STATE OF MICHIGAN

COURT OF APPEALS

EVELYN J. FISH,

Plaintiff-Counter-defendant/Appellant,

v

MONUMENTAL GENERAL INSURANCE COMPANY, d/b/a MONUMENTAL GENERAL INSURANCE GROUP,

Defendant-Counter-plaintiff/Appellee.

UNPUBLISHED
March 24, 1998

No. 199023
Kent Circuit Court
LC No. 95-005038-NZ

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing her complaint and granting judgment on defendant's counterclaim pursuant to cross-motions for summary disposition. We affirm.

In 1991, plaintiff applied for and received a term life insurance policy providing benefits of $7,000 on her life and that of her husband in exchange for payment of quarterly premiums of $101.14. In September 1991, defendant subsequently took over the policy that was originally issued by CUNA. Due to a clerical error, defendant categorized the policy as providing $54,000 in benefits and sent plaintiff a certificate to that effect in 1992. After plaintiff's husband died in 1995, defendant paid plaintiff $54,000. Defendant later discovered its error in classifying the policy and advised plaintiff that her life was insured for only $7,000, as was her husband's life. Plaintiff sued to compel defendant to provide coverage of $54,000 on her life, and defendant countersued for reimbursement of the $47,000 overpayment on plaintiff's husband's life.

Plaintiff contends that there was a contract for a $54,000 policy because there was a meeting of minds between the parties. We agree with the trial court that no meeting of the minds existed on this point. There must be a meeting of the minds on all material facts in order to form a valid contract; "a meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts." *Siegel v Spinney*, 141 Mich App 346, 350; 367 NW2d 860 (1985), quoting *Stark v Kent Products, Inc*, 62 Mich App 546, 548; 233 NW2d 643 (1975). The evidence showed that

CUNA offered credit union members insurance policies that provided coverage of $7,000 on the member's life and, if requested, on that of the member's spouse. Plaintiff accepted that offer and applied for the insurance coverage on herself and her husband. The application stated that "I understand that when the underwriter . . . issues my Certificate, this term insurance will be in effect June 1, 1991 provided the first premium is paid within 21 days of the Effective Date. I also understand that my Family Group Life Insurance, Certificate Number 009617181 will terminate May 11, 1991." CUNA then issued a policy showing that plaintiff and her husband were each insured for $7,000 and that the policy premiums started at $101.14 per quarter. These facts, viewed objectively, permit only one conclusion: the parties agreed that CUNA would provide $7,000 policies on the life of both plaintiff and her husband in exchange for quarterly payments of $101.14. The confusion arose after plaintiff received the policy certificate and thought there must be a mistake or an increase in coverage because of the increase in premiums to $101.14.

Plaintiff also claimed to have had a discussion with an agent of defendant, during which it was agreed that the policy would provide life insurance coverage of $54,000 for the $101.14 premium. Plaintiff testified, however, that this conversation took place in June 1991, at least two months before defendant took over administration of the policy in September 1991. Therefore, she must have spoken to a CUNA agent. Plaintiff has cited no authority for the proposition that an oral representation by CUNA is binding on defendant. In any event, although defendant later issued a certificate showing that plaintiff and her husband were both insured for $54,000, that certificate expressly provided that it was subject to the terms and conditions of the contract (policy), that it was not a part of the contract, and did not itself constitute a contract of insurance. It referenced the certificate number on the policy issued by CUNA; that policy showed a face amount of $7,000 on both plaintiff's life and that of her husband. Plaintiff failed to establish any factual or legal support for her claim that the policy should be reformed. The trial court therefore properly dismissed her complaint.

Plaintiff also contends that defendant failed to prove that it was entitled to recover the overpayment under a theory of unjust enrichment and that the trial court overlooked the fact that plaintiff had a valid defense to defendant's counterclaim. We disagree.

A contract may be implied in law to prevent unjust enrichment to the defendant at the plaintiff's expense. *Hollowell v Career Decisions, Inc,* 100 Mich App 561, 570; 298 NW2d 915 (1980). This approach should be used with some caution, however. *Id.* The essential elements of an unjust enrichment claim are (1) receipt of a benefit by the defendant from the plaintiff and (2) which benefit it is inequitable that the defendant retain. *In re McCallum Estate,* 153 Mich App 328, 335; 395 NW2d 258 (1986), citing *Hollowell, supra*.

The law will imply a promise to repay money paid under mistake of fact which in justice and good dealing should be paid back. *Brenner v Niver Parsons Corp,* 250 Mich 81, 82; 229 NW 595 (1930); *General Equipment Manufacturers v Bible Press, Inc,* 10 Mich App 676, 682-683; 160 NW2d 370 (1968). Recovery is allowed where the payment is made voluntarily if it is made under a mistake of material fact, even though the mistake is unilateral and due to a lack of investigation. *Montgomery Ward & Co v Williams,* 330 Mich 275, 284; 47 NW2d 607 (1951); *Madden v*

Employers Ins of Wausau, 168 Mich App 33, 40; 424 NW2d 21 (1988); *Kern v City of Flint*, 125 Mich App 24, 28; 335 NW2d 708 (1983).

The evidence showed that defendant erroneously paid plaintiff $54,000 upon the death of her husband under the mistaken belief that the policy on his life had a face amount of $54,000. Under such circumstances, restitution is appropriate. *General Equipment Manufacturers, supra* at 683. It was inequitable for plaintiff to retain the excess funds because she did not pay the premiums for a $54,000 policy, and the law recognizes that an insurer should not be required to pay a loss for which it charged no premium. *Lee v Evergreen Regency Cooperative*, 151 Mich App 281, 285-286; 390 NW2d 183 (1986). Apparently, although plaintiff paid a premium, it was not a premium sufficient to purchase a $54,000 life insurance policy. Therefore, the trial court did not err in granting defendant's motion for summary disposition on its counterclaim.

Although plaintiff argued below that defendant was estopped to deny coverage in the amount of $54,000 or had waived its right to enforce the policy as written, she has not addressed either argument in her brief on appeal or cited any authority in support of her contention that she has a valid defense. Therefore, she has abandoned these issues. *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994); *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

We affirm.

/s/ Jane E. Markey
/s/ Richard Allen Griffin
/s/ William C. Whitbeck