STATE OF MICHIGAN

COURT OF APPEALS

TAMIKA GORDON and MICHIGAN HEAD & SPINE INSTITUTE, P.C., Plaintiffs-Appellees, v GEICO GENERAL INSURANCE COMPANY, Defendant-Appellant, and FARMER'S INSURANCE EXCHANGE, Defendant-Appellee.	UNPUBLISHED March 20, 2012 No. 301431 Wayne Circuit Court LC No. 09-020345-NF

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Defendant, Geico General Insurance Company (Geico), appeals the trial court's order of dismissal. Defendant's argument on appeal relates to the trial court's prior grant of summary disposition to defendant, Farmer's Insurance Exchange (Farmer's). For the reasons set forth below, we affirm.

I. FACTS

On May 19, 2009, Tamika Gordon sustained injuries in an automobile accident while she was a passenger in an uninsured vehicle. At the time, Ms. Gordon lived with her mother in Detroit, but from September 2007 to spring 2008, she lived with her father in Mississippi. When she purchased an auto insurance policy from Geico in May 2008, plaintiff stated that her primary residential address was in Mississippi. However, Ms. Gordon also gave Geico copies of her Michigan driver's license and a vehicle registration that listed her mother's address in Detroit. Ms. Gordon told the Geico representative that she would be traveling back and forth to Michigan, although she intended to transfer registration of her vehicle to Mississippi and her car would be "garaged" in Mississippi. Based on this discussion, Geico issued a Mississippi auto policy, as well as a certificate of no-fault insurance for Michigan for the policy period of October 03, 2008, to May 15, 2009.

On an unspecified date in 2008, Ms. Gordon returned to Michigan, but did not inform Geico of her move. In April 2009, she renewed her policy with Geico for the period beginning May 16, 2009 through November 16, 2009. Ms. Gordon admitted that she did not specifically request Michigan no-fault coverage when she applied for coverage with Geico or when she renewed her policy. She reported two losses to Geico under the policy, both of which occurred in Michigan; the losses were dated August 1, 2008, and February 3, 2009, and each claim was under $1,000.

Ms. Gordon admitted that the renewed Geico policy took effect on May 16, 2009, three days before the accident. After the accident, Michigan Head and Spine treated Ms. Gordon for injuries and she incurred medical expenses amounting to $13,975. Geico paid Ms. Gordon the policy limit of $1,000. As an underinsured individual, the remainder of Ms. Gordon's medical expense claim was assigned to Farmer's through the Assigned Claims Facility.

Ms. Gordon filed this action against Geico on August 18, 2009, seeking payment of the remainder of her expenses related to the accident, and Michigan Head and Spine Institute intervened to recoup its costs to treat Ms. Gordon. On March 23, 2010, Gordon filed an action against Farmer's for PIP benefits and the trial court consolidated the two cases.

Farmer's filed a motion for summary disposition pursuant to MCL 2.116(C)(10) and argued that, because Geico knew or should have known that Ms. Gordon resided in Michigan, Geico was a higher priority insurer under the Michigan no-fault statute. Geico filed a response and cross-motion for summary disposition on October 13, 2010, arguing that Geico had no reason to know that Ms. Gordon was a Michigan resident, and further, that her failure to inform Geico constituted fraud. The trial court entered an order granting summary disposition to Farmer's.

II. DISCUSSION

Geico argues that Ms. Gordon does not have a statutory, contractual, or common law right to claim PIP benefits from Geico because Geico was not aware of Ms. Gordon's move to Michigan, and thus, did not purport to provide insurance coverage for a Michigan resident.

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Greene v AP Products, Ltd*, 475 Mich 502, 508; 717 NW2d 855 (2006). As this Court explained in *McGrath v Allstate Ins Co*, 290 Mich App 434, 438 n 1; 802 NW2d 619 (2010):

> A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the case. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party is entitled to a grant of summary disposition if the party demonstrates that no genuine issue of material fact exists. *Coblentz v City of Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ." *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2007).

Geico is correct that Ms. Gordon does not have a statutory right to PIP benefits under MCL 500.3163(1). Pursuant to Michigan case law, the agreement of the parties, and the trial court's ruling, Ms. Gordon was not a "non-resident" for the purposes of MCL 500.3163(1), and the statute does not apply.

Geico further argues that Ms. Gordon also lacks a contractual right to PIP benefits because she misrepresented her residency to Geico. Geico, however, fails to show any misrepresentation, let alone one that would void the contract. Misrepresentation requires proof that (1) the party made a material representation; (2) the representation was false; (3) when the party made the representation, he knew that it was false or made it recklessly without knowledge of its truth or falsity; (4) the party made the representation with the intent that the other party would act upon it; (5) the other party acted in reliance upon it; and (6) the other party suffered damage. *Mitchell v Dahlberg*, 215 Mich App 718, 723; 547 NW2d 74 (1996). Ms. Gordon stated that she applied for a Mississippi insurance policy while living in Mississippi. She stated that she told Geico that she would be traveling back and forth to Michigan. There is no proof on the record that Ms. Gordon knew at the time she was applying for insurance that she would be moving back to Michigan. Accordingly, Geico failed to establish that Ms. Gordon made a misrepresentation, let alone that she made a misrepresentation knowing that it was false.

In ruling that Geico must pay PIP benefits, the trial court relied exclusively on *Farm Bureau v Allstate*, 233 Mich App 38, 40; 592 NW2d 395 (1998) and this Court's interpretation of MCL 500.3012. The statute provides, in relevant part:

> Such a liability insurance policy issued in violation of sections 3004 through 3012 shall, nevertheless, be held valid but be deemed to include the provisions required by such sections, and when any provision in such policy or rider is in conflict with the provisions required to be contained by such sections, the rights, duties and obligations of the insured, the policyholder and the injured person shall be governed by the provisions of such sections.

Interpreting MCL 500.3012, this Court ruled in *Farm Bureau* that "it is evident that the basic purpose of § 3012 is to treat an insurance policy that an insurer issues *purporting to be a Michigan policy that complies with Michigan law* as such even if the written terms of the policy are inconsistent with Michigan law." *Farm Bureau*, 233 Mich App at 41 (emphasis in original). Therefore, if Geico had issued a policy that purported to comply with Michigan law, then MCL 500.3012 provides a remedy wherein courts may impose PIP benefits even if the contract language does not provide for the same.

However, Geico maintained that it issued a Mississippi policy, not a Michigan policy, and was unaware that Ms. Gordon was a Michigan resident. In *Farm Bureau*, the insured was issued an insurance policy from Allstate using an Indiana address, although she was a domiciliary of Michigan. *Farm Bureau*, 233 Mich App at 40. This Court found that Allstate had no reasonable basis on the record to conclude the insured was a Michigan resident. *Id*. at 41. Based on this finding, this Court ruled that Allstate could not have issued a policy purporting to be in compliance with the Michigan no-fault act. *Id*. In fact, the *Farm Bureau* Court explained:

> To generally hold that such an out-of-state policy entered into by a Michigan resident would be treated as if it were a Michigan "no-fault" policy might well assist some unscrupulous Michigan residents to obtain a Michigan no-fault policy at the lower rate of an out-of-state policy. We will not construe § 3012 in such a manner and, thus, we conclude that it has no application to the Indiana insurance policy that Allstate issued to its insured in this case. [*Farm Bureau*, 233 Mich App at 43.]

Therefore, the *Farm Bureau* Court held Allstate could not be forced to provide PIP benefits under MCL 500.3012. *Id*.

Here, however, the trial court found that because Geico knew or should have known that it was dealing with a Michigan resident, Geico must have issued a policy purporting to comply with the Michigan no-fault act, and therefore, that MCL 500.3012 applies and Geico is responsible to pay PIP benefits regardless of what the contract purported to provide.

Farm Bureau stands for the proposition that when an insurer has *no reason to know* it is dealing with a Michigan resident, MCL 500.3012 does not apply. *Farm Bureau*, 233 Mich App at 43 (emphasis added). In fact, the *Farm Bureau* Court only makes one mention of a factual scenario in which the insurer was *actually aware* that it was dealing with a Michigan resident, by way of a footnote, in dicta: "We emphasize that a case in which an insurer is aware that it is dealing with a Michigan resident and nevertheless issues an out-of-state automobile insurance policy that does not comply with Michigan's no-fault act would be a far different circumstance." *Farm Bureau*, 233 Mich App at 43 n 2. The *Farm Bureau* Court was silent regarding a scenario in which an insurer *should have known* it was dealing with a Michigan resident and issues an out-of-state insurance policy. However, the trial court's reasoning is sound: if an insurer knows or has reason to know that it is dealing with a Michigan resident and issues insurance coverage which purports to provide coverage in the insured's state, then MCL 500.3012 applies. Further, we see no reason not to extend *Farm Bureau* in this manner because, if the insurer knows or has reason to know that the insured is a Michigan resident, the risks discussed in *Farm Bureau* are not implicated. When the insurer knows or has reason to know it is providing coverage to a Michigan resident, there is no risk that the Michigan resident is seeking an out-of-state policy for lower premiums. When the applicant's residency is known, there is no misrepresentation, and the insurer must provide the coverage it purports to provide. Therefore, if Geico had reason to know that Ms. Gordon was a Michigan resident and issued her a policy for no-fault insurance coverage in Michigan, we hold that MCL 500.3012 applies.

The record is clear that Geico did know, or clearly should have known, it was dealing with a Michigan resident. Even though Ms. Gordon admitted that she told Geico that she lived in Mississippi, provided a Mississippi address, and told Geico that she intended to change her car registration to Mississippi, she provided a Michigan driver's license and Michigan car registration. She also told Geico she would be traveling back and forth to Michigan. Further, Ms. Gordon made claims with Geico, all of which were Michigan losses. At a minimum, the evidence shows that Geico knew, or should have known, that it was dealing with a Michigan resident who would at least be traveling frequently to Michigan. Thus, Ms. Gordon would have needed no-fault protection based on her conversation with the Geico representative. Therefore, Geico would have issued an insurance policy to comply with her needs.

Further, Geico clearly recognized that Ms. Gordon would need no-fault protection when it issued a Michigan no-fault insurance policy, although the certificate expired three days before the accident. Upon renewal, Geico stated in the verification of coverage sent to Ms. Gordon:

> This letter is to verify that we have issued the policyholder coverage under the above policy number for the dates indicated in the effective and expiration date fields for the vehicles listed. This should serve as proof that the below mentioned vehicle meets or exceeds the financial responsibility requirement for your state.

Therefore, Geico provided coverage to Ms. Gordon, whom it knew or should have known would be in need of no-fault coverage, and represented that it provided her the "necessary" coverage. Therefore, the trial court did not err in granting summary disposition to Farmer's based on MCL 500.3012.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad