STATE OF MICHIGAN

COURT OF APPEALS

ROCHELLE WASHINGTON,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant,

and

OLD AMERICAN COUNTY MUTUAL FIRE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 29, 2009

No. 286388
Wayne Circuit Court
LC No. 07-720964-NF

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Plaintiff initiated this lawsuit for no-fault personal protection (PIP) benefits after sustaining injuries in an automobile accident. She now appeals as of right the trial court's order granting summary disposition for defendant Old American County Mutual Fire Insurance Company. We affirm.[1]

I. Basic Facts

Plaintiff was involved in a motor vehicle accident on August 6, 2006. At the time, plaintiff was a resident of Texas and was operating a vehicle that was licensed and registered in Texas. The vehicle was insured by defendant, which conducts business in Texas, and is not certified to provide PIP benefits under Michigan's no-fault act. After the accident, defendant paid plaintiff $13,316.92 in PIP benefits. However, defendant stopped paying those benefits because it realized it had made a "mistake." This lawsuit ensued.

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After discovery, defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Defendant argued that plaintiff was not entitled to PIP benefits under MCL 500.3113(c) because plaintiff was not a Michigan resident, she was an occupant of a vehicle that was not registered in Michigan, and defendant had not filed a certification in compliance with MCL 500.3163. Plaintiff countered that defendant's insurance policy entitled her to PIP benefits and that defendant should be estopped from asserting otherwise. The trial court agreed with defendant and granted defendant summary disposition on the basis of MCL 500.3113(c). This appeal followed.

II. Standards of Review

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Because the trial court considered evidence outside the pleadings, we will review the court's decision as if it were made pursuant to MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002). Summary disposition may be granted under MCR 2.116(C)(10) when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 128; 713 NW2d 801 (2005). In conducting our review, we must view all the documentary evidence in the light most favorable to the non-moving party. *City of Huntington Woods v Detroit*, 279 Mich App 603, 614; 761 NW2d 127 (2008). Further, to the extent that this Court must interpret the meaning of the insurance policy, our review is also de novo. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004).

III. PIP Benefits

On appeal, plaintiff argues that the plain language of the insurance contract entitles her to PIP benefits. We disagree.[2]

To resolve plaintiff's claim, we must interpret the meaning of the subject insurance policy. Our goal in doing so is to discern and enforce the parties' intent based on the clear language of the contract. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005); *Robert A Hansen Family Trust v FGH Industries, LLC*, 279 Mich App 468, 476; 760 NW2d 526 (2008). When a contract's language is plain and unambiguous, its terms must be applied as written and construction of the contract is not permitted. *Rory*, *supra* at 468-469; *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 638-639; 734 NW2d 217 (2007). We read contracts as a whole and give contractual terms their common and ordinary meaning. *Genesee Foods Services, Inc v Meadowbrook, Inc*, 279 Mich App 649, 656; 760 NW2d 259 (2008).

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[2] We note that the trial court did not consider the language of the contract in its decision to grant summary disposition, but relied entirely on the language of MCL 500.3113(c). This was error. Although we agree that the requirements of § 3113(c) were not met, this does not preclude a plaintiff from seeking PIP benefits from his or her insurer if the parties had contracted under an insurance policy for the provision of such benefits.

Here, the present policy is divided into numerous sections pertaining to particular types of coverage. Plaintiff relies on the following provision in the policy, which is contained in the "Liability Coverage" section of the policy:

> OUT OF STATE COVERAGE
>
> If an auto accident to which this policy applies occurs in any state or province other than the one in which **your covered auto** is principally garaged, we will interpret your policy for that accident as follows:
>
> A. If the state or province has:
>
> 1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
>
> 2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage. [Emphasis in original.]

In our view, it is significant that the above-cited provision is included within the "Liability Coverage" section of the policy. The "Personal Injury Protection Provision" section of the policy contains no similar "out of state" provision regarding out of state coverage and otherwise makes no reference to the compulsory insurance laws of other states. It follows, reading the contract as a whole, that the "out of state" provision only pertains to defendant's responsibility to provide *liability coverage*, not to an obligation to provide first-party PIP benefit coverage. Accordingly, we conclude that the provision does not provide a basis for plaintiff to recover first-party PIP benefits under the policy.

Plaintiff's additional argument that this same provision converted the entire policy into a no-fault policy, in conjunction with the alleged fact that she had the vehicle in Michigan for more than 30 days meaning that no fault insurance was "compulsory," see MCL 500.3101, is similarly unavailing. Nothing in the language of the policy indicates an intent on behalf of the parties that the policy will automatically transform into a no-fault policy applicable in Michigan if plaintiff has her vehicle in Michigan for 30 days. Nor has plaintiff directed us to any such provision. Further, plaintiff's contention that she was in Michigan with the vehicle for 30 days is unsupported by the record.

Because the policy does not obligate defendant to provide plaintiff with PIP benefits, or otherwise convert the policy into a no fault policy, and because plaintiff's additional argument is factually unsupported, we conclude that summary disposition for defendant was proper.

IV. Estoppel

Lastly, plaintiff argues that defendant should be estopped from asserting that it is not bound to pay Michigan no-fault benefits because defendant represented to plaintiff that under her policy she could elect either Texas or Michigan benefits. Again, we disagree. Estoppel is

inapplicable because plaintiff has not shown any reliance on defendant's statements. In fact, during her deposition, plaintiff expressly disclaimed any reliance on defendant's agents, stating, "No, I didn't rely on them." Absent reliance, an argument premised on estoppel is unavailing. See *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008).

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro