STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellant,

v

RUTH WILSON, THOMAS D. DRINKWINE, AMBER BROWN, CHRYSTAL BUTTERFIELD, BRIAN BLAIR, ZACK THOMAS, CHRISTINE ALMAREZ, CHRYSTAL FERRIS, NICHOLAS LAWSON, and DEBRA LEE VANIER,

Defendants,

and

JOSE HERNANDEZ,

Defendant-Appellee.

UNPUBLISHED
February 15, 2005

No. 250735
Genesee Circuit Court
LC No. 01-070445-CK

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying its request to reform an automobile insurance policy, and granting judgment in favor of defendant-appellee Jose Hernandez. We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to reform an automobile insurance policy issued to defendant Ruth Wilson. Plaintiff sought to reduce Wilson's residual tort liability coverage from the policy limits of $100,000 a person, and $300,000 an accident, to the statutory minimums of $20,000 a person, and $40,000 an accident. MCL 500.3009. Plaintiff alleged that reformation was warranted because Wilson misrepresented information on her insurance application. Specifically, in response to the question whether there were other drivers in her household, Wilson failed to disclose that defendant Thomas Drinkwine, an uninsurable driver with a lengthy history of traffic offenses, lived in her household. After plaintiff issued its policy to Wilson, Drinkwine was involved in an automobile accident while driving Wilson's vehicle. Defendant Hernandez, a passenger in the vehicle, was injured in the accident. Hernandez maintained that

reformation of the policy was not warranted because Wilson's misrepresentation was easily ascertainable by plaintiff. The trial court agreed and entered judgment in favor of Hernandez.

MCL 257.520 provides, in pertinent part:

> (f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:
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> (1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy, and except as hereinafter provided, *no fraud, misrepresentation, assumption of liability or other act of the insured in obtaining or retaining such policy* or in adjusting a claim under such policy, and no failure of the insured to give any notice, forward any paper or otherwise cooperate with the insurance carrier, *shall constitute a defense as against such judgment creditor*.
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> * * *
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> (g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy *and such excess or additional coverage shall not be subject to the provisions of this chapter*. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section. [Emphasis added.]

This Court held in *Lake States Ins Co v Wilson*, 231 Mich App 327, 331-332; 586 NW2d 113 (1998), that a no-fault insurance carrier is entitled to reform a policy to revoke non-mandatory coverage if the insured made a material misrepresentation in the application and the fraud could not have been ascertained easily by the insurer at the time the contract of insurance became effective.

Here, defendants do not dispute that Wilson made a material misrepresentation in her insurance application when she falsely indicated that there were no other drivers in her household. Nonetheless, the trial court concluded that plaintiff could have easily ascertained Wilson's misrepresentation with respect to Drinkwine because a search of an AUI database had revealed the names of three licensed drivers who resided with Wilson, but were not named on her application. When plaintiff's agent's administrative assistant questioned Wilson about these persons, Wilson explained that one was her deceased husband and that she had never heard of the other two. Based on this explanation, plaintiff issued the policy. The trial court reasoned that if plaintiff had sought more information about the two other persons, it might have discovered that Drinkwine was also a member of plaintiff's household.

We disagree with the trial court's reasoning. There is no indication in the record that the two persons identified in the AUI search (other than Wilson's deceased spouse) actually lived with Wilson, so there is no basis to conclude that the discovery of these two names, or further investigation of the names, would have revealed that Wilson gave false information. Nor is there any indication that either of these two other persons were not insurable, such that their presence in Wilson's household would have caused plaintiff not to issue a policy. More significantly, there is no reason to believe that further investigation of these other names would have led to information about Drinkwine. Thus, there is no basis for inferring a causal connection between plaintiff's failure to further investigate the other two names revealed in the AUI search and its failure to discover that Drinkwine was a member of Wilson's household. Therefore, the trial court erred in determining that Wilson's misrepresentation was easily ascertainable.

The trial court also erred in relying on a public policy rationale as a basis for denying plaintiff's request for reformation. It is clear from MCL 257.520(g) and this Court's decision in *Lake States*, *supra*, that this state's public policy of protecting innocent third persons does not extend to excess or optional coverage that the insured party would not have obtained but for her misrepresentation.

We therefore reverse the judgment for defendant and remand for entry of an order reforming the insurance policy to provide liability coverage only for the statutory minimums of $20,000 a person, and $40,000 an accident.

Reversed and remanded. We do not retain jurisdiction

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen.