STATE OF MICHIGAN

COURT OF APPEALS

CATHYJO PAGE,

Plaintiff-Appellant,

v

AUTOMOBILE CLUB OF MICHIGAN, INC.,

Defendant-Appellee.

UNPUBLISHED
May 2, 1997

No. 194221
Kent Circuit
LC No. 95-0328-NI

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Plaintiff Cathyjo Page appeals as of right from the trial court's grant of summary disposition to defendant Automobile Club of Michigan, Inc. on plaintiff's claim for personal protection insurance (PIP) benefits. We affirm.

I

First, plaintiff argues that the trial court erred in finding that plaintiff is not entitled to coverage under the provisions of the no-fault act, specifically § 3114, MCL 500.3114; MSA 24.13114. We agree. We review de novo a trial court's ruling on a motion for summary disposition. *Trierweiler v Frankenmuth Ins Co*, 216 Mich App 653, 655; 550 NW2d 577 (1996).

Section 3114 provides an order of priority for payment of PIP claims, it does not set out a list of exclusions. See §§ 3112, 3113. Moreover, section 3114 provides for payment of PIP benefits to "the person named in the policy", and must, therefore, be read in conjunction with the policy language. In the policy at issue, the "insured person" is defined as "you and any resident relative", and "*any other person using [the car] with your permission.*" Emphasis added. Any ambiguities in an insurance policy must be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38-39; 549 NW2d 345 (1996). Plaintiff's claim is not excluded by the language of § 3114 and summary disposition was improperly granted on this basis.

II

Plaintiff, claiming that an ambiguity exists, also argues that the trial court erred in finding no coverage under the terms of the policy. We disagree.

Plaintiff claims that while her car does not fall within the "insured motor vehicle" definition, it does meet the "insured car" definition because the "insured car" is the one listed on declaration certificate, which is her 1984 Datsun.

The flaw in plaintiff's argument is that the "insured car" definition is actually more broadly defined than simply the car listed on the declaration sheet. It also defines the "insured car" as "your car," i.e., the named insured, which is plaintiff's sister, not plaintiff. Because plaintiff's sister did not own the car, it does not meet the "insured car" definition. Thus, while it is true that ambiguities must be construed against the insurer, the drafter of the agreement, *Id*, here there is no ambiguity. Plaintiff's car does not meet either the "insured motor vehicle" definition or the "insured car" definition.

III

Plaintiff next argues that the trial court erred in determining that she is not a third-party beneficiary under the contract. We disagree.

Michigan's third-party beneficiary statute, MCL 600.1405; MSA 27A.1405, requires that, in order for a contract to be deemed a third-party beneficiary contract, the promise must have required the promisor, here defendant, to have done something "directly to or for" the third party. The insurance contract, i.e., the promise, however, is between plaintiff's sister and defendant, with plaintiff's sister paying a premium in exchange for defendant's promise to insure plaintiff's sister and what defendant thought was plaintiff's sister's car, the 1984 Datsun. From the deposition testimony, it is clear that only plaintiff's sister dealt with defendant regarding the at-issue insurance policy, none of the paperwork which defendant sent to plaintiff's sister listed plaintiff, and plaintiff's sister never mentioned plaintiff either initially or after she received the insurance certificate and policy. Thus, we agree with the trial court's conclusion that, quite apart from defendant promising to do something on plaintiff's behalf, "defendant was unaware of the involvement of [plaintiff] in this transaction or that she was the party who was the owner and registrant of the vehicle in question."

We find unpersuasive plaintiff's attempt to liken this case to *Cenovski, Inc v Michigan Mutual Ins Co*, 200 Mich App 725; 504 NW2d 722 (1993). There, this Court held that Michigan Mutual had to pay on a third-party beneficiary theory at least in part because Club Monte Carlo had mentioned in its application for insurance that Cenovski owned the vehicle. Here, by contrast, plaintiff's sister did not do or say anything that revealed that plaintiff was in any way connected with the insured vehicle.

IV

Plaintiff next argues that the trial court erred in refusing to reform the contract. We disagree.

"Courts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties." *Olsen v Porter*, 213 Mich App 25, 29; 539 NW2d 523 (1995). Reformation is undertaken only with the "utmost caution." *Id.*

On appeal, plaintiff points to no evidence from which a reasonable factfinder could conclude that defendant intended to insure plaintiff. Again, the proofs show that, as far as defendant knew, plaintiff was a complete stranger to, and had no connection with, the insurance contract.

V

Finally, plaintiff argues that defendant should be equitably estopped from denying her benefits because she contends that she relied on defendant's representations that she was insured. We disagree.

Equitable estoppel arises when one party represents certain facts, the other party justifiably relies, and the second party will be prejudiced if the first party is permitted to deny the existence of the facts at issue. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 581-582; 458 NW2d 659 (1990).

Plaintiff's claim fails utterly because it is not supported by the record. The record is clear that defendant never represented that plaintiff was insured. Instead, defendant, after dealing only with plaintiff's sister and not with plaintiff, sent insurance documents to plaintiff's sister's address, which documents listed only plaintiff's sister and the sister's husband as insureds. In deposition plaintiff conceded that her sister showed her the documents and that she discovered that her name was notably absent from them, but that she did nothing about it.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Harold Hood
/s/ Roman S. Gribbs

I concur in result only.

/s/ Clifford W. Taylor