

STATE OF MICHIGAN
COURT OF APPEALS

JANET KAYE OGG,

Plaintiff-Appellee,

v

GARY NATHANIEL TAYLOR

Defendant,

and

FARM BUREAU GENERAL INSURANCE
COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 6, 2012

No. 307196
Genesee Circuit Court
LC No. 09-092501-NI

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

In this action for uninsured motorist benefits, defendant Farm Bureau General Insurance Company appeals from a judgment that awarded plaintiff \$94,000 after the court granted plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). Defendant challenges the trial court's earlier denial of its motion for summary disposition pursuant to MCR 2.116(C)(7) and (10).¹ For the reasons set forth below, we affirm.

Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a claim is barred because of a "statute of limitations." This Court has applied that subrule to a contractual limitations period. See *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 238; 625 NW2d 101 (2001). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter

¹ This Court previously denied defendant's interlocutory application for leave to appeal. *Ogg v Taylor*, unpublished order of the Court of Appeals, entered October 25, 2011 (Docket No. 302250).

of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

We agree with the trial court that the one-year contractual limitations period in defendant’s policy for making a claim for uninsured motorist benefits was not enforceable. On December 16, 2005, the Office of Financial and Insurance Services (OFIS) issued Order No. 05-060-M. As succinctly stated by this Court in *Ulrich v Farm Bureau Ins*, 288 Mich App 310, 320-321; 792 NW2d 408 (2010):

Order No. 05-060-M prohibits the issuance, advertisement, or delivery of policies or riders that limit the time to file a claim or commence suit for uninsured motorist benefits to less than three years, but it unambiguously provides an exception where the insurer “was legally using that policy or rider form in Michigan prior to the date of this notice and order of prohibition.” *The order prohibits the modification of such forms*, but it does not prohibit their renewal or reissuance. Indeed, the language of the order further states that an insurer is not prohibited “from continuing to use any policy form or rider that it may have been legally using in Michigan prior to the date of this notice . . . so long as such policy or rider is not revised in any respect.” [Emphasis added.]

Defendant issued an endorsement in January 2007 that was labeled “UNDERINSURED MOTORIST COVERAGE ENDORSEMENT.” That endorsement was not merely an addition to the coverage in the policy. The question whether the endorsement revised the uninsured motorist coverage in the policy is answered by the endorsement itself. It expressly states, “For your covered auto, this endorsement modifies insurance provided under Part IV – Uninsured Motorist Coverage of this policy.” The endorsement changed the definition of “uninsured automobile” to include an underinsured automobile. It added a provision to “Limit of Liability” and it added to the “Additional Conditions” portion of Part IV, a provision addressing exhaustion of payments from other sources. That new provision also stated that coverage was voided if the insured agreed to settle a claim for bodily injury without permission. Because the endorsement revised the policy form that defendant had been using, the policy form with its one-year limitations period was no longer within the exception provided by Order No. 05-060-M.

Defendant relies on affidavits submitted by Barbara Klassen, a “product development analyst” with defendant to argue that the one-year limitations period was valid. Klassen avers that the new endorsement, revised Underinsured Motorist form 1352 (1-07), which was issued in January 2007, “was in fact in existence before the Insurance Commissioner’s Order.” Even if the form was in existence before the issuance of the commissioner’s order, the issuance of the “new endorsement” expressly modified Part IV - Uninsured Motorist Coverage. As previously stated, because the endorsement revised the policy form that defendant had been using, the policy form was no longer within the exception provided by Order No. 05-060-M.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter