

# Court of Appeals, State of Michigan

## ORDER

Aaron Baker v Meemic Insurance Company

Docket No. 344774

LC No. 17-009572-NF

Kirsten Frank Kelly  
Presiding Judge

Christopher M. Murray

Cynthia Diane Stephens  
Judges

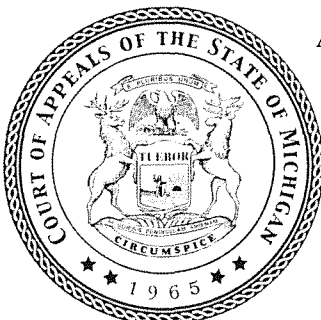
The Court orders that the motion for immediate consideration is GRANTED.

The motion to waive the requirements of MCR 7.209 is GRANTED.

Pursuant to MCR 7.205(E)(2), the Court VACATES IN PART the May 25, 2018 order granting summary disposition on plaintiff's oral motion and in favor of Michigan Assigned Claims Plan. In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The record before this Court reflects genuine issues of material fact. Specifically, the testimony conflicted on whether plaintiff resided with his mother, the policy holder, at the time she applied for insurance, and whether that was disclosed to defendant. Where the proffered evidence establishes a genuine issue of material fact, the moving party is not entitled to judgment as a matter of law. See *id.* at 120. The trial court therefore erred in making a factual finding that defendant was plaintiff's insurer. See generally *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013) (ruling that a trial court should not make findings of fact on summary disposition). The matter is REMANDED to the trial court for further proceedings consistent with this order.

The motion for stay is DENIED AS MOOT.

This order is to have immediate effect, MCR 7.215(E)(2). This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 01 2018

Date

  
Chief Clerk