STATE OF MICHIGAN

COURT OF APPEALS

M. C. PINNER,

Plaintiff-Appellee/Cross-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
May 21, 1999

No. 202195
Saginaw Circuit Court
LC No. 93-056162 CK

Before: Markman, P.J., and Hoekstra and Zahra, JJ.

PER CURIAM.

Defendant appeals by right from an order denying its motion for judgment notwithstanding the verdict (JNOV) pursuant to MCR 2.610, its motion for a new trial pursuant to MCR 2.611, and its motion for remittitur pursuant to MCR 2.611(E). Plaintiff cross-appeals, challenging an order denying his request for attorney fees. The trial court upheld the jury's finding that defendant was estopped from asserting a statute of limitations defense because it had induced plaintiff not to retain an attorney to pursue his claim for no-fault wage loss benefits. Because we find that the trial court erred when it refused to grant defendant's motion for JNOV, we reverse.

Defendant argues that the trial court should have granted its motion for JNOV because no reasonable juror could have found that plaintiff relied on promises made by defendant that it would pay his claim if he refrained from using an attorney. We agree. The standard of review for JNOV requires that we review all the evidence and draw all legitimate inferences in a light most favorable to the nonmovant. Only if the evidence, when viewed in such a light, fails to establish a claim as a matter of law, should a motion for JNOV be granted. *Dedes v Asch*, 233 Mich App 329, 335; 590 NW2d 605 (1998). We review the trial court's decision de novo. *Hord v ERIM*, 228 Mich App 638, 641; 579 NW2d 133 (1998) remanded by ___ Mich ___; 590 NW2d 576 (1999). In this case, plaintiff has failed to show that he ever relied on defendant's promise.

A plaintiff who advances an estoppel theory to avoid a statute of limitations defense must show "that the conduct of the defendant *has induced* the plaintiff to refrain from bringing action . . . ." *Renackowsky v Bd of Water Comm'rs of Detroit*, 122 Mich 613, 616; 81 NW 581 (1900) (emphasis added). Furthermore, plaintiff must show that he actually relied on the promise. *Barber v*

SMH (US), Inc, 202 Mich App 366, 376; 509 NW2d 791 (1993). At trial, plaintiff argued that he did not bring this action within the one year limitations period because he relied on defendant's promise that the claim would be resolved internally if plaintiff did not involve an attorney. However, plaintiff's conduct contradicts his testimony. According to plaintiff's testimony, defendant began asking him not to hire attorneys shortly after sending a letter to plaintiff on May 10, 1990.[1] However, plaintiff admits that he contacted an attorney, his second, in the summer of 1990. He then retained a third attorney, who sent a letter to defendant on November 14, 1990, approximately six months after plaintiff received the May 10 letter from defendant. Plaintiff hired a fourth attorney, who corresponded with defendant twice in January 1991. Two of the attorneys he hired withdrew because they could not help plaintiff obtain wage loss benefits. These actions, to which plaintiff testified at trial, contradict his claim that he "got rid of" the attorneys because defendant asked him to do so.

Plaintiff also testified that on February 28, 1991, defendant sent him a letter denying his entire claim for lost wages and that defendant again told him not to hire an attorney. However, plaintiff admitted that defendant received a letter from his attorney on December 12, 1991, less than nine months after plaintiff received the February 28 letter. This left ample time for plaintiff to file suit within the statute of limitations. Plaintiff acknowledged that he retained this attorney to assist him with his wage loss claim. Again, plaintiff's actions contradict any claim that he acted in reliance on defendant's promises.

In sum, plaintiff's estoppel argument requires that he fire his attorney and refrain from hiring another during the period in which the statute of limitations lapsed. Plaintiff's testimony, however, establishes the contrary. Plaintiff consulted with numerous attorneys during that period, some of whom left his employ of their own volition. Plaintiff cannot create a question of fact on which reasonable minds can differ by issuing self-serving assertions of reliance that are at odds with his actual, historical conduct. *Aetna v Ralph Wilson Plastics*, 202 Mich App 540, 548; 509 NW2d 520 (1993). "The doctrine of estoppel should be applied only where the facts are unquestionable and the wrong to be prevented undoubted." *Barber*, *supra* at 376. Because plaintiff actually hired attorneys during the period in which he claims he was relying on defendant's promise to resolve the claim, no reasonable juror could have concluded that plaintiff actually relied on defendant's alleged representations. Therefore, the trial court should have granted defendant's motion for directed verdict and JNOV.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Joel P. Hoekstra
/s/ Brian K. Zahra

[1] In that letter, defendant stated that it needed additional records before it could continue paying plaintiff's wage loss benefits.