STATE OF MICHIGAN

COURT OF APPEALS

LYNDA HUSULAK, as Personal Representative of the Estate of George Husulak, Deceased,

Plaintiff-Appellee,

v

STATE FARM INSURANCE,

Defendant-Appellant,

and

CATHI KIEHLER-PRZEDORA INSURANCE AGENCY,

Defendant.

UNPUBLISHED
October 17, 2006

No. 267986
Macomb Circuit Court
LC No. 05-002156-CK

Before: Hoekstra, P.J., and Meter and Donofrio, JJ.

PER CURIAM.

Defendant State Farm Insurance appeals by leave granted the trial court's opinion and order denying its motions for summary disposition under MCR 2.116(C)(7) and (10). We reverse and remand for entry of an order granting summary disposition in favor of State Farm.

I. Basic Facts and Procedural History

This case arises from the December 2003 death of plaintiff's husband, George Husulak, who was killed after being thrown from his motorcycle. Husulak had been riding with Mark Zankiewicz, who was riding ahead of Husulak on his own motorcycle at the time of the accident. Both men had been drinking, and a motorist saw them "zig-zagging" in front of each other at high speeds very shortly before the accident. Zankiewicz told witnesses at the scene and at the hospital that another vehicle had either struck or cut off Husulak, causing him to lose control of the motorcycle. When deposed, however, Zankiewicz testified that he only heard a thud and saw sparks in his rear-view mirror from Husulak's motorcycle skidding on the road. Although admitting that he had told others that he believed Husulak had been cut off or hit by another vehicle, Zankiewicz testified that he honestly did not know if any other vehicles were involved in the accident that led to Husulak's death.

State Farm was the no-fault insurer of an automobile owned by Husulak, but was not the insurer of Husulak's motorcycle. Plaintiff testified at deposition that following the accident she telephoned State Farm's agent, defendant Cathi Kiehler-Przedora Insurance Agency (Kiehler-Przedora), to inquire whether she was entitled to any benefits under Husulak's automobile policy. According to plaintiff, although having explained that Husulak had been either cut off or struck by a motor vehicle and killed, she was told by an unknown individual at that office that any claim for benefits did not "pertain to them" because the accident involved a motorcycle not insured by State Farm. Although further testifying that she contacted Kiehler-Przedora at least two more times within the year following the accident regarding other matters related to the death of her husband, plaintiff acknowledged at deposition that she did not assert or give written notice of a claim under the policy of automobile insurance until May 2005, more than 1½ years after Husulak's death. When State Farm denied the claim, plaintiff filed the instant suit alleging that State Farm breached its obligation to provide her "certain no fault benefits" under Husulak's contract for automobile insurance, and that Kiehler-Przedora had negligently misled her to believe that the policy afforded her no such benefits.

State Farm moved for summary disposition of plaintiff's claim pursuant to MCR 2.116(C)(7), arguing, among other things, that plaintiff's claim was barred by the one-year statute of limitations set forth by MCL 500.3145(1). Noting that no-fault benefits are payable only where a motor vehicle is involved in an accident, MCL 500.3105, and that a motorcycle is not a motor vehicle as that term is defined by the no-fault act, see MCL 500.3101(e), State Farm also sought summary disposition under MCR 2.116(C)(10) on the ground that there was no genuine issue of material fact regarding the absence of the involvement of any motor vehicle in the accident.

In denying State Farm's motion under MCR 2.116(C)(7), the trial court found that State Farm should be equitably estopped from asserting the one-year limitations period against plaintiff. Specifically, the court found that because "[i]t could be expected that an unsophisticated consumer who called her insurer to specifically inquire whether she had any claim would rely on the information," it was persuaded that "fairness requires tolling the statute of limitations in this case."

Regarding State Farm's motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court noted that the only evidence of a motor vehicle's involvement appeared to be Zankiewicz's statements immediately after the accident that Husulak was cut off or struck by a motor vehicle. State Farm argued, however, that Zankiewicz's deposition testimony showed that he had no personal knowledge as to how Husulak's accident occurred or whether a motor vehicle was involved in the accident. Plaintiff argued in response that Zankiewicz's statements that Husulak was cut off or struck by a motor vehicle were admissible as excited utterances under MRE 803(2). The trial court found that Zankiewicz's statements indicating the involvement of a motor vehicle were admissible as excited utterances and gave rise to issues of credibility and fact that precluded granting summary disposition. State Farm thereafter sought leave to appeal the trial court's conclusions in these regards, which this Court granted.

II. Analysis

Because we find it to be dispositive, we address only State Farm's claim that the trial court erred in applying the doctrine of equitable estoppel to preclude it from asserting a statute of limitations defense.

This Court considers de novo the applicability of equitable doctrines. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). A trial court's decision on a motion for summary disposition is also reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(7) permits summary disposition where a claim is barred by a statute of limitations. In reviewing a trial court's decision on a statute of limitations defense brought under MCR 2.116(C)(7), this Court "consider[s] all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it." *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). Absent disputed questions of fact, whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo. *Hudick v Hastings Mut Ins Co*, 247 Mich App 602, 605-606; 637 NW2d 521 (2001).

Pursuant to MCL 500.3145(1), "[a]n action for personal protection insurance benefits must be commenced not later than one year after the date of accident, *unless* the insured gives written notice of injury or the insurer previously paid benefits for the injury." *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 574; 702 NW2d 539 (2005) (citation and internal quotation marks omitted). "If notice has been given or payment has been made, the action may be commenced at any time within one year after the most recent loss was incurred." *Id*.

Here, it is not disputed that plaintiff failed to initiate suit or provide State Farm or its agent with written notice of Husulak's death within the one-year period of limitations set forth in MCL 500.3145(1). However, as recognized by the trial court, an insurer may be estopped from asserting the statute of limitations as a bar to bringing an action to recover no-fault insurance benefits. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270-273; 562 NW2d 648 (1997). With regard to the conditions that must exist in order to justify application of estoppel, our Supreme Court, in *Lothian v Detroit*, 414 Mich 160, 177; 324 NW2d 9 (1982), explained that

> [g]enerally, to justify the application of estoppel, one must establish that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon this conduct, and knowledge of the actual facts on the part of the representing or concealing party.

The Court further noted, however, that "the estoppel exception developed by the courts 'seems to be limited to cases involving an intentional or negligent deception," *id*., quoting *Klass v Detroit*, 129 Mich 35, 39-40; 88 NW 204 (1901), and has historically been recognized only where the facts show "conduct clearly designed to induce 'the plaintiff to refrain from bringing action within the period fixed by statute,'" *Lothian*, *supra*, quoting *Renackowsky v Bd of Water Comm'rs of Detroit*, 122 Mich 613, 616; 81 NW 581 (1900). Thus, to avoid a statute of limitations defense under an estoppel theory, "a plaintiff must allege action by the defendant, such as concealment of a cause of action, misrepresentation as to the time in which an action may be brought, or inducement to refrain from bringing an action." *Compton v Michigan Millers*

Mut Ins Co, 150 Mich App 454, 458; 389 NW2d 111 (1986); see also *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998).

Here, the evidence presented below shows, at most, that an unknown individual at Kiehler-Przedora erroneously responded to plaintiff's inquiry regarding the extent of coverage, if any, for the accident at issue. The evidence fails, however, to establish any basis for concluding that State Farm concealed plaintiff's cause of action, misrepresented the applicable period of limitation, or otherwise attempted to dissuade plaintiff from commencing action at an earlier time. *Adams*, *supra*. Furthermore, given that the response was in direct contrast to information received by plaintiff from Husulak's motorcycle insurer, whom plaintiff testified at deposition informed her that a claim for benefits "fell" to the insurer of Husulak's automobile,[1] we do not agree with the trial court that plaintiff could be expected to unquestioningly rely on the response such that the equitable doctrine of estoppel should be applied to preclude State Farm from asserting the statute of limitations as a defense. See, e.g., *Cudahy Bros Co v West Michigan Dock & Market Corp*, 285 Mich 18, 26; 28 NW 93 (1938) ("[o]ne cognizant of all the material facts can claim nothing by estoppel"). Indeed, as noted by the Court in *Lothian*, *supra* at 179, "plaintiff, like most other litigants, had a primary obligation to secure prompt resolution of [her] claim in the courts" and, having failed to do so with full knowledge of the material facts surrounding her claim, "is not entitled to relief on the basis of equitable estoppel." We therefore conclude that the trial court erred in determining that State Farm was equitably estopped from raising a statute of limitations defense and, because plaintiff does not dispute the facts material to such defense, reverse and remand this matter for entry of summary disposition in favor of State Farm.[2] *Hudick*, *supra*.

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[1] With regard to the information received from the motorcycle insurer, plaintiff specifically testified, "When I contacted them they told me that it fell to the auto insurance because there's additional coverages that you can take on a motorcycle policy, but as long as you have an automobile, it goes to your automobile policy."

[2] In reaching this conclusion, we reject plaintiff's assertion that because Husulak's policy of automobile insurance provides that written notice of a claim need only be given "as soon as reasonably possible," it is inequitable to apply the one-year statutory limitations period as a bar to suit. Plaintiff's argument fails to recognize that, in addition to this notice provision, the policy plainly provides that

> [t]here is no right of action against [State Farm] . . . unless the action is begun within one year from (1) the date of the accident; or (2) the date on which the most recent expense or loss has been incurred, if we have either received written notice of the *bodily injury* within one year from the date of the accident or have made a payment under this coverage for the *bodily injury*.

Because this provision clearly tracks the period of limitations set forth in MCL 500.3145(1), we find plaintiff's challenge to the equities of applying the statutory limitations period to be unpersuasive.

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

/s/ Joel P. Hoekstra
/s/ Patrick M. Meter
/s/ Pat M. Donofrio