STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

CARRIE M. HAWKINS, SHIRLEY HAWKINS, ELBUR V. HAWKINS, GERALD SMITH, and HILDEGARD SMITH, Individually and as Co-Conservators of the Estate of CHERYL ANN SMITH, a Minor,

Defendants-Appellees.

FEB 23 1960

No. 97197

BEFORE: E.A. Weaver, P.J., M.H. Wahls and M.J. Shamo*, JJ.

PER CURIAM

Plaintiff Auto Club Insurance Association (ACIA) appeals by right from the opinion and order of the circuit court declaring that plaintiff had failed to effectively cancel an automobile insurance policy issued to defendants Shirley and Elbur Hawkins and therefore plaintiff remained obligated to perform its duties under that policy. We affirm.

Carrie Hawkins, daughter of Shirley and Elbur Hawkins, was involved in a June 3, 1984, automobile accident in which Cheryl Ann Smith was seriously injured. Smith's parents brought suit against the Hawkins for personal injury damages resulting from the accident. Plaintiff brought an independent action to determine its rights and obligations under an ACIA insurance policy covering various Hawkins' vehicles, including the vehicle involved in the June 3, 1984 accident. Plaintiff claimed that the insurance policy had been cancelled for non-payment of premium prior to the June 3, 1984 accident and therefore plaintiff had no liability or duty to defend under that cancelled policy. Defendants contended that plaintiff had failed to effectively cancel its insurance policy and therefore remained obligated to perform its duties as specified in that policy.

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*Recorder's Court Judge, sitting on the Court of Appeals by assignment.

Testimony taken at a one-day bench trial revealed that Hawkins' automobiles had been insured under an ACIA policy which, absent renewal, was set to expire on February 25, 1984. A six-month term renewal policy was negotiated which would have been in effect from February 25, 1984 to August 25, 1984. Shirley Hawkins was named as the "principal insured" on the certificate and billing notice for the vehicles. Elbur Hawkins was named as "other insured" on both. ACIA received an initial renewal payment of $176.56. Mrs. Hawkins failed to make any further installment payments. On April 3, 1984, a cancellation premium notice was sent to the Shirley Hawkins. After the two-week period specified in the cancellation premium notice, a cancellation of policy, dated April 30, 1984, was mailed to Shirley Hawkins on May 1, 1984, confirming that the policy was cancelled effective April 16, 1984. The cancellation notice was mailed to Shirley R. Hawkins and did not contain her husband's name on the form.

The court ruled that both Shirley and Elbur Hawkins were entitled to receive actual notice of cancellation of their ACIA policy and that Mrs. Hawkins had received such notice. However, the court ruled that ACIA failed to effectively cancel its policy as to Mr. Hawkins and therefore remained obligated to perform its duties under that policy.

Subsequently, plaintiff filed a motion for amendment of findings and additional findings and an amendment of judgment. This motion sought reconsideration of the trial court's declaratory judgment and determination that plaintiff's notice of cancellation was ineffectual as to Mr. Hawkins. Plaintiff contended that valid notice to Shirley Hawkins constituted notice to Elbur Hawkins since trial testimony demonstrated that Mrs. Hawkins acted as Mr. Hawkins' agent, and further, that notice to Mr. Hawkins was unnecessary as the insurance policy endorsement which added coverage for the accident vehicle listed Mrs. Hawkins as the "principal named insured" and did not list Mr. Hawkins as either a principal or additional named insured. Plaintiff's

motion was denied. The court ruled that Mr. Hawkins did not intend to make his wife an agent and therefore actual notice was required for both parties. Further, it ruled that the policy change did not affect Mr. Hawkins' coverage.

The sole issue on appeal is whether the trial court erred in finding that plaintiff had failed to effectively cancel an automobile insurance policy issued to defendants Shirley and Elbur Hawkins. Cancellation of a no-fault policy of insurance is governed by MCL 500.3020; MSA 24.13020, which requires that the insured receive actual notice of cancellation at least 10 days prior to the effective date. See Citizens Insurance Company of America v Crenshaw, 160 Mich App 34; ___ NW2d ___ (1987). Plaintiff initially contends that it was not required to give Elbur Hawkins actual notice of the cancellation since he was not the principal insured on the policy. We do not agree.

It is true that under the specific terms of the insurance contract plaintiff was only required to give actual notice of cancellation to the "principal insured", which in this case was Shirley Hawkins. However, our Supreme Court in Lease Car of America v Rahn, 419 Mich 48; 347 NW2d 444 (1984), ruled that MCL 500.3020; MSA 24.13020 requires that notice of cancellation of a policy be given to all of the parties insured under the policy without limitation. Following Lease Car, supra, plaintiff was required was required to give Elbur Hawkins notice of the cancellation.

We agree with the trial court that notice of cancellation was insufficient as to Elbur Hawkins. The notice of cancellation was addressed to Shirley Hawkins and did not contain Mr. Hawkins' name on the face of the notice of cancellation.

Nor can we declare that Shirley Hawkins acted as an agent for Elbur Hawkins. Testimony did show that Mrs. Hawkins routinely negotiated and paid for the family's auto insurance. The trial court, following plaintiff's motion for an amendment of findings and reconsideration of the court's declaratory judgment, ruled that an agency relationship did not exist as Mr. Hawkins

did not intend his wife to act as his agent. It is well settled that the existence and scope of an agency relationship are questions of fact. Whitmore v Fabi, 155 Mich App 333, 338; 399 NW2d 520 (1986). Insufficient evidence was introduced to support a different finding.

Since notice to Shirley Hawkins did not constitute notice to Elbur Hawkins, the trial court was correct in declaring that plaintiff failed to effectively cancel its auto insurance policy as to Elbur Hawkins and was therefore obligated to perform its duties under the policy.

Affirmed.

/s/ Elizabeth A. Weaver
/s/ Myron H. Wahls
/s/ M. John Shamo