STATE OF MICHIGAN

COURT OF APPEALS

RAYNICE STARR, f/k/a RAYNICE DIGGS,

Plaintiff-Appellant,

V

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
September 20, 2011

No. 298136
Muskegon Circuit Court
LC No. 09-046628-CK

Before: GLEICHER, P.J., AND HOEKSTRA AND STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant summary disposition and denying plaintiff summary disposition. We affirm.

Defendant insured plaintiff's home from April 2007 to April 2008. In March 2008, defendant sent plaintiff a renewal notice for the homeowner's policy for the period of April 9, 2008 to April 9, 2009. The bill for the renewal was sent to Chase Home Finance. The premium was not paid, and plaintiff was notified of this fact on April 10, 2008 and April 13, 2008. On April 23, 2008, plaintiff was sent a notice of lapse confirmation, indicating her policy had terminated on April 9, 2008. On May 5, 2008, plaintiff's home was damaged by fire and she sought to recover under the policy. Defendant denied coverage.

Plaintiff argues that the trial court erred in failing to hold that the continuous renewal provision and the cancellation provision in the policy created an ambiguity. Moreover, plaintiff argues that, at the very least, there existed a question of fact on whether an ambiguity existed. In addition, plaintiff argues that the trial court erred in holding that the continuous renewal provision mandated that plaintiff pay the insurance premium before the then current policy expired. Further, plaintiff asserts that the trial court erred in holding that the April 9, 2008 to April 9, 2009 policy never became effective. Finally, defendant failed to comply with the cancellation provision and MCL 500.3020. Whether the continuous renewal provision and the cancellation provision created an ambiguity was not raised before, addressed, or decided by the trial court. Therefore, this issue is not preserved. See *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). However, the issues of whether the continuous renewal provision mandated that plaintiff pay the insurance premium before the then current policy expired, whether the April 9, 2008 to April 9, 2009 policy became effective, and whether

defendant failed to comply with the cancellation provision and MCL 500.3020 were raised before, addressed, or decided by the trial court. Thus, these issues are preserved. *Id*.

A motion for summary disposition is reviewed de novo. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a reviewing court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Coblentz*, 475 Mich at 567-568. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz*, 475 Mich at 568. Contract interpretation is a question of law, which is reviewed de novo on appeal. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). We review unpreserved issues for plain error. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

The Homeowner's Policy Declarations clearly reflected that this was a "[r]enewal" policy. The plain language of the continuous renewal provision provides that "[t]he premium must be paid to us prior to the expiration of the then current policy term and, if not so paid, the policy will end." Plaintiff's policy automatically expired when the premium was not paid before the end of the then current policy term on April 9, 2008. The cancellation provision and MCL 500.3020 required ten days notice by defendant if defendant cancelled a policy for nonpayment of the premium. This requirement does not conflict with the continuous renewal plan, which applies only when defendant chooses to continue an existing policy. The policy in this case did not need to be cancelled by defendant because by its plain terms the homeowner's policy automatically expired. Even viewing the evidence in a light most favorable to plaintiff, there was no ambiguity in the policy and no genuine issue of material fact existed. *Coblentz*, 475 Mich at 567-568. Accordingly, there was no plain error. *Veltman*, 261 Mich App at 690. The plain language of the policy provides that "[t]he premium must be paid to us prior to the expiration of the then current policy term and, if not so paid, the policy will end." The continuous renewal provision mandates that plaintiff pay the insurance premium before the then current policy period expired. *Reicher*, 283 Mich App at 664-665. Plaintiff did not do so, and the trial court correctly concluded that the April 9, 2008 to April 9, 2009 policy never became effective. There were no questions of fact, and summary disposition was proper.

Plaintiff also argues that because she detrimentally relied on defendant's promise that the March 5, 2008 statement was not a bill, promissory estoppel applies in this case and prevented defendant from denying coverage based on plaintiff's failure to pay the premium. This issue was also not presented or decided by the trial court and is therefore, not preserved. *Polkton Charter Twp*, 265 Mich App at 95. In addition, we note that this issue was not contained in the statement of questions presented. "An issue not contained in the statement of questions presented is waived on appeal." *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004).

The trial court correctly decided that there was no genuine issue of material fact and defendant was entitled to judgment as a matter of law because the renewal policy expired when the premium was not paid before the end of the then current policy term on April 9, 2008. *Coblentz*, 475 Mich at 567-568.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens