STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff-Appellee,

v

JOHN L. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
May 9, 1997

No. 182743
Wayne Circuit
LC No. 93-317890-CK

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff instituted this declaratory action to determine its liability under a homeowner's policy issued to defendant. The circuit court granted plaintiff's motion for summary disposition, which precluded defendant from filing a lawsuit against plaintiff. Defendant appeals as of right. We affirm.

Defendant suffered a loss of personal property stored at the home of his girlfriend, Beverly Thornton, when the property was stolen in September and October 1991. Both defendant and Thornton had homeowner policies issued by plaintiff. Under her own policy, Thornton submitted a timely sworn proof of loss that included defendant's property. Defendant did not submit his own proof of loss under his policy until April 1993. After denying defendant's claim, plaintiff brought this declaratory action.

We review the grant of summary disposition de novo. *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). Initially we note that plaintiff amended its motion for summary disposition from MCR 2.116(C)(10) to MCR 2.116(C)(7) before the hearing on the motion, and the circuit court therefore apparently relied upon MCR 2.116(C)(7) to grant plaintiff's motion. MCR 2.116(C)(7) is the appropriate subrule for a defendant moving for summary disposition based on an argument that the plaintiff's claim is barred by some operation of law. *Wilson v Thomas L McNamara, Inc*, 173 Mich App 372, 375; 433 NW2d 851 (1988). The rule does not therefore apply to the present declaratory action. MCR 2.116(C)(10) is the appropriate rule for an insurer to utilize in a declaratory action to determine its liability under a policy. See *Allstate Ins Co v Freeman*, 432 Mich 656, 662; 443 NW2d

734 (1989); *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich App 526, 530; 547 NW2d 52 (1996).

At the summary disposition proceeding, plaintiff presented two arguments: first, defendant had not complied with a policy clause requiring the insured to provide sworn proof of loss within sixty days of the loss, and second, that any lawsuit brought by defendant would further be barred by a policy provision requiring suits to be brought within one year of the loss. The reasoning of the circuit court in granting plaintiff's motion is not absolutely clear. The court stated that defendant did not file his proof of loss or a lawsuit within the prescribed policy periods but later stated that defendant "failed to state a [claim] for which relief could be granted under (C)(7) and the statute of limitations argument. The claim is barred because of the statute of limitations. That's my ruling."

The granting of summary disposition under an inappropriate subrule does not preclude appellate review when, as in the present case, summary disposition is appropriate under another subrule, and the record permits review under the correct subrule. *Brown v Drake-Willock Int'l*, 209 Mich App 136, 143; 530 NW2d 510 (1995). Moreover, this Court will not reverse a lower court where it reached the correct result, albeit for the wrong reason. *Griffery v. Prestige Stamping, Inc*, 189 Mich App 665, 669; 473 NW2d 790 (1991).

Because MCR 2.116(C)(10) is the correct rule for plaintiff's motion for summary disposition, we review the grant of summary disposition under the standards for MCR 2.116(C)(10). *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). When ruling on a motion for summary disposition under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, deposition, admissions, and other documentary evidence available to it and grant summary disposition only if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Rice v ISI Mfg, Inc*, 207 Mich App 634, 635-636; 525 NW2d 533 (1994).

Defendant argues that the circuit court erred in granting summary disposition because there were genuine issues of material fact regarding whether he provided plaintiff with timely notice of his losses. We disagree. Under his policy, defendant had a contractual duty to submit a signed, sworn proof of loss within sixty days of the loss. We are not persuaded by defendant's argument that the insurance policy can be construed as permitting a third-party, such as Thornton, to provide the requisite signed, sworn proof of loss. The terms of an insurance contract are interpreted in accordance with their commonly used meaning, although a court also takes into account the reasonable expectations of the parties. If an insurance contract is unambiguous, the trial court must enforce it as written. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 402-403; 531 NW2d 168 (1995). If the contract fairly admits of but one interpretation, it may not be said to be ambiguous and its plain meaning should be given effect. *Parker v Nationwide Mutual Ins Co*, 188 Mich App 354, 356; 470 NW2d 416 (1991).

In the present case, the insurance policy required, within sixty days of the loss, "your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief," eight specified items. The word, "your" is defined in the definitions section of the policy as meaning the "named insured." We hold that this contract language admits of but one reasonable interpretation, namely, that the named

insured must sign the sworn proof of loss. Under any reasonable interpretation of the contract language, it cannot be construed as permitting the requisite proof of loss to be supplied by a third party such as Thornton, who signs sworn statements in proof of loss under her own, separate insurance policy and records only her policy number on those forms. Therefore, limiting our review to the issue of contract interpretation raised by defendant, we uphold the trial court's grant of summary disposition to plaintiff.

Defendant's alternative theory that plaintiff should be equitably estopped from asserting his failure to submit a signed, sworn proof of loss as a bar to liability is not properly before us because it was not presented to the circuit court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). There can be no disputed issue of material fact where the dispute is not brought to the attention of the trial court. *Community Nat'l Bank of Pontiac v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 519; 407 NW2d 31 (1987). Defendant's conclusory averments of fraud "and/or misfeasance, malfeasance, or nonfeasance" in his affidavit that accompanied his answer to plaintiff's motion for summary disposition are inadequate to show a genuine issue of material fact. *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

Because we find that defendant's failure to submit the signed, sworn proof of loss is dispositive of this action, we need not address his argument that the one-year policy limitation on filing lawsuits had not expired.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Daniel A. Burress