

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN FROST, Individually and as Personal
Representative of the Estate of TERESA FROST,
Deceased,

UNPUBLISHED
March 27, 2007

Plaintiff-Appellant,

v

MINNESOTA LIFE INSURANCE COMPANY,

No. 273745
Arenac Circuit Court
LC No. 05-009586-CK

Defendant-Appellee.

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We conclude that a genuine issue of material fact exists concerning whether the decedent made a false representation in her application for insurance. We therefore reverse and remand for trial. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's wife described herself as bulimic; however, she was never diagnosed as such. Her behavior prevented her from experiencing the normal weight gain associated with pregnancy and her doctor referred her to a psychologist for her eating disorder, but she failed to keep the appointment. After the baby was born, plaintiff and his wife applied for mortgage life insurance. Question 3 of the application asked whether the applicant had ever had or been treated for various ailments, including mental disorders. Plaintiff's wife answered "no." Three months after the policy was issued, plaintiff's wife died of cardio-respiratory failure, severe potassium deficiency, and bulimia nervosa. Defendant asserted that the decedent had misrepresented her mental health and denied coverage. The trial court agreed and granted judgment for defendant. We review the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

"MCL 500.2218 provides that an insurer may rescind an insurance policy if it discovers that an insured made a material misrepresentation on the application for insurance and that the misrepresentation affected either the acceptance of the risk or the hazard assumed by the insurer." *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 129; 713 NW2d 801 (2005). A misrepresentation is a false representation and a representation is a statement of past or present fact made by the applicant as an inducement to the making of the insurance

contract. MCL 500.2218(2); *Oade v Jackson Nat'l Life Ins Co*, 465 Mich 244, 251; 632 NW2d 126 (2001). A misrepresentation is material if “communication of it would have had the effect of ‘substantially increasing the chances of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium.’” *Id.* at 253-254, quoting *Keys v Pace*, 358 Mich 74, 82; 99 NW2d 547 (1959). The insurer must show that it relied upon the misrepresentation where the misrepresentation affected the acceptance of the risk. *Smith v Globe Life Ins Co*, 460 Mich 446, 460-461; 597 NW2d 28 (1999). However, because “a misrepresentation materially affects the ‘hazard assumed’ by an insurer whenever the facts misrepresented are causally connected to the loss,” the insurer need not show reliance when such a causal relationship exists. *Id.* at 461. The burden of proving a material misrepresentation is on the insurer. *Szlapa v Nat'l Travelers Life Co*, 62 Mich App 320, 325; 233 NW2d 270 (1975).

A mental disorder is defined as a disease or illness of the mind. 4 Schmidt, *Attorneys' Dictionary of Medicine* (Matthew Bender & Co, 2000), p M-131. It is also a synonym for mental illness, which is defined as any of various forms of psychosis or severe neurosis. *Random House Webster's College Dictionary* (1997). Defendant agrees that the latter definition is apt; it contends that a mental disorder “is an abnormal mental or psychiatric condition.” Defendant contends that the decedent had a mental disorder because bulimia is a recognized mental disorder, the decedent’s bulimia was noted as part of her psychiatric history in her medical records, and the decedent was referred to a psychologist for treatment.

At the time of the application, the decedent believed herself to be bulimic, presumably because of her use of induced vomiting to control her weight. An eating disorder is generally understood as including bulimia, *Random House, supra*, and thus the decedent clearly believed herself to have an eating disorder. According to the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed, 1994) or *DSM-IV*, which the parties agree is an authoritative treatise regarding the diagnosis of mental disorders, behavior that meets the diagnostic criteria for any one of various types of eating disorders constitutes a mental disorder. However, it is unlikely that the average layperson is familiar with the provisions of the *DSM-IV*, and there is no evidence that the decedent was familiar with that treatise. Further, there is no evidence that the decedent had ever been diagnosed by a qualified health professional as having a recognized eating disorder before her death and, regardless of how we may view the decedent’s behavior in light of the diagnostic criteria for eating disorders, laypersons are not qualified to make medical diagnoses. Thus, the mere fact that an eating disorder qualifies as a mental disorder under the *DSM-IV* does not itself prove that the decedent’s condition constituted a mental disorder or that she believed it to be a mental disorder.

The *DSM-IV* aside, the record shows that when the decedent reported that she was bulimic, it was noted as part of her psychiatric history on forms at her doctor’s office. However, there is no evidence that the decedent filled out the forms, was asked specifically about her psychiatric history, or that she reviewed the forms and thus learned that bulimia was considered a mental health problem. The record also shows that the decedent was referred for psychological counseling to address her eating disorder. However, decedent was never seen by a psychologist. Given that defendant agrees that a mental disorder is “an abnormal mental or psychiatric condition,” and that the decedent was never clinically diagnosed with having such a condition, the fact that the decedent was referred to a psychologist for counseling does not prove that she

had or believed she had, a mental disorder. Accordingly, we find a genuine issue of material fact exists concerning whether decedent made a false representation in her application for insurance.

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

/s/ Brian K. Zahra

/s/ Richard A. Bandstra

/s/ Donald S. Owens