# STATE OF MICHIGAN

# COURT OF APPEALS

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TRACEY PICKETT-HOLMES,

Plaintiff-Appellant,

v

FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellee.

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UNPUBLISHED
August 23, 2005

No. 253058
Monroe Circuit Court
LC No. 03-016360-CK

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant summary disposition on plaintiff's claim for uninsured motorist benefits. We affirm.

Plaintiff first argues the trial court erred in granting summary disposition to defendant because a one-year limitations period contained within defendant's uninsured motorist insurance policy was confusing. We disagree.

A trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.* We must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). The construction and interpretation of the language of an insurance contract presents an issue of law that is also reviewed de novo. *Allstate Ins Co v Muszynski*, 253 Mich App 138, 140-141; 655 NW2d 260 (2002).

There is no dispute that, at the time of the accident, plaintiff was insured under defendant's policy. Part IV of the policy, entitled "Family Protection Coverage," provides uninsured motorist coverage. Following Part IV are three further sections entitled "Conditions," "Special Conditions," and "Mutual Conditions." In addition to this original policy, defendant issued various amendatory endorsements, including Amendatory Endorsement 2013. Within

Amendatory Endorsement 2013 is the one-year limitations period in which to file a legal action against defendant. In pertinent part, Amendatory Endorsement 2013 provides.

> PART IV – FAMILY PROTECTION COVERAGE (INNOCENT VICTIM)
>
> * * *
>
> Action Against Company is replaced by the following.
>
> No action can be brought against the company, unless there has been full compliance with all of the policy provisions. No claimant may bring a legal action against the company more than one year after the date of the accident.

Plaintiff argues that because the title in Amendatory Endorsement 2013, "Action Against Company" cannot be found in Part IV of the policy, the amendment is confusing and misleading. However, in *Hellebuyck v Farm Bureau General Ins Co of MI*, 262 Mich App 250, 255; 685 NW2d 684 (2004), this Court held that the same amendatory endorsement was not confusing or misleading, stating:

> . . . the heading on the amendment was not likely to confuse or mislead plaintiff. The title immediately above the amended contract language, "Action Against Company," is easily found in the "Conditions" section to the policy and was obviously meant to change the language appearing under that title. [*Hellebuyck, supra*.]

Accordingly, we reject plaintiff's argument that application of Amendatory Endorsement 2013 is confusing or misleading.

Plaintiff next argues that summary disposition was improper because Amendatory Endorsement 2013 was ambiguous in regard to the one-year time limit for initiating suits for uninsured motorist claims. We disagree.

Michigan does not require underinsured motorist coverage. "Because such insurance is not mandated by statute, the scope, coverage, and limitations of underinsurance protection are governed by the insurance contract and the law pertaining to contracts." *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 19; 592 NW2d 379 (1998), citing *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 10-11; 512 NW2d 324 (1993).

This Court held, in *Hellebuyck, supra*, that the same contract language at issue, "No claimant may bring a legal action against the company more than one year after the date of the accident," is not ambiguous and "clearly barred actions for underinsured motorist benefits brought more than one year after the accident that gave rise to those claims." *Id*. Thus, we reject plaintiff's argument that the Amendatory Endorsement 2013 is ambiguous.

Plaintiff further maintains Amendatory Endorsement 1901, which states that "Terms of this policy which are in conflict with the statutes of Michigan are amended to conform to such statutes," is in conflict with Amendatory Endorsement 2013, because MCL 600.5807(8) provides

for a six-year limitation period for "all other actions to recover damages or sums due for breach of contract" while Amendatory Endorsement 2013 only provides a one-year limitation period.

Amendatory Endorsement 2013 does not conflict with MCL 600.5807(8). "Statutes of limitation are procedural devices intended to promote judicial economy and the rights of defendants." *Stephens v Dixon*, 449 Mich 531, 534; 536 NW2d 755 (1995). Both Amendatory Endorsement 2013 and MCL 600.5807(8) would prevent actions not commenced within six years. Contrary to plaintiff's argument, MCL 600.5807(8) does not grant plaintiff the right to file an action for breach of contract within six years; rather, it bars breach of contract actions not filed within six years. Thus, Amendatory Endorsement 2013 is not in conflict with MCL 600.5807(8) because they would both bar actions not commenced within six years.

Plaintiff next argues that the trial court erred in failing to toll the period of limitations on the uninsured motorist policy. We disagree. The limitation period in this case is governed solely by the language of the insurance contract and contract law, as underinsured motorist coverage is not mandated by statute. *Mate, supra*. Hence the rights and duties that arise under the contract are derived solely from the terms of the agreement. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62; 664 NW2d 776 (2003), citing *Evans v Norris*, 6 Mich 369, 372 (1859).

Plaintiff was injured on February 6, 2001. On March 2, 2001, plaintiff gave notice to defendant that she would be making a claim for uninsured motorist benefits under the insurance policy. Defendant timely responded within fifteen days of receiving notice of plaintiff's potential claim, and indicated that to make a claim under the uninsured motorist provision of the insurance policy, plaintiff was required to show that the tortfeaser was uninsured and complete certain medical documents that defendant had included in its response. Plaintiff failed to show that the tortfeaser was uninsured until well after February 6, 2002, and no medical documents were forwarded to defendant until July 16, 2002. Given plaintiff's failure to comply with the provisions for filing a formal claim pursuant to the insurance policy, and that neither defendant nor the operation of the insurance policy significantly contributed to plaintiff's tardiness, we hold there exists no basis for tolling. See *Camelot Excavating Co Inc v St Paul Fire and Marine Ins Co*, 410 Mich 118, 124-126, 132 n 6; 301 NW2d 275 (1981). The policy provision is clear and unambiguous and provides for a one-year limitation period for filing a legal action, accruing from the date of the accident. Therefore, there is no basis within the policy itself, or by law, requiring judicial tolling of the limitation period.

Finally, plaintiff argues that the trial court erred in not disregarding the one-year limitation period for uninsured motorist claims on the grounds that the provision is unreasonable. We disagree.

Our Supreme Court in *Rory v Continental Ins Co*, ___ Mich ___; ___ NW2d ___ (2005), addressed a challenge to the same contractual provision providing for a shortened period of limitations on the grounds that it violated the "the reasonableness doctrine." The Court stated:

> [W]e hold that an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy. A mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions. [*Rory, supra* at slip op 14.]

Therefore, the trial court properly rejected plaintiff's argument that the contractual provision providing for a one-year limitation period for uninsured motorist claims was unreasonable.

Affirmed.

/s/ Henry William Saad
/s/ Brian K. Zahra
/s/ Bill Schuette