STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff/Counter-Defendant-Appellant,

v

WILLIAM MORSE and CALLY MORSE,

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellees,

and

HUMANA HEALTH PLAN OF MICHIGAN, INC.,

Defendant,

and

ACUITY INSURANCE COMPANY,

Third-Party Defendant.

UNPUBLISHED
December 12, 2017

No. 334848
Calhoun Circuit Court
LC No. 2012-000320-CK

Before: O'CONNELL, P.J., and BECKERING and STEPHENS, JJ.

PER CURIAM.

In this interlocutory appeal, plaintiff, Auto-Owners Insurance Company, appeals by leave granted[1] the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). In a prior appeal, this Court reversed the trial court's reformation of the insurance policy on the basis of *Corwin v DaimlerChrysler Ins Co*,

[1] *Auto-Owners Ins Co v Morse*, unpublished order of the Court of Appeals, entered January 27, 2017 (Docket No. 334848).

296 Mich App 242; 819 NW2d 68 (2012). *Auto-Owners Ins Co v Morse*, unpublished opinion per curiam of the Court of Appeals, issued November 19, 2015 (Docket No. 322635). In this appeal, Auto-Owners argues that the trial court erred by concluding that there remains a genuine issue of material fact whether mutual mistake warrants reformation of the contract. We agree. Accordingly, we reverse and remand.

I. BACKGROUND

The legal issue presented in this case arises out of the same facts summarized in the prior appeal. See *Morse*, unpub op at 2-4. In that case, this Court concluded that reformation of the automobile insurance policy (Policy 42) for Mor-Dall Enterprises, owned by Aaron Morse, was not warranted under *Corwin*, 296 Mich App 242. *Morse*, unpub op at 4-6. Therefore, this Court reversed the trial court's partial grant of summary disposition in favor of defendants[2] William and Cally Morse and remanded for further proceedings. *Id*. at 4-6. This Court did not reach the issue of whether mutual mistake justified reformation because the trial court declined to grant summary disposition for that reason and Auto-Owners did not brief the issue on appeal. *Id*. at 4 n 5.

On remand, in the trial court, Auto-Owners moved for summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that mutual mistake supported reformation of Policy 42. The trial court denied Auto-Owners's motion because Auto-Owners's acceptance of premium payments for PIP benefits on the seven vehicles listed on Policy 42 established a material factual dispute regarding whether the parties mistakenly believed that the policy offered PIP benefits to all listed drivers under all circumstances.

II. STANDARD OF REVIEW

This Court reviews de novo a ruling on a motion for summary disposition and an equitable argument, including reformation. *Kaftan v Kaftan*, 300 Mich App 661, 665; 834 NW2d 657 (2013). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the evidence in the light most favorable to the nonmoving party to determine whether it gives rise to a genuine issue of material fact. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016).

III. DISCUSSION

A party moving for summary disposition under MCR 2.116(C)(10) may succeed "by submitting affirmative evidence that negates an essential element of the nonmoving party's claim *or* by demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Lowrey*, 500 Mich at 7 (quotation marks, brackets, and citation omitted). Conversely, the nonmoving party must "set forth specific facts"

[2] Defendants Humana Health Plan of Michigan and Acuity Insurance Company are not parties to this appeal.

to show that a genuine issue of material fact remains. *Lowrey*, 500 Mich at 7 (quotation marks and citation omitted).

A trial court may reform a contract to effectuate the parties' actual agreement. *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006). The party seeking reformation must show a mutual mistake of fact or fraud. *Id*. "A mutual mistake is an erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction." *Kaftan*, 300 Mich App at 665-666 (quotation marks and citation omitted). Neither unilateral mistake nor a mistake of law supports reformation. *Casey*, 273 Mich App at 398.

In this case, defendants contended that both they and Auto-Owners mistakenly believed that Policy 42 provided coverage for all listed drivers for any vehicle they occupied, including defendants who were scheduled drivers on Policy 42. As evidence of each party's mistaken belief, defendants cited Aaron's testimony that he believed that Policy 42 insured all listed vehicles and drivers and Auto-Owners's receipt of premium payments for PIP benefits on all seven vehicles listed in the policy.

We conclude that the trial court erred by determining that a genuine issue of material fact regarding mutual mistake remained. On the contrary, this case reflects defendants' unilateral mistake regarding the terms of Policy 42. The policy clearly stated that PIP benefits were not available for out-of-state accidents unless the injured person was occupying the insured motor vehicle or the injured person was a named insured under the policy or a spouse or resident relative of a named insured. The rental vehicle was not an insured vehicle, and defendants were not named insureds or spouses or resident relatives of a named insured.

Defendants argued that Auto-Owners's receipt of premium payments showed its mistaken belief that the policy provided PIP coverage for all drivers in all situations. Defendants reasoned that Auto-Owners could never be liable for PIP benefits for any of the individually owned vehicles, despite receiving premiums for PIP benefits for those vehicles, including the Ford Explorer that William owned. In the prior appeal, this Court concluded otherwise, explaining that the policy provided PIP benefits for bodily injury sustained during the use of any of the seven listed vehicles, including the five privately owned vehicles. *Morse*, unpub op at 5. Moreover, William sold the Explorer four months before the accident, so no one could have reasonably believed that the premiums paid on the Explorer before the accident provided coverage after the accident. After William sold the Explorer, he used another vehicle listed on Policy 42, but he did not own it or any of the other listed vehicles. Additionally, neither William nor Cally was a spouse or resident relative of Aaron or Mor-Dall Enterprises. Although defendants were not entitled to coverage under these circumstances, Auto-Owners's acceptance of premiums reflects the PIP coverage that Mor-Dall did have. Therefore, the policy did not relieve Auto-Owners of all liability, and Auto-Owners's acceptance of premiums did not show that Auto-Owners believed that coverage would differ from what was described in the policy.

In addition, defendants contended that they believed that they were entitled to coverage at the time of the accident because they were listed as scheduled drivers on Policy 42. However, "merely listing a person as a driver on a no-fault policy does not make the person a 'named insured' . . . ." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 534 n 3; 740 NW2d 503

(2007). In this case, Policy 42 clearly stated that PIP benefits were unavailable for out-of-state accidents unless the injured person was a named insured or the relative of a named insured. Although defendants were listed drivers, they were not named insureds. Therefore, defendants were not entitled to PIP benefits at time of the accident, and they provided no evidence giving rise to a genuine issue of material fact that Auto-Owners shared their mistaken belief.

Defendants also argued that Aaron did not have a duty to review the policy for adequate coverage because the change of the named insured in Policy 42 resulted in a reduction of coverage. Generally, an insured is required to read the policy and is charged with knowledge of its contents. *Casey*, 273 Mich App at 394-395. The insured is entitled to the earlier, greater coverage only if the insurance company reduces coverage without notifying the insured of the reduction in coverage. *Id*. at 395. In this case, Auto-Owners did not initiate the change. Rather, Aaron requested that the named insured be changed from his name to Mor-Dall Enterprises. Further, defendants were not listed on the policy at the time of the change, so they were unaffected by any alleged reduction in coverage. Additionally, defendants would not have been entitled to PIP benefits for an out-of-state accident if Aaron were still the named insured on Policy 42 because neither William nor Cally was Aaron's spouse or resident relative.

Finally, defendants provided no evidence that Auto-Owners had a duty to ensure that all drivers listed on Policy 42 had adequate insurance coverage. When the terms of an insurance policy do not include a guarantee of coverage, an expectation of adequate coverage "cannot overcome the actual terms of the policy." *Casey*, 273 Mich App at 397. In this case, the insurance policy does not guarantee full coverage of all drivers, so defendants' argument that Auto-Owners had a duty to ensure adequate coverage fails.

In sum, we conclude that defendants were unilaterally mistaken about the terms and coverage in Policy 42. In response to Auto-Owners's motion for summary disposition, defendants submitted no evidence showing a genuine issue of material fact regarding whether Auto-Owners believed that the coverage available under Policy 42 was different than what was stated in the policy. Thus, the trial court erred by denying Auto-Owners's motion for summary disposition under MCR 2.116(C)(10).

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens