

STATE OF MICHIGAN
COURT OF APPEALS

GINGER STEIN,

Plaintiff-Appellant,

v

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 12, 2011

No. 295876

Wayne Circuit Court

LC No. 08-126633-CK

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this insurance coverage dispute. We reverse.

A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 317; 783 NW2d 695 (2010). Summary disposition under MCR 2.116(C)(10) is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). In reviewing the trial court's decision, the appellate court considers "the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id.*

When ruling on a motion for summary disposition, the court does not assess the credibility of the witnesses. *White v Taylor Distrib Co*, 482 Mich 136, 142; 753 NW2d 591 (2008). "Summary disposition is suspect where motive and intent are at issue or where the credibility of a witness is crucial." *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). When the truth of a material factual assertion made by a moving party is contingent upon credibility, summary disposition should not be granted. *Id.* at 136. The trial court may not make factual findings or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). When the evidence conflicts, summary disposition is improper. *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003). Inconsistencies in statements given by witnesses cannot be ignored. *White*, 482 Mich at 142-143. Application of disputed facts to the law present proper questions for the jury or trier of fact. *Id.* at 143.

This case surrounds a fire that occurred at plaintiff's residence and her subsequent claim for insurance benefits to cover her loss. After defendant denied her claim, she filed a complaint alleging breach of contract. In its motion for summary disposition, defendant argued that the policy became void at the date of loss because plaintiff breached the policy's provision regarding concealment, fraud, and false statements. The trial court granted defendant's motion, having concluded that there remained no genuine issues of material fact that plaintiff made false statements relating to the loss.

An insurer may seek to void a policy when the insured has willfully misrepresented a material fact. *Mina v General Star Indemnity Co*, 218 Mich App 678, 686; 555 NW2d 1 (1996), rev'd in part on other grounds 455 Mich 866 (1997). To void the policy, the insurer must demonstrate that (1) a material misrepresentation occurred; (2) it was false; (3) the insured knew it was false at the time it was made or made recklessly without regard to any knowledge of the truth; and (4) the insured made the material misrepresentation with the intention that the insurer would rely on it. *Id.* "A statement is material if it is reasonably relevant to the insurer's investigation of a claim." *Id.* at 686-687 (further citations omitted). A claim of mistake or misrepresentation raises a question of fact involving intent that should properly be resolved by a jury. *Harris v Lapeer Pub Sch Sys*, 114 Mich App 107, 116; 318 NW2d 621 (1982).

A review of the record reveals that the trial court ruled that plaintiff did not tell the truth. However, summary disposition is inappropriate when motive and intent are at issue or where the credibility of a witness is crucial. *Foreman*, 266 Mich App at 135-136. Application of disputed facts to the law present proper questions for the jury. *White*, 482 Mich at 143. Accordingly, the trial court erred in granting defendant's motion for summary disposition.¹

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood

¹ We note that defendant also asserted that circumstances surrounding plaintiff's bankruptcy proceeding and valuation of property warranted the application of judicial estoppel and entitled it to summary disposition. The trial court did not address this issue, and it is not raised on appeal. Accordingly, we do not address it.