

STATE OF MICHIGAN
COURT OF APPEALS

MIKOS WILLIAMS,

Plaintiff,

v

MEEMIC INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-
Appellant,

and

FARM BUREAU INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED

March 7, 2006

No. 265808

Wayne Circuit Court

LC No. 04-405782-NI

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order granting third-party defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

FACTS

Plaintiff lived with his parents, John and Donzella Williams, on January 19, 2003, when he was involved in a pedestrian/automobile accident. John Williams had no-fault insurance under a policy issued by defendant Meemic, who paid benefits for a time. Donzella Williams had no-fault insurance under a policy issued by Farm Bureau. In December 2003, defendant discovered the Farm Bureau policy and claimed a right to reimbursement. Defendant apparently stopped paying benefits and plaintiff filed suit against defendant, only, in February 2004. In April 2004, Farm Bureau rescinded the policy issued to Donzella "as a result of material misrepresentations of fact contained in the application for insurance" and refunded the premium. In October 2004, defendant filed a third-party complaint against Farm Bureau, asserting that Williams qualified as an insured under his mother's policy, and that Farm Bureau was primarily liable under MCL 500.3114. Farm Bureau denied liability on the ground that the policy had been rescinded and thus was void *ab initio*. Defendant contended that Farm Bureau could not

deny liability to defeat the rights of an innocent third party. The trial court disagreed and granted Farm Bureau's motion.

STANDARD OF REVIEW

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law which is also reviewed de novo on appeal. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

ANALYSIS

The owner or registrant of a motor vehicle required to be registered must have no-fault insurance coverage. MCL 500.3101(1). Except as otherwise provided, "a personal protection insurance policy described in § 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household." MCL 500.3114(1). "When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority" MCL 500.3115(2).

The parties do not dispute that if Farm Bureau had issued a policy to Donzella Williams that was in effect at the time of the accident, Farm Bureau would be liable to plaintiff and, by extension, would be obligated to partially reimburse defendant. There is also no dispute that Farm Bureau had rescinded its policy, albeit after the accident, based on an alleged misrepresentation in Donzella's application for insurance. "It is well-settled that a material misrepresentation made in an application for no-fault insurance entitles the insurer to rescind the policy." *Lash v Allstate Ins Co*, 210 Mich App 98, 103; 532 NW2d 869 (1995). In such cases, the insurer may declare the policy void *ab initio*. *Auto-Owners Ins Co v Comm'r of Ins*, 141 Mich App 776, 780; 369 NW2d 896 (1985).

It has been held that the insurer may rescind a policy after a claim has been made only if "the person seeking to collect the no-fault benefits is the same person who procured the policy of insurance through fraud" *Hammoud v Metropolitan Property & Cas Ins Co*, 222 Mich App 485, 488; 563 NW2d 716 (1997). In other words, "[a]n insurer may only void a policy of insurance *ab initio* where an innocent third party is not affected thereby and where it can be shown that the insured *intentionally* misrepresented a *material* fact communicated at the time of effecting the insurance; that is, where such misrepresentation substantially increased the risk of loss insured against so as to bring about a rejection of the risk or the charging of an increased premium." *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9; 369 NW2d 243 (1985) (emphasis in original). The relevant inquiry is whether the injured third party was innocent with respect to the misrepresentation made to the insurance company, or was actively involved in defrauding the insurer. *Hammoud, supra*. See also *Auto-Owners Ins Co v Johnson*, 209 Mich App 61, 64; 530 NW2d 485 (1995) (insurer estopped from rescinding policy where "an innocent third party is injured in an accident" covered by the policy).

Plaintiff, who was injured in a motor vehicle accident and thus potentially entitled to coverage under the Farm Bureau policy, is the allegedly innocent injured third party who could challenge the effectiveness of the rescission. However, he has not done so. Defendant is not an

innocent injured third party otherwise entitled to benefits under the Farm Bureau policy. Rather, defendant is another insurer obligated to pay benefits with a right to reimbursement from another insurer also obligated to the insured. By virtue of the rescission of the policy, Farm Bureau was not obligated to the insured. Defendant, who does not claim to be subrogated to the rights of plaintiff, has not shown that it has standing to contest the rescission on his behalf. In any event, defendant has not shown that plaintiff was in fact innocent with respect to the misrepresentation made by his mother. Therefore, the trial court did not err in granting third-party defendant's motion for summary disposition.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald