STATE OF MICHIGAN

COURT OF APPEALS

FRANK LAFOREST,

Plaintiff-Appellant
Cross-Appellee,

v

TRANSAMERICA INSURANCE GROUP,
a Michigan Corporation,

Defendant-Appellee
Cross-Appellant.

August 25, 1992

No. 134055

UNPUBLISHED

Before: Neff, P.J. and Gribbs and Shepherd, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment in favor of defendant entered pursuant to a jury verdict. The jury found that plaintiff had received a notice of cancellation of insurance before an automobile accident in which plaintiff was rendered paraplegic. Plaintiff also appeals and defendant cross-appeals from the circuit court's order denying opposing motions for summary disposition. We affirm.

I

In October 1988, plaintiff acquired a no-fault automobile insurance policy from defendant. On December 6, 1988, defendant mailed a notice to plaintiff advising him that his next premium was due on or before December 26, 1988. Plaintiff failed to make that payment. On January 7, 1989, defendant sent a notice advising that the policy would be cancelled on January 17, 1988, unless payment was received before that date. The notice was sent by certified mail, return receipt requested, to plaintiff's home address.

It is undisputed that the notice was received at plaintiff's address and that plaintiff's mother signed for it. However, plaintiff contends that he never saw the letter and does not know what happened to it.

On January 22, 1989, plaintiff was involved in an automobile accident resulting in severe injuries including paraplegia. His claim for benefits from defendant was denied on the ground that the policy had been cancelled.

Plaintiff brought suit and subsequently moved for summary disposition asserting that there were no triable issues of fact and that he was entitled to judgment because he had not received actual notice of the cancellation. Defendant responded with a request that the court enter summary disposition in its favor pursuant to MCR 2.116(I)(2) because it had complied with the requirements for cancellation set forth in MCL 500.3020; MSA 24.13020.

The circuit court denied both motions on the ground that a factual dispute existed as to whether plaintiff had received actual notice of the cancellation. The case was then tried before a jury which concluded that plaintiff had received the registered letter containing the notice of cancellation.

II

Plaintiff asserts that the trial court erred in denying his motion for summary disposition. We disagree.

Summary disposition of all or part of a claim or defense may be granted when

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

MCL 500.3020; MSA 24.13020 governs the procedure for cancellation of a no-fault insurance policy. Citizens Ins Co of America v Crenshaw, 160 Mich App 34, 37; 408 NW2d 100 (1987). Under that statute, an insurer may cancel a policy "by mailing to the insured at the insured's address last known to the insurer . . . a not less than 10 days' written notice . . ." §3020(1)(b). A policy is cancelled only if the insured receives actual notice at least ten days before the effective date of cancellation. Id.

The statute further provides that "mailing of notice shall be prima facie proof of notice." §3020(4). The term "prima facie proof" denotes a rebuttable presumption in the law. Raptis v Safeguard Ins Co, 13 Mich App 193, 199; 163 NW2d 835 (1968).

In Phillips v DAIIE, 69 Mich App 512; 245 NW2d 114 (1976), this Court addressed the question of whether §3020 "requires actual receipt of notice by the insured or whether the mailing of the notice is sufficient to effect cancellation." Id. at 514-515 (emphasis in original). This Court noted that in prior case law, it was decided that the mailing of a notice of cancellation raises a presumption of receipt, but that the presumption may be rebutted by evidence that the insured had not received the notice. Id. The Court also stated that denial of receipt raises a factual question. Id. at 516.

Plaintiff relies on Citizens Ins Co of America v Lemaster, 99 Mich App 325; 298 NW2d 19 (1980). The facts of that case are similar to those in the present one. Two notices of cancellation were mailed by certified mail, return receipt requested, to the insured's address. Both were received and signed for by relatives of the insured who lived at the same address. The insured was involved in an automobile accident two days after the effective date of the last notice. The insured averred that he did not know of the notices until after the accident.

The insured sued when the defendant refused to honor the policy. The trial court's grant of summary disposition to the plaintiff was affirmed in the majority opinion. Without explicitly saying so, the majority apparently concluded that the plaintiff's averments successfully rebutted the statutory presumption because it ruled that the defendant had not rebutted the plaintiff's evidence and, so, there was no genuine issue of material fact. Id.

The trial court's ruling in the present case is consistent with the majority opinion in Lemaster. The difference between the present case and Lemaster is that defendant in the present case presented evidence to rebut the plaintiff's affidavit and deposition testimony that he did not receive the notice, that he never saw the certified letter and that he did not know what happened to it. At deposition, plaintiff's mother testified that she received and signed for the envelope containing the notice and then, as was her usual habit, put it on the kitchen table with the other mail she had received that day. She further testified that her son normally would sift through the stack and pick out his own mail, but that she did not know if her son had done so that day. This created an issue of fact as to whether the insured had received actual notice of the cancellation.

Therefore, the trial court correctly denied plaintiff's motion for summary disposition and sent the issue to the jury. The jury found for defendant and plaintiff does not challenge any aspects of the trial or verdict.

Because of our conclusion, we need not further address defendant's issue raised on cross-appeal.

Affirmed.

/s/ Janet T. Neff
/s/ Roman S. Gribbs
/s/ John H. Shepherd