

STATE OF MICHIGAN
COURT OF APPEALS

MARIJA SABADOS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 12, 2019

No. 342088
Wayne Circuit Court
LC No. 17-005766-NF

Before: JANSEN, P.J., and BECKERING and O'BRIEN, JJ.

PER CURIAM.

Plaintiff, proceeding *in propria persona*, appeals as of right the order granting defendant's motion for summary disposition. We affirm.

On April 18, 2016, plaintiff was involved in an accident while driving her son's car. At the time of the accident, plaintiff was a named insured under a no-fault automobile insurance policy through defendant that covered the car. Plaintiff alleged that she was injured and filed a claim for recovery of personal protection insurance (PIP) benefits from defendant under the no-fault act, MCL 500.3101 *et seq.* When defendant denied the claim, plaintiff filed a complaint seeking recovery of PIP benefits.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff made misrepresentations about her accident-related injuries and, for that reason, her claim for PIP benefits was barred under her insurance policy's fraud exclusion provision. The trial court granted the motion because "reasonable minds could not differ and no rational trier of fact could ever reach any conclusion other than that Plaintiff has engaged in indisputable fraud by knowingly making numerous material misrepresentations."¹

¹ The trial court also granted defendant's motion to amend its affirmative defenses to include an affirmative defense based on the fraud exclusion. While plaintiff mentions that she is appealing

On appeal, plaintiff argues the trial court erred by granting defendant's motion for summary disposition on the basis of the fraud exclusion. We disagree.

This Court reviews a motion for summary disposition de novo. *Kelsey v Lint*, 322 Mich App 364, 370; 912 NW2d 862 (2017). In reviewing a motion under MCR 2.116(C)(10), "this Court considers all the evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact." *Sisk-Rathburn v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 425, 427; 760 NW2d 878 (2008). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Plaintiff's insurance policy contained a "concealment or fraud" provision, which stated:

There is no coverage under this policy if **you** or any other **person** insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

"The rules of contract interpretation apply to the interpretation of insurance contracts," so this Court must enforce the clear language of an insurance policy. *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 424; 864 NW2d 609 (2014) (citation and quotation marks omitted). For fraud exclusions in particular, this Court explained:

To void a policy because the insured has wilfully misrepresented a material fact, an insurer must show that (1) the misrepresentation was material, (2) that it was false, (3) that the insured knew that it was false at the time it was made or that it was made recklessly, without any knowledge of its truth, and (4) that the insured made the material misrepresentation with the intention that the insurer would act upon it. A statement is material if it is reasonably relevant to the insurer's investigation of a claim. [*Id.* at 424-425 (citation omitted).]

In support of her claim for PIP benefits, plaintiff testified at her deposition that she could not drive, and had not driven since the accident, because of her injuries. After being confronted with the possibility that there was video evidence of plaintiff driving to her deposition, plaintiff conceded that she could drive. In her brief on appeal, plaintiff admits that she was dishonest when she testified at her deposition that she could not, and did not, drive.

Thus, it is undisputed that plaintiff misrepresented that she could not drive as a result of the accident. This misrepresentation was material because it was evidence of the severity of her injuries, which is reasonably relevant to defendant's investigation of the claim. See *id.* at 425. The misrepresentation was also material because plaintiff claimed "driving" as one of the

the trial court's order granting defendant's motion to amend its affirmative defenses, she provides no argument in support of her position.

replacement services to which she was entitled. Next, plaintiff's misrepresentation that she could not drive was clearly false, as she admitted at her deposition and continues to admit in her brief on appeal. See *id.* at 424. And plaintiff clearly knew that the representation was false because, if nothing else, she drove herself to the deposition before she gave the testimony that she could not drive. See *id.* Lastly, reasonable minds could not disagree that plaintiff intended for defendant to rely upon the misrepresentation. See *id.* at 425. Plaintiff listed the inability to drive on her replacement-services form, and then testified at her deposition that she still could not drive as a result of the accident. Plaintiff only admitted that she could drive after she was confronted with the possibility that defendant had video footage of plaintiff driving to the deposition. On this record, a reasonable juror could only conclude that plaintiff intended for defendant to rely on her misrepresentation that she could not drive so that defendant would pay for replacement services that defendant did not require.

In response to this undisputed evidence, plaintiff contends that she had permission from her doctor to drive to her deposition. But even if this was true, it is irrelevant to the issue at hand. The issue is whether plaintiff committed fraud such that her claim was barred under the insurance contract's fraud exclusion provision. Even if plaintiff had permission to drive, it has no bearing on whether plaintiff misrepresented that she could not drive.

Similarly, plaintiff argues that she created a genuine issue of material fact because she has bills and documents from her doctors establishing the need for things like attendant care. But, again, the issue is plaintiff's misrepresentation and whether it was sufficient to trigger the fraud exclusion in the insurance contract. Plaintiff's entitlement to otherwise valid services is irrelevant because, under the insurance contract's fraud exclusion provision, plaintiff was entitled to "no coverage under [the] policy" for a material misrepresentation. As already explained, there is no genuine issue of material fact that plaintiff made a material representation sufficient to void the insurance policy. See *Bahri*, 308 Mich App at 424-425. And for that reason, the trial court properly granted defendant's motion for summary disposition.²

Affirmed.

/s/ Kathleen Jansen
/s/ Jane M. Beckering
/s/ Colleen A. O'Brien

² There were other instances of potential material misrepresentations that we need not address based on our conclusion that plaintiff's misrepresentation that she could not drive was sufficient to void the insurance policy under the insurance policy's fraud exclusion provision.