STATE OF MICHIGAN

COURT OF APPEALS

BILLY RAYFIELD,

Plaintiff-Appellant,

v

EDWIN JARED STEWART and AMERICAN RELIABLE INSURANCE COMPANY,

Defendant-Appellees.

UNPUBLISHED
December 15, 2015

No. 322764
Wayne Circuit Court
LC No. 13-007099-NI

Before: JANSEN, P.J., and CAVANAGH and GLEICHER, JJ.

PER CURIAM.

In this no-fault insurance action, plaintiff appeals as of right an order granting defendants' motions for summary disposition. We affirm.

On July 3, 2010, plaintiff was in a motor vehicle accident with defendant Edwin Jared Stewart and, in 2013, brought this third-party no-fault insurance action against him. Plaintiff also brought a claim against defendant American Reliable Insurance Company, seeking uninsured motorist benefits on the ground that Stewart was uninsured at the time of the accident. Both parties eventually moved for summary disposition under MCR 2.116(C)(10), primarily arguing that plaintiff was uninsured as of March 27, 2010, because he failed to pay his renewal insurance premium. After concluding that plaintiff failed to establish that a genuine issue of material fact existed on the issue whether he was insured, the case was dismissed. This appeal followed.

Plaintiff argues that the trial court erred in granting both defendants' motions for summary disposition. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim and should be granted only if the evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

The dispute in this case concerns whether plaintiff had automobile insurance at the time of the accident. It was undisputed that plaintiff's renewal insurance premium was due by March 27, 2010, and the accident occurred on July 3, 2010. An uninsured motorist cannot bring a third-party no-fault action, MCL 500.3135(2)(c), and a person who had no insurance clearly cannot sue for breach of an insurance policy.

Defendants filed motions for summary disposition under MCR 2.116(C)(10), arguing that plaintiff was uninsured at the time of the accident. Thus, defendants had the initial burden of supporting their positions by affidavits, depositions, admissions, or other documentary evidence. See *Ward v Frank's Nursery & Crafts, Inc*, 186 Mich App 120, 134; 463 NW2d 442 (1990). In that regard, defendant American Reliable presented the affidavit of Orlando Morales, the Vice-President of underwriting and policy services, who stated that plaintiff was mailed an offer of renewal packet in January 2010 which included a copy of a renewal declaration for the period of March 27, 2010 to March 27, 2011, as well as a Certificate of Insurance for that period. Morales also stated that, on March 10, 2010, a courtesy reminder notice was sent to plaintiff and, on March 31, 2010, a letter was mailed to plaintiff informing him that his policy had expired due to nonpayment of the renewal premium. Morales attested that payment of the renewal premium was never received and plaintiff's policy was not reinstated before July 3, 2010, the date of the accident.

In support of its motion for summary disposition, defendant American Reliable also presented the affidavit of Teresa Flynn, the Director of Operations Accounting, who stated that if plaintiff had mailed his renewal premium to an address in Miami, Florida as he claimed, there was a procedure in place which would have been followed to alert the insurer that the premium for the policy of insurance was paid. And in this case, there was no record of any renewal premium payment being received in the Florida office in payment of plaintiff's insurance and there was no record of any bank deposit of plaintiff's purported money order in that regard.

Defendant American Reliable also relied on the deposition testimony of Laura Marakovits, a claims supervisor, who testified that plaintiff had one previous policy of insurance covering his Model T from December 18, 2006 through December 18, 2007, but it had a different policy number and it lapsed. The only other insurance policy she was aware of covered his vehicle from March 27, 2009 through March 27, 2010. Plaintiff had called in with a Visa credit card number to pay that premium the year before, on March 26, 2009. Marakovits testified that about 45 days before the renewal date, plaintiff would have been mailed a renewal packet which included the insurance policy, the Certificate of Insurance, the renewal declaration page, and the bill. It was the general practice of the insurer to send renewal packets to customers about 45 days in advance of their insurance policy's expiration. She also testified that a renewal letter was sent to plaintiff that was dated March 10, 2010, reminding him to pay his premium. Marakovits affirmed several times that the Certificate of Insurance would have been mailed to plaintiff in the renewal packet, which was routinely mailed about 45 days before the policy was due to expire and before his renewal premium was paid.

After this evidence was presented to support defendants' claims that plaintiff was uninsured on the date of the accident, the burden shifted to plaintiff to present evidence showing that a genuine issue of fact existed on this dispositive issue. It is well-established that the party opposing the motion may not rest upon mere allegations or denials but generally must, by

documentary evidence, set forth specific facts showing that a genuine issue for trial exists. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

In that regard, plaintiff presented his own testimony that he purchased a money order at a party store, wrote out an envelope to the address listed on his Certificate of Insurance, and mailed in the payment for his insurance premium on April 3, 2010. Plaintiff offered no other witness testimony and no documentary evidence to support his claim that he was insured on the date of the accident. But a party cannot rely on his own deposition testimony in support of his claim because unsubstantiated self-serving allegations are insufficient to establish that a genuine issue of material fact exists. *Town v Mich Bell Telephone Co*, 455 Mich 688, 712 n 10; 568 NW2d 64 (1997) (RILEY, J., concurring). And plaintiff's testimony that he mailed in his renewal premium does not tend to establish that he was, in fact, insured on the date of the accident. For example, there was no evidence to rebut defendant American Reliable's claims that (1) it never received plaintiff's renewal premium, (2) it never deposited plaintiff's alleged money order in a bank, and (3) it never reinstated plaintiff's insurance policy after informing him by letter dated March 31, 2010 that his policy had expired due to nonpayment of the renewal premium. That is, plaintiff presented no evidence that defendant American Reliable did in fact insure his vehicle on the date of the accident.

Plaintiff argues, however, that collateral estoppel and res judicata prevented the trial court from granting defendants' motions for summary disposition because a different judge presiding over this matter before it was voluntarily dismissed by the parties rejected the same arguments. While collateral estoppel precludes relitigation of an issue in a subsequent case between the same parties, it does so only "when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). And res judicata bars a subsequent action between the same parties when the claims have already been, or could have been, litigated. *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001) (citation omitted). Clearly, these doctrines do not apply in this case.

Plaintiff also argues that the principle of equitable estoppel should bar defendant from denying that it insured plaintiff's vehicle on the date of the accident. As our Supreme Court explained in *Morales v Auto-Owners Ins Co*, 458 Mich 288; 582 NW2d 776 (1998):

> The principle of estoppel is an equitable defense that prevents one party to a contract from enforcing a specific provision contained in the contract. With regard to payment provisions of an insurance policy, it is generally recognized that "[b]ecause provisions for forfeiture, lapse, or suspension for nonpayment of premiums, assessments, or dues are for the benefit of the insurer, the insurer may waive, or may be estopped to assert, such a provision through its conduct or words." 5 Couch, Insurance, 3d, § 78:1, p. 78–5. [*Id*. at 295.]

In this case, plaintiff did not set forth any conduct or words which misled him to believe that defendant American Reliable continued to insure his vehicle after March 27, 2010, and thus should be prevented from enforcing a payment provision in its insurance policy.

Plaintiff also argues that, although defendant American Reliable claims that it never received his renewal premium payment, he is entitled to rely on the mailbox rule for the presumption that it was, in fact, received. The mailbox rule presumption only applies to documents that are properly addressed and mailed. See *Goodyear Tire & Rubber Co v Roseville*, 468 Mich 947; 664 NW2d 751 (2003). As the trial court held, the address to which plaintiff allegedly mailed his payment was the wrong address to send in renewal premiums and there was no proof of the mailing.

In summary, plaintiff failed to establish that a genuine issue of fact existed on the issue whether he was insured on the date of the accident or that defendants were not entitled to summary disposition. Accordingly, the trial court properly granted defendants' motions for summary disposition.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Elizabeth L. Gleicher