

STATE OF MICHIGAN
COURT OF APPEALS

CHARLENE CUMMINGS,

Plaintiff-Appellant,

v

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant-Appellee.

UNPUBLISHED

July 31, 2001

No. 220844

Wayne Circuit Court

LC No. 99-906700-AV

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order affirming the district court's grant of summary disposition in favor of defendant pursuant to MCR 2.116(C)(7). We affirm.

Plaintiff argues that the district court erred by granting defendant's motion for summary disposition because she was not provided one full year from the date of receipt of defendant's denial of her insurance claim in which to file her complaint and because a question of fact existed regarding the date on which defendant mailed the notice of denial. We disagree.

We review a trial court's grant or denial of a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court accepts all well-pleaded factual allegations as true and construes them most favorably to the plaintiff. *Fante v Stepek*, 219 Mich App 319, 321-322; 556 NW2d 168 (1996). This Court considers affidavits, admissions, depositions, and other documentary evidence along with the pleadings. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). A motion for summary disposition under MCR 2.116(C)(7) is properly granted where no factual development could provide a basis for recovery. *Id.*

Pursuant to the insurance policy at issue in this case, plaintiff was afforded one year from the date of loss in which to file suit against defendant arising out of the denial of her claim, and the one-year limitations provision was expressly permitted by statute. MCL 500.2833(1)(q). The parties do not dispute that the loss occurred on November 30, 1996, and that plaintiff notified defendant of the loss on December 2, 1996. Rather, the dispute concerns that date on which

defendant notified plaintiff of the denial of her claim. Plaintiff contends that she was not notified of the denial until June 7, 1997, when she received defendant's certified letter denying her claim, while defendant maintains that it formally denied plaintiff's claim on April 29, 1997, when it mailed two notices of denial to plaintiff, one by first-class mail and one by certified mail.

This Court recently determined that an insurer formally denies an insured's claim on the date that it mails the notice of denial to the insured, and not on the date that the insured receives the notice. *Saad v Citizens Ins Co of America*, 227 Mich App 649, 652; 576 NW2d 438 (1998). Although the Michigan Supreme Court initially granted leave to appeal in *Saad*, it subsequently vacated its order granting leave to appeal and denied leave to appeal. *Saad v Citizens Ins Co of America*, 459 Mich 927; 615 NW2d 738 (1998); *Saad v Citizens Ins Co of America*, 461 Mich 915; 604 NW2d 679 (1999). Therefore, the date on which an insurer *mails* notice of the denial of an insured's claim is the date on which the tolling of the limitations period ceases. *Saad, supra* at 652.

Plaintiff argues that the affidavit of Lawrence A. Rueff, a claim superintendent employed by defendant, was insufficient to establish that the letters were mailed on April 29, 1997, because Rueff did not state that he personally mailed the letters on that date. Plaintiff, however, did not raise this argument in the district court, and the circuit court properly found that the argument was not preserved for appellate review. In response to Rueff's first affidavit in the district court, plaintiff contended that it failed to establish the date of mailing because at best Rueff merely stated that the certified letter was prepared on April 29, 1997, as opposed to actually mailed on that date. Thereafter, Rueff executed a second affidavit in which he stated that two letters were mailed on April 29, 1997, one certified and one by regular mail, and plaintiff failed to challenge this affidavit in the district court. It is well-settled that arguments not raised or addressed in the trial court are not preserved for appellate review. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). Therefore, as the circuit court recognized, the argument was not properly before it on appeal, and is not properly before this Court. While plaintiff contends that she was not given an opportunity to contest the affidavit in the district court because the parties were not afforded oral argument, the record demonstrates that while defendant's motion was originally noticed to be submitted September 25, 1998, defendant's reply to plaintiff's reply, which included Rueff's second affidavit at issue here, was not filed until September 28, 1998, and the motion was not decided until February 16, 1999. Thus, plaintiff had ample time to call the affidavit's deficiencies to the court's attention before the motion was decided. Further, she could have raised the argument in a motion for reconsideration of the district court's decision, but she failed to do so.

In any event, the trial court was obligated to consider the pleadings and affidavits submitted by the parties in ruling on defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). *Frommert v Bobson Construction Co*, 219 Mich App 735, 737; 558 NW2d 239 (1996). Plaintiff did not dispute Rueff's second affidavit in support of defendant's motion, stating that the notices of denial were mailed on April 29, 1997. Because plaintiff failed to contest Rueff's affidavit, the affidavits and documentary evidence showed that no genuine issue of material fact existed regarding the date on which defendant mailed the letters, and the district court was obligated to grant defendant's motion for summary disposition under MCR

2.116(C)(7). *Baks v Moroun*, 227 Mich App 472, 477 n 2; 576 NW2d 413 (1998); *Harris v City of Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992).

Affirmed.

/s/ Helene N. White

/s/ David H. Sawyer

/s/ Henry William Saad