

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

ROBERT VENNE,

NOV 14 1990

Plaintiff-Appellee,

v

No. 118123

MICHIGAN MUTUAL INSURANCE COMPANY,

AFTER REMAND

Defendant-Appellant.

Before: MacKenzie, P.J., and Sawyer and R. B. Burns,* JJ.

PER CURIAM.

Defendant appeals from orders of the circuit court granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition. We affirm.

This is the second time this matter is before us, this Court having previously reversed a grant of summary disposition in favor of plaintiff. See Venne v Michigan Mutual Ins Co, 168 Mich App 513; 425 NW2d 109 (1988), modified 431 Mich 861; 428 NW2d 684 (1988). On remand, the trial court again granted summary disposition in favor of plaintiff, although on a different ground than that at issue in the prior appeal. This time, however, we affirm.

The facts of this case were fully set forth in our prior opinion and need not be repeated here. At issue in this appeal is whether defendant's conduct of accepting the payment of plaintiff's premium prior to the accident, and failing to refund the premium until approximately three months after plaintiff's claim arose, constitutes a waiver of defendant's right to cancel the insurance policy at issue. We conclude that, under the facts of this case, defendant by its conduct and by the wording of its notice to plaintiff waived cancellation of the insurance policy at issue.

On September 29, 1984, plaintiff secured a postal money

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

order in the amount of \$60.50 and deposited it in the mail addressed to defendant. Defendant received the payment in its Detroit office on October 6, 1984, after the deadline which defendant had previously notified plaintiff of in order to continue coverage under the policy. In response to the receipt of the premium, defendant issued to plaintiff a "partial payment notice" dated October 10, 1984, some eleven days prior to the accident giving rise to the claim at issue, which acknowledged the receipt of the \$60.50 and which indicated that there was no remaining amount due on plaintiff's account. Furthermore, the notice stated as follows:

Thank you for your recent payment. It has been credited to the outstanding premium on your account. We have not, however, been able to reinstate your policy. Please refer to the following paragraph with an x in the box. (Emphasis in original.)

The indicated paragraph states that:

Your payment was not received in time to reinstate your policy. Please contact your agent regarding new coverage. (Emphasis in original.)

Plaintiff took no action in response to this notice from the time it was received until his accident on October 21, 1984. As previously indicated, defendant did not tender a refund of the premium until January 14, 1985. Moreover, the amount of the refund tendered was \$72, an amount less than the full premium which had originally been billed and paid by plaintiff for the policy period involved.

Defendant argues that, since its October 10 notice specifically informed plaintiff that the premium was received too late to reinstate coverage and that he should contact his agent regarding new coverage, and plaintiff failed to contact his agent, the policy was cancelled in accordance with the earlier cancellation notice and was not reinstated and, therefore, defendant is not liable on the policy. While there is some persuasion to defendant's argument, we conclude that it must fail in light of the other statements contained in the notice as well