

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TITAN INSURANCE COMPANY,

Plaintiff-Counter  
Defendant-Appellant,

v

MICHAEL W. FORBES,

Defendant-Counter  
Plaintiff-Appellee,

and

ROHIT A. SHAH, PURNIMA SHAH  
and KEVIN POWELL, Personal Representative of the Estate of JUSTINO RAMIREZ, Deceased,

Defendants-Appellees.

UNPUBLISHED  
September 19, 1997

No. 195161  
Berrien Circuit Court  
LC No. 94-000563-CZ

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Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals by right judgment in this declaratory action, entered at the conclusion of a bench trial, upholding the policy as not having been procured by the fraud of the insured, defendant Forbes, and thereby obligating plaintiff to indemnify the insured for liability for judgments in favor of the innocent injured third parties, and for no fault benefits and defense costs for the insured. This case is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Forbes made a down payment on the premium of \$440, and plaintiff insurer agreed to accept installment payments for the premium balance. However, billings sent to the address the insured provided on the application were returned as undeliverable, as were subsequent notices of cancellation based on nonpayment of premium. Because actual notice of cancellation is generally required, the mere

sending of notices of cancellation was ineffective to terminate the policy. *American States Ins Co v ACIA*, 193 Mich App 248, 254; 484 NW2d 1 (1992). An insurer can protect itself against this difficulty by including a provision in the policy that nonpayment of premium when due causes the policy to expire. *Grable v Farmers Ins Exchange*, 129 Mich App 370, 372-373; 341 NW2d 147 (1983), and cases there cited. Plaintiff failed to include any such provision in its policy, nor does plaintiff's policy contractually obligate the insured to provide the insurer with notice of address changes.

When Forbes applied for the policy, he provided the insurance agent with the address of his former marital home; Forbes was already living at another address. Plaintiff relies on a theory of innocent misrepresentation, which requires, unlike other types of fraud, proof not only of injury to plaintiff, but that the injury inured to the benefit of defendant Forbes. *Temborius v Slatkin*, 157 Mich App 587; 403 NW2d 821 (1986). In providing an arguably incorrect address, Forbes gained no benefit. He did not thereby absolve himself of liability for premiums. As the burden of proving fraud was on plaintiff, *Jim-Bob, Inc v Mehling*, 178 Mich App 71; 443 NW2d 451 (1989), the trier of fact's rejection of plaintiff's proofs as insufficient to establish fraud does not represent the requisite clear error necessary to obtain appellate relief. *Cebulak v Lewis*, 320 Mich 710, 718-719; 32 NW2d 21 (1948), reversed in part on other grounds *Wheelock v Eyl*, 393 Mich 74, 78-79; 223 NW2d 276 (1974).

The trial court not having erred in its rejection of plaintiff's claim of fraud, plaintiff's second issue is moot.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski