STATE OF MICHIGAN

COURT OF APPEALS

KEVIN R. PELTON, D.O., and KEVIN R. PELTON, D.O., P.C., d/b/a SOUTH END FAMILY PRACTICE,

Plaintiff/Counter-Defendant/Appellee,

and

LORI PELTON,

Plaintiff/Counter-Defendant/Appellant,

v

STATE FARM FIRE & CASUALTY COMPANY,

Defendant/Counter-Plaintiff/Appellee.

UNPUBLISHED
April 8, 1997

No. 184858
LC No. 89-003507-CK

Before: Wahls, P.J., and Young and J.H. Fisher,* JJ.

PER CURIAM.

Plaintiff Lori Pelton appeals as of right from a judgment awarding her $5,668.14 plus interest in proceeds from her fire and casualty insurance policy. We affirm.

Plaintiffs Lori Pelton, Dr. Kevin Pelton and his corporation sued defendant for insurance proceeds for their building and business, which had been insured by defendant before it burned. Defendant countersued plaintiffs for reimbursement for payments it made to NBD, the mortgagee of plaintiffs' building, alleging that plaintiffs intentionally burned the building down. At trial, the parties stipulated that Lori Pelton (hereinafter plaintiff) was an innocent coinsured. The jury returned a verdict finding that plaintiff Kevin Pelton had set fire to the building in question.

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

Plaintiff first argues that the parties' stipulation that she was an innocent coinsured determined who was responsible to repay defendant for the money it paid to NBD and that plaintiff should therefore not be held liable for the payments. We disagree.

Plaintiff fails to adequately distinguish between a set-off and a reimbursement. The set-off reflected the mortgage loss language in the insurance contract that certain damages had to be paid directly to the mortgagee, NBD, rather than to plaintiff or her husband. Accordingly, the set-off has nothing to do with culpability. Rather, it ensured that defendant did not have to pay these damages twice.

On the other hand, defendant's counterclaim sought reimbursement from the truly culpable party for the money that it paid to NBD. By stipulating to Lori Pelton's innocent coinsured status, defendant gave up the right to be reimbursed by plaintiff for that amount that it had already paid NBD. The fact that defendant had a reimbursement claim against plaintiff's husband is wholly separate from defendant's right not to have to pay the same damages to both NBD and plaintiff. Nothing in the stipulation can be construed to affect defendant's right to set off the payment it made to NBD from plaintiff's recovery. See *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990).

Plaintiff next argues that the trial court erred by dividing the actual damages in half and then deducting the entire set-off from plaintiff's share of the proceeds. We disagree. The damages were stipulated to be $400,000 total: $200,000 for the building, $150,000 for the contents, and $50,000 for lost business. The trial court divided these damages in half to yield a $200,000 share for plaintiff. The trial court then subtracted the entire set-off, the $194,331.86 that defendant paid NBD, from plaintiff's share. The trial court properly concluded that the innocent coinsured plaintiff should recover half of the actual damages (up to the policy limits) minus the entire set-off. *Brown v Frankenmuth Mutual Ins Co*, 187 Mich App 375, 383-384; 468 NW2d 243 (1991); compare *Nationwide Mutual Fire Ins Co v Pittman*, 82 NC App 756; 348 SE2d 350, 351 (1986) (payment to mortgagee is set off from actual damages first, with innocent coinsured receiving half of remainder).

Finally, plaintiff argues that, although the loss occurred prior to Kevin Pelton's death, the doctrine of equitable conversion should be utilized to give plaintiff one hundred percent of the rights in the property as if his death had occurred before the loss. We disagree. There are no cases in Michigan that apply the doctrine of equitable conversion in this manner. See *Ramon v Farm Bureau Ins Co*, 184 Mich App 54, 64; 457 NW2d 90 (1990). Moreover, it is not clear that plaintiff and Kevin Pelton owned the property as joint tenants with full rights of survivorship. Without such proof, plaintiff cannot make the argument for the use of the equitable conversion doctrine. See *Rock Co Savings & Trust Co v London Assurance Co*, 17 Wis 2d 618; 117 NW2d 676, 678 (1962).

Affirmed.

/s/ Myron H. Wahls
/s/ Robert P. Young, Jr.

/s/ James H. Fisher