

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARY M. BURKE,

Plaintiff-Appellant,

v

JACKSON NATIONAL LIFE INSURANCE  
COMPANY a Michigan insurance corporation,  
UNDERWRITING SERVICES AGENCY, INC., a  
Michigan corporation, and KENNETH L. PHILLIPS,  
jointly and severally,

Defendant-Appellees.

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UNPUBLISHED

May 24, 1996

No. 176878

LC No. 93-010195-CK

Before: Saad, P.J., and McDonald and M. A. Chrzanowski\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a June 10, 1994, order granting summary disposition in favor of defendants pursuant to MCR 2.116 (C)(8) and (10), in this action stemming from the denial of plaintiff Mary M. Burke's claim for life insurance benefits by defendant Jackson National Life Insurance Company following the death of her husband Larry K. Burke. We affirm.

The trial court properly granted summary disposition in defendants' favor on plaintiff's claim that Jackson breached the interim insurance contract because the interim insurance receipt unambiguously terminated on its own accord when Jackson offered the decedent a plan other than the one applied for. One of the conditions contained in the interim insurance receipt was not fulfilled. *Reed v Citizens Ins Co, 198 Mich App 443; 499 NW2d 22 (1993)*. Furthermore, plaintiff's argument that the interim insurance receipt's termination provisions were ambiguous is moot and without merit because the document's clear language provides that proper disclosure of the decedent's health problems would have terminated the coverage afforded by the interim insurance receipt.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

There was also no error in the court's grant of summary disposition on plaintiff's promissory estoppel and implied contract claims. Plaintiff failed to carry her evidentiary burden to show a disputed material fact existed on either claim. *SSC Assoc v General Retirement Sys*, 192 Mich App 360; 480 NW2d 275 (1991); *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543; 487 NW2d 499 (1992). The record reveals neither a definite nor clear promise of coverage and no evidence that the decedent ever accepted the rated policy and instructed defendant Phillips to process it.

Summary disposition was also proper with regard to plaintiff's express contract claim. The policy never became effective because decedent's health did not remain as represented, one of the conditions of the policy application. *G P enterprises, Inc v Jackson Nat'l Life Ins Co*, 202 Mich App 557; 509 NW2d 780 (1993). Contrary to plaintiff's assertions, a "policy date" is not synonymous with the "effective date" when the insurance application specifically provides coverage will not become effective unless certain conditions are met prior to issuance. *GP, supra*.

Finally no error occurred in the dismissal of plaintiff's negligence claims. Plaintiff has no cause of action against Phillips for a breach of the duty to advise because there was no special relationship between Phillips and the decedent, *Bruner v League Gen'l Ins Co*, 164 Mich App 28; 416 NW2d 318 (1987); there was no negligent processing by Jackson because any delay in processing was due to reasonable underwriting activities; and even assuming some breach of duty by Phillips for failing to accept and process the rated policy, such a breach would not have been the cause in fact of plaintiff's injuries.

Affirmed. Costs to appellee.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Mary A. Chrzanowski