STATE OF MICHIGAN

COURT OF APPEALS

EDWARD BOLDA,

Plaintiff-Appellant,

v

CHUBB INSURANCE,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

UNPUBLISHED
November 26, 2002

No. 237401
Macomb Circuit Court
LC No. 01-001294-NF

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff Edward Bolda appeals as of right the order granting summary disposition in favor of defendant Chubb Insurance ("Chubb").[1] We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff challenges the trial court's dismissal of his claims pursuant to MCL 500.3145.[2] Plaintiff maintains that the trial court should have found that Chubb was estopped from asserting

[1] Defendant State Farm Mutual Automobile Insurance Company is not a party to this appeal.

[2] The parties do not dispute that plaintiff failed to file a complaint or to provide written notice of his personal injury claim within one year of his injury pursuant to MCL 500.3145 which states in pertinent part:

> Sec. 3145. (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal

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the statute of limitations under this section. He maintains that, when his attorney called Chubb's insurance adjuster shortly before the expiration of the one year limitations period, she informed his attorney that she would open a claim file. She then requested that plaintiff's attorney send her the medical bills for plaintiff's injury. During the hearing below, plaintiff's attorney claimed that he took this to mean that he did not need to send written notice of plaintiff's claim as required by MCL 500.3145 and did not do so.[3] Plaintiff later filed the instant action after his claims had been rejected.

Relying mainly on *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263; 562 NW2d 648 (1997), plaintiff contends that defendant should be equitably estopped from asserting the statute of limitations as a bar to plaintiff's action. An insurance company may be estopped from asserting the one-year statute of limitations as a bar to a claim if its own actions induced the claimant to refrain from filing suit until after the limitations period expired. *Id*., 264. One who seeks to invoke doctrine of equitable estoppel generally must establish that there has been (1) false representation or concealment of material fact, (2) expectation that other party will rely on misconduct, and (3) knowledge of actual facts on part of representing or concealing party. *Id*., 270.

However, the trial court in the instant case correctly noted that, even reviewing plaintiff's attorney's affidavit and assertions during the hearing below in the light most favorable to plaintiff, plaintiff has failed to present evidence of assertions comparable to those in *Cincinnati* so as satisfy the elements of estoppel. His attorney's testimony does not support his assertion that Chubb's agent sought to induce plaintiff to forgo providing written notice to defendant under the requirements of MCL 500.3145. Unlike the situation in *Cincinnati*, plaintiff has presented no indication that Chubb's adjuster prevented plaintiff from providing timely notice or requested

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> protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

[3] According to Chubb's adjuster, she merely informed plaintiff's attorney that she would speak with her supervisor and retrieve the claim file from storage. Apparently, the property damage portion of the claim had been previously settled. She denied telling the attorney that the written notice required pursuant to MCL 500.3145 was waived or that she induced him to refrain from filing a written notice of injury. Because this Court reviews the facts presented in the light most favorable to the nonmoving party in resolving the question of whether summary disposition is appropriate, see *Cole v Lambroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000); *Brennan v Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001), we accept plaintiff's allegations as true for the purpose of the instant appeal.

that plaintiff's attorney forego filing notice for the convenience of Chubb. See *Id*., 271-272. Specifically, plaintiff's attorney never asserted that Chubb's agent told him that written notice would not be necessary. He merely stated that he "didn't feel it would be necessary to send any written notice." This is a statement of subjective belief, not of objective inducement.

In discussing the use of equitable estoppel, the *Cincinnati* Court reiterated that the doctrine is a judicially created exception to the general rule that statutes of limitation run without interruption. *Id*., 270. Courts should therefore be "reluctant" to recognize an estoppel "absent intentional or negligent conduct *designed to induce* a plaintiff to refrain from bringing a timely action." *Id*., (emphasis added). In addition, we note that the basic premise of the theory of promissory estoppel is that the promise be clear and definite. *State Bank of Standish v Curry*, 442 Mich 76, 85; 500 NW2d 104 (1993). Thus, in the absence of evidence of a specific indication by appellee's agent that plaintiff need not provide written notice or that it would simply waive the statute of limitations, the trial court did not err in finding that defendant was not estopped from asserting MCL 500.3145 as a defense to plaintiff's claim.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski