belief that the "renewed" policy is the same as the prior policy, the renewal rule does not apply here, where the new policy was issued to plaintiff as a result of her move from Indiana to Michigan.[8] Accordingly, the trial court erred when it granted summary disposition in favor of plaintiff.

In light of our conclusion that the renewal rule does not apply in "state to state" transactions, we need not consider defendant's alternative argument.

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[7] The stickers state, "This policy contains significant changes." *Id.*

[8] We again stress that some affirmative act or representation by an insurance company *could* make the renewal rule apply to interstate policy transfers. However, plaintiff presented no evidence of any such assertions.

Reversed. USAA, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder