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# STATE OF MICHIGAN

# COURT OF APPEALS

FARMERS INSURANCE EXCHANGE as subrogee of THE MICHIGAN ASSIGNED CLAIMS PLAN,

Plaintiff-Appellee,

v

ALLEN LUSK,

Defendant/Cross-Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION, d/b/a AAA OF MICHIGAN,

Cross-Defendant-Appellee.

UNPUBLISHED
January 12, 2026
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No. 373088
Wayne Circuit Court
LC No. 2022-014675-NF

Before: BOONSTRA, P.J., and O'BRIEN and YOUNG, JJ.

PER CURIAM.

Defendant/cross-plaintiff, Allen Lusk, appeals by delayed leave granted[1] the trial court's order granting summary disposition in favor of plaintiff, Farmers Insurance Exchange (Farmers), on its complaint against Lusk, granting summary disposition in favor of cross-defendant, Auto Club Insurance Association of Michigan d/b/a AAA of Michigan (AAA), on Lusk's cross-complaint against AAA, and denying Lusk's motion for summary disposition on his cross-complaint. We affirm.

[1] See *Farmers Ins Exch v Lusk*, unpublished order of the Court of Appeals, entered March 10, 2025 (Docket No. 373088).

## I. PERTINENT FACTS AND PROCEDURAL HISTORY

In 2020, Lusk procured an auto insurance policy from AAA covering a 2004 Toyota Corolla and other vehicles. On March 5, 2020, Lusk's granddaughter, Anyah Coleman, was involved in an auto accident while driving the Corolla. Coleman submitted a claim for benefits to AAA. After investigating the claim, AAA rescinded Lusk's policy on the grounds that he had provided false or misleading material facts in his application for (or renewal of) his auto insurance policy, or had failed to give AAA notice of changes regarding who was regularly driving his vehicles and where the vehicles were garaged. The rescission letter indicated that the policy was void as of July 1, 2019, and stated that Lusk would "receive a refund or credit of premium" for the rescinded policy. Coleman received a letter denying her claim shortly after Lusk received notice of the rescission. The denial letter stated that the policy had been rescinded and was not in effect on the date of the accident. Coleman then made a claim for benefits to the Michigan Automobile Insurance Placement Facility (MAIPF), asserting that no higher-priority insurer could be found. Coleman represented that she did not reside with the owner of the Corolla and that she had made a claim to the Corolla owner's insurer for personal protection insurance (PIP) benefits, which was denied.

MAIPF assigned Coleman's claim to Farmers, who paid PIP benefits to Coleman. Farmers filed suit against Lusk for subrogation, alleging that he had permitted the Corolla to be operated without insurance in violation of the Michigan no-fault act, MCL 500.3101(1) *et seq.*, and seeking to recover the PIP benefits it had paid to Coleman. Lusk answered the complaint and asserted as an affirmative defense that the Corolla was covered by a valid insurance policy. Lusk also filed a cross-complaint against AAA. He alleged that AAA had refused to pay benefits under the policy, had improperly rescinded the policy, and had refused to defend Lusk in the lawsuit filed by Farmers, causing Lusk to be held personally liable for damages and defense costs; Lusk also sought a declaration of the rights and responsibilities of Lusk and AAA under the policy.[2]

Farmers moved for summary disposition on its subrogation claim, arguing that, because of AAA's rescission of its policy with Lusk, there was no genuine issue of material fact regarding whether the Corolla was uninsured at the time of Coleman's accident. AAA moved for summary disposition on the cross-complaint, arguing that there was no genuine issue of material fact regarding whether the policy had been properly rescinded and that AAA therefore had no obligation to provide coverage to Coleman or Lusk. AAA asserted that Lusk had failed to disclose that the Corolla would be driven by Coleman and garaged at her Detroit address, which was different than Lusk's New Boston address; AAA also argued that Lusk had failed to disclose that two other insured vehicles were also principally garaged at addresses in Detroit that were different than Lusk's New Boston address, and that one of the vehicles was not owned by Lusk, but by Coleman's aunt. AAA supported its motion with an affidavit from the manager of its underwriting operations, Jackie Strasser, who averred that if Lusk had disclosed that Coleman was an additional driver of the Corolla and that the Corolla would be garaged at Coleman's address, the premium

[2] Lusk also asserted a claim for monetary damages based on AAA's alleged failure to pay collision benefits under the policy. AAA moved for summary disposition on that claim as well, and Lusk and AAA stipulated to the dismissal of that claim.

charged would have been approximately $1,078.90 more per year. Lusk's failure to disclose information about the ownership and garaging of his other vehicles also would have resulted in a higher premium, and one of Lusk's vehicles would not have been eligible for coverage under AAA's underwriting rules. AAA also provided an affidavit of a claims investigator, Katie Brown, who averred in relevant part that she had uncovered traffic tickets written to Coleman for infractions made while driving the Corolla in 2017 and 2019, and further that Brown had interviewed Coleman and confirmed that Coleman had resided at her current address for nineteen years and had "previously driven the 2004 Toyota Carolla [sic] (an insured vehicle) on numerous occasions in the past."

Lusk was deposed in November 2023. Lusk testified that the Corolla was insured with AAA on March 5, 2020. He also admitted that he received a refund check for the premiums he had paid to AAA, and that he had cashed it; he stated that he "didn't know what the check was actually for" and that the check had not been accompanied by a letter or any documents explaining its purpose. Lusk denied ever misrepresenting where the Corolla was garaged, who lived with him, or who was driving the Corolla. When Lusk was asked if he had ever made any representations to AAA about who would be driving the Corolla, he stated that he did not remember, but that he would have answered any questions honestly.

Lusk responded to Farmers' and AAA's motions for summary disposition, and stated in his own supporting affidavit that all of his insured cars were "primarily garaged" at his home address, that he "occasionally allowed" Coleman to drive his car, and that Coleman did not have her own keys or "regular use/access to the cars."

The trial court held a hearing on the motions for summary disposition. It noted that Lusk had received the rescission letter (indicating why his policy was being rescinded and that he would receive a refund of his premiums) before he received the refund check, which he cashed. The trial court also concluded that Lusk had not provided evidence to contest all of the reasons for rescission stated by AAA. Accordingly, the court found that AAA had valid reasons to rescind the policy. The court then balanced the equities and concluded that equity favored rescission.

The trial court subsequently issued an order granting AAA's and Farmers' motions as described. This appeal followed.

## II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition is appropriate under MCR 2.116(C)(10) when the evidence, viewed in the light most favorable to the nonmoving party, reveals no genuine issue of material fact. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

We review de novo issues of statutory interpretation, *Safdar v Aziz*, 501 Mich 213, 217; 912 NW2d 511 (2018), as well as the interpretation of contracts, *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). We also review de novo the application of an

equitable doctrine such as rescission. *Wilmore-Moody v Zakir*, 511 Mich 76, 83; 999 NW2d 1 (2023).

## III. ANALYSIS

On appeal, Lusk argues that the trial court erred by holding that AAA's rescission of the policy was valid and that the balance of the equities favored rescission. We disagree.

### A. VALIDITY OF RESCISSION

"[I]t is well settled that an insurer is entitled to rescind a policy ab initio on the basis of a material misrepresentation made in an application for no-fault insurance." *Bradley v Westfield Ins Co*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365828), slip op at 4, quoting *21st Century Premier Ins Co v Zufelt*, 315 Mich App 437, 445; 889 NW2d 759 (2016). To justify rescission, an insurer must establish common-law fraud. *Id*. at ___, slip op at 4, citing *Howard v LM Gen Ins Co*, 345 Mich App 166, 172-174; 5 NW3d 46 (2023). In other words, the insurer must establish:

> (1) the alleged fraudulent party made a material representation; (2) the representation was false; (3) the person making the representation knew it was false or acted recklessly in making the statement; (4) the person intended that the opposing party should act upon the representation; (5) the opposing party acted in reliance; and so (6) suffered injury. [*Howard*, 345 Mich App at 172-174.]

An insured's representation is "material" if the policy would not have been issued at the specific agreed-upon premium rate absent the representation. *Odde v Jackson Nat'l Life Ins Co of Mich*, 465 Mich 244, 254; 632 NW2d 126 (2001). An insured's failure to disclose a person who will be a regular driver of the vehicle is a material misrepresentation that supports rescission of the policy. See *Bazzi v Sentinel Ins Co*, 502 Mich 390, 397; 919 NW2d (2018).

In this case, Lusk argues that AAA did not carry its burden of establishing that he had made any misrepresentations on his application for the policy. Lusk correctly notes that AAA has not provided a copy of his application, which AAA attributes to the purging of the application, at some point over the years, from the electronic system in which it was stored. But the record reflects that Lusk's address was listed on the declarations page of the policy as being in New Boston, Michigan, that Lusk was listed as the principal driver, and that Anyah Coleman was not listed as an additional named insured. And Lusk does not seriously argue that the address and list of named insureds did not derive from information that he provided during the application process.

AAA also presented evidence in the form of an affidavit from a claim investigator who concluded from her investigation that Coleman regularly drove the Corolla and that it was regularly garaged in Detroit, not New Boston. Additionally, AAA presented evidence that Coleman had been issued several traffic citations in Detroit while driving the Corolla over the previous several years. The claim investigator also attested to numerous other misrepresentations that had been discovered regarding Lusk's other insured vehicles, including that Lusk did not actually own one of them, and that three of the vehicles were garaged in Detroit despite Lusk's representation that they were garaged in New Boston. AAA also presented evidence that the location where the cars were garaged, as well as the persons who would be driving them, had a

substantial impact on the calculation of the policy's premiums. AAA accordingly carried its initial burden, as the party moving for summary disposition, of supporting its position with "affidavits, depositions, admissions, or other admissible documentary evidence." See MCR 2.116(C)(10), MCR 2.116(G)(3)(b), (6); see also *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009).

Because AAA carried its initial burden, the burden shifted to Lusk to establish the existence of a genuine issue of material fact for trial. *Innovative Adult Foster Care*, 285 Mich App at 475. Lusk argues that his affidavit establishes a genuine issue of material fact. We disagree. Lusk's affidavit states generally that all of his vehicles were "primarily garaged" at his home address[3] and admits that he "occasionally" allowed Coleman to drive his car. This affidavit does not address many of the reasons cited by AAA in rescinding the policy, including that he misrepresented who would be driving the vehicles and even that he owned one of the vehicles (when it was actually owned by a relative). Moreover, a self-serving affidavit containing only conclusory allegations is generally insufficient to establish a genuine issue of material fact. See *Quinto*, 451 Mich at 371-372. Given the evidence presented, the trial court did not err by concluding that AAA had established the elements of common-law fraud necessary to support the rescission of the policy. *Howard*, 345 Mich App at 172-174.

## B. BALANCING OF THE EQUITIES

Even if fraud is established, however, an insurer is not "categorically entitled to rescission." *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 405; 952 NW2d 586 (2020). The equitable remedy of rescission "is granted only in the sound discretion of the court." *Id*. In other words, "rescission does not function by automatic operation of the law." *Bazzi*, 502 Mich at 411. Particularly when rescission of an insurance policy may implicate the recovery of an innocent third party, "the trial court must balance the equites to determine whether the [insurer] is entitled to the relief [it] seeks." *Id.* at 410 (quotation marks and citation omitted). In this case, the trial court balanced the equities with Coleman in mind as a potential innocent third party.

In balancing the equities, a trial court should consider the following nonexclusive factors, if applicable:

> (1) the extent to which the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured; (2) the relationship between the fraudulent insured and the innocent third party to determine if the third party had some knowledge of the fraud; (3) the nature of the innocent third party's conduct, whether reckless or negligent, in the injury-causing event; (4) the availability of an alternate avenue for recovery if the insurance policy is not enforced; and (5) a determination of whether policy enforcement only serves to relieve the fraudulent

[3] Although Lusk's affidavit states that his primary address is in Belleville, MI rather than New Boston, he provides the same street address. It appears that the address provided is actually in New Boston.

> insured of what would otherwise be the fraudulent insured's personal liability to the innocent third party. [*Wright*, 311 Mich App at 411 (citation omitted).]

Regarding the first *Wright* factor, the trial court noted that an insurer has no duty to investigate potential fraud in an application for insurance, and found that no evidence was presented that AAA could have discovered the issues with garaging, driving, and ownership of Lusk's vehicles as noted in the rescission letter. Accordingly, the trial court found that this factor favored AAA. The trial court was correct that insurers generally have no duty to investigate or verify the representations of an insured. See *Titan Ins Co*, 491 Mich at 557. However, this Court has held that when "[t]here is no evidence to suggest that there could or could not have been a more diligent effort" on the part of the insurer to discover misrepresentations by an insured, this factor "does not truly weigh in either party's favor." *Wright*, 331 Mich App at 412. Accordingly, although it does not affect our ultimate conclusion, we conclude that this factor is actually neutral.

Regarding the second *Wright* factor, the trial court noted that weighing it could result in a "tie," but that the grandparent-granddaughter relationship between Lusk and Coleman could result in this factor "probably leaning towards the insurer in this case." It is unclear whether the trial court actually found that this factor favored the insurer, but on this record, there is little evidence that Coleman was aware of Lusk's misrepresentations; indeed, she appears to have told the truth when making a claim to AAA and MAIPF, insofar as she admitted that she did not live with Lusk and told an AAA investigator that she had driven the Corolla "on numerous occasions in the past." On this record, this factor weighs against rescission. See *Wright*, 331 Mich App at 412.

Regarding the third *Wright* factor, the trial court noted that there was some evidence from the crash report of the accident that Coleman may have been at fault. The crash report does indicate that Coleman may have disregarded a traffic control signal, and it assigns no potentially hazardous action to the other driver. The trial court did not err by concluding that this factor weighed in favor of rescission. See *Howard*, 345 Mich App at 176 (quotation marks and citation omitted).

Regarding the fourth *Wright* factor, the trial court noted that Coleman did in fact receive no-fault benefits even though AAA did not pay them, and found that this factor favored the insurer. We agree. Rescission of the policy would have no direct impact on Coleman's ability to recover PIP benefits; rather, whether the policy is rescinded or not implicates whether Lusk is legally liable to Farmers. This factor favors AAA. *Wright*, 331 Mich App at 411.

Regarding the fifth *Wright* factor, the trial court found that it favored the insurer, because enforcement of the policy would only benefit Lusk, not Coleman. We agree. The validity of the policy's rescission primarily affects whether Lusk can be held personally liable for benefits paid as a result of the accident, not whether Coleman can be held liable. See *Id.*

Balancing the equities, we conclude that three factors favored rescission, one was neutral, and one weighed against rescission. On balance, and although we disagree with the trial court regarding some of the factors, we agree with the trial court's ultimate conclusion that the balancing of equities favored rescission. *Bazzi*, 502 Mich at 412.

We conclude that AAA demonstrated valid reasons to rescind the policy and that the trial court did not err by concluding that the balance of equities favored rescission. We therefore affirm

the trial court on these grounds. Because we do so, we need not address the parties' arguments concerning Lusk's acceptance and deposit of the premium refund check.

Affirmed.

/s/ Mark T. Boonstra
/s/ Colleen A. O'Brien
/s/ Adrienne N. Young