

STATE OF MICHIGAN
COURT OF APPEALS

NOREEN CZAPSKI, as Personal
Representative of the Estate of
GREGORY MICHAEL CZAPSKI,

Plaintiff-Appellant,

v

NO. 100034

DETROIT AUTOMOBILE INTER-
INSURANCE EXCHANGE,

Defendant-Appellee.

Before: Kelly, P.J. and Gribbs and C.W. Simon,* JJ.

PER CURIAM

Plaintiff, the personal representative of the estate of Gregory Michael Czapski, appeals as of right the trial court's granting of defendant's motion for summary disposition on plaintiff's claim for intentional infliction of emotional distress. We affirm.

On September 6, 1983, and January 18, 1984, plaintiff's decedent, Gregory Czapski was involved in auto accidents. Both accidents resulted in Czapski sustaining bodily injuries that required medical care. The subsequent accident not only caused additional injuries, but aggravated existing injuries from the original accident. At the time both accidents occurred, Czapski was covered by a no-fault auto insurance policy issued by defendant.

Czapski originally brought this action in October, 1984, claiming that defendant wrongfully refused to pay medical benefits due under the contract of no-fault auto insurance. Czapski alleged that defendant's refusal to pay was outrageous, wanton and wilful.

Plaintiff, was substituted in as a party following Czapski's March 31, 1985, suicide. With the granting of

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

defendant's motion for summary disposition the court also dismissed plaintiff's wrongful death claim. That part of the decision is not appealed.

On appeal plaintiff argues that defendant not only refused to pay benefits to Czapski, but conspired to prevent Czapski from obtaining necessary psychiatric care. On this basis, plaintiff contends the trial court erred in granting summary disposition since plaintiff has stated a claim for intentional infliction of emotional distress.

With regard to the claim for intentional infliction of emotional distress, the amended complaint states:

"23. That the Defendants, AAA Insurance Company, also known as the Detroit Automobile Inter-Insurance Exchange, are guilty of the tort of outrage for specifically failing to heed the warnings of Plaintiff's counsel, and Plaintiff's doctors, in providing medical care and payment of bills, as required by Michigan's No Fault Statute.

"24. That as a result of the Defendant's failure to comply with the provisions of the No Fault Statute, Plaintiff did commit suicide, resulting in the damages claimed herein.

"25. That Defendants' conduct was designed and orchestrated strictly to prevent Mr. Czapski from obtaining psychiatric care that he needed, and that they knew, or should have known, through the evaluation and investigation of medical records within their own files, that Mr. Czapski was in need of said benefits, and that they cut his benefits off intentionally, recklessly, wilfully, and wantonly, through a scheme designed by agents, servants, and employees of AAA insurance Company to ignore the payment of benefits that they knew or should have known were due Mr. Czapski and that were necessary for his own health and the well-being of himself and the public."

Plaintiff's complaint does not state a claim for intentional infliction of emotional distress because the complaint alleges nothing more than the wrongful refusal to pay insurance benefits. In Roberts v Auto-Owners Insurance Co., 422 Mich 594, 605; 374 NW2d 905 (1985), the Supreme Court stated that "[t]he mere failure to pay a contractual obligation, without more, will not amount to outrageous conduct for purposes of this tort."

Extreme and outrageous conduct is the prime necessary element of the tort. Id., at 602. An insurer's request for verification of claims does not establish this element. Id., at 606. Even dilatory tactics which might constitute "bad faith" are not enough to support a claim for intentional infliction of emotional distress. Id., at 608. To successfully maintain a claim based on this tort requires some tortious conduct apart from the breach of an insurance contract. Id., 606-607; see also Crossley v Allstate Insurance Co., 155 Mich App 694, 698; 400 NW2d 625 (1986).

In her brief on appeal plaintiff concedes that the second amended complaint does not meet the Roberts requirements for a claim of intentional infliction of emotional distress. Plaintiff attempts to meet the requirement of tortious conduct apart from the breach of contract, by arguing that there was a conspiracy between defendant's adjusters and attorneys to deny plaintiff's decedent medical benefits. "However a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort." Early Detention Center, P.C. v New York Life Insurance Co., 157 Mich App 618, 632; 403 NW2d 803 (1986).

There is no separate actionable tort claimed here to support the conspiracy claim; likewise, there is no separate actionable tort of civil conspiracy to support the intentional infliction of emotional distress claim.

Apart from the claim of conspiracy, plaintiff has failed to produce evidence that defendant did anything beyond the wrongful failure to pay benefits. As plaintiff concedes, the complaint on its face is insufficient to state a claim for the tort of intentional infliction of emotional distress. Assuming that plaintiff had incorporated into the complaint allegations of conspiracy, asserted by plaintiff on appeal, the complaint still would not state a claim of intentional infliction of emotional

distress. Finally, plaintiff's claim finds no support in the depositions and other documentary evidence (considered by the trial court). Therefore, summary disposition was appropriate pursuant to either MCR 2.116(C)(8) or (10).

Affirmed.

Michael J. Kelly
Roman S. Gibbs
Charles W. Simon