STATE OF MICHIGAN

COURT OF APPEALS

ROGER HAKEEM,

Plaintiff-Appellant,

v

LUMBERMENS MUTUAL CASUALTY INSURANCE COMPANY,

Defendant-Appellee,

and

KEMPER INSURANCE COMPANY,

Defendant.

UNPUBLISHED
December 1, 2005

No. 254454
Wayne Circuit Court
LC No. 03-318853-NF

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition for defendant and dismissing this case involving his claim for underinsured motorist coverage.[1] We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

It is apparent that the trial court granted summary disposition under MCR 2.116(C)(10) because it considered evidence beyond the pleadings, i.e., correspondence between plaintiff's counsel and defendant. We review such a decision de novo, and consider the evidence in the light most favorable to the nonmoving party. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

[1] While the caption for this case indicates that there are two defendants, it appears that they are actually a single entity, with Kemper Insurance Company being a trade name used by Lumbermens Mutual Casualty Insurance Company. We will use the term "defendant" to refer jointly to these parties as a single entity.

First, plaintiff argues that the trial court erred by failing to conclude that defendant waived the policy exclusion on which it relied to deny underinsured motorist coverage, or at least that there was a question of fact in that regard. We disagree. There is simply no reasonable basis for concluding that defendant waived the policy exclusion. A waiver "is a voluntary and intentional abandonment of a known right." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). In its initial letter to plaintiff's counsel regarding this matter, defendant expressly stated that it did not waive any of its rights under the insurance policy. It is apparent that defendant never retracted that statement. Accordingly, there is simply no basis to conclude that defendant waived, i.e., voluntarily and intentionally abandoned its right to rely on, the relevant exclusion.

Next, plaintiff argues that the trial court erred by concluding as a matter of law that defendant could not be held to be equitably estopped from relying on the relevant policy exclusion. We disagree. Equitable estoppel may apply if "(1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts." *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 527; 644 NW2d 765 (2002), quoting *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999). Generally, estoppel will not be applied to protect an insured against risks expressly excluded from an insurance policy. *Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 593-594; 592 NW2d 707 (1999). No reasonable view of the evidence would support a determination that defendant intentionally or negligently induced plaintiff to believe that it would not rely on the policy exclusion at issue. Rather, defendant in its initial letter to plaintiff's counsel expressly stated that it was not waiving any of its rights under the policy. While defendant later consented to plaintiff's settlement with the insurer of the driver of the car, there is no evidence that it ever retracted its statement that it was not waiving its rights under the policy. Further, defendant dealt directly with plaintiff's counsel in this regard, who defendant could reasonably assume was sophisticated enough to recognize that it had not waived its right to rely on a policy exclusion. Thus, the trial court did not err in rejecting plaintiff's equitable estoppel argument.

Finally, plaintiff argues that the trial court erred by denying his motion to amend his complaint to assert claims of "promissory estoppel/detrimental reliance and misrepresentation" because he "attached written documentation to support the amendment, which at the very least, established a prima facie [sic] for the claims being asserted." Beyond this, plaintiff does not explain his basis for these alleged claims. This argument is so lacking in substance that we conclude it must be rejected based on plaintiff's failure to meaningfully argue its merits. See, e.g., *Badiee v Brighton Area Schools*, 265 Mich App 343, 359; 695 NW2d 521 (2005) ("A party waives an issue when it gives the issue cursory treatment on appeal.").

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello