STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
June 25, 1996

No. 175484
LC No. 94-001139

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

PER CURIAM.

Plaintiff appeals by right an order of the circuit court granting summary disposition in defendant's favor pursuant to MCR 2.116(C)(10). We affirm.

In 1992, Michael Stokes' house caught fire, damaging part of his dwelling and some of his personal property. At the time of the fire, Stokes had homeowner's insurance policies with both plaintiff, Michigan Millers Mutual Insurance Company, and defendant, Michigan Basic Property Insurance Association. Each policy contained an "other insurance" provision limiting each insurer's responsibility to a pro-rata share of a covered loss.

Stokes notified each insurer of his losses. Pursuant to its policy, plaintiff compensated Stokes for his losses. However, defendant denied Stokes' claim because Stokes failed to comply with a policy requirement that he submit a signed proof of loss within sixty days of the fire.

In 1994, plaintiff commenced this action to recover from defendant a pro-rata share of the proceeds plaintiff paid Stokes in satisfaction of his claim. Plaintiff's claim is based on the theories of indemnification, contribution, and subrogation. In lieu of an answer, defendant moved for summary disposition, arguing that it never became liable to Stokes under its policy and, accordingly, plaintiff has

---

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

no right to recover from defendant. The trial court agreed and granted summary disposition in defendant's favor pursuant to MCR 2.116(C)(10).

On appeal, plaintiff contends that the trial court erred in granting summary disposition in defendant's favor. We disagree. We review the trial court's ruling on a motion for summary disposition de novo to determine whether the pleadings or the uncontroverted documentary evidence establish that defendant is entitled to judgment as a matter of law. MCR 2.116(I)(1); *Kennedy v Auto Club of Michigan,* 215 Mich App 264, 266; 544 NW2d 750 (1996). The existence of either circumstance merits a grant of summary disposition. *Kennedy, supra* at 266.

In *Morrow v Shah,* 181 Mich App 742, 749; 450 NW2d 96 (1989), this Court articulated the principle of subrogation as follows:

> Regardless of whether a right of subrogation arises by operation of law or by contractual agreement, the controlling general principles are the same: The subrogee, upon paying an obligation owed to the subrogor as the primary responsibility of a third party, is substituted in the place of the subrogor, thereby attaining the same (and no greater) rights to recover against the third party. See *Allstate Ins Co v Snarski,* 174 Mich App 148, 154-155; 435 NW2d 408 (1988), lv den 432 Mich 883 (1989).

See also *Atlanta Int'l Ins Co v Bell,* 438 Mich 512, 521; 475 NW2d 294 (1991). A subrogee obtains no greater rights than those possessed by the subrogor. *Commercial Union Ins Co v Medical Protective Co,* 426 Mich 109, 117; 393 NW2d 479 (1986); *Snarski, supra* at 154-155; *Northwestern Mutual Ins Co v Jackson Vibrators, Inc,* 402 F2d 37, 40 (CA 6, 1968).

In the present case, plaintiff does not dispute that Stokes failed to meet a condition precedent to coverage under his policy with defendant by failing to submit a signed proof of loss within sixty days of the fire. Hence, Stokes has no right to coverage under his policy with defendant. See *Fenton v National Fire Ins Co,* 235 Mich 147; 209 NW 42 (1926); *Auto-Owners Ins Co v Gallup,* 191 Mich App 181, 183-184; 477 NW2d 463 (1991); *Reynolds v Allstate Ins Co,* 123 Mich App 488, 490-491; 332 NW2d 583 (1983); *Barnes v State Farm Fire & Casualty Co,* 623 F Supp 538 (ED Mich, 1985). Therefore, because plaintiff, as Stokes' subrogee, possesses no greater rights against defendant than the rights possessed its subrogor, *Commercial Union Ins Co, supra* at 117; *Allstate Ins Co, supra* at154-155, plaintiff cannot pursue a claim against defendant on the basis of the insurance policy. Cf. *Fremont Mutual Ins Co v Michigan Basic Property Ins Ass'n,* 171 Mich App 500; 430 NW2d 764 (1988); *Badger State Mutual Casualty Ins Co, v Auto-Owners Ins Co,* 128 Mich App 120; 339 NW2d 713 (1983); *Keller v Losinski,* 92 Mich App 468; 285 NW2d 334 (1979). We decline plaintiff's invitation to rewrite the insurance contract between Stokes and defendant by abrogating the sixty-day notice requirement under the circumstances of this case. Furthermore, we find that plaintiff failed to present documentary evidence sufficient to establish a basis for recovery under a theory of either contribution or indemnification. See *Lubetsky v Standard Fire Ins Co,* 217 Mich 654, 656; 187 NW 260 (1922); *Reliance Ins Co v Liberty Mutual Fire Ins Co,* 13 F3d 982, 983; *Auto-*

Owners Ins Co v Southern Michigan Mutual Ins Co, 123 Mich App 39, 41; 333 NW2d 168 (1983); see also *Oberle v Hawthorne Metal Products Co*, 192 Mich App 265, 269-270; 480 NW2d 330 (1991); *Hartman v Century Truss Co*, 132 Mich App 661, 664-665; 347 NW2d 777 (1984). Accordingly, we conclude that summary disposition was properly granted.

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello