

STATE OF MICHIGAN
COURT OF APPEALS

ANDRE SPEARMAN,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

January 8, 2002

No. 224351

Wayne Circuit Court

LC No. 99-910862-NI

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders granting defendant's motion for summary disposition and denying plaintiff's motion for reconsideration. We affirm.

Plaintiff sustained injuries as result of an automobile accident involving a vehicle in which plaintiff was a passenger. Tawana Williams owned the vehicle and Patricia Mann drove it. However, neither Williams nor Mann carried insurance. Plaintiff brought suit against Mann and Williams. Williams asserted that she did not give Mann permission to drive the vehicle. In consideration of receiving \$400, plaintiff signed a document releasing Williams along with "her executors, administrators, and all persons or organizations responsible for her acts from all claims and causes of action for all injuries, losses, and damages" arising from the accident.

Thereafter, plaintiff sought uninsured motorist benefits under a policy issued by defendant to his mother, with whom he lived. Defendant denied the request. Plaintiff filed this action to compel defendant to arbitrate plaintiff's claim for uninsured motorists benefits.

Relying on the terms contained in the release executed by plaintiff, defendant moved for summary disposition in accord with MCR 2.116(C)(7), (8) and (10). Defendant argued that the terms of the release absolved it from any liability. Additionally, defendant argued that pursuant to the terms of the insurance policy, plaintiff's claim was void because plaintiff settled the bodily injury claim without defendant's consent.

The trial court granted defendant's motion and denied plaintiff's motion for reconsideration. This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Dampier v Charter County of Wayne*, 233 Mich App 714, 720; 592 NW2d 809 (1999). In making this

determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

Although the trial court was apparently persuaded by defendant's argument concerning the scope of the release, plaintiff's argument on appeal primarily focuses on whether the exclusion contained in the policy barred plaintiff's claims. The policy states in pertinent part that:

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained ...

* * *

2. If that person or the legal representative settles the "bodily injury" claim without [defendant's] consent.

According to plaintiff, in releasing the owner, he did not "settle the bodily injury claim" under the policy, because he was not legally entitled to recover damages from the owner since the owner did not give the driver permission to operate the vehicle.

We disagree with plaintiff's interpretation of the policy. Plaintiff executed a release absolving the owner and others "responsible for her acts from all injuries, losses, and damages sustained by [plaintiff], arising from an incident, all or part of which occurred on or about May 7, 1994 in Detroit, Michigan." The release further states, "I intend this document to operate as a release for all consequences of the injuries, losses and damages sustained by me whether or not I am presently aware of such consequences." By executing this comprehensive release, plaintiff settled the bodily injury claim with the owner of the vehicle. Defendant is not required to show prejudice in order to rely on the exclusion as a bar to plaintiff's recovery. *Lee v Auto-Owners Ins Co (On Second Remand)*, 218 Mich App 672, 676; 554 NW2d 610 (1996). Although it appears that the trial court did not grant summary disposition on this basis, this Court will nevertheless affirm where the trial court reached the correct result for a different reason. *Kosmyna v Botsford Community Hosp*, 238 Mich App 694, 701; 607 NW2d 134 (1999).

In light of our conclusion, we need not decide whether the trial court correctly determined that defendant was included within the scope of the release.

Plaintiff also argues that the issue of his entitlement to damages should have been submitted to arbitration and not otherwise decided by the court. Plaintiff, however, raised this argument for the first time in his motion for reconsideration, after the court granted defendant's motion for summary disposition. Because the reconsideration motion contained facts and theory that plaintiff could have pled or otherwise set forth in response to defendant's motion for summary disposition, the trial court did not abuse its discretion by denying plaintiff's motion for reconsideration. *Charbeneau v Wayne County Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Harold Hood

/s/ Martin J. Doctoroff