STATE OF MICHIGAN

COURT OF APPEALS

DENNIS B. SLAUGHTER and MARY K. SLAUGHTER, individually, and MARY K. SLAUGHTER, as Next Friend for William L. Slaughter, Minor Child,

Plaintiffs,

-v- No. 96483

RICHARD J. SMITH and CONSTANCE S. SMITH,

Defendants,

and

RICHARD J. SMITH AND CONSTANCE S. SMITH,

Third-Party Plaintiffs-Appellees,

-v-

CADILLAC INSURANCE COMPANY and ALL DRIVERS INSURANCE CENTER, INC.,

Third-Party Defendants-Appellants.

BEFORE: G.R. McDonald, P.J. and M.M. Doctoroff and R.E. Robinson*, JJ.

PER CURIAM

Third-party defendants appeal by right from a judgment granting third-party plaintiffs' motion for summary disposition under MCR 2.116(C)(10), and denying third-party defendant's motion for summary disposition under the same rule. For purposes of clarity we shall refer to third-party plaintiffs as Smiths and third-party defendant as Cadillac.

On April 29, 1983, Richard Smith purchased a six-month policy of insurance from Cadillac, through its agent, All Drivers Insurance Center, covering a 1966 GMC pickup truck owned by Richard Smith. This policy was to expire on October 29, 1983. In September of 1983, Smiths decided to change their insurance

*Former circuit judge, sitting on the Court of Appeals by assignment.

protection from Cadillac to Auto-Owners Insurance Company, and after receiving an insurance binder from Auto-Owners, they asked Cadillac, on September 8, 1983, to cancel their policy with Cadillac.

On September 20, 1983, Auto-Owners notified Smiths that their application for insurance had been rejected and that Auto-Owners coverage would end on October 12, 1983.

On September 29, 1983, Cadillac sent Smiths a notice of cancellation effective October 11, 1983, for non-payment of premium.

On October 4, 1983, Cadillac sent Smiths a notice of reinstatement of the original six-month policy. This notice indicated that Smiths' policy, which had been cancelled on August 2, 1983, was reinstated as of August 10, 1983.

On November 1, 1983, three days after the six-month policy expired, Richard Smith, while operating the GMC pickup, struck Mary K. Slaughter, daughter of plaintiffs herein.

Cadillac refused to defend the subsequent suit brought by plaintiffs against Smiths, asserting that Smiths were not, at the time of the accident, insured by Cadillac. This triggered the third-party complaint against Cadillac.

The first question to be answered is whether the trial judge erred in granting summary disposition to Smiths on the ground that there was no genuine issue as to any material fact. We find no error.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it. Giving the benefit of any reasonable doubt to the opposing party, the court must determine whether the kind of record which might be developed would leave open an issue upon which reasonable minds might differ. Fulton v Pontiac General Hospital, 160 Mich

App 728, 735; 408 NW2d 536 (1987); Pauley v Hall, 124 Mich App 255, 262 (1983), lv den 418 Mich 870 (1983); MCR 2.116(G)(4). The moving party must identify by supporting affidavits the facts it believes cannot be genuinely disputed. Goldman v Loubella Extendables, 91 Mich App 212, 217; 283 NW2d 695 (1979), lv den 407 Mich 901 (1979). The adverse party must show the existence of a factual dispute by submitting opposing affidavits, testimony, depositions, admissions or other documentary evidence. Fulton, supra at 735.

We are not talking here about cancellation of the insurance policy before its expiration date, but rather about a non-renewal of the policy upon its expiration at the end of its term.

Michigan has no statute governing the procedures which must be followed by an insurer which elects not to renew its insured's auto policy.

MCL 500.3204; MSA 24.13204 provides:

"(2) Refusal to renew any policy of automobile liability insurance shall not constitute a cancellation unless the insurer fails to mail, 20 days prior to the termination date of the policy, by first class mail, a notice to the insured that the policy will not be renewed."

It could be argued that the Legislature, by this language, is attempting to impose a notice requirement prior to non-renewal at the expiration date of the policy. We note, however, that this provision appears in that portion of the statute dealing with cancellation of automobile liability policies (Chapter 32 of the Insurance Code of 1956), §3208 of which, specifically makes the chapter not applicable to termination of coverage at the end of any policy period. MCL 500.3208; MSA 24.13208.

In the absence of a statute governing non-renewal, we look to the provisions of the policy itself. Radford v National Indemnity Co, 50 Mich App 698, 701; 213 NW2d 843 (1983).

The policy provides as follows:

"Non-Renewal. If the Company elects not to renew this policy, it shall mail to the insured named in item 1 of the declarations at the address shown in this policy, by first class mail, a written notice of non-renewal not less than 20 days prior to the expiration date."

In this case, Cadillac, on September 29, 1983, sent Smiths a notice of cancellation which included a notice of intent not to renew the insurance policy. Before the notice of cancellation became effective on October 11, Cadillac on October 4 reinstated the policy. Did this reinstatement obligate Cadillac to send another notice of non-renewal in order to bring the policy to an end on its expiration date? The trial judge thought so, and so do we.

There is no genuine issue here as to any material fact, only as to the consequences of those facts. Cadillac correctly argues that the insurance policy clearly indicates that it was to expire on October 29, 1983. It is also correct in its view that Michigan law does not mandate a notice by an insurer of intent not to renew an insurance contract. It is not correct, however, in its apparent claim that the policy itself did not require Cadillac to notify Smiths of its intent not to renew the policy. The trial judge reasoned, and we agree, that when Cadillac reinstated the policy after cancelling it (or sending notice of non-renewal) it became obligated by its own agreement to again send notice of its intent either to cancel or not to renew.

No such notice having been sent, we now reach the question as to the status of the policy after October 19, 1983. Cadillac, while recognizing that failure to give a statutorily mandated notice results in a renewal of the policy, citing Ray v Associated Indemnity Corp, 373 So 2d 166 (La 1979), and Shore v Coronet Ins Co, 288 NE2d 887, 7 Ill App 782 (1972),[1] argues that the same result does not follow failure to give a policy mandated

[1] See also Zeman v Zack Agency, Inc, 429 NYS2d 444; 75 A2d 261 (1980).

notice. This distinction escapes us.

Although neither the Michigan courts nor courts elsewhere, so far as we can determine, have addressed this question, it is the policy of this state that persons who suffer loss due to automobile accidents have a source and means of recovery. State Farm Mutual Automobile Ins Co v Kurylowicz, 67 Mich App 568, 574; 242 NW2d 530 (1976).

We note also that provisions of an insurance policy are to be strictly construed against the insurer. Nickerson v Mutual Ins Co, 393 Mich 324, 330; 224 NW2d 896 (1975); Selina Mutual Ins Co v Citizens Ins Co, 136 Mich App 315, 320-321; 355 NW2d 916 (1984).

If the courts have no trouble finding that failure to observe a notice requirement imposed by the state results in renewal of a policy, it is surely easier to find that a similar requirement self-imposed by Cadillac likewise results in a renewal, and we so hold.

Citing Ray v Associated Indemnity Corp, supra, Cadillac asserts that no notice of non-renewal was required because it was willing to renew the policy, as evidenced by its issuance of a new policy to Smiths on November 2, 1983. If there is any merit to this argument, Cadillac's after-the-fact expression of its intent is insufficient to support it.

Judgment affirmed with costs to third-party plaintiffs-appellees.

/s/ Gary R. McDonald
/s/ Martin M. Doctoroff
/s/ Richard E. Robinson