STATE OF MICHIGAN

COURT OF APPEALS

KERRY J. MOCKERMAN,

Plaintiff-Appellant,

v

NORTH POINTE INSURANCE COMPANY, BRIAN INGERSOLL, and PROFESSIONAL LAWN CARE & LANDSCAPING, INCORPORATED,

Defendants-Appellees,

and

BEST BUY INSURANCE AGENCY, INCORPORATED and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants.

UNPUBLISHED
July 8, 2003

No. 237354
Kent Circuit Court
LC No. 99-012357-NF

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant North Pointe Insurance Company's (North Pointe) motion for summary disposition.[1] We affirm.

In deposition, plaintiff testified that he purchased a van from Dave's Auto Sales, but he did not need insurance because the vehicle was inoperable. Shortly before his birthday in the summer of 1998, plaintiff was referred by a friend to the Best Buy Insurance Agency to obtain

[1] The trial court granted defendant North Pointe's motion for summary disposition. The case proceeded to trial to address the negligence and any damages of defendants Brian Ingersoll and Professional Lawn Care & Landscaping, Incorporated. A jury awarded plaintiff a judgment of $89,116.09 against these defendants. The jury verdict is not challenged on appeal. For ease of reference, the use of the term defendant references North Pointe only.

insurance for the vehicle. Although plaintiff could not recall specific information regarding the execution of the insurance contract with defendant,[2] he identified his signature on the document and recalled making a down payment on a six-month policy of insurance.[3] Plaintiff agreed to pay the cost of the insurance premium in installments, although he could not recall the number of installment payments. Plaintiff could not recall receiving a payment coupon book or a notice of intent to cancel the insurance policy based on non-payment of the premium. Plaintiff acknowledged that the documentation did contain his correct mailing address. Plaintiff further testified that he lived alone and had to access his mailbox with a key. Plaintiff did not report any difficulty with receipt of any other mail and did not make any payments following the initial installment payment. Plaintiff reported learning of the cancellation of his policy only after being involved in an accident with Ingersoll in December 1998. Plaintiff's policy of insurance indicated its expiration in January 1999. Consequently, plaintiff sought insurance benefits based on his insurance policy with defendant.

Coverage was refused based on the cancellation of the policy due to nonpayment of the premium installments. Defendant alleged that a ten-day notice of intent to cancel the account was sent to plaintiff by Westshore, the finance company, on July 30, 1998, which identified plaintiff's correct name and address. The notice of intent to cancel was not returned to Westshore. After plaintiff did not respond, Westshore sent a notice of cancellation to plaintiff on August 10, 1998. Following notice of cancellation from Westshore, defendant sent its own notice of cancellation of the policy dated August 19, 1998. The mailings to plaintiff were not returned as undeliverable. Consequently, defendant submitted affidavits delineating custom and practice of detection of outstanding accounts and the notice procedures to the insured following detection. The trial court granted defendant's motion for summary disposition, concluding that plaintiff's "bold assertion" denying receipt did not create a question of fact regarding mailing.

Plaintiff alleges that the trial court erred in concluding as a matter of law that the notice of cancellation was mailed because the presumption of mailing was rebutted by plaintiff's deposition testimony. We disagree. An appellate court reviews the grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

This case is governed by *Doshi v Michigan Basic Property Ins Ass'n*, 229 Mich App 595, 599-603; 582 NW2d 542 (1998). In *Doshi*, this Court held that the cancellation of an insurance contract by a premium finance company merely required compliance with the provisions of MCL 500.1511. *Id*. at 603. MCL 500.1511 provides for cancellation of an insurance contract based on a mailing of a notice of cancellation with not less than ten days' notice.[4] This Court

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[2] The documentation indicates that defendant issued the insurance policy. However, Westshore Premium Finance Company (Westshore) provided the financing for the automobile insurance.

[3] Plaintiff did not produce any documentation that he received at the time of execution of the insurance contract. He explained that the documentation was in the van, and the van was "totaled" following the accident.

[4] Plaintiff does not dispute defendant's ability to cancel. MCL 500.1511(1). We note that, as in
(continued…)

expressly rejected application of the notice provisions of MCL 500.3020 to a premium finance company. Furthermore, the plaintiff's denial of receipt of the ten-day notice did not alter the defendant's entitlement to summary disposition. *Id*. at 598 n 1. Accordingly, the trial court properly granted defendant's motion for summary disposition despite plaintiff's denial of receipt of the notice of cancellation where defendant submitted evidence of compliance with the mailing requirements of MCL 500.1511.[5] *Doshi, supra*.

Plaintiff's challenge to the compliance with MCL 500.1508 is without merit. The Legislature did not provide for a sanction for a procedural defect in the provisions of MCL 500.1508, and therefore, we will not sua sponte add a sanction. See *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991).

Affirmed.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood

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Doshi, power of attorney was given in the documentation executed by plaintiff. *Doshi, supra* at 601.

[5] Plaintiff's reliance on *Good v Detroit Automobile Inter-Ins Exchange*, 67 Mich App 270; 241 NW2d 71 (1976) is misplaced. The *Good* Court addressed MCL 500.3020 and whether *actual* receipt of notice to effectuate cancellation was required. The *Good* Court also noted that the statute stated that mailing was prima facie proof of notice. *Id*. at 273. Our Supreme Court recently concluded that MCL 500.3020 does not require actual notice to the insured to effectuate cancellation of a policy. *Nowell v Titan Ins Co*, 466 Mich 478, 479-480, 488; 648 NW2d 157 (2002). Rather, mailing of the notice must occur in a manner so as to arrive at least ten days before the date specified for cancellation for the notice to be effective. *Id*. The *Good* decision did not address the provisions of MCL 500.1511. Furthermore, plaintiff's denial of receipt of the notice of cancellation failed to address defendant's compliance with the mailing requirement of MCL 500.1511. A deficiency in the custom and practice of identifying policies to be cancelled and the mailing of notices is not established by an absence of receipt of notice.