

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

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ROBERT GAINES,

Plaintiff-Appellant,

v

JAMES A. KERN, d/b/a JAMES A. KERN  
AGENCY, ALLSTATE INSURANCE  
COMPANY, and MICHIGAN BASIC  
INSURANCE ASSOCIATION,

Defendants-Appellees.

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UNPUBLISHED  
September 24, 2009

No. 286029  
Oakland Circuit Court  
LC No. 2004-059906-CK

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

This case returns to us after remand to the trial court for a factual determination. Plaintiff appeals as of right from a circuit court order that granted summary disposition pursuant to MCR 2.116(C)(10) in favor of Michigan Basic Insurance Association. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts of this case are relatively simple and were set forth in the previous appeal:

This case arises from an insurance dispute following a house fire that occurred on December 2, 2003. Specifically, plaintiff and his friend, Erica McGowan, entered into an agreement that included plaintiff purchasing a house that he would immediately sell to McGowan, who worked in real estate. They agreed that McGowan would facilitate his purchase of the house, including securing the necessary insurances. Plaintiff admitted that he authorized McGowan to do whatever was necessary on his behalf to complete the transactions.

Subsequent to its purchase, the house burned down. Thereafter, plaintiff attempted to determine from whom the fire insurance policy was purchased. It appeared from the closing documents that defendant Kern had provided the fire insurance policy, which was issued by defendant Michigan Basic. However, when plaintiff attempted to make a claim, he was told that the insurance policy had been cancelled by his son, Sedrick. Sedrick was not plaintiff's son, but rather

was McGowan's boyfriend, and he had secured the insurance policy on plaintiff's behalf. Defendant Kern's representative testified that Sedrick had purchased the policy on plaintiff's behalf, claiming to be plaintiff's son, therefore when he requested to cancel the policy some days later, the policy was cancelled effective November 25, 2003. The policy that was cancelled was issued by Michigan Basic, not Allstate, and defendant Michigan Basic sent a cancellation notice to the address of record.

After coverage was denied, plaintiff filed suit alleging that (1) defendant Kern was negligent for canceling his insurance coverage at the request of a third party, and (2) defendants Michigan Basic and Allstate breached the terms of their insurance policy. [*Gaines v Kern*, unpublished opinion per curiam of the Court of Appeals, issued April 20, 2006 (Docket No. 266049), pp 1-2.]

In the prior appeal, this Court agreed with the trial court that the insurance policy that covered plaintiff's home was cancelled before the fire with respect to plaintiff, but remanded for further development of the record concerning the effective cancellation date with regard to the mortgagee. *Id.*, pp 3-4. On remand, the trial court determined that the policy was properly cancelled prior to the fire and that the cancellation notice did not revive or reinstate the policy. It also concluded that plaintiff could not recover under an estoppel theory because he could not show that either he or the mortgagee detrimentally relied on the dates in the notice.

In this appeal, plaintiff has not contested the issue of equitable estoppel, but maintains that the insurance policy was still in effect with regard to the mortgagee at the time of the fire. Recognizing that the argument is immaterial unless he can establish that the rights and remedies of the mortgagee would afford him some basis for relief, he relies on the doctrine of equitable subrogation. Although the trial court did not address the equitable subrogation issue, because plaintiff raised it before the trial court, we may properly consider it. *Peterman v DNR*, 446 Mich 177, 183; 521 NW2d 499 (1994).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The requirements for equitable subrogation also present a question of law that is reviewed de novo. *Auto-Owners Ins Co v Amoco Production Co*, 468 Mich 53, 57; 658 NW2d 460 (2003).

"[E]quitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other. It is well-established that the subrogee acquires no greater rights than those possessed by the subrogor, and that the subrogee may not be a mere volunteer." *Id.* at 59 (citation and quotation marks omitted). "The doctrine of subrogation arises only in favor of one who pays the debt of another, and not in favor of one who pays the debt in performance of his own covenants. This right never follows a primary liability" and "is never allowed in favor of a person who is himself personally liable for the debt he discharges by payment." *Michigan Hosp Service v Sharpe*, 339 Mich 357, 373, 374; 63 NW2d 638 (1954) (citation and quotation marks omitted).

Although plaintiff acknowledges the principle that equitable subrogation applies when a person pays a debt for which another is primarily responsible, the payment upon which he invokes the doctrine is his payment of the balance of mortgage debt when he refinanced the loan. Because he was personally liable for the debt, equitable subrogation is inapplicable. *Id.*

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Douglas B. Shapiro