

STATE OF MICHIGAN
COURT OF APPEALS

DEAN KEVIN SPAULDING and CAROL ANN
SPAULDING,

UNPUBLISHED
May 12, 2005

Plaintiffs-Appellants,

v

FARMERS INSURANCE EXCHANGE,

No. 251910
Allegan Circuit Court
LC No. 02-032124-NI

Defendant-Appellee.

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs had an automobile insurance policy with defendant, which was scheduled to expire on May 2, 1997, if the renewal premium was not paid. On April 2, 1997, defendant mailed a renewal premium notice to plaintiffs. Defendant subsequently mailed plaintiffs an expiration notice on May 8, 1997, and a cancellation notice on May 24, 1997, indicating that the policy was cancelled, effective May 2, 1997, for nonpayment of the premium. On June 20, 1997, plaintiff Carol Spaulding was involved in an automobile accident that resulted in an action being filed against plaintiffs. Defendant denied plaintiffs insurance coverage, claiming that the policy had expired. Plaintiffs filed this action, seeking a ruling that defendant was obligated to provide a defense and indemnification in accordance with the policy. Plaintiffs claimed to have paid the premium, and denied receiving the expiration and cancellation notices. The trial court granted defendant's motion for summary disposition, concluding that there was no genuine issue of material fact with regard to whether the premium payment was made.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003) (citations omitted).

It is undisputed that, by its own terms, the automobile policy expired on May 2, 1997, if the premium was not paid. In a deposition, Carol Spaulding testified that she put cash, along with the renewal premium notice, in an envelope, and “put the money into a night deposit.” But she could not recall the exact date the payment was made, whether she had “done that” in the day or night, whether she or “one of [her] boys” deposited the money, or what amount of money was placed in the envelope. Further, although Carol Spaulding testified that she placed the renewal notice in the envelope with the cash, she also testified that she did not recall if she had ever received the renewal notice. Carol Spaulding could not locate a receipt or other documentation showing that she made the May 2, 1997, payment. When asked if she received a receipt when previously paying after business hours, she stated, “Sometimes in the mail.” In her affidavit, Carol Spaulding speculated that “someone from the [insurance] Agency took the cash from [her] envelope and failed to properly credit [her] account,” but no evidence was offered in support of this belief.

To oppose a motion for summary disposition, the nonmoving party “must present more than conjecture and speculation to meet their burden of providing evidentiary proof [to] establish[] a genuine issue of material fact.” *Libralter Plastics, Inc v Chubb Group*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Here, plaintiffs failed to set forth specific facts to meet the required burden of proof. Consequently, we affirm the trial court’s grant of summary disposition to defendant.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter