

STATE OF MICHIGAN
COURT OF APPEALS

SHARON B. FRALEY and RONALD LEE
FRALEY,

UNPUBLISHED
April 28, 2000

Plaintiffs-Appellees,

v

No. 211018
Oakland Circuit Court
LC No. 97-543100-CK

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant-Appellant.

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying its motion for summary disposition and granting plaintiffs' motion for summary disposition and to compel arbitration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A vehicle driven by Sharon Fraley collided with a truck driven by Anthony Lavelle. After providing insurance information to Fraley, Lavelle left the scene. The police report was compiled from the information provided to Fraley by Lavelle. That information indicated that Lavelle was driving a 1974 truck at the time the accident occurred.

Plaintiffs filed suit after defendant, who issued them a policy for uninsured motorist coverage, refused to pay their claim, notwithstanding the fact that Lavelle's father's insurer had informed them that the 1974 truck was not insured on the date of the accident. Plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(7) and to compel arbitration pursuant to the terms of the contract of insurance. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the evidence showed that on the date of the accident Lavelle was driving an insured 1981 truck, and had handed insurance papers for the 1974 truck to Fraley by mistake.

* Circuit judge, sitting on the Court of Appeals by assignment.

The trial court granted plaintiffs' motion for summary disposition and to compel arbitration, and denied defendant's motion for summary disposition. The court found that the

policy of insurance issued to plaintiffs by defendant contained a valid arbitration clause which provided that if the parties disagreed as to whether plaintiffs were entitled to benefits, either party could demand arbitration. Moreover, the trial court found that plaintiffs presented adequate proof that the truck driven by Lavelle at the time of the accident was uninsured.

We review a trial court's decision on a motion for summary disposition on a de novo basis. When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pleaded allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA of Benton Harbor/St. Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

Defendant argues that the trial court erred by denying its motion for summary disposition and granting plaintiffs' motion for summary disposition and to compel arbitration. Defendant asserts that the evidence presented by plaintiffs in support of their motion, specifically the police report and Fraley's affidavit, was inadmissible hearsay because it was based on information given to Fraley by Lavelle. We disagree and affirm. Defendant's argument regarding the admissibility of the evidence submitted in support of plaintiffs' motion for summary disposition and to compel arbitration was not presented to or ruled on by the trial court, and thus is not preserved for appellate review. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Our review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987).

The unobjected to evidence presented to the trial court established that an issue of fact existed as to whether Lavelle was driving the 1974 truck or the 1981 truck at the time of the accident. Defendant does not contest the trial court's finding that the policy issued to plaintiffs contained a valid and enforceable arbitration clause. The decision to not address the unpreserved issue of the admissibility of the evidence submitted in support of plaintiffs' motion for summary disposition and to compel arbitration does not result in manifest injustice. *Herald Co, Inc v City of Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998).

Affirmed.

/s/ Roman S. Gribbs
/s/ Martin M. Doctoroff
/s/ Thomas L. Ludington