

STATE OF MICHIGAN
COURT OF APPEALS

IMOGENE COBB,

Plaintiff-Appellant,

v

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 24, 2001

No. 225216

Calhoun Circuit Court

LC No. 98-002499-CK

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order that denied her motion for partial summary disposition in this breach of contract action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that the trial court erred in denying her motion for partial summary disposition regarding liability. Plaintiff contends that, because she testified that she owned a VCR and toolbox that were missing following the alleged burglary, and because defendant's representative conceded at deposition that defendant had no evidence that plaintiff herself had committed fraud or false swearing, no genuine issue of material fact existed regarding defendant's liability. We reject this argument.

Summary disposition is generally precluded where motive and intent are at issue or where a witness or deponent's credibility is crucial. *Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994); *Crossley v Allstate Ins Co*, 139 Mich App 464, 468; 362 NW2d 760 (1984). Here, a genuine issue of material fact existed regarding whether plaintiff's sworn proof of loss statement constituted fraud and false swearing. Plaintiff's testimony at the examination under oath and at deposition was equivocal on the issue of ownership of the allegedly stolen property and the issue of whether the property was in fact stolen. Plaintiff further testified that her son prepared the proof of loss statement and that she did not read or understand the statement before signing it. Although defendant may not have had direct evidence that plaintiff herself had committed fraud or false swearing, a genuine issue of material fact was raised as to her credibility. Accordingly, the trial court properly denied plaintiff's motion for partial summary

* Circuit judge, sitting on the Court of Appeals by assignment.

disposition so as to allow defendant to proceed to trial on the issue of liability. See *Brown v Pointer*, 390 Mich 346, 354; 212 NW2d 201 (1973); *Crossley, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel