STATE OF MICHIGAN

COURT OF APPEALS

DAVID GERMAK and TERRY SCHAAF,

Plaintiffs-Appellants,

v

AUTO-OWNERS INSURANCE COMPANY, a Michigan Corporation,

Defendant- Appellee.[1]

UNPUBLISHED
December 18, 2003

No. 242870
Genesee Circuit Court
LC No. 01-069782-NF

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

PER CURIAM.

Plaintiffs David Germak and Terry Schaaf appeal as of right the trial court's order denying their motion for summary disposition and granting defendant Auto-Owners' motion under MCL 2.116(I)(2). We affirm.

At issue in this case is whether the Auto-Owners commercial automobile insurance policy issued to Terry Schaaf and Sandra Dadovich, d/b/a Your Blind Source, LLC, through defendant Fulcher Companies, was in effect at the time of plaintiff Germak's automobile accident. Because plaintiff Schaaf requested that her automobile be transferred to a personal insurance policy, we find that she effectively cancelled the Auto-Owners commercial policy on her vehicle.

I. Facts and Procedural History

Plaintiffs initially insured plaintiff Germack's 1994 Oldsmobile Cutlass and their 1989 GMC Jimmy with the Cincinnati Insurance Company, through their agent, defendant Fulcher Companies. But when plaintiff Schaaf formed Your Blind Source, LLC, with Sandra Dadovich in July 2000, she took the 1989 GMC Jimmy off the Cincinnati personal policy and placed it on the business' commercial policy with Auto-Owners. This change was effectuated through

[1] Defendants Dan Fulcher and The Fulcher Companies, Inc., are not participating in this appeal. Plaintiffs stipulated to dismiss them after arbitration. The trial court issued an order to this effect on July 22, 2002.

defendant Fulcher Companies. The commercial automobile policy listed "Terry Schaaf and Sandra Dedovich, d/b/a Your Blind Source, LLC" as the named insured/s. The address on the policy was 3156 Leith Street, Flint, Michigan 48506-3039. Plaintiff Schaaf and Ms. Dadovich also took out a business owner's liability policy with Auto-Owners. On July 28, 2000, plaintiff Schaaf made a payment to cover the first three months of the Auto-Owners commercial automobile policy. It is undisputed that no further payments were remitted to Auto-Owners.

In October 2000, the relationship between plaintiff Schaaf and Ms. Dadovich deteriorated and they closed their business. Plaintiff Schaaf telephoned Fulcher Companies on October 26, 2000, and spoke with Marcia Howell, a commercial lines customer service representative. During this conversation, plaintiff Schaaf informed Ms. Howell of the business closure and requested that the billing address on the commercial policies be changed to 3137 McCollum. Plaintiff Schaaf then informed Ms. Howell that the 1989 GMC Jimmy needed to be placed back on her personal insurance policy and that Ms. Dadovich's name should be removed from the insurance. Ms. Howell informed plaintiff Schaaf that she needed to speak with defendant Dan Fulcher on these issues.

Defendant Fulcher contacted plaintiff Schaaf on October 30, 2000. Plaintiff Schaaf explained to defendant Fulcher that she wanted to keep the business owner's liability insurance intact if possible, as she intended to continue the business under a different name, but that the truck could be transferred back to her personal policy. According to plaintiff Schaaf, defendant Fulcher advised her that he could not take Ms. Dadovich off the business policy without her approval. He further stated that plaintiff Schaaf should just let the automobile policy "run its course until the money ran out." She stated, however, that defendant Fulcher agreed to switch the 1989 GMC Jimmy back to her personal automobile policy. Defendant Fulcher denied this claim.

On November 8, 2000, Auto-Owners sent a notice of cancellation for non-payment to the Leigh Street address provided on the face of the policy. The notice stated that the commercial automotive policy for Terry Schaaf and Sandra Dedovich, d/b/a Your Blind Source, LLC, would be cancelled for non-payment on December 2, 2000. Ms. Dadovich acknowledged receiving the cancellation notice at the Leigh Street address but never opened it until shortly before her deposition.

Plaintiff Germak was involved in an automobile accident on December 27, 2000, while operating the 1989 GMC Jimmy. After the accident, plaintiff Schaaf received PIP benefits from the Cincinnati Insurance Company. Defendant Fulcher testified that an employee with his company inadvertently sent the loss report to the Cincinnati Insurance Company before realizing that plaintiffs' 1989 GMC Jimmy was not covered under that policy.

Plaintiffs filed a complaint against defendants Fulcher and Fulcher Companies on February 27, 2001. This complaint was amended on September 17, 2001, and Auto-Owners was added as a defendant. On October 1, 2001, plaintiffs filed a motion for summary disposition against Auto-Owners, pursuant to MCL 2.116(C)(10). In their motion, plaintiffs argued that Auto-Owners improperly denied coverage in this case. Specifically, plaintiffs claimed that Auto-Owners' failure to mail notice of cancellation to the most current address known to its authorized agent rendered the cancellation ineffective. Plaintiffs therefore requested that the trial court enter an order stating that the policy in question was in effect at the time of the accident.

In response to plaintiffs' motion, Auto-Owners claimed it was plaintiff Schaaf who made the request to cancel the commercial policy by asking that the subject vehicle be placed back on her personal insurance policy. According to Auto-Owners, this request negated any statutory responsibility it had to notify plaintiffs that the policy was cancelled. And if notification was required, Auto-Owners maintained that the notice of cancellation was properly sent to the last known address of the insured business. Auto-Owners argued that defendant Fulcher Companies' knowledge of plaintiff Schaaf's home address through her personal automobile policy was not a "true new address for the business insured in the Auto-Owners commercial auto policy, and in any event, cannot be imputed to Auto-Owners because they were acting as an independent agent for plaintiffs in affecting a change to Cincinnati Insurance, and not for Auto-Owners." As such, Auto-Owners requested summary disposition in their favor under MCL 2.116(I)(2).

On November 7, 2001, the trial court entered an order granting Auto-Owners' request for summary disposition. At the conclusion of the hearing on the motion, the trial court stated that plaintiff Schaaf's request to transfer the 1989 GMC Jimmy to her personal policy with Cincinnati Insurance effectively cancelled the Auto-Owners policy. The trial court further noted that the insured in this case was the business and not plaintiff Schaaf and Sandra Dadovich as individuals. Thus, to the extent Auto-Owners had any duty to notify plaintiff Schaaf of the cancellation, the trial court found that it properly mailed notification to the last known address of the insureds, meaning "the d/b/a's business address[.]" The trial court denied plaintiffs' motion for reconsideration.

II. Legal Analysis

Plaintiffs allege that the trial court improperly determined that plaintiff Schaaf's discussions with representatives from defendant Fulcher Companies amounted to a cancellation of her insurance policy with Auto-Owners. We disagree.

A trial court's denial of a motion for summary disposition is reviewed de novo on appeal.[2] A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[3] "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists."[4] Summary disposition under MCR 2.116(C)(10) is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[5] But summary disposition is properly granted to the opposing party under MCR 2.116(I)(2) if the

---

[2] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[3] *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

[4] *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

[5] *Auto-Owners Ins Co, supra* at 397.

trial court determines that the opposing party is entitled to summary disposition as a matter of law.[6]

Assuming, arguendo, that plaintiff Schaaf is an insured under the Auto-Owners commercial automobile policy, we find that she was not entitled to notice of cancellation from Auto-Owners. Under MCL 500.3020(1)(a), an insurance policy "may be canceled at any time at the request of the insured . . . ." Case law provides that this request may be made orally or in writing and that it is effective on the date given.[7] In *Blekkenk*, for instance, this Court determined that an insured's oral request to cancel his insurance policy was effective on the date it was given to the agent of the insurer.[8] The agreement to cancel an insurance policy may also be express or implied from the surrounding circumstances.[9] Written notice of cancellation from the insurer is only required where the *insurer*, and not the insured, decides to cancel a policy.[10]

Plaintiff Schaaf insists that she never asked to cancel the Auto-Owners policy on her 1989 GMC Jimmy, but a review of the record reveals otherwise. Initially, we note that the fact plaintiff Schaaf never used the magic words "cancel my policy" in this case is immaterial, as her remarks to Ms. Howell and defendant Fulcher show that she instructed them to transfer her vehicle to her private insurance policy. We consider plaintiff Schaaf's conversation with defendant Fulcher regarding the transfer in light of the fact that he explained to her that the vehicle could not be insured under two policies at once.

While plaintiff Schaaf expressed a desire to keep the business liability policy intact, she testified that the Auto-Owners policy covering her vehicle was not an issue because it could be transferred to her personal policy. Plaintiff Schaaf even recalled discussing the fact that the transfer would cause the premiums on her personal policy to increase by $29. According to plaintiff Schaaf, defendant Fulcher informed her that the best course of action would be to allow the Auto-Owners policy to run out in order to use up any unearned premium. Plaintiff Schaaf admitted during her deposition that she only paid for the first three months of the insurance policy in July 2000, and that no further payments were made.

When asked whether defendant Fulcher ever told her that he was going to switch the vehicle to her personal automobile insurance policy, plaintiff Schaaf claimed he stated that he would "take care of that." She specifically disagreed with defendant Fulcher's deposition testimony that "he did not agree to switch [her] 1989 Jimmy from the Auto-Owners commercial policy to the Cincinnati personal policy[.]" In fact, plaintiff Schaaf made the following comments when asked why she was not surprised to receive checks from the Cincinnati Insurance Company, rather than Auto-Owners, after the accident:

---

[6] *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

[7] See *Blekkenk v Allstate Ins Co*, 152 Mich App 65, 69-71, 79; 393 NW2d 883 (1986).

[8] See *id*. at 69-71, 80.

[9] See *Beckner v Cadillac Ins Co*, 175 Mich App 632, 635; 438 NW2d 268 (1989).

[10] MCL 500.3020(1)(b); see also *Blekkenk, supra* at 71.

> To be honest with you, sir, I figured it had been changed back by then.
>
> * * *
>
> I never gave it a thought because of the conversation I had with Dan and the Fulcher Agency. They indicated that they would put it back, it being the Jimmy, back on the personal policy, *as I requested both in the office and on the telephone to Dan*.
>
> * * *
>
> I didn't assume it was on any particular policy, but was not surprised to see it was Cincinnati. I figured that my agent had followed through on what he said he was going to do.
>
> * * *
>
> Well, sir, when your agent tells you he's going to take care of it, you assume that's [sic] going to be done.[11]

We cannot ignore plaintiff Schaaf's explicit testimony that she requested that the vehicle be put back on her personal insurance policy. On this record, we conclude that the trial court properly determined that plaintiff Schaaf cancelled the Auto-Owners commercial automobile insurance policy before the accident in question.

To the extent plaintiffs further argue that their cancellation was ineffective because Auto-Owners did not receive notice of the cancellation until after the accident, we disagree. Plaintiffs assert that the Auto-Owners policy in this case specifically stated that a party could only cancel the policy by returning it to the company providing the insurance or by providing that company advanced notice of the cancellation. Because insurance contracts are subject to statutory regulation, they must be construed in light of statutory requirements.[12] Again, MCL 500.3020(1)(a) allows an insured to cancel a policy at any time. In *Blekkenk*, this Court determined that the insured's cancellation request was effective on the date he orally informed the agent for the insurance company.[13] We note that the insurance company in *Blekkenk* was not informed of the cancellation until several days later.[14] Thus, it is irrelevant that Auto-Owners was not notified before the accident of the previous cancellation request that plaintiff Schaaf made to its agent.

---

[11] Emphasis added.

[12] *Blekkenk, supra* at 78.

[13] See *id.* at 69-70, 80.

[14] *Id*. at 69.

Even if defendant Fulcher is not considered an authorized agent of Auto-Owners, summary disposition would still be appropriate in this case. We note that to cancel a policy the statute only requires an insurer to mail notice to "the insured's address last known to the insurer or an authorized agent of the insurer . . . ."[15] It is undisputed that Auto-Owners mailed a notice of cancellation to plaintiffs' last known address in its records before plaintiff Germak's accident.

Accordingly, we find that summary disposition was properly awarded to Auto-Owners in this case.

Affirmed.

/s/ Richard Allen Griffin
/s/ Jessica R. Cooper

[15] MCL 500.3020(1)(b).