STATE OF MICHIGAN

COURT OF APPEALS

FREMONT MUTUAL INSURANCE COMPANY,

Plaintiff/Counter Defendant-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant,

and

LACIE PYLES,

Defendant-Appellee,

and

JEFFREY DEWITTE,

Defendant/Counter Plaintiff-Appellee.

UNPUBLISHED
May 23, 2006

No. 259663
Lapeer Circuit Court
LC No. 01-030675-NZ

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this dispute concerning priority among no-fault insurers, defendant Farmer's Insurance Exchange appeals as of right from the circuit court's orders granting summary disposition to plaintiff Fremont Mutual Insurance Company and dismissing all remaining claims. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Defendant DeWitte was seriously injured on May 25, 2001, while driving a car owned by his girlfriend, which she had purchased from DeWitte's parents and insured with plaintiff. DeWitte and his parents had apparently maintained various policies of insurance with defendant Farmers, but at issue here is whether he had his own continuing no-fault policy at the time of the accident. Plaintiff, who had been providing DeWitte with insurance benefits under his girlfriend's policy, brought suit to shift that burden to Farmers on the ground that DeWitte was in

fact Farmers' insured. The parties agree that if DeWitte was insured with Farmers at the time, then Farmers, not plaintiff, bears responsibility for those benefits. See MCL 500.3114.

Plaintiff and Farmers filed cross-motions for summary disposition, each seeking to establish the other's priority for DeWitte's benefits. The trial court concluded that Farmers' evidence was "insufficient to create a genuine issue of material fact," but that plaintiff's evidence "is sufficient to establish plaintiff's entitlement to judgment as a matter of law." The trial court entered an order stating that Farmers had highest priority for DeWitte's benefits and, thus, that Farmers must reimburse plaintiff for benefits paid to date. The case proceeded to entry of a judgment against Farmers in favor of plaintiff in the amount of $342,638.17, plus taxable costs and interest. The trial court later entered an order dismissing without prejudice all remaining claims.

Farmers' sole issue on appeal is whether the trial court erred by failing to recognize that whether DeWitte was insured by Farmers at the time of the accident posed a material question of fact demanding resolution at trial.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

DeWitte obtained a no-fault insurance policy from Farmers in February 2000, cancelled it in November of that year, and then reinstated it on April 2, 2001. At issue is whether the policy was then cancelled before the May 25, 2001, accident.

Farmers points to a cancellation notice referring to the policy in question, listing premiums due in the amount of $1,689.20, bearing a mailing date of April 25, 2001, and a cancellation date of May 10, 2001. Farmers further asserts that no such premium was paid. Farmers seems to imply that that the policy thus became inoperative for failure to pay premiums. See MCL 500.3020(1)(b). However, Farmers nowhere asserts that it cancelled the policy solely through its own machinations, for want of premiums or any other reason. Instead, Farmers asserts that DeWitte's mother, Nancy, cancelled the policy as part of a group of household policies in the DeWittes' name. Farmers further asserts that "DeWitte never disputed the cancellation" and that his mother "had the full authority to cancel the policy."

Farmers points to a transaction summary referring to the policy in question, but listing the primary insured as Nancy DeWitte. This document is dated May 15, 2001, and says "VEHICLE CANCELLED AS OF 05/15/2001," but also lists an "EFF DATE" of "05/27/2001." The only way for the latter to mean anything is to take the canceled-as-of date as indicating when certain administrative action was taken, and to take the effective date as the one upon which the policy actually was to become inoperative. Assuming, without deciding, that the transaction summary properly lists Nancy DeWitte as one entitled to cancel the policy in question, it nonetheless indicates cancellation two days after the accident in question.

But Farmers' theory that Nancy DeWitte was authorized to cancel her son's policy is more problematic. If Farmers used Nancy DeWitte's name in connection with various policies involving the DeWitte family, Farmers nonetheless points to no evidence to show that Nancy DeWitte indeed exercised Jeffrey DeWitte's power of attorney, or otherwise had an agency relationship with her son, such as would give her authority to cancel on his behalf an insurance policy upon which he was the sole named insured.

Because the existence of a policy of no-fault insurance between defendant DeWitte and Farmers is clearly established, but Farmers failed to produce evidence to show that, before the accident in question, it had cancelled that policy for want of premiums, or that Nancy DeWitte was entitled to cancel Jeffrey DeWitte's insurance on his behalf, Farmers has failed to show that an issue of material fact exists for jury resolution. The trial court properly granted summary disposition to plaintiff.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot