

S T A T E O F M I C H I G A N
C O U R T O F A P P E A L S

GJERGJ DUSHAJ,

APR 24 1989

Plaintiff-Appellee,

v

No. 102398

AUTOMOBILE CLUB OF MICHIGAN,

Defendant-Appellant.

Before: Cynar, P.J., and Shepherd and Marilyn Kelly, JJ.

PER CURIAM.

Defendant Automobile Club of Michigan appeals as of right from the trial court's July 10, 1987, judgment in favor of plaintiff. We affirm.

This case arises out of defendant's failure to provide uninsured motorist coverage to plaintiff who had requested "full coverage." In 1976, plaintiff obtained automobile insurance coverage from defendant. Thereafter, plaintiff was injured in a hit-and-run automobile accident and sought uninsured motorist's benefits. Defendant informed plaintiff that he did not have uninsured motorist coverage. Plaintiff filed the instant complaint seeking a declaratory judgment and order to arbitrate in Count I, and damages for fraud and misrepresentation in Count II. At the start of trial, the parties stipulated that, if the trial court found that coverage existed under any theory, the damages in this case would be \$20,000. The parties also stipulated to dismissal of Count II of plaintiff's complaint. Following a two-day bench trial, the trial court entered its opinion on March 20, 1987. On July 10, 1987, the trial court entered a judgment for plaintiff in the amount of \$20,000 plus interest and costs of \$7,847.68.

On appeal, defendant argues that the trial court erred in denying defendant's motion for a directed verdict and in

finding that defendant undertook to advise plaintiff on the adequacy of his coverage and to provide full coverage.

If the evidence, viewed in a light most favorable to plaintiff, establishes a prima facie case, a defendant's motion for a directed verdict should be denied. Dixon v W W Grainger, Inc., 168 Mich App 107, 110; 423 NW2d 580 (1988).

The elements of an action for negligence are (1) duty, (2) general standard of care, (3) specific standard of care, (4) cause in fact, (5) legal or proximate cause, and (6) damages. Moning v Alfonso, 400 Mich 425, 437; 254 NW2d 759 (1977), reh den 401 Mich 951 (1977). Duty has been defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct towards another. Horn v Arco Petroleum Co., 170 Mich App 390, 392; 427 NW2d 582 (1988). The question of duty is one solely for the court to decide, with the essential question being whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person. Moning, supra, pp 438-439; Horn, supra. In negligence cases, the duty is always the same, to conform to the legal standard of reasonable conduct in light of the apparent risk. Sponkowski v Ingham Co Road Comm., 152 Mich App 123, 127; 393 NW2d 579 (1986). While the court decides questions of duty, general standard of care and proximate cause, the factfinder decides whether there is cause in fact and the specific standard of care. Moning, supra, p 438.

The law imposes an obligation upon everyone who attempts to do anything, even gratuitously, for another, to exercise some degree of care and skill in the performance of what he has undertaken, for nonperformance of which duty an action lies. Hart v Ludwig, 347 Mich 559, 564; 79 NW2d 895 (1956).

In the present case, the record reveals that defendant undertook to advise plaintiff and to provide him with insurance coverage. After having assumed that undertaking, there arose a

duty to perform the undertaking in a non-negligent manner. Viewing the evidence presented in a light most favorable to plaintiff, we find that the trial court did not err in denying defendant's motion for a directed verdict. Furthermore, sitting as the trier of fact, the trial court found that the standard of care was established by the uncontradicted testimony of plaintiff's expert and that a reasonably prudent insurance salesman, when asked to provide full coverage, would include uninsured motorist coverage. Moreover, the trial court found that defendant undertook to provide plaintiff with the insurance requested but that defendant was negligent in its undertaking. Findings of fact by the trial court may not be set aside unless they are clearly erroneous. MCR 2.613(C). Tuttle v Dept of State Highways, 379 Mich 44, 46; 243 NW2d 244 (1976). Based upon our review of the record and the facts of this case, we conclude that the trial court's findings were not clearly erroneous.

Defendant next argues that the trial court's decision cannot be justified on reformation of contract grounds where plaintiff failed to demonstrate by clear and convincing evidence either mutual mistake of fact or unilateral mistake and fraud or inequitable conduct. However, in defendant's appellate brief, defendant acknowledges that "the circuit court's decision rested entirely upon Plaintiff's negligence theory." Accordingly, we need not address this argument on appeal.

Defendant lastly argues that the trial erred in awarding plaintiff mediation sanctions and interest on the judgment since the parties settled plaintiff's claim for money damages prior to trial. We disagree.

Prejudgment interest on a money judgment, under MCL 600.6013; MSA 27A.6013, is not applicable where a case is terminated by dismissal following a settlement. Quarters v Michigan Physicians Mutual Liability Co, 154 Mich App 593, 597; 399 NW2d 46 (1986). MCR 2.403(0)(1) authorizes mediation sanctions anytime a party has rejected an evaluation and fails to

improve its position by ten percent. The Wayne-Oakland Bank v. Brown Valley Farms, Inc., 170 Mich App 16, 20; 428 NW2d 13 (1988).

In the instant case, the parties stipulated that the damages at trial would be \$20,000 if the trial court found that coverage existed under any theory. Since that stipulation did not constitute a settlement or a consent judgment, we find that the trial court did not err in awarding mediation sanctions and interest on the judgment. The award of mediation sanctions was proper in this case since defendant rejected the mediation evaluation of \$11,000 and failed to improve its position by ten percent.

Affirmed.

/s/ Walter P. Cynar
/s/ John H. Shepherd
/s/ Marilyn Kelly