

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TRACIE JENKINS COUTURE, Personal  
Representative for the Estate of THOMAS  
RAYMOND COUTURE,

UNPUBLISHED  
August 6, 2009

Plaintiff-Appellant,

v

No. 283404  
Arenac Circuit Court  
LC No. 07-010102-CK

FARM BUREAU GENERAL INSURANCE  
COMPANY,

Defendant/Cross-Plaintiff-Appellee,

and

RODNEY LEE DANIELS and TANYA LYNN  
DANIELS,

Defendants/Cross-Defendants.

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Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

ZAHRA, P.J. (*dissenting*).

I respectfully dissent. I conclude there was more than sufficient evidence to support the trial court's finding of mutual mistake. I would affirm.

The trial court properly found a mutual mistake in the execution of the insurance policy. Rodney never requested a change in the Daniels' coverage from \$20,000 to \$300,000; Rodney at all times believed that the policy gave him only \$20,000 in coverage. Significantly, in my view, Rodney delegated the duty to negotiate an insurance contract with an acceptable premium to his insurance agent, Brian Lansky. Lansky confirmed that he was the Daniels' insurance agent and that he had processed the original application for insurance. Lansky stated that Rodney was interested in getting the "best price" and that he, Lansky, had filled out the original application for \$20,000 in bodily injury coverage. Rodney testified that he went to Lansky's office shortly before the amended policy was issued and told Lansky that he could not afford his current premiums. Rodney testified that he "did not care what [Lansky] did to get the premium down" and "authorized [Lansky] to get [him] a lower monthly payment." Significantly, however, Lansky testified that at no time did he initiate a change in coverage. Thus, as far as the Daniels

and their designated agent Lansky were concerned, the policy for which they paid a premium featured \$20,000 in bodily injury coverage.

The majority places great emphasis on the fact that “Rodney was willing to agree to virtually any change to his policy as long as the change gave him ‘legal’ coverage and resulted in a lower overall premium.” It is undisputed that the lower premium was the result of changing the medical coverage under the policy from primary to excess. Lansky testified that the Daniels were not entitled to excess medical coverage unless they had some other medical coverage. Lansky further testified that before an insured may change from primary to excess medical coverage, the insured must provide proof of other medical coverage. The record is clear that the Daniels did not have other medical coverage, never produced evidence of other coverage and never requested a change in their medical coverage. Thus, while the erroneously issued policy allowed the Daniels to register the vehicle, the Daniels did not have sufficient “security for payment of benefits under personal protection insurance” under Michigan law. MCL 500.3101; MCL 500.3107. This fact, in my view, also supports the trial court’s finding of mutual mistake.

/s/ Brian K. Zahra