

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TITAN INSURANCE COMPANY,

Plaintiff-Appellant,

v

JACK L. SEIFERT and CINDY LYNN LABELLE,

Defendants-Appellees.

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UNPUBLISHED

May 23, 2000

No. 212840

Houghton Circuit Court

LC No. 97-010227-CZ

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition, MCR 2.116(C)(10),<sup>1</sup> of its action for a declaratory judgment. On appeal, plaintiff argues that the policy of its insured excluded coverage because the insured's intentional act was the cause of the victim's injuries. We reverse and remand.

This case arises out of an October 1993 incident in which defendant LaBelle collided with the back of defendant Seifert's truck. In October 1996, Seifert filed suit against LaBelle in Houghton Circuit Court, alleging that at the time of the collision, LaBelle operated her automobile in a negligent and careless manner. Plaintiff was the insurer of Labelle's vehicle. In September 1997, plaintiff filed an action seeking a declaration, pursuant to MCR 2.605(A)(1), that under the facts of the case, it had no duty to defend or indemnify LaBelle.

Plaintiff seized on statements contained in emergency room reports in which hospital personnel recorded LaBelle's declaration that she intentionally collided with Seifert's vehicle in an attempt to commit suicide. Seifert and LaBelle countered with a motion for summary disposition in which they cited LaBelle's deposition testimony that she fabricated the suicide story in an effort to avoid prosecution for driving while intoxicated. The parties did not dispute that LaBelle had a blood alcohol content of .275 at the time of the collision. The trial court granted defendants' motion and dismissed the complaint.

We review de novo a trial court's order granting summary disposition in a declaratory judgment action. *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999); *Stajos v*

*Lansing*, 221 Mich App 223, 226; 561 NW2d 116 (1997). Courts have the ability, by virtue of MCR 2.605(A)(1), to “declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” Declaratory judgments are useful in adjudicating “before trial” conflicts arising between insured and insurer. *Allstate Ins Co v Hayes*, 442 Mich 56, 65; 499 NW2d 743 (1993). In deciding a motion for summary disposition under MCR 2.116(C)(10), the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists to warrant a trial. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Chandler v Dowell Schlumberger, Inc*, 456 Mich 395, 397; 572 NW2d 210 (1998).

In the present case, plaintiff presented evidence to the trial court that tended to establish that LaBelle’s collision with Seifert’s truck was intentional. Defendants, in contrast, provided LaBelle’s deposition testimony in which she asserted that her intoxication was the cause of the collision, and that she did not intend to commit suicide. We conclude, based on this conflicting evidence, that a genuine issue of material fact existed regarding whether LaBelle intentionally collided with Seifert. This factual dispute precluded defendants’ request for summary disposition under MCR 2.116(C)(10). We therefore remand for further proceedings to resolve this factual issue. The trial court must make specific findings of fact and determine whether plaintiff is required to defend and indemnify LaBelle.

Reversed and remanded. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Peter D. O’Connell

<sup>1</sup> Defendants’ summary disposition motion requested dismissal on the basis of both MCR 2.116(C)(8) and (C)(10). However, because the trial court relied on matters outside the pleadings, we construe the motion as having been granted pursuant to MCR 2.116(C)(10). *Krass v Joliet, Inc*, 233 Mich App 661, 664-665; 593 NW2d 578 (1999).