

STATE OF MICHIGAN
COURT OF APPEALS

MARY ELLEN MCDONALD,
Plaintiff-Appellee,

UNPUBLISHED
August 24, 2006

v

FARM BUREAU INSURANCE CO.,
Defendant-Appellant.

No. 259168
Genesee Circuit Court
LC No. 03-076398-NF

Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this declaratory action arising from an automobile insurance contract, defendant appeals by leave granted the trial court's order denying its motion for summary disposition and granting summary disposition in favor of plaintiff. We affirm.

On November 29, 2001, a motorist collided with a car driven by plaintiff's husband. Plaintiff was riding in the passenger seat and sustained significant injuries in the collision. Plaintiff's husband maintained automobile insurance with defendant, which included underinsured motorist coverage. However, the policy contained an endorsement, which provided that "[n]o claimant may bring a legal action against the company more than one year after the date of the accident." Plaintiff's attorney notified defendant by mail that plaintiff had a claim for underinsured motorist benefits on May 10, 2002. Defendant denied the underinsured motorist claim on December 10, 2002 on the basis that the one-year period of limitations provided for in the contract had passed. On May 21, 2003, plaintiff commenced the present declaratory action.

On April 26, 2004, defendant moved for summary disposition. Defendant argued that plaintiff's suit was barred under the one-year period of limitations contained in the contract. On October 13, 2004, the trial court entered an order denying defendant's motion for summary disposition and granting plaintiff's motion for summary disposition under MCR 2.116(I)(2). The trial court determined that the one-year period of limitations provided for in the contract was inapplicable for the following reasons: (1) the one-year period is unreasonable and, hence, unenforceable as a matter of law, (2) because of defendant's dilatory conduct, defendant is estopped from asserting the contractually provided period of limitation, (3) the contractually provided period of limitations was equitably tolled by plaintiff's letter of May 10, 2002 until defendant officially denied the claim, and (4) the contractually provided period of limitations is ambiguous. After defendant's motion for reconsideration was denied on October 29, 2004, defendant appealed.

On appeal, defendant contends that the trial court erred when it refused to enforce the contractually provided period of limitation. We disagree. The trial court correctly determined that this period of limitation was equitably tolled by plaintiff's letter of May 10, 2002 until defendant officially rejected plaintiff's claim on December 10, 2002. Further, because this issue is dispositive, we need not address defendant's remaining claims of error.

We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002).

In the present case, the trial court determined that the equitable tolling doctrine adopted in *Tom Thomas Org, Inc v Reliance Ins Co*, 396 Mich 588; 242 NW2d 396 (1976) served to toll the contractual period of limitations. On appeal defendant correctly notes that the doctrine of equitable tolling adopted in *Tom Thomas, supra* was effectively abrogated by the decisions in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 582; 702 NW2d 539 (2005) (noting that statutory and contractual language must be enforced according to its plain meaning) and *Rory v Continental Ins Co*, 473 Mich 457; 703 NW2d 23 (2005) (holding that an unambiguous contractual provision must be enforced as written unless the provision would violate law or public policy). However, this Court recently held that the decision in *Devillers* does not apply to insurance contract claims, such as the present claim, which are "wholly separate from the no-fault act and the associated statutes of limitations." *West v Farm Bureau General Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2006).¹ Further, the Court in *West* also held that the decision in *Rory* must be applied prospectively. *Id.* at ___. Therefore, the doctrine of equitable tolling properly applies to this case.

The trial court correctly determined that the contractually provided period of limitations was tolled during the period from Plaintiff's letter of May 10, 2002, which placed defendant on notice that plaintiff had an underinsured motorist claim, until defendant officially denied the claim on December 10, 2002. Consequently, plaintiff's suit was timely filed.

Affirmed.

/s/ Michael R. Smolenski
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

¹ Docket No. 251003, issued August 15, 2006.