STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY MICHAEL ALLEN,

Plaintiff-Appellant,

v

EVEREST NATIONAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 13, 2020

No. 348961
Bay Circuit Court
LC No. 18-003554-NI

Before: MURRAY, C.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

In this first-party no-fault insurance action, plaintiff appeals as of right an order granting defendant's motion for summary disposition. We affirm.

On January 13, 2018, plaintiff was involved in a motor vehicle accident at approximately 1:15 p.m. In September 2018, plaintiff brought an action against defendant, Everest National Insurance Company, arguing that he was insured by defendant under the Michigan No-Fault Act, MCL 500.3101 *et seq*., and defendant was obligated to pay his incurred medical expenses, lost earnings, and other expenses under the insurance policy. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff was uninsured as of January 11, 2018, because he failed to pay his renewal insurance premium. The trial court granted defendant's motion for summary disposition after finding that plaintiff's policy of insurance was not in effect at the date and time of the accident. This appeal followed.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition after finding that plaintiff's insurance policy lapsed for non-payment. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Summary disposition under MCR 2.116(C)(10) is proper if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Bennett v Russell*, 322 Mich App 638, 642; 913 NW2d 364 (2018) (quotation marks and citations omitted).

Further, "the proper interpretation of contracts and the legal effect of contractual provisions are questions of law subject to review de novo." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012).

The dispute in this case concerns whether plaintiff had automobile insurance at the time of the accident. It was undisputed that plaintiff's renewal insurance premium was due by January 6, 2018, which plaintiff did not pay, and the accident occurred on January 13, 2018 at about 1:15 p.m. It was also undisputed that plaintiff submitted a payment to renew his insurance with a lapse in coverage on January 13, 2018, at approximately 5:39 p.m.—*after* his automobile accident. Plaintiff sued, claiming that defendant was obligated to pay him no-fault benefits. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff was uninsured at the time of the accident. In support of its motion, defendant submitted multiple documents, which included a copy of an offer of renewal, certificate of insurance, insurance policy, and payment receipt. The trial court agreed with defendant.

Plaintiff first argues that defendant issued a policy of insurance that provided him coverage from January 11, 2018 until July 11, 2018 because, according to the declaration page, the insurance policy took effect on January 11, 2018, at 12:01 a.m., and the certificate of insurance states that defendant had issued an insurance policy to him. We disagree.

The Michigan the no-fault act, MCL 500.3101 *et seq*., provides that "the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance and property protection insurance as required under this chapter, and residual liability insurance." MCL 500.3101(1). An insurance policy continues to be in effect until it expires or is canceled. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 238; 507 NW2d 741 (1993). A policy is no longer in effect and a notice of cancelation is not required after the period of coverage has expired. *Id*. "Failure by the insured to pay the required renewal premium means that the insured declined the insurer's offer of renewal, and the policy automatically terminated at the end of the policy term." *Id*. at 239-240.

Here, plaintiff failed to renew the insurance policy before it expired. Defendant sent plaintiff a renewal notice in December 2017, which stated that plaintiff was required to pay the premium by January 6, 2018, or the policy would expire on January 11, 2018 at 12:01 a.m. Plaintiff admitted that he did not submit the premium payment by January 6, 2018. Additionally, the certificate of insurance stated that "all coverage will be null and void regardless of listed expiration date if premium billed is not paid or policy is cancelled for valid reasons[.]" Further, the insurance policy explicitly provided that the insurance policy automatically terminated at the end of the policy term when an offer to renew the policy is rejected. Therefore, plaintiff's insurance policy terminated at the end of the policy term on January 11, 2018.

Alternatively, plaintiff argues that he was covered by the insurance policy issued by defendant on January 13, 2018, because the January 12, 2018 offer-to-renew correspondence stated that there would be a lapse in coverage until the date the payment was received. Plaintiff argues that he was covered by this policy because the premium payment was received on January 13, 2018, and the correspondence did not indicate that the coverage would be effective at the *time* and date the payment was made. However, plaintiff submitted his premium payment through Arrowhead Exchange, an online payment system, on January 13, 2018, at approximately 5:39 p.m.

EST. By submitting payment through Arrowhead Exchange, plaintiff agreed to be bound by certain terms and conditions, which included that his lapsed automobile insurance policy would not be reinstated until the *date and time* of payment.

Plaintiff does not argue that he was not bound by the Arrowhead Exchange terms and conditions; rather, he argues that the terms and conditions created an ambiguity regarding when coverage began on January 13, 2018, because the January 12, 2018 correspondence indicated that coverage took effect on January 13, 2018, at 12:01 a.m. But the correspondence and Arrowhead exchange terms are not ambiguous because they do not irreconcilably conflict with each other and are not equally susceptible to more than one meaning. See *Dancey v Travelers Prop Cas Co of America*, 288 Mich App 1, 8; 792 NW2d 372 (2010). Rather, the Arrowhead Exchange conditions and terms explicitly stated, "If your automobile or motorcycle policy is in lapse status, you acknowledge that your policy will not be reinstated until the date and time payment is submitted via the Arrowhead Exchange website." Plaintiff accepted the additional terms and conditions by submitting his payment via the Arrowhead Exchange website. Therefore, plaintiff's insurance was not reinstated until the date and time he submitted his payment, which was *after* the motor vehicle accident.

Because plaintiff failed to establish that a genuine issue of fact existed regarding whether he was insured on the date and time of the accident, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Brock A. Swartzle