STATE OF MICHIGAN

COURT OF APPEALS

AARON WILLIAMS, by his Next Friend, ANGELA WILLIAMS, and ANGELA WILLIAMS, individually

Plaintiffs-Appellants,

v

ALLSTATE INSURANCE COMPANY, a/k/a ALLSTATE INDEMNITY COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 10, 2002

No. 229005
Lenawee Circuit Court
LC No. 00-008493-NF

Before: Holbrook, Jr., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

This case originates from an automobile accident that occurred in Ohio on August 3, 1997. Rory Williams, now deceased, was driving a vehicle in which his wife, Angela Williams was in the passenger's seat, and their son, Aaron Williams, was in the rear seat. Upon entering an intersection, Rory Williams' vehicle stalled and was hit by a truck. At the time of the accident, plaintiffs had a Florida automobile insurance policy issued by defendant that had been in effect since 1995. In 1995, plaintiffs were residents of Florida, but moved to Michigan in the summer of 1996. Plaintiffs, however, did not obtain Michigan automobile insurance, Michigan driver's licenses, Michigan automobile registrations, or Michigan license plates.

Plaintiffs filed their complaint, seeking to have the Florida insurance policy reformed to be in accordance with Michigan no-fault automobile insurance law. The Florida policy was less expensive for plaintiffs, but Florida law is not as comprehensive in providing benefits as Michigan law. Defendant moved for summary disposition, which the trial court granted.

We review de novo the trial court's decision on the motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). While the trial court failed to specify under which section it granted defendant's motion for summary disposition, based on the trial court's comments, it appears to have done so pursuant to MCR 2.116(C)(10). Summary disposition pursuant to MCR 2.116(C)(10) assesses the factual support for a claim. *Maiden, supra* at 120. When deciding a motion for summary disposition on the basis of MCR

2.116(C)(10), a court must consider all pleadings, affidavits, admissions, depositions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Maiden*, supra at 120. Where the proffered evidence fails to establish a genuine issue of a material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiffs contend that they are entitled to have their Florida insurance policy reformed to comply with the requirements of Michigan's no-fault act under MCL 500.3012, which governs the issuance of a noncomplying insurance policy. MCL 500.3012 provides:

> Such a liability insurance policy issued in violation of sections 3004 through 3012 shall, nevertheless, be held valid but be deemed to include the provisions required by such sections, and when any provision in such policy or rider is in conflict with the provisions required to be contained by such sections, the rights, duties and obligations of the insured, the policyholder and the injured person shall be governed by the provisions of such sections: Provided, however, That the insurer shall have all the defenses in any action brought under the provisions of such sections that it originally had against its insured under the terms of the policy providing the policy is not in conflict with the provisions of such sections.

However, the insurance policy in this case was not issued in violation of the Michigan no-fault act because defendant did not purport to issue a policy in compliance with Michigan law, nor is there evidence indicating that defendant knew it was dealing with a Michigan resident. *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38; 592 NW2d 395 (1998).

Contrary to plaintiffs' assertion that "Allstate knew without a doubt that its insureds were Michigan residents," there is absolutely no evidence in the record that defendant knew or had reason to know that plaintiffs were Michigan residents at the time of the accident. In fact, at the motion hearing, plaintiffs' counsel stated that he could not affirmatively state that defendant knew that plaintiffs were permanent residents of Michigan at the time of the accident. Therefore, this case is controlled by *Farm Bureau*, *supra* at 41, where this Court held that the defendant insurance company that issued an Indiana automobile policy to its insured who was a resident of Michigan did not violate Michigan law by issuing the Indiana insurance policy because there was no evidence that the defendant should have known that its insured was a Michigan resident.

At her deposition, plaintiff Angela Williams admitted to updating the registration of plaintiffs' vehicles in Florida at the time of their expiration, which was after plaintiffs had moved to Michigan. Moreover, at that time, plaintiffs represented to Florida authorities that they were residents of Florida, and only temporarily in Michigan. Plaintiffs never changed the license plates, registration, or driver's licenses in Michigan. Angela Williams testified that this was never done because they were unsure if they were going to remain in Michigan.

Additionally, under the policy, it is the obligation of the insured to notify defendant of any events that could impact their coverage. While defendant acknowledges that there was communication between plaintiffs and one of its Florida agents after plaintiffs moved to Michigan, in her deposition Angela Williams expressly stated that she did not remember any details about her contact with the Florida agent. Additionally, an affidavit from the Florida agent refers to documentation recorded under an endorsement for a temporary change in address after such communication, stating: "[I]nsured has policy here and in Michigan. Needs to keep Florida

policy in force. Vehicle is here, meaning in Florida and they will be coming back. Just wants her bills to go to Michigan until they return to Florida." Alternatively, there is no evidence in the record, aside from a temporary change of address, that plaintiffs at any time advised defendant that they had changed their residence permanently.

Accordingly, the trial court did not err in granting summary disposition in favor of defendant because there is no evidence from which to conclude that defendant reasonably should have known that plaintiffs were Michigan residents. Defendant did not violate Michigan law by issuing the Florida automobile insurance and plaintiffs are not entitled to reformation of the insurance policy.

In addition, in a companion (but not consolidated) case pending in the trial court, plaintiffs are seeking damages for the alleged negligence of Rory Williams. Defendant, in its motion for summary disposition, also argued for the application of a family exclusion clause to the companion case, which would absolve defendant of liability in that action. The trial court ruled on that issue and the parties now seek a review of that ruling. However, because the issue of the application of the family exclusion clause is pertinent exclusively to the companion case, this Court does not have jurisdiction to consider this issue. *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001). The aggrieved party should have sought an appeal from that separate lower court action.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder