

STATE OF MICHIGAN  
COURT OF APPEALS

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JOAN EVANS,

Plaintiff-Appellant,

v

No. 110870

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

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Before: Griffin, P.J., and Gillis and Sawyer, JJ.

PER CURIAM.

The trial court granted summary disposition in favor of defendant on plaintiff's claim for uninsured motorist benefits under MCR 2.116(C)(7) (claim barred by release). Plaintiff now appeals and we affirm.

Plaintiff was involved in an automobile accident with an uninsured motorist on January 17, 1986. Thereafter, on April 4, 1986, plaintiff executed a release to defendant for uninsured motorist benefits in exchange for \$240. Plaintiff thereafter sought additional benefits from defendant under her uninsured motorist coverage, which was denied in light of the release, resulting in the instant litigation.

The trial court granted defendant's motion for summary disposition stating that there was no evidence to establish plaintiff's allegation that the release had been improperly obtained beyond "the ardor of Mr. Schaefer's [plaintiff's counsel] argument." The burden is upon the party seeking to avoid a release to establish by a preponderance of the evidence that the release should be set aside. Binard v Carrington, 163 Mich App 599, 603; 414 NW2d 900 (1987). In the case at bar, plaintiff presented nothing to the trial court, beyond counsel's argument, to establish her claims that the release was not fairly or knowingly made due to a mutual mistake or misrepresentation.

There was no affidavit, deposition testimony, or other evidence to support plaintiff's position.

Accordingly, since plaintiff did fail to provide any factual support for her claim that the release should be set aside, the trial court properly granted summary disposition in favor of defendant.

Affirmed. Defendant may tax costs.

/s/ Richard Allen Griffin

/s/ John H. Gillis

/s/ David H. Sawyer