

STATE OF MICHIGAN
COURT OF APPEALS

TEDRA TUCKER,

Plaintiff-Appellee,

v

STATE FARM AUTOMOBILE INSURANCE
COMPANY,

Defendant-Appellant

and

A. VANCE AGENCY

Defendant.

UNPUBLISHED

April 7, 2000

No. 209675

Wayne Circuit Court

LC No. 96-618379 NI

Before: Cavanagh, P.J., and Holbrook and Kelly, JJ.

PER CURIAM.

Defendant State Farm appeals as of right the trial court's orders denying its motions for summary disposition and granting summary disposition in favor of plaintiff. We reverse.

I.

Plaintiff contacted defendant A. Vance Agency, an independent broker with no contractual relationship with State Farm, to add her car to her mother's auto policy. She paid a \$400 deposit and received a temporary Michigan Automobile Insurance Placement Facility (MAIPF) certificate of insurance good for 60 days, effective September 11, 1995, at 5:00 p.m. MAIPF is a statutory scheme for insuring otherwise uninsurable drivers. MCL 500.3301 *et seq.*; MSA 24.13301 *et seq.* Under the scheme, Vance was the producer of the certificate.

Vance and plaintiff's mother completed the proper policy request change form to be sent to State Farm. The form clearly stated that Vance was not acting as an agent of any insurance company, but only as an agent of the insured. Vance sent the form to Citizens Insurance Company by mistake, and Citizens returned the form to Vance. Vance then changed the form to designate State Farm as the

insurer and changed the effective date from September 11, 1995, to September 15, 1995. State Farm received the application on September 16, 1995, and issued a policy of insurance effective September 15, 1995, in accordance with MAIPF directives that, when there is a discrepancy, the effective date of such policies is the date of the application, not the date of the temporary certificate.

Plaintiff was involved in an automobile accident on September 12, 1995. State Farm and Vance asserted that there was no coverage in effect on September 12, 1995. Plaintiff filed suit seeking first-party and uninsured motorist coverage. State Farm and plaintiff sought summary disposition under MCR 2.116(C)(10). The trial court denied State Farm's motions for summary disposition and granted plaintiff's motion for summary disposition. Vance had failed to respond to the complaint and a default judgment was entered on September 13, 1996. The court found defendants jointly and severally liable, ordered the uninsured motorist claim to arbitration, held that if State Farm was found not to be liable on appeal, then Vance would pay \$20,000 pursuant to the default, and that plaintiff was entitled to \$28,000 reimbursement for damage to her vehicle and for first-party no-fault benefits.

II.

We review a trial court's ruling on a motion for summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 633; 601 NW2d 160 (1999).

A motion pursuant to MCR 2.116(C)(10), tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact. . . . A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

III.

State Farm argues that an application for insurance is a mere offer which must be accepted before a contract of insurance can come into being, and that conditions set forth in the application are controlling, including the effective date of the policy. State Farm points out that the sole case cited by plaintiff actually held that the insurer is bound by the effective date written on the MAIPF form. *Jackson v Transamerica Ins Corp*, 207 Mich App 460, 462; 526 NW2d 31 (1994). The *Jackson* court stated, "we decline to apply any date or time contrary to that clearly expressed in the MAIPF forms." *Id.* at 463. In *Jackson*, the defendant insurer there sought to make the effective date later than what was stated on the MAIPF forms. The *Jackson* Court noted that there was nothing in the materials submitted indicating that coverage was meant to be effective other than as clearly stated on the policy change request form. State Farm seeks to enforce the date on the police change request form and has submitted material in support of its position.

We find a more recent Court of Appeals decision to be exactly on point. *Auto-Owners Ins Co v Michigan Mutual Ins Co*, 223 Mich App 205; 565 NW2d 507 (1997). In *Auto-Owners*, the trial court granted summary disposition in favor of the claimants on its finding that, “because a certificate of insurance was issued indicating that coverage had begun at the time of the accident, and because claimants were innocent third parties, Michigan Mutual was estopped from denying coverage.” This Court disagreed, stating, “Because Michigan Mutual had issued no policy at the time of the accident and because Central Insurance had no implied or apparent authority to bind Michigan Mutual to immediate coverage, the trial court erred in granting summary disposition in favor of plaintiff and denying Michigan Mutual's motion for summary disposition.” *Id.*, 216. We find *Auto-Owners* to be controlling.

The policy change request form signed by plaintiff's mother clearly indicated that Vance had no authority to bind State Farm. Since there was no policy in effect on the date of the accident, State Farm was not liable. The trial court erred by denying its motions for summary disposition and by granting plaintiff's motion for summary disposition.

Reversed.

/s/ Mark J. Cavanagh

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly