STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA ANN CRAIG, Plaintiff-Appellant, v GEOFFREY MICHAEL LARSON and BRADFORD JOHN LARSON, Defendants, and FRANKENMUTH INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED October 17, 2013 No. 311467 Livingston Circuit Court LC No. 11-025938-NI
PATRICIA ANN CRAIG, Plaintiff-Appellant, v FRANKENMUTH INSURANCE COMPANY, Defendant-Appellee.	No. 313333 Livingston Circuit Court LC No. 12-026860-NI

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff appeals by right from two separate orders of the circuit court granting summary disposition pursuant to MCR 2.119(C)(10) to defendant,

Frankenmuth Insurance Company, thereby dismissing plaintiff's claim for underinsured motorist benefits.[1] For the reasons stated below, we affirm.

On September 2, 2010, plaintiff, who was covered by a $300,000 underinsured motorist policy through defendant, was injured in a car accident involving a car owned by Bradford Larson and driven by his son Geoffrey Larson. The Larson car was insured through Progressive Insurance Company with limits of $100,000. On April 6, 2011, plaintiff filed a lawsuit against the Larsons for injuries she sustained as a result of the accident, and against defendant for underinsured motorist benefits. The trial court dismissed defendant from the action, without prejudice, finding that the claim against defendant was not yet ripe because plaintiff failed to establish that she was entitled to damages, or that any damages she may be entitled to would exceed the Larsons' policy limit. The trial court noted that plaintiff could refile her lawsuit if sufficient recovery was not made against the Larsons. Plaintiff and the Larsons subsequently entered into a mutual acceptance of a case evaluation award of $80,000, which thereby dismissed the Larsons from the case. Plaintiff did not obtain defendant's consent prior to accepting the case evaluation award.

Plaintiff then filed a second lawsuit against defendant for the recovery of benefits under her underinsured motorist policy. The trial court granted defendant summary disposition, finding that the mutual acceptance of a case evaluation award was a settlement under the language of the policy, and that plaintiff's failure to obtain defendant's consent prior to accepting that case evaluation award triggered a policy exclusion that barred any recovery by plaintiff. On appeal, plaintiff argues that the trial court erred by granting both of defendant's motions for summary disposition.

We review decisions on motions for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial 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. 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), (G)(4). Q*uinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). [*Id.* at 120.]

Plaintiff argues that the trial court erred by granting defendant's first motion for summary disposition because it was inefficient and unjust, in that plaintiff's case against the Larsons involved the same factual issues and plaintiff's claim against defendant may have been time barred had she gone to trial against the Larsons. We decline to address this issue because we

[1] Geoffrey and Bradford Larson are not parties to this appeal. Frankenmuth will be referred to as "defendant."

conclude that any claim for underinsured motorist benefits by plaintiff is barred by plaintiff's failure to obtain defendant's consent before accepting the case evaluation award.

Since underinsured motorist coverage is not required by law, and thus, is optional, "the scope, coverage, and limitations of underinsurance protection are governed by the insurance contract and the law pertaining to contracts." *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 19; 592 NW2d 379 (1998). Here, the policy reads, in relevant part:

> A. We do not provide Underinsured Motorists Coverage for bodily injury sustained by any person:
>
> * * *
>
> 2. If that person or legal representative settles the bodily injury claim without our consent.

It is undisputed that plaintiff entered into a mutual acceptance of the case evaluation award with the Larsons and their insurance company, Progressive, without first obtaining the consent of defendant. Plaintiff argues that the mutual acceptance was not a settlement. This argument, however, is contrary to both the common understanding of what a settlement entails, as well as the treatment of case evaluations under Michigan law. In *Larson v Auto-Owners Ins Co*, 194 Mich App 329, 332-333; 486 NW2d 128 (1992), this Court stated that the purpose of MCR 2.403, which governs case evaluations, "is to expedite and simplify the final settlement of cases to avoid trial," and "is intended to settle cases without further litigation." This Court also stated that "[a]n accepted mediation evaluation serves as a final adjudication of the claims mediated, and is therefore binding on the parties similar to a consent judgment or settlement agreement." *Id.* at 332.

Further, this Court has stated that "Michigan courts have consistently upheld policy exclusions barring recovery of benefits where the insured party releases a tortfeasor from liability without the insurer's consent, recognizing that such a release of liability destroys the insurance company's right to subrogation." *Lee v Auto-Owners Ins Co*, 218 Mich App 672, 675; 554 NW2d 610 (1996) (citations omitted). Accordingly, plaintiff's attempt to evade the policy exclusion at issue is contrary to Michigan law and the policy's plain and unambiguous language. See *id.* at 676. Thus, the trial court did not err by granting defendant summary disposition.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens