

STATE OF MICHIGAN
COURT OF APPEALS

CRAIG M. HANSON,

Plaintiff-Appellant,

v

FREMONT MICHIGAN INSURACORP, a/k/a
FREMONT INSURANCE,

Defendant,

and

WHITE AGENCY, INC., and LISA REICHLE,

Defendants-Appellees.

UNPUBLISHED

July 2, 2015

No. 320607

Muskegon Circuit Court

LC No. 12-048576-CK

Before: BECKERING, P.J., and MARKEY and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court order granting White Agency, Inc., and Lisa Reichle’s motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff and his wife, Cinnamon Hanson, owned a residence on Brunswick Road in Holton, Michigan. On October 1, 2009, plaintiff and Cinnamon went to White Agency, an independent insurance agency, to purchase homeowners’ insurance for the property. Plaintiff and Cinnamon spoke with Reichle, a licensed insurance agent and employee of White Agency. Reichle verbally asked plaintiff and Cinnamon questions and completed their insurance application based on their verbal answers. Reichle entered the answer “no” for the following question: “During the past 5 years has any applicant been indicted for or convicted of any degree of the crime of fraud, bribery, arson or any other arson related crime in connection with this or any other property?” Plaintiff claims that Reichle never asked him or Cinnamon about their criminal histories and that Reichle inaccurately answered the question without input from plaintiff or Cinnamon. At the time, both plaintiff and Cinnamon had been convicted of false pretenses with intent to defraud over \$200 but less than \$1,000. Cinnamon signed the insurance application without correcting the answer to the question regarding criminal histories. Fremont issued plaintiff and Cinnamon a policy insuring the Brunswick property.

On September 18, 2010, fire damaged the property. A claim for coverage was submitted to Fremont for this damage, but it denied the claim and rescinded the policy based on the misrepresentation on the application regarding the applicants' criminal histories. On August 30, 2012, plaintiff filed a complaint in the trial court against Fremont only. Plaintiff alleged that Fremont breached its contractual duty under the insurance policy by failing to pay plaintiff benefits for the loss from the fire. On March 22, 2013, plaintiff filed an amended complaint adding White Agency and Reichle as defendants, alleging negligence, arguing that they breached their duty to plaintiff by incorrectly completing his insurance application. The trial court dismissed Fremont from the action on the stipulation of all parties and granted summary disposition in favor of White Agency and Reichle.

Plaintiff agreed to dismissal of his contract claim against Fremont. His sole remaining cause of action is a negligence claim asserting that Reichle owed and breached her duty as an independent insurance agent to fully and accurately complete the application. *Genesee Foods Servs, Inc v Meadowbrook, Inc*, 279 Mich App 649, 654; 760 NW2d 259 (2008) (quotation marks and citation omitted) (“When an insurance policy is facilitated by an independent insurance agent or broker, the independent insurance agent or broker is considered an agent of the insured rather than an agent of the insurer.”).

We affirm because, even assuming for purposes of argument that Reichle owed and breached a duty to properly question the applicants and accurately complete the application, plaintiff's claim fails on causation grounds. See, e.g., *Laier v Kitchen*, 266 Mich App 482, 495; 702 NW2d 199 (2005) (“To establish a prima facie case of negligence, a plaintiff must prove . . . causation[.]”). Defendants presented un rebutted evidence that Fremont would not have issued the insurance policy had it known about the subject convictions. Therefore, had Reichle done what plaintiff claims she should have, i.e., ask plaintiff and Cinnamon about their criminal histories and accurately complete the application, Fremont would not have issued the policy under which plaintiff now seeks benefits. Moreover, plaintiff has not proffered any evidence that another insurer would have issued him a homeowners' policy had Fremont refused. Put simply, there is no evidence that, but for Reichle's alleged failures, plaintiff would have been able to obtain a homeowners' policy.

Although the trial court granted summary disposition on a basis immaterial to the dispositive issue of this appeal, i.e., that plaintiff did not reside at the Brunswick property at the time of the fire, “[a] trial court's ruling may be upheld on appeal where the right result issued, albeit for a wrong reason.” *Gleason v Mich Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Plaintiff also argues that Cinnamon's signing the insurance application was not binding on him because she was not acting as his agent and signing on his behalf. However, plaintiff does not argue or provide legal support for how, even if this were true, it would render erroneous the grant of summary disposition in favor of White Agency and Reichle. Plaintiff and his wife jointly sought the homeowners' insurance; both were named as applicants on the application for the Brunswick property and plaintiff did not object to Cinnamon's signing of the application. Moreover, plaintiff's argument in this regard has no effect on his failure to present evidence of causation.

Therefore, the trial court properly granted White Agency's and Reichle's motion for summary disposition under MCR 2.116(C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008) ("Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.").

Affirmed. As the prevailing party, defendants may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Douglas B. Shapiro