STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY IDALSKI,

Plaintiff-Appellee,

v

DAVID ALLEN SCHWEDT,

Defendant,

and

STATE FARM MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 29, 2009

No. 287279
Livingston Circuit Court
LC No. 07-022684-NI

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant State Farm Mutual Insurance Company ("defendant") appeals by leave granted a circuit court order granting plaintiff's motion for reconsideration of the court's previous order, which had granted defendant's motion for partial summary disposition pursuant to MCR 2.116(C)(10). The court initially concluded that plaintiff's breach of contract claim for failure to pay uninsured motorist benefits was barred because plaintiff had neither given notice nor filed suit in accordance with the contractually shortened limitations period in the policy. In granting plaintiff's motion for reconsideration, the court was persuaded by plaintiff's argument that defendant was required to show prejudice from plaintiff's delay and had not done so. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tinman v Blue Cross & Blue Shield of Michigan*, 264 Mich App 546, 556-557; 692 NW2d 58 (2004). An abuse of discretion occurs when the trial court misapprehends the law to be applied. *Bynum v ESAB Group, Inc*, 467 Mich 280, 283; 651 NW2d 383 (2002). This Court considers de novo any issues of law involved in the decision. *In re Moukalled Estate*, 269 Mich App 708, 713; 714 NW2d 400 (2006).

The trial court erred by concluding that defendant was required to show actual prejudice in order to rely on the contractual notice and limitations period. In *Rory v Continental Ins Co*,

473 Mich 457, 461; 703 NW2d 23 (2005), the Court considered a contractual limitations period and determined that its enforceability was governed by the same principles that are applicable to other contracts. "[U]nless a contract provision violates law or one of the traditional defenses to enforceability of a contract [e.g. waiver, fraud, unconscionability] applies, a court must construe and apply unambiguous contract provisions as written." *Id.* "Consistent with our prior jurisprudence, unambiguous contracts, including insurance policies, are to be enforced as written unless a contractual provision violated law or public policy. . . . [N]othing in our law or public policy precludes enforcement of the contractual provision at issue." *Id.* at 491. There is no indication in *Rory* that an insurer must show prejudice in order to rely on a limitations or notice provision in an insurance contract. Plaintiff does not offer any basis for concluding that requiring a demonstration of prejudice for enforcement of time limitations is consistent with principles that are applicable to contracts generally. We are not persuaded by plaintiff's argument that *Rory* does not apply to her cause of action because her accident occurred three days before the decision; there is no basis for her to claim reliance on pre-*Rory* decisions. See *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 206; 747 NW2d 811 (2008).

Plaintiff raises a host of arguments as alternative grounds for affirmance, but none of them is persuasive.

Plaintiff argues that, because her amended complaint relates back to the filing of the original complaint, her lawsuit should be considered timely for the purposes of the requirements of the insurance policy. The relation-back doctrine applies to amended pleadings and may affect the analysis of the timeliness of an action for the purposes of compliance with statutes of limitations. See MCR 2.118(D); *Doyle v Hutzel Hosp*, 241 Mich App 206, 212 n 2; 615 NW2d 759 (2000). Applying this rule of civil procedure to nullify or modify contractual notice and limitations periods is an entirely different matter. Plaintiff does not cite any authority that would allow this principle to extend to private contracts. Adopting plaintiff's position is inconsistent with the Court's instruction in *Rory, supra* at 461, to treat insurance contracts as other contracts.[1]

As an alternative argument, plaintiff contends that an insurer must show both non-cooperation and resulting prejudice in order to successfully claim non-cooperation as a defense. She cites *Allen v Cheatum*, 351 Mich 585, 595; 88 NW2d 306 (1958), and *Anderson v Kemper Ins Co*, 128 Mich App 249, 253-254; 340 NW2d 87 (1983). However, in these cases the insurer attempted to rely on the insured-tortfeasor's non-cooperation as a defense in a garnishment action against the insurer brought by a third party, and thus these cases do not provide a basis for

[1] Plaintiff suggests that defendants' actions provide a basis for disregarding the limitations defense "on the basis of either the wrongful conduct rule, *Orzel v Scott Drug Co*, 449 Mich 550, 560; 537 NW2d 208 (1995), or the unclean hands doctrine, *Stachnik v Winkel*, 394 Mich[] 375, 382; 230 NW2d 529 (1975)." However, naming the doctrine and citing a case is not adequate briefing of these points, and we decline to develop plaintiff's arguments for her. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

imposing a requirement of prejudice in a breach of contract action brought by an insured against the insurer.

Citing *Stanton v Dachille,* 186 Mich App 247, 258; 463 NW2d 479 (1990), for the principle of contract law that one cannot interfere with the other party's performance of a contract and then claim breach of contract, plaintiff argues that defendant is barred from relying on the notice provision to avoid liability under the policy because defendant "hindered and prevented [her] from discovering Schwedt's lack of insurance from the filing of suit until the filing of the First Amended Complaint . . . ."

The argument must be rejected because the record does not establish that defendant hindered or prevented her from complying with the two-year limitations or notice period in the policy. As support for plaintiff's assertion that she asked defendant about Schwedt's insurance, she presents a letter to defense counsel that is dated August 16, 2007, which was more than two years after the accident. Defendant's purported lack of response to this inquiry did not cause plaintiff's non-compliance with the policy because the time period had elapsed before the inquiry was made.[2]

In summary, the trial court's ruling is incompatible with *Rory, supra* at 457, and the decision to grant rehearing on the basis of a misapprehension of the law was an abuse of discretion.

Reversed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Stephen L. Borrello

[2] Plaintiff argues that the "discovery rule" applies inasmuch as she diligently attempted to verify Schwedt's claim that he was insured, and upon discovering that he was not, she promptly sought leave to amend the complaint. This argument, too, lacks factual support. The record does not show that plaintiff made any effort to determine whether Schwedt was insured until after the two-year period had expired.