

STATE OF MICHIGAN
COURT OF APPEALS

ANDRE LYNN FRANKLIN and ESTHER M.
FRANKLIN,

UNPUBLISHED
December 18, 2003

Plaintiffs-Appellants,

v

No. 242551
Wayne Circuit Court
LC No. 01-141514-CK

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Plaintiffs Andre Lynn Franklin and Esther M. Franklin appeal a June 28, 2002, order of the circuit court granting defendant Allstate's motion for summary disposition.¹ We affirm.

Plaintiffs originally brought this action alleging that defendant breached an insurance contract in denying plaintiffs' claim for the total loss of plaintiffs' 1999 Ford Mustang automobile. Plaintiffs purchased the used vehicle on April 20, 2000, for \$21,189.40. Plaintiffs made a \$1,000 cash payment for the vehicle and financed the remainder of the purchase price through Ford Motor Credit. On August 1, 2001, plaintiffs' vehicle was allegedly stolen and burned by unidentified thieves. Plaintiffs filed a claim with defendant under their insurance policy for a total loss. Plaintiffs' counsel was not retained by lienholder Ford Motor Credit and did not assert a claim on behalf of Ford Motor Credit. Defendant denied plaintiffs' claim for a variety of reasons including that plaintiffs "failed to prove a compensable loss under the Allstate policy." Plaintiffs thereafter filed the instant breach of contract action for their individual damages.

¹ Defendant's motion was brought pursuant to MCR 2.116(C)(7), (8), and (10). Although the order granting the motion does not specify on which ground it was based, because documentary evidence was considered by the circuit court, we treat the motion as being granted pursuant to MCR 2.116(C)(10). *Krass v Tri-County Security, Inc*, 233 Mich App 661, 664-665; 593 NW2d 578 (1999).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters*, 451 Mich 358; 547 NW2d 314 (1996).

At the June 12, 2002, hearing on defendant's motion for summary disposition, plaintiffs' counsel represented to the court that his expert was prepared to testify that at the time of the loss the 1999 Mustang was worth "about \$18,000." Further, plaintiffs' counsel admitted Ford Motor Credit held a valid lien in the sum of \$20,000 for plaintiffs' debt on the automobile. Based on such admissions, the trial court correctly held that plaintiffs had not sustained a compensable loss under the policy. As the trial court stated:

The Court: But he [plaintiff Andre Franklin] got a value from the settlement that exceeded what he was entitled to under the policy, because Ford Motor Credit released him under the lien. It was a great deal for him.

Mr. Stern (attorney for plaintiffs): I'm not saying it was not a good deal.

The Court: Even if he went to trial and won, there's a setoff for the value of the lien for twenty grand. There's nothing he could possibly recover.

On appeal, plaintiffs argue that summary disposition was not warranted because despite defendant's payment to Ford Motor Credit and the release of its lien, the trial court erred by disregarding plaintiffs' counsel's common-law lien for attorney fees. However, the cases cited by plaintiffs on appeal uniformly hold that a common-law attorney lien attaches only to those funds that resulted from the attorney's services. *Reynolds v Polen*, 222 Mich App 20, 23; 564 NW2d 467 (1997); *Bennett v Weitz*, 220 Mich App 295; 559 NW2d 354 (1996); *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993). The undisputed facts in the present case are that plaintiffs' attorney played absolutely no role in defendant's payment to Ford Motor Credit and the release of the lien. Defendant separately negotiated that claim with Ford Motor Credit and paid the lienholder pursuant to the terms of its loss payable clause.

Plaintiffs' suit and appeal are without merit.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper