

STATE OF MICHIGAN
COURT OF APPEALS

GLENN LAMAR LINGERFELT,

Plaintiff-Appellee,

v

FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN,

Defendant-Appellant,

and

FREEDOM DRIVING AIDS, INC.,

Defendant.

UNPUBLISHED

January 14, 1997

No. 186585

LC No. 94-2179-CK

Before: Taylor, P.J., and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

Defendant appeals as of right an order of dismissal entered pursuant to a stipulation of the parties on the basis of the court's prior summary disposition order in favor of plaintiff. We affirm.

Proper resolution of this appeal requires an understanding of three related lawsuits. In the first lawsuit, case No. 92-7112-NF, plaintiff, who was insured under a motor vehicle policy issued by defendant, sued defendant for benefits under the no-fault insurance act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, for injuries he sustained in a motor vehicle accident. The parties entered into a consent judgment whereby defendant agreed to pay plaintiff a total of \$206,086.52 (a portion of which was to be used to purchase a specially equipped van), plus benefits for future attendant care. Plaintiff filed a second lawsuit, case No. 94-2179-CK (the instant appeal) when defendant refused to remove its security interest from the handicapper's van that was provided for in the consent judgment. The trial court granted plaintiff's motion for summary disposition and ordered defendant to remove its lien on the van. Defendant filed a third lawsuit, case No. 94-3602-CK asking the court to set aside the consent judgment because it had been entered based upon a mistake, inadvertence, surprise, or excusable

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

neglect and countenanced a fraud upon the court. The trial court summarily dismissed the third lawsuit pursuant to a motion brought by plaintiff.

Defendant does not challenge the trial court's order requiring it to remove the security interest from the van. Rather, defendant claims that the consent judgment entered in case No. 92-7112-NF is invalid for various reasons. We reject defendant's effort to challenge the consent judgment in an appeal from a lower court case that did not result in entry of the consent judgment. As the trial court stated in its opinion dismissing the third lawsuit, if defendant was dissatisfied with the consent judgment its recourse was a motion for relief from judgment pursuant to MCR 2.612. Defendant cannot collaterally attack an order entered in the first lawsuit in this appeal because this is an appeal of the second lawsuit. Defendant is not entitled to any relief because it has not demonstrated any defect in the lower court order which is being appealed in this case.

Affirmed. Plaintiff may tax costs.

/s/ Clifford W. Taylor

/s/ Roman S. Gibbs

/s/ Roy D. Gotham