STATE OF MICHIGAN

COURT OF APPEALS

ANNIE L. MCCOY,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant,

and

CASEY JAHN, d/b/a FARM BUREAU LIFE INSURANCE COMPANY,

Defendant.

UNPUBLISHED
September 21, 2010

No. 291049
Sanilac Circuit Court
LC No. 08-032637-CZ

ANNIE L. MCCOY,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE COMPANY OF MICHIGAN,

Defendant,

and

CASEY JAHN, d/b/a FARM BUREAU LIFE INSURANCE COMPANY,

Defendant-Appellant.

No. 291214
Sanilac Circuit Court
LC No. 08-032637-CZ

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

PER CURIAM.

Defendants Farm Bureau Insurance Company of Michigan and Casey Jahn appeal by leave granted the trial court's order denying their motion for change of venue. Because we conclude that the trial court did not err when it denied the motion for change of venue, we affirm.

The present dispute arises from Farm Bureau's denial of plaintiff Annie McCoy's claim for life insurance benefits following the death of her estranged husband Joshua McCoy. Joshua McCoy purchased a $100,000 life insurance policy through Jahn. Farm Bureau issued the policy on August 4, 2005. He later obtained a second policy from Jahn that Farm Bureau issued on November 28, 2007. The second policy replaced the first policy, which was canceled effective February 4, 2008. Annie McCoy was the beneficiary under both policies.

On August 20, 2008, Joshua committed suicide.[1] Annie McCoy requested payment of the life insurance benefits, but defendant Farm Bureau denied the request because the policy precluded payment in the event that the insured commits suicide within two years of the policy's issuance. After Farm Bureau refused to pay benefits, Annie McCoy sued both Farm Bureau and Jahn in Sanilac County seeking benefits under the first policy. She alleged both breach of contract and negligence claims. Jahn moved for a change of venue and Farm Bureau joined in that motion. The trial court denied the motion.

This Court reviews a trial court's ruling on a motion to change venue for clear error. *Dimmitt & Owens Financial, Inc v Deloitte & Touche, LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). This Court also reviews de novo the proper interpretation of the statutes governing venue. *Dimmit & Owens Financial, Inc*, 481 Mich at 624.

The sole issue before us is whether the trial court clearly erred in determining that MCL 600.1621, the statute governing venue for contract claims, controls in this case. Farm Bureau and Jahn contend that, under MCL 600.1641(2), the trial court had to determine venue by applying MCL 600.1629, which is the statute that governs venue for tort claims.

MCL 600.1641 addresses proper venue in cases where there is more than one type of claim raised in a complaint:

> (1) Except as provided in subsection (2), if causes of action are joined, whether properly or not, venue is proper in any county in which either cause of action, if

[1] We note that Annie McCoy does not concede that her husband committed suicide; rather, she contends that he might have accidentally shot himself in the chest.

> sued upon separately, could have been commenced and tried, subject to separation and change as provided by court rule.
>
> (2) If more than 1 cause of action is pleaded in the complaint or added by amendment at any time during the action and 1 of the causes of action is based on tort or another legal theory *seeking damages for personal injury, property damage, or wrongful death*, venue shall be determined under rules applicable to actions in tort as provided in section 1629 (emphasis added).

In *Provider Creditors Committee v United American Health Care Corp*, 275 Mich App 90, 95-96; 738 NW2d 770 (2007), this Court determined that MCL 600.1641(2) did not control venue, even though the plaintiff's complaint included both tort and contracts claims. The Court concluded that this was the case because the plaintiff was not seeking damages for personal injury, property damage, or wrongful death. *Id.* at 96. Similarly, in this case, although Annie McCoy alleged both tort and contract claims, she has not sought damages for personal injury, property damage, or wrongful death. Accordingly, under the holding stated in *Provider Creditors Committee*, MCL 600.1641(2) is inapplicable. Consequently, "venue is proper in any county in which either cause of action, if sued upon separately, could have been commenced and tried." MCL 600.1641(1). Sanilac County was a proper venue for Annie McCoy's contract claim if sued upon separately. The trial court did not clearly err in denying the motion for change of venue.

In reaching this decision, we are not unmindful of *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 323-324; 661 NW2d 248 (2003), in which this Court interpreted identical language in the comparative negligence statutes, MCL 600.2957 and MCL 600.6304, and held that the trier of fact must apportion liability among those at fault in all tort-based actions, not merely those tort actions seeking damages for personal injury, property damage, or wrongful death. Nevertheless, because *Provider Creditors Committee* interpreted the statute specifically at issue here, we must follow it. MCR 7.215(J)(1). We are also aware that in *Dimmit & Owens Financial* our Supreme Court assumed—without analyzing the relevant statutory language—that MCL 600.1629 governed venue where the plaintiff had both tort and contract claims and where the tort claims did not seek damages for personal injury, property damage, or death. See *Dimmit & Owens Financial, Inc*, 481 Mich at 623-625. However, absent more specific guidance from our Supreme Court, we conclude that we must follow *Providers Creditors Committee*.

Affirmed.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens