STATE OF MICHIGAN

COURT OF APPEALS

ANDREW FAISON and JAMES STEWART, Plaintiffs-Appellees, v HARTFORD INSURANCE COMPANY, Defendant-Appellant, and FARMERS INSURANCE EXCHANGE, Defendant.	UNPUBLISHED April 10, 2014 No. 313555 Wayne Circuit Court LC No. 11-015799-NF

Before: SERVITTO, P.J., and FORT HOOD and BECKERING, JJ.

PER CURIAM.

Defendant, Hartford Insurance Company, appeals by leave granted[1] the order denying its motion for summary disposition in this insurance action. We reverse.

This litigation arises from an automobile accident that occurred on December 22, 2010. Plaintiff, allegedly a resident of Maryland, was driving his car in Michigan with James Stewart[2] as a passenger, when their vehicle was rear-ended. Plaintiff sought benefits from defendant, his insurer. However, defendant did not pay the benefits requested, alleging that plaintiff failed to obtain Michigan insurance in light of his presence in this state since September 2010. Defendant moved for summary disposition, contending that plaintiff did not comply with the statutory provisions for coverage. In opposition to the motion, plaintiff alleged that a factual dispute

[1] *Faison v Hartford Ins Co*, unpublished order of the Court of Appeals, entered May 31, 2013 (Docket No. 313555).

[2] Although James Stewart is also identified as a plaintiff, this dispute involves the insurance secured by plaintiff Andrew Faison in light of his residency. Accordingly, the singular plaintiff refers to Faison only.

existed, but did not submit any documentary evidence in support of the assertions. The trial court denied defendant's motion, holding that a factual issue precluded summary disposition. We granted defendant's application for leave to appeal.

Defendant argues that it was entitled to summary disposition because plaintiff failed to raise a genuine issue of material fact regarding his eligibility for Michigan personal injury protection benefits. Defendant contends that plaintiff produced only conclusory statements in contrast to his actual historical conduct to assert that a factual question existed regarding whether he spent more than 30 days in Michigan during 2010. Specifically, defendant alleges that plaintiff's extensive admissions to defendant's representatives that he lived in Michigan for more than 30 days in 2010, made him ineligible for benefits. We agree.

A trial court's ruling regarding a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id*. "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id*. The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362, 371-372; 547 NW2d 314 (1996). When an opposing party provides mere conclusions without supporting its position with underlying foundation, summary disposition in favor of the moving party is proper. See *Rose v Nat'l Auction Group*, 466 Mich 453, 470; 646 NW2d 455 (2002). "[S]ummary disposition cannot be avoided by a party's conclusory assertions in an affidavit that conflict with the actual historical conduct of the party." *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004). Specifically, a party may not contradict previously given deposition testimony in an affidavit as part of an attempt to defeat a motion for summary disposition. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 396; 729 NW2d 277 (2006).

Out-of-state residents may be entitled to personal injury protection (PIP) benefits if they are involved in an automobile accident in Michigan, through their out of state insurer. MCL 500.3163(1). "[I]f the insured is not a nonresident, MCL 500.3163 has no application and may not be used to impose responsibility for payment of PIP benefits on an out-of-state insurer that maintains a written certification in Michigan." *Tienda v Integon Nat'l Ins Co*, 300 Mich App 605, 613-614; 834 NW2d 908 (2013). Michigan residents are required to purchase no-fault vehicle insurance policies in order to operate a vehicle in Michigan. MCL 500.3101(1). Nonresident owners of motor vehicles not registered in Michigan "shall not operate or permit the motor vehicle . . . to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits." MCL 500.3102(1). Therefore, a nonresident who is present in Michigan for more than 30 days in a calendar year must obtain Michigan insurance to remain eligible for benefits under the Michigan no-fault insurance system. *Tienda*, 300 Mich App at 620 n 3.

Plaintiff's "actual historical conduct" throughout 2010 demonstrates that there is no genuine issue of material fact regarding whether he operated a vehicle in Michigan for more than 30 days during the year. During 2010, plaintiff called defendant at least five times and indicated to defendant's representatives that he was either in or recently had been in Michigan, and he was spending significant time in Michigan. During these calls, plaintiff addressed a lapse in coverage and altered coverage. Most importantly, plaintiff stated on September 1, 2010, that he was no longer a resident of Maryland, and he instructed defendant's representative to change his billing address to Michigan. After the accident, plaintiff admitted that he had been living in Michigan continuously from around September 1, 2010, through the date of the accident, December 22, 2010. Further, plaintiff's statements that he was traveling frequently, and his numerous calls to defendant regarding his automobile insurance, strongly suggest that he was operating his vehicle throughout the time he was located in Michigan.

In his deposition, plaintiff asserted that he had only been in Michigan for less than two weeks at the time of the accident, and he had been planning to leave just days after the accident occurred. However, he then acknowledged in his deposition that he travelled between Maryland and Michigan between September 1, 2010, and December 22, 2010.[3] This testimony did not contradict defendant's documentary evidence regarding the representations made to alter the coverage and the aggregate number of days in a calendar year spent in Michigan. Irrespective of plaintiff's denial of his presence in Michigan 30 days before the accident, he failed to present documentary evidence addressing his aggregate presence in this state between September and December 2010. *Rose*, 466 Mich at 470. Plaintiff did not provide any documentary evidence beyond the statements in his deposition to demonstrate that he had lived anywhere outside of Michigan between September 1, 2010, and December 22, 2010. Further, plaintiff has not challenged the authenticity of the recordings of his conversations with defendant's representatives during 2010. Therefore, plaintiff's conclusory allegations were insufficient to create a genuine issue of material fact. We note that although plaintiff filed an answer in opposition to the motion, he failed to attach documentary evidence to support his assertions.[4] The lack of a recollection of events and the failure to present other witnesses does not yield a factual issue for trial.

At the motion hearing, the trial court asked numerous questions apparently focused on plaintiff's legal residency during 2010. Specifically, the trial court asked whether plaintiff carried a Michigan driver license, and repeatedly asked whether he owned a home in Maryland. Plaintiff's state of legal residency was not the relevant inquiry for the purposes of his eligibility for PIP benefits; rather, it was whether plaintiff operated a vehicle for an aggregate of 30 days in Michigan during the 2010 calendar year. MCL 500.3102(1). On that inquiry, plaintiff's conclusory assertions that he spent less than 30 days in Michigan in 2010 are insufficient to

[3] The focus of the deposition addressed plaintiff's injuries, and the testimony regarding his residence was sparse particularly with regard to plaintiff's location in the fall of 2010. Although plaintiff lacked a recollection of time in each state, he also indicated that witnesses, such as his daughter with whom he resided, could not aid in determining this information.

[4] Plaintiff also did not file a brief on appeal.

create a genuine issue of material fact. The actual historical conduct of plaintiff demonstrates that he was living and operating a vehicle in Michigan for over 30 days. Accordingly, plaintiff was required to purchase Michigan liability insurance in order to retain eligibility for PIP benefits.

Reversed and remanded for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction. Defendant, the prevailing party, may tax costs.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Jane M. Beckering