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STATE OF MICHIGAN

COURT OF APPEALS

RAWAA SABAH ESSA,

Plaintiff-Appellee,

v

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendant-Appellant,

and

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Appellee,

and

OLUWATOMISIN TOLUWANIYIN OLUSANYA,

Defendant.

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No. 377036
Wayne Circuit Court
LC No. 23-010379-NI

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

In this no-fault insurance priority dispute, defendant Michigan Automobile Insurance Placement Facility (MAIPF) appeals the trial court's order granting summary disposition to co-defendant Progressive Marathon Insurance Company. The order permitted Progressive to rescind an insurance policy that would otherwise have provided PIP benefits to plaintiff Rawaa Essa. Because MAIPF has not shown that the trial court abused its discretion in granting rescission to Progressive, we affirm.

I. FACTS

Plaintiff is married to Dali Shawkat. Dali immigrated to the United States from Iraq in 2010. He first lived with his parents, Jamal Oraha and Sanaa Deesha, and his brother, Shawkat Oraha, on Chesterfield Drive in Troy. In January 2021, Dali married plaintiff, and thereafter they lived on Almont Drive in Sterling Heights along with plaintiff's two daughters.

On March 9, 2022, Dali applied for no-fault insurance from Progressive. At his deposition, he testified that he did not speak English fluently and that he had his brother, Shawkat, who speaks better English, call Progressive on his behalf. According to Dali, a Progressive agent completed the application using the information Shawkat provided by telephone, and Dali then signed it. The application listed the Chesterfield Drive address in Troy as Dali's residence, even though he was living on Almont Drive in Sterling Heights. Dali maintained that Shawkat supplied the Chesterfield address in response to Progressive's agent asking for the address listed on Dali's driver's license, which he had not yet updated with the Secretary of State. The named insured was Dali, and the application incorrectly identified Shawkat as his spouse; it did not disclose any other resident relatives. The policy covered a GMC Yukon that Dali owned and primarily garaged on Almont, as well as a Dodge Challenger that Shawkat owned and garaged on Chesterfield. The application Dali signed said that he "declare[d] that the statements contained herein are true to the best of my knowledge and belief" and that he understood "that this policy may be rescinded and declared void if this application contains any false information or if any information that would alter [Progressive's] exposure is omitted or misrepresented." The policy that Progressive ultimately issued to Dali had "unlimited" PIP benefits.

On September 9, 2022, the policy was renewed with some changes. Shawkat was no longer listed as Dali's spouse, but he remained listed as a resident relative. Dali's parents were added as resident relatives, and his father's Honda Odyssey was added as a covered vehicle. Dali, however, remained listed as living at his parents' residence on Chesterfield, and the policy did not reference plaintiff or the minor children living with Dali on Almont.

On October 30, 2022, Dali and plaintiff were in an accident in his Yukon. After eating dinner in Detroit, they were on I-75 heading back to Sterling Heights when they had to slow down for an accident in the middle of the freeway. In the confusion, they were rear-ended by defendant Oluwatomisin Olusanya.[1] Plaintiff, who was a bit more than three months pregnant, was injured and needed immediate hospital care. Her son was born prematurely at the end of January, weighing less than two pounds.

Plaintiff made a claim for PIP benefits with Progressive. On November 4, Progressive rejected her claim, saying that she "was not a named insured nor was [she] a resident-relative of" Dali, meaning Progressive was "not in the order of priority for payment of first-party No-Fault

[1] Plaintiff initially sued Olusanya seeking noneconomic damages under MCL 500.3135(1). That claim was later dismissed by stipulation of the parties and appears to be the subject of a separate action in the Wayne Circuit Court.

benefits." In August 2023, plaintiff sued MAIPF. In July 2024, plaintiff moved to amend her complaint to add Progressive; the trial court granted the motion.

In May and June 2025, MAIPF and Progressive filed competing motions for summary disposition. Progressive sought rescission of the policy due to material misrepresentations in Dali's insurance application. Progressive supported its motion with an affidavit from an "Insurance Litigation Representative," Janeen Copic, who averred that Progressive would not have issued the policy had Dali disclosed that he and his Yukon were located at Almont Drive while the other listed individuals and vehicles were located at Chesterfield Drive. MAIPF opposed rescission, arguing that Progressive was the highest-priority insurer and therefore liable for paying plaintiff's PIP benefits. MAIPF pointed out that an assigned claim would be capped at $250,000 in benefits, which would be inadequate in light of plaintiff's extensive hospital care and premature delivery. Progressive responded that plaintiff's son was not a claimant and that in any event the "one year back" rule of MCL 500.3145(2) would largely preclude her from recovering PIP benefits from Progressive, leaving her better off making an assigned claim.

After a hearing, the trial court granted Progressive's motion for summary disposition and denied MAIPF's motion. Under the five-factor test this Court adopted in *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 411; 952 NW2d 586 (2020), in deciding rescission requests such as this, trial courts are to balance the following factors in reaching an equitable outcome:

> (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 insured of what would otherwise be the fraudulent insured's personal liability to the innocent third party. [*Id*. at 411.]

The trial court stated that the first factor "remains to be seen," concluded that the second and third factors weighed against rescission, and made no specific finding concerning the fifth factor.[2] Nevertheless, the trial court allowed rescission based on the fourth factor, reasoning that Progressive's late addition to the litigation could complicate plaintiff's recovery under the one-year-back rule, MCL 500.3145(2). It therefore granted summary disposition to Progressive and denied it to MAIPF. MAIPF and plaintiff subsequently reached a settlement and entered a stipulated order to dismiss the case.[3] MAIPF now appeals, challenging the trial court's grant of summary disposition to Progressive.

[2] On appeal, Progressive concedes that factor five "is not applicable."

[3] Given that MAIPF is not itself an insurer, the exact nature of this settlement is not clear.

II. STANDARD OF REVIEW

The trial court decided Progressive's motion under MCR 2.116(C)(10). We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). On a (C)(10) motion, the trial court reviews documentary evidence submitted by the parties in the light most favorable to the nonmoving party and can grant summary disposition if there is no genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A trial court's decision to grant rescission is reviewed for an abuse of discretion. *Sherman v Progressive Mich Ins Co*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167826); slip op at 8.

III. ANALYSIS

A. "MEND THE HOLD"

MAIPF first contends that Progressive should be precluded from rescinding the insurance policy it issued to plaintiff's husband because material misrepresentation was not the reason it initially gave for denying plaintiff's claim. According to MAIPF, Progressive's change of position violates the "mend the hold" doctrine. We disagree.

The "mend the hold" concept takes its name from language in *C.E. Tackels, Inc v Fantin*, 341 Mich 119; 67 NW2d 71 (1954).

> Where a party gives a reason for his conduct and decision touching any thing involved in a controversy, he cannot, after litigation has begun, change his ground, and put his conduct upon another and a different consideration. He is not permitted thus to mend his hold. He is estopped from doing it by a settled principle of law. [*Id*. at 124, quoting *Ohio & Miss R Co v McCarthy*, 96 US 258, 267-268; 24 L Ed 693 (1877).]

Notwithstanding the special name, "mend the hold" is nothing more than an application of certain equitable principles related to estoppel and waiver. The more directly applicable rule was stated in *Smith v Grange Mut Fire Ins Co of Mich*, 234 Mich 119; 208 NW 145 (1926):

> This court has many times held, and it must be accepted as the settled law of this state, that, when a loss under an insurance policy has occurred and payment refused for reasons stated, good faith requires that the company shall fully apprise the insured of all the defenses it intends to rely upon, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those of which it has given notice. [*Id*. at 122-123.]

A more modern expression of the rule is that "[g]enerally, once an insurance company has denied coverage to its insured and stated its defenses, the insurer has waived or is estopped from raising new defenses." *Mich Twp Participating Plan v Fed Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999).

These principles, however, do not override the substantive limits of the law of contracts. Thus, the Supreme Court has cautioned that the concept cannot be used to "make [a] contract of

insurance cover a loss it never covered by its terms, to create a liability not created by the contract and never assumed by the [insurer] under the terms of the policy." *Ruddock v Detroit Life Ins Co*, 209 Mich 638, 654; 177 NW 242 (1920). Nor may the doctrine be used "to bring into existence a contract not made by the parties, to create a liability contrary to the express provisions of the contract the parties did make." *Id*. As the Court more recently explained:

> The application of waiver and estoppel is limited, and, usually, the doctrines will not be applied to broaden the coverage of a policy to protect the insured against risks that were not included in the policy or that were expressly excluded from the policy. This is because an insurance company should not be required to pay for a loss for which it has charged no premium. [*Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 593-594; 592 NW2d 707 (1999) (citations omitted).]

Progressive's November 4 denial on the basis of plaintiff not being a resident relative under the policy does not bar it from seeking rescission on the facts presented here. Under *Smith*, an insurer must "fully apprise the insured of *all the defenses it intends to rely upon*, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those of which it has thus given notice." *Smith*, 234 Mich at 122 (emphasis added). But when Progressive denied plaintiff's claim, it had not been informed that Dali was married to plaintiff or that he and his family resided on Almont Drive. If "mend the hold" were applied here, it would "bring into existence a contract not made by the parties, to create a liability contrary to the express provisions of the contract the parties did make." *Ruddock*, 209 Mich at 654. As a result, the trial court properly did not treat "mend the hold" as an obstacle to granting rescission.

B. RESCISSION AS A LAWFUL REMEDY

Next, MAIPF argues that the inaccuracies in Dali's application did not provide a lawful basis for rescission. We disagree.

The premise of MAIPF's argument is that Progressive needed to establish Dali's deliberate intent to deceive. Michigan law imposes no such categorical requirement. "Michigan's contract law recognizes several interrelated but distinct common-law doctrines—loosely aggregated under the rubric of 'fraud'—that may entitle a party to a legal or equitable remedy if a contract is obtained as a result of fraud or misrepresentation." *Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012). "The legal and equitable remedies for fraud are manifold," and fraud may be "grounds to retroactively avoid contractual obligations through traditional legal and equitable remedies such as cancellation, rescission, or reformation." *Id*. at 557-558. One of those "fraud" theories is "innocent misrepresentation." *Id*. at 555-556.

The rule of innocent misrepresentation is that "if there was in fact a misrepresentation, though made innocently, and its deceptive influence was effective, the consequences to the plaintiff being as serious as though it had proceeded from a vicious purpose, he would have a right of action for the damages caused thereby either at law or in equity." *U.S. Fidelity & Guaranty Co v Black*, 412 Mich 99, 115; 313 NW2d 77 (1981), quoting *Holcomb v Noble*, 69 Mich 396, 399; 37 NW 497 (1888) (opinion by MORSE, J.). The Court has defined innocent misrepresentation by juxtaposition with "actionable fraud." Actionable fraud has six elements: (1) the defendant made

a material misrepresentation; (2) the representation was false; (3) the defendant knew it was false or made it recklessly; (4) the defendant intended the plaintiff to act on it; (5) the plaintiff acted in reliance on it; and (6) the plaintiff suffered injury. *U.S. Fidelity & Guaranty Co*, 412 Mich at 114. Innocent misrepresentation modifies these elements by "eliminating scienter and proof of the intention that the misrepresentation be acted upon" but "adds the requirements that the misrepresentation be made in connection with making a contract and the injury suffered by the victim must inure to the benefit of the misrepresenter." *Id*. at 118. That means that "while it is unnecessary to show that the innocent misrepresenter knew that his representation was false, it is necessary to show that not only does the victim suffer injury, but also the injury must inure to the misrepresenter's benefit." *Id*. In effect, this keeps elements (1), (2), (5), and (6) of actionable fraud, while replacing elements (3) and (4). Element (3) is replaced by a requirement that the misrepresentation was made in connection with a contract between the parties, while element (4) is replaced by a requirement that the injury caused by the misrepresentation runs to the misrepresenter's benefit.

That rule defeats MAIPF's contention that Progressive had to prove deliberate deception by Dali. All six elements of the innocent misrepresentation test are satisfied. First, in light of a no-fault insurer's obligation under MCL 500.3114(1) to cover "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household," an accurate list of who lives in an insured household is clearly material. Second, Dali's account of who lived at Chesterfield Drive was false—he said he lived there even though he did not.[4] Third, that misrepresentation came in connection with a contract he was making with Progressive. Fourth, the injury ran to his benefit because he was able to obtain an insurance policy that Progressive would not otherwise have issued. Fifth, Progressive acted in reliance on those representations, as documented by the Copic affidavit. And sixth, Progressive suffered injury by being exposed to a risk they would not otherwise have agreed to cover. There is no genuine issue of material fact as to any of these conclusions.

MAIPF, however, contends that Dali should not be held responsible for the misrepresentations in the insurance application because Progressive's agent completed the document for Dali based on the telephone conversation with Shawkat. But in signing the application, Dali declared that the statements contained within it were true and that he understood the policy could be rescinded if information that would increase Progressive's risk exposure had been omitted or misrepresented. Our caselaw generally holds that someone who signs an application for insurance is held to the representations made in the document.

[4] MAIPF notes Dali's testimony that the agent asked for the address on his driver's license and that his answer was accurate because he had not updated the license. Because drivers who change their residence are legally obligated to update their address with the Secretary of State, MCL 257.315(1), asking Dali the address on his driver's license would seem to have been a reasonable proxy for asking him for his residence. In any event, as discussed below, regardless of what was said on the telephone conversation, Dali was obliged to read the application he signed and verify its accuracy, and that document said he resided on Chesterfield Drive.

> Appellant claims that there was no showing that Mr. Wojciechowski made the statements found in the application over his signature, that the application might have been signed in blank, and that it might be inferred that the answers had been written in after the application was signed. Defendant offered no proof bearing on this issue and conceded that the signature to the application was that of Mr. Wojciechowski. A copy of the application was attached to the bill of complaint and its authenticity was not denied by the defendant. A prima facie showing was thus made by the plaintiff, and the circuit judge correctly concluded that in the absence of any proof to that effect the court would not be justified in finding that a fraud had been perpetrated on either the insurer or the insured, by someone who might have filled in the answers unknown to Mr. Wojciechowski. [*Gen American Life Ins Co v Wojciechowski*, 314 Mich 275, 283; 22 NW2d 371 (1946).]

This suggests that if Dali had signed a blank application and then submitted it to Progressive, the courts might blame Progressive for misinformation in the application. But that is not what is alleged here.

MAIPF also asserts that Dali's limited English proficiency and reliance on his brother should excuse the inaccuracies. But this is again contradicted by our caselaw. In a case involving an illiterate party, the Court held:

> The stability of written instruments demands that a person who executes one shall know its contents or be chargeable with such knowledge. If he cannot read, he should have a reliable person read it to him. His failure to do so is negligence which estops him from voiding the instrument on the ground that he was ignorant of its contents, in the absence of circumstances fairly excusing his failure to inform himself. [*Sponseller v Kimball*, 246 Mich 255, 260; 224 NW 359 (1929).]

See also *Weidner v Northway Motor Mfg Co*, 205 Mich 583, 590-591; 172 NW 574 (1919); *Pakulski v Ludwiczewski*, 291 Mich 502, 510; 289 NW 231 (1939). MAIPF identifies no authority for the notion that sufficiently large contracting parties must provide interpreters to ensure that their counterparties understand a contract they have signed. Our caselaw makes clear that Dali was responsible for the truthfulness of what he signed, not Progressive.

Finally, MAIPF argues that the Copic affidavit is an insufficient basis to establish Progressive's entitlement to rescission. MAIPF contends that statements in Copic's affidavit are offered "for the truth of the matter asserted," pointing to purported "conclusions of fact" concerning Dali's residence and where the Yukon was garaged. But those underlying facts were established through separate deposition testimony. The affidavit's significance lies in its final two paragraphs, in which Copic attests that Progressive does not issue "dual garage" policies and would not have issued Dali's policy had he disclosed that he and the Yukon were located on Almont Drive while the other individuals and vehicles listed on the policy were located on Chesterfield Drive. MAIPF has not identified a genuine factual dispute about Progressive's underwriting practice or its reliance on Dali's application. Its challenge to Copic's affidavit therefore does not defeat summary disposition.

In short, the trial court properly found that Dali's misrepresentations in his insurance application made rescission a lawful remedy in this case. MAIPF's efforts to disqualify rescission as a potential remedy are unpersuasive.

C. BALANCING THE EQUITIES

Finally, MAIPF contends that the trial court erred in balancing the equities and should have denied rescission. As noted above, the trial court's decision is reviewed for an abuse of discretion, *Sherman*, ___ Mich at ___; slip op at 3. We conclude that MAIPF has not met that standard.

Under *Bazzi v Sentinel Ins Co*, 502 Mich 390, 410; 919 NW2d 20 (2018), when an innocent third party seeks to claim benefits from an insurance policy otherwise eligible for rescission, the trial court must balance the equities to determine whether rescission would be equitable under the circumstances. This Court has adopted a five-factor test to guide trial courts' exercise of discretion in these circumstances. *Pioneer State Mut Ins Co*, 331 Mich App at 411. Progressive concedes that the second and third factors weigh against rescission and that the fifth factor is inapplicable. The question on appeal is whether the remaining factors are sufficient to support the trial court's decision to grant rescission.

The first factor considers "the extent to which the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured." *Id*. The trial court made no explicit finding on this factor, instead stating "that question remains to be seen" and that "[t]here is no evidence that the underwriter didn't use due diligence in trying to ascertain whether or not the Plaintiff in this case was married to the insure[d]." These remarks appear focused on whether Progressive used due diligence in determining whether plaintiff was married to Dali *when she made a claim for benefits from Progressive*. But the relevant inquiry is whether Progressive used due diligence in *verifying the accuracy of Dali's insurance application*.

However, any error the trial court made involved overlooking additional reasons to rescind the policy. The innocent misrepresentation doctrine does not "require the party asserting fraud to have performed an investigation of all assertions and representations made by its contracting partner as a prerequisite to establishing fraud." *Titan Ins Co*, 491 Mich at 557. Here, there were no "red flags" in Dali's application that would have induced a reasonable insurer to give it additional scrutiny. See, e.g., *Allstate Ins Co v Fremont Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 6, 2024 (Docket No. 365617), p 6. The initial application incorrectly identified Shawkat as Dali's spouse. At renewal, the policy was corrected to identify Shawkat as a resident relative but not a spouse. This case is therefore distinguishable from *Farm Bureau Gen Ins Co v ACE American Ins Co*, 337 Mich App 88, 94, 101; 972 NW2d 325 (2021), where the applicant identified himself as married but failed to name his wife, and this Court said this was "a lack of professional diligence." The change in Shawkat's designation, without more, did not alert Progressive that Dali was married to someone else and lived at a different address. Moreover, "an insurer has no duty to investigate or verify the representations of a potential insured." *Titan Ins Co*, 491 Mich at 570. If anything, the trial court should have found that the first factor weighed in favor of rescission.

Under the fourth factor—which was dispositive in this case—the trial court inquires into "the availability of an alternate avenue for recovery if the insurance policy is not enforced."

Pioneer State Mut Ins Co, 331 Mich App at 411. As the trial court noted, rescission would allow plaintiff to avoid any complications caused by the one-year-back rule, MCL 500.3145(2), because Progressive was not brought into the suit until well after plaintiff filed suit against MAIPF. This Court has said that "[t]he availability of other coverage should not be found when the claimant would be barred from recovery from a different insurer because of the one-year-back rule." *Farm Bureau Gen Ins Co*, 337 Mich App at 106 n 12. Moreover, the parties did not develop a record showing how the one-year-back rule would affect plaintiff's recoverable losses under Progressive's policy. Given that uncertainty, the trial court did not abuse its discretion by considering the possible limitation on recovery from Progressive when assessing plaintiff's alternative means of obtaining benefits.

MAIPF also argues that the trial court failed to account for the difference between the unlimited PIP medical benefits available under Progressive's policy and the limit applicable to an assigned claim. It is true that under MCL 500.3172(7)(a), when an assigned claim is filed, PIP benefits are capped at "the limit provided in [MCL 500.3107c(1)(b)]." And the trial court did not specifically analyze what effect this would have on plaintiff's ability to recover benefits. But that appears to be because the parties did not provide any evidence on this point. We do not see anywhere in the record where the parties established the amount of plaintiff's recoverable medical expenses, whether those expenses would exceed the cap, or what benefits, if any, plaintiff's son might independently be entitled to claim. In light of the record, we cannot say the trial court abused its discretion in failing to address the impact of the $250,000 cap on plaintiff's ability to recover benefits.

In conclusion, MAIPF has not shown that the trial court abused its discretion in granting rescission to Progressive. Its judgment is therefore affirmed.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin