STATE OF MICHIGAN

COURT OF APPEALS

CLARISSA WILLIAMS,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 1, 2007

No. 270956
Wayne Circuit Court
LC No. 04-437920-CK

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order granting summary disposition for plaintiff regarding defendant's right to rescind an automobile insurance policy. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The general rule is that "[w]here a policy of insurance is procured through the insured's intentional misrepresentation of a material fact in the application for insurance, and the person seeking to collect the no-fault benefits is the same person who procured the policy of insurance through fraud, an insurer may rescind an insurance policy and declare it void ab initio." *Hammoud v Metropolitan Property & Cas Ins Co*, 222 Mich App 485, 488; 563 NW2d 716 (1997). An insurer may only void a policy of insurance *ab initio* if the insured intentionally or innocently misrepresented a material fact in the application for insurance. *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995); *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985). A misrepresentation is material where it "substantially increased the risk of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." *Id.*

Defendant has shown that plaintiff made several misrepresentations in her insurance application but has failed to show that those misrepresentations were material. Plaintiff, who was married but had separated and had five children, indicated that she was single, had no dependents, and that there were no other licensed drivers in her household. While two of plaintiff's children were 16 or older, defendant has not shown that they were licensed drivers or resided with plaintiff. Additionally, while plaintiff's husband was a licensed driver whose license had been suspended, defendant has not shown that he and plaintiff were members of the same household or that he had access to plaintiff's car. Defendant also produced evidence to show that plaintiff's husband could not have been added to the policy, but there is no evidence that he was covered by the policy. Defendant also states that it would not have issued the policy to plaintiff had it known that her husband "was driving the vehicle due to his horrendous driving record," but there is no evidence that he had access to or had ever driven the vehicle.

Because defendant failed to show that plaintiff's misrepresentations were material, the trial court properly denied defendant's motion. Although the trial court erred in considering whether the misrepresentations were causally related to the loss, *Darnell*, *supra*, this Court will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Stephen L. Borrello
/s/ Jessica R. Cooper