Order

Michigan Supreme Court
Lansing, Michigan

June 2, 2023

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

164796
164801

LAWRENCE S. HOLMAN,
Plaintiff-Appellee,

v

SC: 164796
COA: 357473
Oakland CC: 2019-178713-NI

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,
Defendant-Appellee,

and

JONATHAN HEINZMAN AGENCY, INC., and JONATHAN HEINZMAN,
Defendants-Appellants.

_____/

LAWRENCE S. HOLMAN,
Plaintiff-Appellee,

v

SC: 164801
COA: 357473
Oakland CC: 2019-178713-NI

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,
Defendant-Appellant,

and

JONATHAN HEINZMAN AGENCY, INC., and JONATHAN HEINZMAN,
Defendants-Appellees.

_____/

On order of the Court, the applications for leave to appeal the August 4, 2022 judgment of the Court of Appeals are considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals and REMAND this case to the Oakland Circuit Court for further proceedings not

inconsistent with this order. We reverse the Court of Appeals to the extent it held that the defendants were not entitled to summary disposition of the plaintiff's claim asserting that the defendants were negligent in not ensuring that he had insurance coverage. The plaintiff cannot show that any alleged negligent action caused his injury, as it was the plaintiff's own failure to provide proof of prior insurance that led to the defendants' denial of coverage. Because the trial court did not specifically address the plaintiff's claim that the defendants breached a duty by failing to notify him that his insurance policy would be or had been cancelled, we remand to the trial court to address that claim.

The plaintiff, Lawrence Holman, purchased a Mercury Mountaineer and applied to the defendant Farm Bureau General Insurance Company of Michigan for insurance after filling out an application with the defendant insurance agent Jonathan Heinzman. The application said that the plaintiff had not driven and owned an uninsured vehicle in the last six months, and it listed a AAA insurance policy number as the previous policy. Heinzman sent the application to the plaintiff who read it, signed it, and faxed it back. Farm Bureau then issued a temporary certificate of insurance, i.e., a binder, to the plaintiff while they reviewed the application.[1] But the plaintiff was unable to provide proof of prior insurance from the previous six months, and Farm Bureau consequently rejected his application as incomplete and denied coverage. Shortly after Farm Bureau wrote a letter to that effect, the plaintiff was injured in a car accident.

The plaintiff sued the other driver and Farm Bureau, claiming that he was entitled to a 10-day notice before his policy was cancelled. But in *Holman v Mossa-Basha*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2018 (Docket Nos. 338210 and 338232) (*Holman I*), the Court of Appeals affirmed summary disposition in favor of the defendants, reasoning that the temporary certificate of insurance had expired on its own terms before the accident and no notice of cancellation was required. Additionally, the Court of Appeals held that because of the misrepresentations regarding the plaintiff's prior insurance, the policy was void ab initio and therefore Farm Bureau could rescind it. *Holman I* reasoned that regardless of who provided the false AAA policy number, the plaintiff had read and signed the application, affirming any misrepresentations in it. *Id*. at 6.

The plaintiff then brought the instant negligence action alleging that Heinzman and Farm Bureau breached their duty to ensure that the plaintiff had no-fault insurance and had not notified him that his application would be, or had been, rejected because he had no

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[1] "An insurance binder is 'a contract of temporary insurance pending issuance of a formal policy or proper rejection by [the insurer].' " *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 721 (2001), quoting *Blekkenk v Allstate Ins Co*, 152 Mich App 65, 68 (1986) (alteration in original).

proof of prior insurance from the previous six months. Heinzman moved for summary disposition. The trial court granted the motion under MCR 2.116(C)(10), reasoning that the plaintiff could not show causation because under *Holman I*, the policy was void ab initio.[2]

The Court of Appeals reversed in a published opinion. It reasoned that *Holman I*'s statements that the plaintiff had, at minimum, affirmed any misrepresentation by signing the application were made in the context of the contract claim and did not apply to the instant tort claim. *Holman v Farm Bureau Gen Ins Co of Mich*, ___ Mich App ___, ___ (2022) (Docket No. 357473) (*Holman II*); slip op at 4-5. Under *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16 (2008), the duty to read an insurance policy is relevant to the question of comparative negligence, but does not necessarily wholly bar a negligence claim. While in *Zaremba* an insurance agent's duty to advise on the adequacy of coverage could arise only from a special relationship, see *Harts v Farmers Ins Exch*, 461 Mich 1, 8 (1999), the Court of Appeals believed that the applicable duty of an insurance agent to act as an order taker included a duty to fill out the application accurately and not to include false information, *Holman II*, ___ Mich App at ___; slip op at 6.

The defendants applied for leave to appeal *Holman II*. We review a decision on a motion for summary disposition de novo. *Chandler v Muskegon Co*, 467 Mich 315, 319 (2002). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999), citing *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992).[3] "To establish a prima facie case of negligence, a plaintiff must prove that '(1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant's breach was a proximate cause of the plaintiff's damages.' " *Hill v Sears*,

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[2] The defendant had moved for summary disposition under MCR 2.116(C)(7) (immunity granted by law), (C)(8) (failure to state a claim on which relief can be granted), and (C)(10) (no genuine issue as to any material fact). Though the trial court granted summary disposition based on (C)(10), its reasoning relied on collateral estoppel, specifically *Holman I*'s analysis. However, "[s]ummary disposition on the basis of collateral estoppel . . . is pursuant to MCR 2.116(C)(7)." *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 246 (1998). Therefore, insofar as the trial court relied on collateral estoppel in order to grant the motion for summary disposition, it should have been granted under (C)(7) rather than (C)(10).

[3] Because we do not consider facts outside the pleadings, given that the plaintiff states in his amended complaint that his application was rejected for failure to provide proof of prior insurance, we conclude that summary disposition is properly granted under MCR 2.116(C)(8). We do not weigh in on whether summary disposition would also be proper under MCR 2.116(C)(7) or (C)(10).

Roebuck & Co, 492 Mich 651, 660 (2012), quoting *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162 (2011).

Summary disposition is properly granted on the plaintiff's negligence claim based on the theory that the defendants breached a duty to insure him. Plaintiff cannot show that that the alleged negligence is the proximate cause of his noncoverage. The Court of Appeals reasoned that even under the narrowest duty of an agent as an order taker, Heinzman had a duty to fill out an application accurately, and that any failure to read the application on the plaintiff's part only went to contributory negligence. But that analysis ignores that the misrepresentations in the application, regardless of their source, are causally disconnected from Farm Bureau's decision not to offer the plaintiff insurance. Instead, it was the plaintiff's failure to offer proof of prior insurance that caused his noncoverage. In other words, even assuming that Heinzman was responsible for filling out the false AAA policy number on the application and that the plaintiff only ratified that misrepresentation by failing to read the application before he signed it, it was not that misrepresentation that led to Farm Bureau's decision not to insure the plaintiff; rather, it was the plaintiff's independent failure to provide proof of insurance for the six months prior to his application that was the proximate cause of Farm Bureau's determination that the application was incomplete and that Farm Bureau consequently would not offer the plaintiff coverage. Therefore, because the plaintiff cannot show that the defendants' allegedly negligent conduct was the proximate cause of his injury, the trial court properly granted summary disposition.

The plaintiff also alleged that the defendants were negligent in failing to notify him that coverage would be or had been rejected. The Court of Appeals addressed this theory as to Heinzman and said that though it was unaware of any caselaw addressing whether an insurance agent has a duty to advise of an impending cancellation, when a person voluntarily assumes a duty, they must act as an ordinarily prudent person; the Court of Appeals then said there was a question of fact regarding Heinzman's communications about the potential cancellation of the policy. *Holman II*, ___ Mich App at ___ n 4; slip op at 6 n 4. We take no position on whether the defendants owed the plaintiff a duty to warn of a potential cancellation or notify of a recent cancellation in a more timely manner, or the source or scope of that duty. Because the trial court did not specifically address the plaintiff's claim that the defendants breached a duty by failing to notify him that his insurance policy would be or had been cancelled, we remand to the trial court to address that claim.

VIVIANO, J. (*dissenting*).

While I do not necessarily disagree with the majority's analysis or holding, I do not believe it is appropriate to resolve the case on these grounds in a peremptory order. Our practice of resolving cases on the merits through peremptory orders (i.e., without additional

directed briefing and argument or a full opinion) appears to be unique and somewhat controversial.[4] I believe that peremptory reversals have a place when the law is clear and the case is resolved on the issues and arguments presented by the parties. Here, however, the majority decides the case in favor of defendants based on an argument they never presented. And in doing so, the majority must recharacterize plaintiff's one-count complaint as containing two separate claims. Again, the majority might have come to the correct outcome on these points, but I would not reach this resolution without full briefing and argument, giving both sides a chance to address these matters in the first instance. I therefore dissent.

[4] See Maveal, *Michigan Peremptory Orders: A Supreme Oddity*, 58 Wayne L Rev 417, 418 (2012) ("In other states, high courts rarely reach the merits of a question presented in passing on an application for leave to appeal. The prevailing custom elsewhere is for the supreme court to vote first on the application for review; if granted, full briefing, oral arguments, and deliberation inform subsequent decision on the merits. The preliminary inquiry of whether to hear a case is a critical aspect of judicial administration . . . ."); Comment, *Peremptorily Deciding State Constitutional Law Issues in Michigan: Cruel or Unusual Decision Making?*, 11 TM Cooley L Rev 213, 214-218 (1994) (noting the limited and controversial use of peremptory orders and resolution of cases in other jurisdictions).