

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN FELLOWSHIP MUTUAL
INSURANCE COMPANY,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 190910

Livingston Circuit Court

LC No. 95-014066 CK

DIANA L. FERENCE as Guardian-Conservator of the
Estate of JASON FERENCE,

Defendant, Counterplaintiff,
Third-Party Plaintiff,

and

AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Defendant-Appellee.

Before: White, P.J., and Bandstra and Smolenski, JJ.

BANDSTRA, J. (dissenting).

I respectfully dissent. The “innocent third party” doctrine relied upon by the majority found its genesis in *Morgan v Cincinnati Ins Co*, 411 Mich 267; 307 NW2d 53 (1981). However, *Morgan* involved a standard fire insurance policy prescribed by statute. *Id.* at 276. Our Supreme Court construed the statutory language as meaning that “the claim of any insured under the policy who is innocent of fraud” cannot be barred. *Id.* at 277. This holding, required by the statute,¹ was specifically limited to apply only “whenever the statutory clause limiting the insurer’s liability in case of fraud by the insured is used.” *Id.* at 277.

This limiting clause from *Morgan* was not quoted or considered when a panel of our Court extrapolated the innocent third party rule into the no-fault context in *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 10; 369 NW2d 243 (1985). Accordingly, I consider *Darnell* to be wrongly

decided.² Further, I agree with appellant that there is no good public policy reason to prevent rescission of the insurance policy issued as a result of Diana Ference's misrepresentations regarding her son.

I would reverse the decision granting summary disposition in favor of Auto Club.

/s/ Richard A. Bandstra

¹ The statute interpreted in *Morgan* has since been amended. See *Williams v Auto Club Group Ins Co (On Remand)*, 224 Mich App 313, 320-321; 569 NW2d 403 (1997) (Bandstra, P.J., dissenting).

² The majority also cites *Katinsky v Auto Club Ins Ass'n*, 201 Mich App 167; 505 NW2d 895 (1993), and *Ohio Farmers v Michigan Mutual Ins Co*, 179 Mich App 355; 445 NW2d 228 (1989). However, these cases are factually distinguishable. Both involved a claim by a person who was not a member of the household of the insurance applicant and who was, thus, truly an "innocent third party."