STATE OF MICHIGAN

COURT OF APPEALS

JACK PHILLIP SCHILD

Plaintiff-Appellee,

v

AETNA CASUALTY & SURETY COMPANY,
a foreign corporation,

Defendant-Appellant,

and

JAMES F. DENNIS & ASSOCIATES, INC.,
a Michigan corporation.

Defendant.

January 7, 1992

No. 117945

Before: Marilyn Kelly, P.J., and MacKenzie and Gribbs, JJ.

PER CURIAM.

Defendant Aetna Casualty & Surety Company appeals as of right from a judgment entered for plaintiff on a jury verdict in the Oscoda circuit court. Aetna appeals also from the judge's denial of its motions for a directed verdict and a judgment notwithstanding the verdict or a new trial. We affirm.

Aetna argues on appeal that plaintiff's claim was procedurally defective, because it was based solely on equitable estoppel. It asserts also that plaintiff failed to prove a prima facie case of equitable estoppel, and the great weight of the evidence did not support a finding of plaintiff's good faith.

I

Plaintiff was involved in an automobile accident on May 18, 1986. A person injured in the accident sued him. Plaintiff claimed Aetna insured him. Aetna denied coverage and refused to defend or indemnify plaintiff, alleging that plaintiff's automobile insurance policy had expired on March 26, 1986, fifty-three days before the accident. Plaintiff filed this action seeking a declaration that Aetna had a duty to defend and indemnify him under the terms of his no-fault policy.

On September 26, 1985, plaintiff purchased insurance with Aetna on the recommendation of agent James F. Dennis & Associates. He testified at trial that he received a copy of the policy by mail but never read it. The policy indicated that it expired on March 26, 1986. Plaintiff also received a certificate of insurance which he did read which specified that the expiration date was September 26, 1986.

Plaintiff stated that he never got a notice of cancellation or renewal. He testified that his mail delivery was not reliable. In January, 1986, the Dennis office telephoned him saying it had received a notice from Aetna that payment on the policy was overdue. Plaintiff went to the office and made a payment. He received a receipt indicating no balance owing.

Mr. Dennis testified that he had handled plaintiff's automobile insurance needs from 1982 through May 18, 1986. On two occasions, he helped plaintiff by making his premium payments, and plaintiff reimbursed him. Plaintiff frequently came into the office, as he preferred to make payments in person. When plaintiff changed from another insurer to Aetna, Dennis did not inform him of the terms of the new policy.

The written document was not physically in existence. Dennis testified that Aetna directs agents to prepare its certificates of insurance showing coverage for a twelve-month period, not for the actual period of the policy. He stated that Aetna will not cancel a policy within twelve months so long as the insured continues to make payments.

The jury found that Aetna owed plaintiff a duty to defend and indemnify based on a theory of equitable estoppel. It found no cause of action against defendant Dennis.

II

It has been established that equitable estoppel is available to a plaintiff as protection from a defense raised by a defendant. It is not available to a plaintiff for the purpose of stating a cause of action. Charter Twp of Harrison v Calisi, 121 Mich App 777, 787; 329 NW2d 488 (1982).

In this case, plaintiff sought coverage under the insurance policy. Aetna denied coverage on the grounds that the policy had expired and had not been renewed. Plaintiff did not raise equitable estoppel in his complaint as a separate cause of action. Rather he pled facts which would support the theory. He claimed he was entitled to coverage and that Aetna had denied coverage. He contended that Aetna should be equitably estopped from raising the defense that plaintiff was not covered because the policy had expired. Plaintiff properly raised equitable estoppel as protection from Aetna's defense.

III

Next, Aetna claims that the court erred in denying his motions for a directed verdict and a judgment notwithstanding the verdict or a new trial. It argues that plaintiff failed to establish a prima facie case, because he had been provided with several documents indicating that the policy expired in March. Plaintiff's reliance upon the representation of the agency, according to Aetna, was not reasonable considering that he failed to read the policy. Aetna contends the jury erred in finding that plaintiff had a good faith belief in coverage.

A

A trial court may not direct a verdict in the face of a question of fact upon which reasonable minds may differ. Michigan Mutual Ins Co v CNA Ins Cos, 181 Mich App 376, 380; 448 NW2d 854 (1989). It must determine whether a prima facie case has been established, viewing the evidence in the light most favorable to the nonmoving party. Hunt v CHAD Enterprises, 183 Mich App 59, 62; 454 NW2d 188 (1990).

Likewise, when ruling on a motion for a judgment notwithstanding the verdict, the court views the evidence in the light most favorable to the nonmoving party. It then determines whether the facts preclude a judgment for that party as a matter of law. If the evidence is such that reasonable people could differ, the question is for the jury, and a judgment notwithstanding the verdict is improper. Hodgins Kennels, Inc v Durbin, 170 Mich App 474, 479; 429 NW2d 189 (1988), rev'd in part on other grounds 432 Mich 844 (1989).

A new trial may not be granted unless the verdict is against the great weight of the evidence. Harrigan v Ford Motor Co, 159 Mich App 776, 788; 406 NW2d 917 (1987). The jury's verdict should be retained if there is competent evidence to support it, as the trial court must not substitute its judgment for that of the factfinder. Bell v Merritt, 118 Mich App 414, 422; 325 NW2d 443 (1982).

B

In this case, defendant argues that there was insufficient evidence of equitable estoppel. To establish equitable estoppel, plaintiff must prove that: (1) by representation, admission or silence, defendant intentionally or negligently induced him to believe facts; (2) upon which he justifiably relied; and (3) that he will be prejudiced if defendant is permitted to deny the existence of those facts. Holt v Stofflet, 338 Mich 115, 119; 61 NW2d 28 (1953); Schmude Oil Co v Omar Operating Co, 184 Mich App 574, 581-582; 458 NW2d 659 (1990).

Plaintiff testified that he relied on Dennis to call him when a payment was due. He also relied on the date of expiration set forth on the certificate of insurance. Thus he concluded that his coverage extended through September 26, 1986, and he was prejudiced when Aetna denied coverage for the May 18, 1986 accident. Based on these proofs, plaintiff insists that questions of fact were posed upon which reasonable minds could differ and that the evidence was sufficient to establish a prima facie case.

Aetna disagrees. It contends that plaintiff's reliance was not reasonable, because it was not based on the policy of insurance, a document plaintiff never read.

C

Generally, an insurance agent is not required to advise a client regarding the adequacy of a policy's coverage. An insured has an obligation to read the insurance policy and raise questions concerning coverage. Bruner v League General Ins Co, 164 Mich App 28, 31-32; 416 NW2d 318 (1987); Transamerica Ins Corp of America v Buckley, 169 Mich App 540; 426 NW2d 696 (1988).

However a duty to advise an insured regarding the adequacy of coverage may arise when a "special relationship" exists between the insurance company or its agent and the policyholder. Bruner, 31-32. Absent an issue regarding the scope of authority, when an insurance agent breaches its duty to advise, the insurance company is liable for damages flowing from that breach. Stein v Continental Casualty Co, 110 Mich App 410; 313 NW2d 299 (1981); Palmer v Pacific Indemnity Co, 74 Mich App 259; 254 NW2d 52 (1977).

No precise rule of law has been formulated for determining whether a question of fact has been created as to the existence of a special relationship. Something more than the standard policyholder-insurer relationship must be shown. There must be some type of interaction on a question of coverage and detrimental reliance by the insured on the expertise of the insurance agent. Bruner, 34. The existence of a special relationship is a question for the trier of fact. Stein, 417.

In this case, by the date the accident occurred, the Dennis agency had been taking care of plaintiff's automobile insurance needs for a period of four years. Plaintiff testified that he received phone calls from the agency when his premium payments were due. He trusted and relied on Dennis's advice. Plaintiff frequently went to Dennis's office to pay bills in person. From time to time, Dennis helped plaintiff make payments. We find that this evidence is sufficient to establish a special relationship. The relationship in this case imposes a duty on the agency to inform plaintiff of the expiration date of his policy. Plaintiff was thereby excused from his duty to read the policy to discover its date of expiration.

The court did not err in refusing to grant a judgment notwithstanding the verdict. Aetna claimed that it had provided plaintiff with eight documents indicating a March 26, 1986, expiration date. However plaintiff presented evidence that he did not receive some of the documents. He also presented proof of a special relationship which would obviate his duty to read the documents he did receive to discover the policy expiration date. Since evidence had been presented upon which reasonable minds could differ, a judgment notwithstanding the verdict would have been improper.

D

The trial court did not abuse its discretion in refusing to grant a new trial. There was competent evidence to support the jury's finding of good faith on the part of plaintiff. If the jury believed that plaintiff had a special relationship with the agent, then it could also conclude that plaintiff relied on the agent to inform him of the expiration date. With regard to Aetna's assertion that plaintiff was not credible, that determination was for the trier of fact. Levi v Winters Floor Covering, 57 Mich App 226, 228; 225 NW2d 693 (1974). The jury chose to believe plaintiff.

Affirmed.

/s/ Marilyn Kelly
/s/ Roman S. Gribbs

STATE OF MICHIGAN

COURT OF APPEALS

JACK PHILLIP SCHILD,

Plaintiff-Appellee,

v No. 117945

AETNA CASUALTY & SURETY CO,
a foreign corporation,

Defendant-Appellant,

and

JAMES F. DENNIS & ASSOCIATES,
a Michigan corporation,

Defendant.

Before: Marilyn Kelly, P.J., and MacKenzie and Gribbs, JJ.

MacKENZIE, J. (dissenting.)

I would reverse. In my view, the trial court should have granted Aetna's motion for judgment notwithstanding the verdict or, in the alternative, a new trial because plaintiff failed to establish a proper claim of equitable estoppel.

After reviewing the record, I am satisfied that if plaintiff was not aware that his policy expired on March 26, 1986, it was not because of any misrepresentation by Aetna, but rather because of plaintiff's decision to ignore the information supplied to him by Aetna.

The record indicates that plaintiff was informed by Aetna on numerous occasions that his policy would expire on March 26, 1986 if not renewed by that date. The application plaintiff completed when he initially insured with Aetna showed a policy period of September 26, 1985 to March 26, 1986. The insurance policy, which plaintiff testified he received in the mail, stated that the insurance had to be renewed every six months. A cover memorandum prepared by the Dennis insurance agency which accompanied the policy indicated that plaintiff's coverage expired March 26, 1986. The declaration page accompanying the policy also showed an expiration date of March 26, 1986. Further, a mailing sent to plaintiff by Aetna dated February 1, 1986, which plaintiff also testified he received in the mail, clearly notes at the top, "Policy Period From: 9/26/85 To: 3/26/86."

An insured is obligated to read his or her insurance policy and raise questions concerning coverage. Transamerica Ins Corp of America v Buckley, 169 Mich App 540; 426 NW2d 696 (1986); Bruner v League General Ins Co, 164 Mich App 28, 31-32; 416 NW2d 318 (1987). In this case, Aetna's several statements documenting the six-month coverage period, combined with plaintiff's complete failure to meet his obligation to read his policy and the related documents, should preclude application of the doctrine of equitable estoppel. Plaintiff was not misinformed by Aetna; he chose to remain uninformed.

The majority essentially concludes that, by virtue of the "special relationship" between plaintiff and the Dennis insurance agency, Aetna must be held vicariously liable for plaintiff's mistaken belief that he was covered after March 26, 1986. That conclusion assumes the Dennis agency prejudicially misled plaintiff regarding his coverage by failing to adequately disclose the policy terms. The jury, however, found no

wrongdoing on the part of the Dennis agency. Because the jury found no breach of a duty to disclose by the insurance agency, there can be wrongdoing to impute to Aetna. The "special relationship" between plaintiff and the Dennis agency therefore cannot serve as a basis for holding Aetna liable to provide coverage. Nor can it obviate, as the majority holds, plaintiff's duty to read the insurance documents he received.

An insurer should not be estopped from denying coverage simply because an insured decides to ignore the terms of the coverage. Yet that is precisely the result of the majority's opinion. Accordingly, I dissent.

/s/ Barbara B. MacKenzie