

STATE OF MICHIGAN  
COURT OF APPEALS

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CLARISSA WILLIAMS,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 270956

Wayne Circuit Court

LC No. 04-437920-CK

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. “Where a policy of insurance is procured through the insured’s intentional misrepresentation of a material fact in the application for insurance, and the person seeking to collect the no-fault benefits is the same person who procured the policy of insurance through fraud, an insurer may rescind an insurance policy and declare it void ab initio.” *Hammoud v Metropolitan Property & Cas Ins Co*, 222 Mich App 485, 488; 563 NW2d 716 (1997). An insurer may void a policy of insurance ab initio if the insured intentionally or innocently misrepresented a material fact in the application for insurance. *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995); *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985). A misrepresentation is material where it “substantially increased the risk of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium.” *Id.*

Plaintiff made several misrepresentations in her insurance application. The majority concludes that those misrepresentations were not material, but I disagree. Plaintiff was married but separated, and had five children. Her husband’s driver license had been suspended. Nonetheless, plaintiff indicated in the insurance application that she was single, had no dependents, and that there were no other licensed drivers in her household. Plaintiff also misrepresented her street address, providing an address other than that of her actual current residence.

Although the record does not clearly indicate whether plaintiff and her husband were still members of the same household, or whether the husband had access to plaintiff’s car, plaintiff certainly had a motive for failing to disclose in the automobile insurance application that she was married to a man whose driver license had been suspended or revoked. I conclude that a misrepresentation concerning the suspension or current status of a spouse’s driver license is material for the purposes of an automobile insurance application. Such a misrepresentation

could conceivably substantially increase the risk of loss. *Id.* As support for this conclusion, it is necessary to look no further than to defendant's own admission that it would not have issued the insurance policy to plaintiff had it known of her husband's driving record and current license status. I further conclude that plaintiff's misrepresentation of address could be considered material because geographic location and street address are factors occasionally used by insurers in the assessment of automobile risk.

Because at least some of plaintiff's misrepresentations were material, I conclude that defendant was entitled to cancel the policy ab initio and refund plaintiff's premiums. *Hammoud, supra* at 488. I would reverse and remand for entry of summary disposition in favor of defendant.

/s/ Kathleen Jansen