STATE OF MICHIGAN

COURT OF APPEALS

DEBRA L. LANGLEY, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED June 28, 2012
v	No. 300517 Marquette Circuit Court
AUTO-OWNERS LIFE INSURANCE CO., Defendant-Appellant/Cross-Appellee.	LC No. 09-47171-CK

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

PER CURIAM.

In this insurance dispute, defendant Auto-Owners Life Insurance Co. appeals by right the trial court's opinion and order granting summary disposition in favor of plaintiff Debra L. Langley. On appeal, Auto-Owners argues that the trial court erred when it determined that Debra Langley's deceased husband, Eric Langley, did not—as a matter of law—make any misrepresentations on his application for life insurance that would void the policy. Auto-Owners maintains that there was, at the very least, a question of fact as to whether Eric Langley made one or more misrepresentations on the application. On cross-appeal, Debra Langley argues that the trial court erred when it ordered Auto-Owners to pay 6% interest on the judgment, rather than 12% interest. We conclude that the trial court did not err when it granted summary disposition in favor of Debra Langley with regard to whether Eric Langley misrepresented whether he had completed all the tests that he had been advised to take. However, we conclude that there was a question of fact as to whether Eric Langley knew or should have known that he had a heart disease when he answered that he did not have heart disease. As such, the trial court erred when it granted summary disposition as to that question. We also conclude that, if Debra Langley should prevail on her claim, she would be entitled to 12% interest. For these reasons, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

Jerry Garceau testified at his deposition that Eric Langley came to him to purchase life insurance in April 2007. Garceau originally had Eric fill out an application for $250,000 in life insurance from Cincinnati Life Insurance Company. After he submitted the application on Eric's behalf, Garceau explained, the insurance company would send someone to conduct a medical examination, and there was documentation to show that the examination occurred on April 20,

2007. Garceau testified that Cincinnati approved Eric's $250,000 policy, but substantially raised the premium. Garceau stated that Eric did not want the policy at the revised rate.

Bonnie L. Hafeman, M.D. testified at her deposition that Eric Langley had treated with her since 1993 or 1994 and that she was aware that he had had Hodgkin's disease when he was a child. She stated that she was also monitoring him for a mild mitral valve regurgitation—a heart murmur—since about 2002.

Hafeman stated that Eric came to her on April 11, 2007. During that visit, she noticed that he had a louder murmur. She stated that the murmur was now "holosystolic", which she explained was "a different murmur than it had been previous to this. The sound of an aortic murmur and a mitral murmur are different, and it's a lot harsher murmur." She told him at that time that his "heart murmur had changed in quality", that it was "louder, and it was over the whole of the heart instead of more localized like it had been." She talked with him about the changes and told him that there was a "possibility that he had aortic stenosis"; she even "drew him a diagram to show him what it was." She stated that she "vividly" recalled the conversation with Eric and remembered that she told him that the heart murmur was "different", "had changed in quality", and that she was "concerned about it", "because it was into the neck, and that I thought it was aortic stenosis." She ordered an echocardiogram to verify her diagnosis.

Eric had the echocardiogram on the same day. The imaging revealed that Eric's "[a]ortic valve cusps are heavily calcified" and that there was evidence of "moderate aortic stenosis." Hafeman testified that there was a note in Eric's file that her office had called and informed Eric's wife, Debra Langley, about the results on April 17, 2007. She stated that her office frequently informed Eric's wife because Eric "was fairly difficult to get ahold of because he worked, you know, long hours." Hafeman did not see Eric again until June 13, 2007, when he called to arrange an appointment after he had had a scan that revealed a pleural effusion in his lungs. She explained the extent of his aortic stenosis at that June 13 visit.

Debra Langley averred that she was surprised when Cincinnati increased the annual premium for her husband's life insurance by $1,000 over just a murmur. She said that she called Hafeman's office on April 11, 2007 because she was concerned about the murmur. Debra Langley stated that Hafeman told her that it "was nothing to worry about", that it was just a "'funny noise in the heart'".

On May 21, 2007, Eric Langley visited Emmy Lawrason, D.O. with concerns about significant pain on the left side of his back. In her report, Lawrason indicated that Eric had been having the pain for 5 or 6 months and had visited the hospital, a chiropractor, and tried physical therapy to solve the problem. Lawrason stated in the report that Eric thought that he might have aggravated an old rib injury. She prescribed osteopathic treatment with a reevaluation in one week. After the next visit, which was on May 29, 2007, Lawrason ordered a chest x-ray.

Eric returned to see Lawrason on June 6, 2007. In her notes, Lawrason wrote that Eric's x-ray had revealed a "left pleural effusion." She also indicated that she ordered a CT scan and some lab work and stated that she would follow up with Eric on those labs and studies in one week. Eric had the CT scan on June 8, 2007. The CT scan revealed some pleural effusion,

"pleural parenchymal scarring", vascular calcifications, and "[s]hotty lymph nodes." Lawrason did not address the results with Eric until his June 11, 2007 appointment.

On June 11, 2007, Eric went to see Garceau about his life insurance options after the problem with Cincinnati. Eric apparently went to see Garceau before he went to his appointment with Lawrason. At the meeting, Eric filled out a simplified application for $50,000 in life insurance from defendant Auto-Owners Life Insurance Company.

On the application there were a series of yes or no questions. Above these questions, in bold and upper case type, was a warning that the applicant could not use the simplified form if he or she answered yes to any question: "**IF ANY OF THE FOLLOWING QUESTIONS ARE LEFT BLANK OR ANSWERED "YES," COVERAGE CANNOT BE ISSUED UNDER THIS APPLICATION, INSTEAD, PLEASE SUBMIT A REGULAR APPLICATION FOR UNDERWRITING.**" One question asked, "[d]o you have, or during the past 10 years, have you been diagnosed or treated by any medical professional for:" "Heart Disease including Heart Attack, Stroke, Angina, Arterial Disease of the Heart or Extremities or Congestive Heart Failure . . . ?" Another question asked, "have you been advised by any medical professional during the past 3 years, to have any surgery, additional diagnostic testing, hospital confinement, or nursing facility confinement, and have not yet done so?" Eric answered both questions by checking the boxes for "no." Finally, by signing the application, Eric agreed that his "statements and answers" were "true and complete" and he agreed that "they will form a part of any insurance policy issued hereon." He also stated that he "understood that the information on this application will be relied upon to determine insurability and that incorrect information may result in coverage being voided, subject to the policy Incontestability Provision."

Auto-Owners accepted Eric's application and issued him a $50,000 life insurance policy with his wife, Debra Langley, as the primary beneficiary.

In her notes from the June 11, 2007, appointment, Lawrason indicated that Eric needed to be closely monitored to see if his "anemia" and "shotty mesenteric lymph nodes" were indications of "another neoplastic process"—that is, a possible sign of cancer. She also ordered a series of tests, including tests to evaluate the cells in the "left pleural effusion." Eric had a thoracentesis done on June 14, 2007 and the results showed that the cells in the fluid were "malignant epithelial cells with glandular features." Lawrason's notes from a June 20, 2007 appointment show that Eric had been diagnosed with cancer and that he was going to the Mayo clinic to receive treatments for both the cancer and his aortic stenosis.

Eric died from cancer on November 6, 2007.

Because Eric died within 2 years of the date that he applied for life insurance, Auto-Owners conducted an investigation before paying under the policy. At the conclusion of its investigation, Auto-Owners rescinded the policy on the ground that Eric had made two material misrepresentations in the application: he denied that he had been diagnosed with heart disease and he denied that he had been advised to take a diagnostic test and had not yet done so.

Debra Langley sued Auto-Owners for payment on the policy in September 2009. Auto-Owners moved for summary disposition in October 2009. The trial court, however, determined that—given the current evidence—there was a question of fact as to whether Eric Langley knew that he had heart disease. In addition, the court concluded that the evidence showed that he had done all the recommended diagnostic tests that he was advised to take as of the application date.

In April 2010, after conducting discovery, Debra Langley moved for summary disposition. She argued that Auto-Owners had no evidence that her husband actually believed that he had heart disease when he denied having or having been diagnosed with heart disease. She also argued that there was no evidence that he had been advised to take a diagnostic test, which he had not done by the time he filled out the application.

Auto-Owners argued that the evidence showed that Eric Langley had aortic stenosis, which is heart disease or an arterial disease of the heart or extremities, at the time that he filled out the application. It also argued that, although Eric might have submitted to the diagnostic tests, because he had not yet consulted with his physician about the results, the tests were not yet "done" when he filled out the application. Given the evidence, it maintained, Eric's answers to these questions amounted to a material misrepresentations. Accordingly, it asked the trial court to grant summary disposition in its favor under MCR 2.116(I)(2).

The trial court agreed with Debra Langley and granted summary disposition in her favor. In July 2010, Debra Langley moved for entry of judgment with 12% statutory interest. The trial court entered judgment in her favor in September 2010, but refused to give her 12% interest on the judgment. Instead, it ordered Auto-Owners to pay 6% interest.

These appeals followed.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

On appeal, Auto-Owners argues that the trial court erred when it granted summary disposition in favor of Debra Langley and erred when it concluded that the questions at issue were ambiguous. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo, as questions of law, the proper interpretation of a contract and whether a contract is ambiguous. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). And, to the extent that this case involves the proper interpretation of statutes and the application of the common law, this Court reviews those issues de novo as well. *Michigan Citizens for Water Conservation v Nestlé Waters North America, Inc*, 269 Mich App 25, 53, 83, 709 NW2d 174 (2005), rev'd not in relevant part 479 Mich 280 (2007).

B. FRAUD, WARRANTIES, AND MISREPRESENTATIONS

Auto-Owners contends that the undisputed evidence showed that Eric Langley actually had heart disease at the time of his application—as that term is commonly understood—and represented that he did not. Auto-Owners maintains that Eric's subjective understanding about the nature of his heart condition was irrelevant because the cases that address whether an applicant had a subjective good faith belief that his or her answer was true apply only to questions asking for the applicant's opinion and the question at issue did not ask for Eric's opinion.

Traditionally, fraud in the inducement was an absolute defense to a claim under an insurance contract. See *John Hancock Mut Life Ins Co v Dick*, 114 Mich 337, 340; 72 NW 179 (1897). But an insurer could also void a life insurance policy without proving fraud. An insurer could defend against a claim under a life insurance policy by proving that the insured made misstatements that either amounted to a breach of warranty or were misrepresentations. See *Nat Life & Accident Ins Co v Nagel*, 260 Mich 635, 637; 245 NW 540 (1932) (citing *Eastern Dist Piece Dye Works, Inc v Travelers Ins Co*, 234 NY 441, 449; 138 NE 401 (1923) for the proposition that there is a distinction between a misstatement as to a warranty and a misstatement that amounts to a mere misrepresentation). As the New York court explained, "a breach of warranty contained in an application for insurance constituted a defense to a claim upon the policy, although the warranty related to an *immaterial* matter. A misrepresentation contained in the application on the other hand only became a defense if it related to a *material* matter." *Eastern Dist Piece Dye Works*, 234 NY at 449 (emphasis added). The applicant could be liable even for an innocent misstatement because the common law placed the burden on the applicant to know that his or her answers were true: "[I]t was the duty of the insured to know that the representations . . . contained [in the application], and which constituted the inducement for the issuance of the policy, were true." *Bonewell v North American Accident Ins Co*, 167 Mich 274, 276; 132 NW 1067 (1911). The applicant's good faith belief that the answers were true was irrelevant; the only question was whether the answers were actually true. *Perry v John Hancock Mut Life Ins Co*, 143 Mich 290, 295; 106 NW 860 (1906) ("Good faith would not save the policy in this case. Unless the warranties were substantially true or their truth waived, the policy was void."). Hence, under the common law, an insurer could defend against a suit brought under a life insurance policy by proving that it was induced to enter into the contract through fraud or by showing that the applicant made a misstatement in his or her application. If the misstatement involved a warranty, the insurer did not have to show that the warranty was material; however, if the misstatement involved a mere representation, the insurer had to show that the representation was material. *Nagel*, 260 Mich 637-638.

In 1907 the Legislature modified these common law defenses. See 1907 PA 187. First, the Legislature precluded insurers from asserting a defense premised on the applicant's misstatements—whether warranties or misrepresentations—where the insured had faithfully paid on the policy for years. To achieve that, it required insurers to include a term in every contract that provided that the policy would become "incontestable two years from its date." 1907 PA 187, § 1. This law has been in force continuously since 1907, in one form or another, and is currently codified at MCL 500.4014. Second, the Legislature required insurers to include a "provision that all statements made by the insured, shall, in the absence of fraud, be deemed

representations and not warranties . . . ." 1907 PA 187, § 1. This statute too has been in force since 1907 and is now codified at MCL 500.4016.

Reflecting on what is now MCL 500.4016,[1] our Supreme Court approvingly quoted a New York court's explanation of a similar statute adopted in New York:

> "The result of this provision is that in order to produce a warranty in an application for insurance whereof a breach would necessarily and *ipso facto* avoid the policy, the statement claimed to constitute or have the effect of a warranty must be characterized by and include the element of fraud, and which ordinarily would be established by proof that the person making it knew that the statement was false, and wherefrom could be inferred an intent to deceive and cheat. A misstatement, even though stated in the form of a warranty, if made in good faith and without this element of fraud, passed into the same class as an ordinary representation and became a defense to the policy only if it was material. On the other hand, *the effect of a misrepresentation was left unchanged by the statute. If material it constituted a defense, although made innocently and without any feature of fraud; it was sufficient that it was material as an inducement for the issue of the policy, and was untrue.*" [*Nagel*, 260 Mich at 637-638 (emphasis added), quoting *Eastern Dist Piece Dye Works*, 234 NY at 449.]

Accordingly, an insurer could not void a policy on the basis of a misstatement made by the applicant in his or her application unless the insurer proved that the applicant made the misstatement with a fraudulent intent *or*, in the absence of fraud, the misstatement amounted to a misrepresentation that was material. See MCL 500.4016; MCL 500.2218.

After these changes to the common law, some courts continued to apply the common law rule that, in the two year period within which an insurer may contest a policy on the basis of misstatements, an insurer may void the policy on the basis of *either* a misstatement that was made with the actual intent to deceive *or* where the applicant made a misstatement—even though made in a good faith—that was material to the acceptance of the risk or the hazard assumed by the insurer. See *General American Life Ins Co v Wojciechowski*, 314 Mich 275, 281-282; 22 NW2d 371 (1946) (reiterating that a false representation is grounds for voiding a policy if the misrepresentation was material and without regard to whether the applicant answered in good faith); *North American Life Assurance Co v Jones*, 287 Mich 298, 303-304; 283 NW 587 (1939) ("It is not essential, however, that we find actual fraud. Misstatements made in good faith which materially affect acceptance of the risk constitute sufficient grounds for cancellation of the policy."); *Prudential Ins Co of America v Ashe*, 266 Mich 667, 672; 254 NW 243 (1934) ("An insurance policy may be cancelled for an untrue statement made in good faith or even in ignorance of its falsity, if such misrepresentation materially affected the assumption of the risk by the insurer."). However, relying on *Franklin Life Ins Co v William J. Champion & Co*, 350 F2d 115 (CA 6, 1965), other courts recognized a good faith exception to the common law rule that an insurer could rescind a policy by proving that the applicant made a misrepresentation that

[1] The statute was then codified at 1929 CL 12427.

was material. See *Howard v Golden State Mutual Life Ins Co*, 60 Mich App 469; 231 NW2d 655 (1975), overruled not in relevant part by *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999); *Mutual Benefit Life Ins Co v Abbott*, 9 Mich App 547; 157 NW2d 806 (1968); *Lipsky v Washington Nat'l Ins Co*, 7 Mich App 632; 152 NW2d 702 (1967).

In *Franklin Life*, the insured represented that he was in good health on his application, but he apparently had a carcinoma of the brain. *Franklin Life*, 350 F2d at 117-120. The court had to determine whether, under Michigan law, the insured's statement regarding his health "rendered the reinstatement of the policy void" because it was false. *Id.* at 120. In considering the issue, the court examined authorities that stood for the proposition that, with regard to questions concerning one's overall health, the applicant should not be held to have guaranteed the literal truth of the statement. *Id.* at 120-121. The court explained that these authorities consistently interpreted statements that the applicant was in good health or free from disease to mean that the applicant had a good faith belief or was justified in believing that he or she was in good health. *Id.* at 121. That is, an answer need not be true in a literal sense, it need only be true in the broader sense that the answer was honest, sincere, or not fraudulent. *Id.* at 123. Although the court in *Franklin Life* recognized that there were Michigan authorities that appeared to recognize that even an innocent misrepresentation would void a policy, it concluded that those cases were hang-overs from an earlier era when courts construed such representations in favor of the insurer. *Franklin Life*, 350 F2d at 125-126. It then considered several decisions and noted that in each case the Michigan Supreme Court actually considered the evidence and determined that the applicant could not have answered in good faith; from that, the court determined that Michigan recognized a good faith rule. *Id.* at 126-128.

On appeal, Auto-Owners concedes that Michigan courts have adopted the good faith rule stated in *Franklin Life*, but argues that the rule should be limited to the type of question at issue in that case; namely, questions asking for an opinion. But the decisions adopting the good faith rule have applied it to questions involving matters of historic fact. See *Howard*, 60 Mich App at 474 (stating that the insurer refused to pay because the insured did not disclose that she had been admitted to the hospital on a prior occasion); *Abbott*, 9 Mich App at 551 (stating that the insurer refused to pay because the insured failed to disclose his true medical history); *Lipsky*, 7 Mich App at 635 (stating that the insurer refused to pay because the insured answered "no" when asked about prior medical consultations). Consequently, we cannot agree that application of the good faith rule must be limited to questions that involve the applicant's opinion. Rather, we hold that, in order to void a policy for a misrepresentation an insurer must prove that the applicant made a representation that was actually false, that the applicant knew or should have known that the representation was false, and that the representation was material to either the risk or hazard assumed. See *Prudential Ins Co v Cusick*, 369 Mich 269, 286; 120 NW2d 1 (1963) (stating that the insurer must prove "actual falsity of [the] representation."); *Abbott*, 9 Mich App at 555 (stating that the "truth or falsity of a representation on an insurance policy should be examined in the light of what the applicant knew or had reason to know at the time of his application); MCL 500.2218 (stating that a misrepresentation will not void a policy unless "such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer."). Here, there is no dispute about whether the representations were material to Auto-Owners acceptance of the risk; the only question is whether Eric Langley knew or should have known that his answers were false.

C. AMBIGUOUS QUESTIONS

As a preliminary matter, Auto-Owners argues that the trial court erred to the extent that its decision to grant summary disposition in favor of Debra Langley was the result of its determination that the questions at issue were ambiguous. In making its decision, the trial court apparently concluded that the questions at issue were ambiguous, construed them against Auto-Owners, and then determined whether Eric Langley's answers were made in good faith given what he knew.

Auto-Owners had the burden to prove that Eric Langley made a representation that was actually false. *Cusick*, 369 Mich at 286. Whether Eric's answers were false depends on the proper interpretation of the questions and his answers. And, if the questions or answers are ambiguous, the ambiguity must be resolved by the finder of fact. See *Klapp v United Ins Group Agency*, 468 Mich 459, 471; 663 NW2d 447 (2003).

A contractual provision is ambiguous when it is capable of conflicting interpretation. *Id.* at 467. A contract is likewise ambiguous when two provisions irreconcilably conflict. *Id.* However, courts will not pervert the meaning of a word or phrase in order to find an ambiguity; rather, courts will give words and phrases their commonly used meanings. *Henderson*, 460 Mich at 354. If the jury is unable to ascertain the parties' intent using "conventional means of contract interpretation, including the consideration of relevant extrinsic evidence," the jury should interpret the contract against the insurer. *Id.*

Question 2.A. on the application concerned whether the applicant currently had, or had been diagnosed or treated for heart disease:

> 2. Do you have, or during the past 10 years, have you been diagnosed or treated by any medical professional for:
>
> A. . . . Heart Disease including Heart Attack, Stroke, Angina, Arterial Disease of the Heart or Extremities or Congestive Heart Failure . . . .

The phrases "heart disease" and "arterial disease of the heart or extremities" can be commonly understood and are not susceptible to conflicting interpretation. The term "arterial" means pertaining to the arteries, which are defined to be blood vessels that convey blood from the heart. *Random House Webster's College Dictionary* (1997). And a disease is a disordered or abnormal condition of an organ. *Id.* Accordingly, arterial disease is an abnormal or disordered condition of the arteries. It is also plain that, in ordinary speech, the term heart disease is used to refer to something other than commonly occurring variations in the heart that do not impair its ordinary function. *Id.* (defining heart disease to mean a condition that impairs the functioning of the heart). In addition, although Auto-Owners included examples of what is within the definition of heart disease, the identification of those items did not serve to alter the common understanding of the phrase "heart disease." Each of the identified items refers to a condition that clearly impairs the functioning of the heart to one degree or another, and, although some of those conditions are quite severe, such as a heart attack, other conditions can have varying degrees of impairment. Hence, even when interpreted in the context of these specifically identified disorders, the phrase heart disease must be understood to mean any condition that impairs the

heart's ordinary function. And the doctrines of *ejusdem generis* and *noscitur a sociis* do not alter that understanding. See *Neal v Wilkes*, 470 Mich 661, 669; 685 NW2d 648 (2004); *G.C. Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420-421; 662 NW2d 710 (2003).

To have a disease means to currently have a disease, as opposed to having had, but no longer having, a disease. Similarly, to have been diagnosed by a medical professional is commonly understood to mean that a medical professional has performed an examination and identified a disease. See *Random House Webster's College Dictionary* (1997) (defining diagnose to mean "to determine the identity of (a disease, illness, etc.) by a medical examination" and defining diagnosis as "the process of determining by medical examination the nature and circumstances of a diseased condition."). Finally, to treat a disease is typically understood to mean to take some step to cure or relieve the disease. *Id.*

Giving these terms and phrases their ordinary meanings, question 2.A. on the application is not capable of conflicting interpretation. Rather, the applicant must answer yes if he or she currently has a condition that impairs the heart's ordinary function or has an abnormal or disordered condition of the arteries. The applicant must also answer yes if he or she has been examined by a medical professional and that professional has identified such a condition, or if he or she has been treated by a medical professional for such a condition. Consequently, this question is not ambiguous and the trial court erred to the extent that it concluded otherwise.

Question 3.A. on the application concerned, in relevant part, whether the applicant had been "advised by any medical professional during the past 3 years, to have any surgery, additional diagnostic testing, hospital confinement, or nursing facility confinement, and have not yet done so?" At issue here, is whether the phrase "have not yet done so" is ambiguous with regard to being advised to have a diagnostic test. On appeal, Auto-Owners argues that "to have done" a diagnostic test means to go through the complete process of diagnostic testing, including taking the test, receiving the results, and consulting with one's doctor about the results. Thus, according to Auto-Owners, an applicant has not yet "done" a diagnostic test until he or she has received the results from the test.

Contrary to Auto-Owners' contention, the ordinary meaning of the phrase "not yet done so" when construed in light of the phrase "advised to have . . . additional diagnostic testing", must mean to have completed the test itself and cannot refer to the consultation and procedures that might follow after having done the test. That is, once the test itself is complete, the applicant has followed the advice and, accordingly, cannot be said to have "not yet done so." Because this question too was unambiguous, the trial court erred to the extent that it concluded otherwise.

D. THE EVIDENCE

There was undisputed evidence that showed that Eric Langley had taken every diagnostic test that he had been advised to take as of the time he filled out the application for insurance. As such, there was no evidence from which a reasonable finder of fact could conclude that his answer to question 3.A. was actually false. Consequently, the trial court did not err when it determined that Eric's answer to that question could not serve to invalidate the insurance policy.

With regard to whether Eric Langley had, or had been diagnosed or treated for heart disease, there was undisputed evidence that Eric actually had a mitral valve regurgitation and aortic stenosis when he answered "no" to this question. The evidence showed that mitral valve regurgitation is common and does not impair the ordinary functioning of the heart. As such, the mitral valve regurgitation was not a heart disease. However, the evidence showed that aortic stenosis was more serious than mitral valve regurgitation and actually impaired the functioning of the aorta. Thus, that condition constituted a heart disease. Nevertheless, in order to void the policy, Auto-Owners had to present evidence that showed that Eric Langley knew or should have known that he had aortic stenosis or knew or should have known that he had been diagnosed with aortic stenosis when he answered "no" to this question. *Abbott*, 9 Mich App at 555.

Auto-Owners presented sufficient evidence to establish a question of fact as to whether Eric Langley answered question 2.A. in good faith. Auto-Owners presented evidence that Hafeman examined Eric before he filled out the application at issue and told him about a heart murmur that was significantly different than his previously diagnosed murmur. She specifically recalled telling him that his "heart murmur had changed in quality", that it was "louder, and it was over the whole of the heart instead of more localized like it had been." She talked with him about the changes and told him that there was a "possibility that he had aortic stenosis"; she even "drew him a diagram to show him what it was." And she was so concerned that she immediately ordered an echocardiogram, which Eric took on the same day.

There was also evidence that the echocardiogram confirmed that Eric had aortic stenosis and that someone from Hafeman's staff informed his wife of the results. Although the staff person did not speak directly to Eric, there was testimony that Hafeman's office routinely informed Debra Langley about medical matters concerning Eric and that Eric's wife relayed that information to him. Thus, there was evidence from which a reasonable finder of fact could infer that Eric had been given a preliminary diagnosis of aortic stenosis, and might have received a confirmed diagnosis of aortic stenosis, before he filled out the application at issue. Because there was evidence that Hafeman explained the seriousness of aortic stenosis to Eric, a reasonable finder of fact could conclude that Eric knew that he had a condition that constituted heart disease within the ordinary meaning of that phrase and chose to conceal it on the application. Finally, there was evidence that Eric Langley knew that Cincinnati had raised its proposed premium on the basis of his existing heart murmur and, therefore, that he must have understood that an insurer might consider any heart murmur—and especially his new, more serious murmur—to constitute heart disease.

The trial court erred when it determined there was no evidence that Eric did not answer question 2.A. in good faith. There was evidence from which a reasonable finder of fact could find that Eric knew or should have known that he had aortic stenosis, or had been diagnosed with aortic stenosis, when he answered "no" to question 2.A. And, because the undisputed evidence showed that aortic stenosis constituted a condition that impaired the functioning of the heart, it plainly constituted heart disease. Accordingly, whether Eric answered that question in good faith was a matter for trial.

III. STATUTORY INTEREST

A. STANDARD OF REVIEW

On appeal, Debra Langley argues that the trial court erred when it refused to order Auto-Owners to pay 12% interest. This Court reviews de novo the proper interpretation of a statute. *Nestlé*, 269 Mich App at 83.

B. ANALYSIS

Under the uniform trade practices act, see MCL 500.2001 *et seq.*, the Legislature prohibited insurers from engaging in any "trade practice" that is defined to be "an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." MCL 500.2003. Under MCL 500.2006(1), the Legislature provided that a "person must pay on a timely basis to . . . an individual . . . entitled to benefits provided under the terms of its policy, or, in the alternative, the person must pay . . . 12% interest, as provided" under MCL 500.2006(4). It also stated that the failure "to pay claims on a timely basis or to pay interest on claims as provided un [MCL 500.2006(4)] is an unfair trade practice unless the claim is reasonably in dispute." MCL 500.2006(1).

On appeal, Debra Langley argues that the first sentence of MCL 500.2006(1) required Auto-Owners to timely pay her claim or pay 12% interest. She further argues that the second sentence of MCL 500.2006(1), which defines the failure to timely pay or to pay 12% interest as an unfair trade practice unless the claim was reasonably in dispute, did not alter the legislative command that an insurer must either timely pay or pay 12% interest. In examining an identical argument, this Court has held that the second sentence of MCL 500.2006(1) does not establish an exception to the requirement that an insurer either make timely payment or pay 12% interest. *Griswold Properties LLC v Lexington Ins Co*, 276 Mich App 551, 558-559, 566; 741 NW2d 549 (2007). Accordingly, whether Auto-Owners reasonably disputed the claim was irrelevant.

On appeal, Auto-Owners relies on MCL 500.2006(3) for the proposition that it cannot be required to pay 12% interest because it required further medical information in order to establish whether there was a misrepresentation. That statute provides, in relevant part, that an insurer timely pays if it pays "within 60 days after receipt of necessary medical information" in cases where the claimant's proof of loss "contains facts that clearly indicate the need for additional medical information." MCL 500.2006(3). Here, even conceding that Auto-Owners needed further information, it still could not be said to have timely paid unless it paid within 60 days of its receipt of the new information, which it did not do. Accordingly, if Auto-Owners is found to be liable under the contract, the fact that it reasonably believed that it needed more medical information would not relieve it of the burden to pay 12% interest.

IV. CONCLUSION

The trial court did not err when it determined that Auto-Owners had to present evidence that Eric Langley knew or should have known that his answers were actually false before it would be entitled to void the policy at issue. The trial court also did not err when it determined that Auto-Owners failed to establish a question of fact as to whether Eric Langley made a representation that was actually false when he answered "no" to question 3.A on the application. Therefore, the trial court properly granted summary disposition as to the claim that that answer constituted a misrepresentation. However, Auto-Owners presented evidence that, if believed, would establish that Eric Langley either knew or should have known that he had aortic stenosis. Because aortic stenosis constitutes heart disease as that term is commonly understood, Auto-Owners established a question of fact as to whether Eric Langley's answer to question 2.A amounted to a material misrepresentation. Finally, the trial court erred when it determined that Debra Langley would not be entitled to 12% interest on her claim should she prevail.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Neither party having prevailed in full, neither may tax costs. MCR 7.219(A).

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly