S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

CITIZENS UNITED RECIPROCAL EXCHANGE, doing business as CURE AUTO INSURANCE,

Plaintiff-Appellant,

v

TNITHA BARNES,

Defendant-Appellee,

and

ALWAYZ ON TIME TRANSPORTATION,

Defendant.

UNPUBLISHED
June 23, 2026
10:05 AM

No. 373766
Oakland Circuit Court
LC No. 2023-202069-CK

TNITHA BARNES,

Plaintiff-Appellee,

v

DONALD RIEMAN, C & J PARKING LOT SWEEPING LLC, and C & J PARKING LOT SWEEPING, INC.,

Defendants,

and

CITIZENS UNITED RECIPROCAL EXCHANGE,

Defendant-Appellant.

No. 373770
Oakland Circuit Court
LC No. 2022-195729-NI

Before: MARIANI, P.J., and MURRAY and PATEL, JJ.

PER CURIAM.

In these no-fault actions consolidated below and on appeal,[1] plaintiff[2] Citizens United Reciprocal Exchange (CURE) appeals as of right the trial court's orders denying its motion for summary disposition asserting entitlement to rescission of defendant[3] Tnitha Barnes's no-fault policy, and its motion for reconsideration.[4] We reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 28, 2022, Barnes applied for car insurance from CURE for coverage on a 2006 Nissan Altima and a 2014 Ford Fusion. The insurance certificate lists both vehicles with a policy period from January 29, 2022 to July 29, 2022.

On March 13, 2022, Barnes got into an accident while driving the 2014 Fusion. Several months later, she filed suit claiming personal protection insurance (PIP) benefits against CURE[5] related to the accident (LC No. 22-195729-NI). In a separate action for declaratory relief, CURE alleged that Barnes made material misrepresentations in her insurance application by failing to identify her child, Karin Barnes, as a member of her household, or as the registrant of the 2006 Altima, and that had it known the truth it would not have issued the policy. Thus, CURE claimed, it was entitled to a declaration that Barnes's policy was void *ab initio*.

The trial court consolidated the cases, and CURE moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that it is

> entitled to a declaration that the CURE Policy is void *ab initio* as a matter of law on [Barnes's] material misrepresentations in procuring the CURE Policy and to dismissal of [Barnes's] claims as rescission would nullify all coverages under the CURE Policy.

---

[1] *CURE v Barnes*, unpublished order of the Court of Appeal, entered December 23, 2024 (Docket Nos. 373766; 373770).

[2] CURE is the plaintiff in LC No. 23-202069-CK and Docket No. 373766, but the defendant in LC No. 22-195729-NI and Docket No. 373770.

[3] Barnes is a defendant in LC No. 23-202069-CK and Docket No. 373766, but the plaintiff in LC No. 22-195729-NI and Docket No. 373770.

[4] The actual order appealed from is the stipulation for final judgment with retention of appellate rights, which states that CURE and Barnes

> have agreed to dismiss case number 2023-202069-CK and 2022-195729-NI with prejudice as to No-Fault benefits incurred through November 22, 2024, but this order is entered expressly reserving the right to appeal as an aggrieved party to allow CURE to appeal this Court's [summary disposition] Court Order and the [motion for reconsideration] Court Order, where this Court ruled that CURE was not permitted to rescind the CURE Policy . . . .

[5] The other defendants in this suit are not parties to this appeal.

In response, Barnes argued that CURE failed to demonstrate it suffered injury as a result of any alleged misrepresentation because there was no evidence that ownership of the Altima was material to any coverage determination made, Karin was not a household member as she had returned indefinitely to Atlanta for college, and "even if Karin did need to be disclosed to CURE as a household member, there again would be no injury and no materiality of that disclosure to this crash as it is undisputed Karin was not involved in the crash . . . ." CURE replied to Barnes's arguments, and the court held a hearing at which it denied CURE summary disposition, reasoning that "material facts are in dispute here as to whether there was a material misrepresentation that would have resulted in [CURE] denying coverage for the 2014 Fusion as opposed to the 2006 Altima". Specifically, the court found that the alleged misrepresentations pertained to a vehicle not involved in the accident, Karin was not involved in the accident or seeking PIP benefits, Karin was at school at the time of the accident, and the Altima did not appear to have been operable.

The court subsequently denied CURE's motion for reconsideration, and CURE then applied for leave to appeal the court's decisions in this Court, before stipulating to dismiss that appeal,[6] and for entry of final judgment with retention of appellate rights. This appeal followed.

II. ANALYSIS

CURE argues that the trial court erred by finding a question of fact regarding the materiality of Barnes's misrepresentations and denying summary disposition on that basis.

A. STANDARD OF REVIEW

Given that the court considered evidence beyond the pleadings and found genuine issues of material fact, it appears the court denied summary disposition under MCR 2.116(C)(10). We review de novo a trial court's decision on a motion for summary disposition. *Yopek v Brighton Airport Ass'n, Inc*, 343 Mich App 415, 422; 997 NW2d 481 (2022). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

> When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*Id*. (quotation marks and citations omitted).]

B. MATERIAL MISREPRESENTATION

"Insurance policies are contracts and, in the absence of an applicable statute, are subject to the same contract construction principles that apply to any other species of contract." *Titan Ins Co v Hyten*, 491 Mich 547, 554; 817 NW2d 562 (2012) (quotation marks and citation omitted).

---

[6] *CURE v Barnes*, unpublished order of the Court of Appeals, entered January 28, 2025 (Docket No. 373246).

"[B]ecause insurance policies are contracts common-law defenses may be invoked to avoid enforcement of an insurance policy, unless those defenses are prohibited by statute." *Id*. As the no-fault act does not provide a fraud defense to PIP coverage, the common-law defense of fraud in the inducement is available to no-fault insurers. *Howard v LM Gen Ins Co*, 345 Mich App 166, 172-173; 5 NW3d 46 (2023). Indeed, it "is well settled that an insurer is entitled to rescind a policy *ab initio* on the basis of a material misrepresentation made in an application for no-fault insurance." *Bradley v Westfield Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365828); slip op at 5 (quotation marks and citation omitted).

> [I]n order to justify rescission of PIP coverage with respect to preprocurement misrepresentations, the insurer must be able to demonstrate *common-law* fraud under equitable principles. It must be shown that: (1) the alleged fraudulent party made a material misrepresentation; (2) the representation was false; (3) the person making the representation knew it was false or acted recklessly in making the statement; (4) the person intended that the opposing party should act upon the representation; (5) the opposing party acted in reliance upon it; and so (6) suffered injury. [*Howard*, 345 Mich App at 173 (citations omitted).]

The evidence produced in support of CURE's summary disposition motion demonstrates that Barnes listed herself as the sole owner and registrant of the 2006 Altima in her insurance application, and declared that the statements made in the application were true. However, documentation attached to CURE's motion for summary disposition indicates that Karin owned and applied for title to the Altima.

Barnes asserted below, and asserts again on appeal:

> There is no injury because absent coverage on the 2006 Altima there is no evidence that CURE would not have issued the policy to just cover the 2014 Fusion. Similarly, there is no evidence that the ownership of the 2006 Altima was material to any coverage determination made as to the 2014 Fusion. If anything, providing CURE with the correct ownership information on the 2006 Altima when applying for coverage would likely have reduced [Barnes's] premiums as it would have lead [sic] into a conversation about the fact that the 2006 Altima was inoperable and likely did not need to be insured . . . .

"[A] fact or representation in an application is material where communication of it would have had the effect of substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." *Oade v Jackson Nat'l Life Ins Co of Mich*, 465 Mich 244, 253-254; 632 NW2d 126 (2001) (quotation marks and citation omitted). In other words, a misrepresentation is considered material if the insurer would not have issued the policy, or would have charged a different rate, had it known of the misrepresentation. See *Sherman v Progressive Mich Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364393); slip op at 2-3. And here, in support of its motion for summary disposition, CURE attached the affidavit of James Sullivan, CURE's Manager of Underwriting Investigations, in which he attested that:

> 7. Had CURE been aware that the Named Insured was not the titled owner or registrant of the Altima, CURE would not have issued the CURE Policy to the Named Insured due to the risk associated with insuring a vehicle that was not titled or registered to the Named Insured.
>
> 8. CURE's underwriting rules for policies in Michigan do not allow a policy to bind if the applicant is not the owner of the vehicle(s) to be insured.

See *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 129; 713 NW2d 801 (2005) ("Because defendant's underwriter stated in his affidavit that [the] defendant would not have issued the policy if it had been aware of the decedent's smoking habit, the misrepresentation about the decedent's smoking habit was material."); *Lash v Allstate Ins Co*, 210 Mich App 98, 103-104; 532 NW2d 869 (1995).

In response, Barnes argued the applicability of *Howard* to deny CURE summary disposition, and the trial court agreed. In *Howard*, 345 Mich App at 169, the insured sought PIP benefits related to an accident involving a vehicle for which she had properly obtained insurance. However, the insurer denied benefits and rescinded the policy because a few weeks before the accident, the other named insured on the policy added a vehicle that was not involved in the accident to the policy, and misrepresented where that vehicle was garaged. *Id*. at 169-170. This Court held that the injury element of fraud was missing "because the coverage obtained by the misrepresentation [was] not at issue. That is, there [was] no claim that the [additional vehicle] was involved in the accident or that absent coverage on the [additional vehicle], plaintiff would not have been covered as to the [vehicle involved in the accident]." *Id*. at 173-174.

Barnes asserts that like in *Howard*, the alleged misrepresentations pertained to a vehicle—the Altima—that was not involved in the accident. Thus, Barnes argues, CURE did not suffer any injury as a result of the misrepresentation regarding ownership of the Altima. CURE produced evidence that it would not have issued the subject insurance coverage to Barnes had it known she was not the owner of the Altima, but not necessarily that absent coverage on the Altima, it would not have covered the Fusion involved in the accident. Indeed, Sullivan stated only that had CURE known about the true ownership of the Altima, it would not have issued the policy *because of the risk of insuring a vehicle not titled to the insured*—specifically, the Altima. Accordingly, CURE failed to establish the lack of a genuine issue of material fact regarding the injury it suffered as a result of Barnes's misrepresentation regarding ownership of the Altima.

Nonetheless, the trial court should have granted summary disposition on the basis that Barnes's failure to list Karin as a household member or occasional driver on the insurance application constituted a material misrepresentation resulting in injury to CURE. In the insurance application produced by CURE in support of its motion, Barnes failed to list Karin when prompted to provide the names of "[a]ll household members, including but not limited to spouse(s), roommate(s), children, and family members," and "all individuals outside the household and any drivers to whom the in[s]ured auto(s) is furnished or available for his or her use, even occasionally and/or infrequently."

Barnes argues:

> As to Karin, CURE fails to prove with undisputed facts that she even constituted a "household member" when [Barnes] was applying for insurance as it is undisputed she had returned indefinitely to Atlanta for college. However, even if Karin did need to be disclosed to CURE as a household member, there again would be no injury and no materiality of that disclosure to this crash as it is undisputed Karin was not involved in the crash and still in Atlanta when this crash occurred. CURE is being asked to provide coverage for injuries which it undisputably fully accounted for in assessing its policy premiums on [Barnes] and the 2014 Fusion. Ancillary issues about Karin and the 2006 Altima are not material and do not demonstrate an injury to CURE from any alleged fraud.

But Barnes testified in her deposition that Karin owned the Altima, that although Karin was not using the vehicle at the time and it was inoperable, the hope was that Karin would use it when she returned from attending school in Atlanta, and that she had only driven the vehicle once or twice. And Karin testified in her deposition that the Altima was just for her use, and no one else ever used it. Moreover, both Barnes and Karin testified that although Karin attended college in Atlanta, and was at school when Barnes completed the insurance application, Karin returned home to Michigan to live with Barnes in the summers, including in the summer of 2022, a portion of which was included in the policy coverage period.[7] Barnes even testified that in January 2022 (when she completed the insurance application), the plan was for Karin to return to her home in Michigan at the completion of the spring semester. And Karin testified that it was always her plan and intention to return to Barnes's home during those times school was not in session. Thus, Barnes knew at the time she completed the application that Karin would be a member of the household during the policy period, and failed to list her as such.

Additionally, CURE demonstrated injury as a result of Barnes's misrepresentation. In his affidavit, Sullivan attested:

> 10. The Named Insured did not disclose to CURE that Karin Barnes was a household member at the Policy Address at the time the Application for Insurance was filled out and executed by the Named Insured.
>
> 11. Had CURE been aware that Karin Barnes was a household member at the time of the Application for the CURE Policy, the premiums for the CURE Policy would have increased by $263.75.
>
> 12. The CURE Policy premiums would have increased due to the increased risk of insuring another household member and/or driver under the CURE Policy.

In response, Barnes argued below and now on appeal that when Barnes applied for insurance it was undisputed Karin had returned to school "indefinitely," but that assertion is belied

[7] The policy coverage period was January 29, 2022 to July 29, 2022.

by the testimony outlined above.[8] Viewing this evidence in a light most favorable to Barnes, there was no genuine issue of material fact that Karin should have been listed as a household member, and that CURE suffered injury as a result of that misrepresentation. See *Webb v Progressive Marathon Ins Co*, 335 Mich App 503, 510; 967 NW2d 841 (2021) (concluding that failing to disclose a household member on an insurance application constituted a material misrepresentation). While true that neither Karin nor the Altima were involved in the accident for which Barnes claimed PIP benefits, Sullivan's affidavit indicates that CURE suffered injury regardless, because it would have charged a higher premium for the policy had it known that Karin was a household member and therefore a potential driver of *either* car. *Oade*, 465 Mich at 253-254; *Sherman*, ___ Mich App at ___; slip op at 2-3. Accordingly, the trial court erred when it failed to grant summary disposition to CURE on this basis.

However, because the trial court concluded that there was a genuine issue of material fact whether Barnes misrepresented material information in her insurance application, it did not reach the next step—balancing the equities and determining whether rescission is an appropriate remedy. See *Sherman v Progressive Marathon Ins Co*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167826); slip op at 12-13 (noting that if a court finds that there is no genuine issue of material fact regarding whether the insured made a material misrepresentation in the application and that the insurer relied upon that representation, then the trial court, sitting in equity, should determine whether rescission is the proper remedy). Therefore, it is necessary to remand this matter to the trial court for such a balancing of the equities. See *id*. at ___; slip op at 13-14.

The trial court's order denying CURE's motion for summary disposition is reversed, and the matter is remanded for entry of an order granting summary disposition under MCR 2.116(C)(10) regarding whether there was a material misrepresentation, and for a determination of whether plaintiff is entitled to rescission under *Sherman*. We do not retain jurisdiction.

/s/ Philip P. Mariani
/s/ Christopher M. Murray
/s/ Sima G. Patel

---

[8] See *Cleveland v Hath*, 350 Mich App 320, 331; 32 NW3d 109 (2024) ("Under Michigan law, if a moving party presents evidence to support a motion for summary disposition under MCR 2.116(C)(10), the burden shifts to the party opposing the motion to produce evidence to show that there is a genuine issue of material fact. Where, as here, the opposing party fails to present any evidence, the motion is properly granted because no genuine issue of material fact exists.") (quotation marks and citations omitted).