

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MILTON O'FLYNN, as Conservator of the Estate  
of DENISE O'FLYNN HODGE,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF COMMUNITY  
HEALTH,

Intervenor,

and

PROGRESSIVE MICHIGAN INSURANCE  
COMPANY,

Defendant-Appellant.

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UNPUBLISHED  
April 6, 2006

No. 265826  
Van Buren Circuit Court  
LC No. 04-052221-NF

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying its motion for summary disposition and granting plaintiff's motion for summary disposition. We reverse and remand for entry of summary disposition in favor of defendant. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 2, 2003, defendant issued a no-fault automobile insurance policy to Denise Hodge. The policy was valid for a six-month period from January 2, 2003, through July 2, 2003. On June 5, 2003, defendant sent Hodge a renewal notice informing her that she was required to pay the minimum amount shown by the due date, July 2, 2003, in order to renew the policy. On June 22, 2003, defendant sent Hodge a renewal reminder notice. This notice stated that Hodge's policy would expire on July 2, 2003, unless the minimum payment was received or postmarked by 12:01 a.m. on July 2, 2003. Hodge did not pay the renewal premium prior to July 2, 2003.

On July 7, 2003, Hodge's vehicle was struck by a dump truck that ran a red light. Hodge's teenage son and his friend were killed instantly, and Hodge suffered disabling injuries as a result of the accident.

On July 9, 2003, Hodge's estranged husband, John Hodge, found numerous pieces of unopened mail at Denise Hodge's residence, among them the renewal notices sent to her by defendant. On July 10, 2003, John Hodge notified defendant of the accident. An adjuster advised John Hodge that Denise Hodge's policy had expired, and that coverage would not be available if payment had not been made prior to the expiration date of the policy.

At some point after the accident occurred, plaintiff, Denise Hodge's father, wrote a check for the minimum payment due as indicated on the renewal notices sent to Denise Hodge by defendant. The check was dated June 30, 2003.

Defendant declined to pay benefits for Denise Hodge's accident. Plaintiff filed suit alleging that defendant breached its contract by failing to pay benefits. The parties filed cross motions for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued that because Hodge failed to pay her renewal premium by July 2, 2003, the policy lapsed and was not in effect on the date of the accident. Defendant stated that when it received the premium mailed after the accident occurred, it reinstated the policy effective from the date payment was tendered, as it had done for Hodge in the past.<sup>1</sup> Plaintiff asserted that when defendant received the premium mailed after the accident, it reinstated the policy effective July 2, 2003. The trial court denied defendant's motion and granted plaintiff's motion, finding that defendant's act of retaining the premium it received after the accident could have been done for no other purpose but to insure the vehicle during the period in which the accident occurred.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurance policy is an agreement between the parties. *Heath v State Farm Muto Auto Ins Co*, 255 Mich App 217, 218; 659 NW2d 698 (2002). The primary goal in the interpretation of a contract is to honor the intent of the parties, and when presented with a dispute, a court must determine what the parties agreed to and enforce the agreement. *Shefman v Auto Owners Ins Co*, 262 Mich App 631, 637; 687 NW2d 300 (2003). Insurance contracts are construed in accordance with the principles of contract construction. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 417; 668 NW2d 199 (2003).

If an insurer, through language in its policy, or its acts, declarations, or course of conduct, has misled an insured regarding the payment of premiums or created a belief that strict compliance with the contract as to payment of the premium on the due date would not be exacted, and as a consequence the insured fails to pay the premium on the date it is due, the insurer will be found to have waived the requirement of timely payment and will be estopped from asserting the lack of timely payment as a cause for forfeiture. The test is whether the insurer has induced the insured to honestly believe that the terms and conditions of the policy

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<sup>1</sup> Hodge had been insured by defendant on two occasions in the past. One such policy lapsed on August 14, 2001, after Hodge failed to pay the renewal premium. Hodge paid the premium, and defendant renewed the policy effective September 14, 2001, with a gap in coverage for the period August 14 through September 13, 2001.

would not be enforced but that payment would be accepted on a subsequent day. When such a belief is induced and the insured acts on it, the insurer is estopped from asserting forfeiture. For equitable estoppel to apply, a plaintiff must establish: (1) that the insurer's acts or representations induced the insurer to believe that the policy was in effect at the time of the accident; (2) that the insured justifiably relied on the belief; and (3) that the insured was prejudiced as a result of the belief that the policy was still in effect. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW2d 776 (1998).

An insurer which unconditionally accepts the payment of a premium with the knowledge that a loss has occurred may be found to have waived its right to assert that the policy has lapsed. *Glass v The Harvest Life Ins Co*, 168 Mich App 667, 670-671; 425 NW2d 107 (1988).

We reverse the trial court's order denying defendant's motion for summary disposition and granting plaintiff's motion for summary disposition, and remand this case for entry of summary disposition for defendant. The policy issued by defendant to Hodge expired on July 2, 2003, without Hodge having paid the renewal premium. The policy contained no provision allowing for continuing coverage if the premium was paid within a grace period after the expiration date. No evidence showed that defendant represented to Hodge that she would enjoy continuing coverage even if she paid the premium in an untimely manner. Cf. *Glass, supra* (policy beneficiary told that life insurance policy would continue uninterrupted if premium paid following expiration of grace period). Plaintiff paid the minimum amount due shown on Hodge's renewal notice after the accident occurred, after defendant had been notified of the accident, and after defendant had advised John Hodge that coverage would not be available if payment had not been made prior to the expiration date of the policy. Defendant retained the premium, and insured Hodge effective the day after the premium payment was postmarked. This act was consistent with defendant's past and current practice. No evidence showed that defendant was informed that Hodge's vehicle had been destroyed and that she had not obtained a replacement vehicle. Cf. *id.* (in which the defendant was informed of the insured's death but thereafter accepted and retained untimely premium payment for policy). No evidence showed that defendant informed plaintiff that its retention of the premium signaled its willingness to continue Hodge's coverage without interruption. Plaintiff did not show that defendant acted in a manner that would justify the application of the doctrine of equitable estoppel to preclude defendant from denying coverage for Hodge's loss. Cf. *Morales, supra*.

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Henry William Saad  
/s/ Richard A. Bandstra