STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff,

v

PATRICIA BLOSSOM, CLIFFORD BLOSSOM, BLOSSOM HEATING COMPANY, BRIAN LEE DUNLAVY, and PAUL KROYER,

Defendants,

and

LINDA K. ZIEGLAR, personal representative of the Estate of DWIGHT ZIEGLAR, Deceased,

Defendant-Third Party, Plaintiff-Appellant,

v

CELINA INSURANCE GROUP,

Third-Party, Defendant-Appellee.

May 21, 1993

No. 137150

Before: MacKenzie, P.J., and Hood and White, JJ.

PER CURIAM.

This was originally an action for declaratory judgment brought by an insurance company against the persons involved in a fatal accident and others. One of the defendants, Linda Zieglar, representing the estate of her deceased husband, filed a third party declaratory judgment action against Celina Insurance Group, the former insurer of defendant Clifford Blossom, the driver of the vehicle which allegedly caused the accident. Mrs. Zieglar appeals from the trial court's grant of summary disposition to that insurance company. We affirm.

The policy at issue here had been purchased for Mr. Blossom by a business partner, codefendant Paul Kroyer, who was the title owner of the vehicle. By the time of the accident, the business relationship between the two men had ended. Mr. Kroyer had cancelled the insurance policy on Mr. Blossom's vehicle seventeen days earlier. The insurance company admittedly did not send Mr. Blossom a cancellation notice.

On appeal, Mrs. Zieglar argues that the trial court erred in finding that the insurer had no duty to notify Mr. Blossom of the cancellation. She further argues that the failure to notify Mr. Blossom rendered the cancellation ineffective. The insurance company counters that Mr. Blossom was not a named insured entitled to notice, that there was no policy "cancellation" triggering the notice requirement, only the deletion of a vehicle from the list of vehicles covered, and that, even if there was a cancellation, it was effected by an insured, not by the insurance company, and therefore there was no statutory duty to notify Mr. Blossom. We disagree with the insurer's first two arguments but find the third dispositive.

Although the policy in question was issued to Mr. Kroyer, Mr. Blossom was listed as the primary driver of the vehicle in question. The insurance company sent Mr. Blossom a "certificate of insurance" listing him as a "certificate holder". Additionally, under the policy's definition of "who is insured", any person driving a covered vehicle with the owner's permission qualifies as an insured. Given these facts and given that Mr. Blossom's name, address and status were known to the insurer, we find that he was an "insured" within the meaning of the no-fault act.

The insurance company correctly points out that Mr. Kroyer's policy was not cancelled. Instead, according to the "change in declarations endorsement" and other documents found in the file, he "eliminated from coverage" the particular vehicle and deleted Mr. Blossom as an authorized driver. In practical terms, however, coverage on that vehicle was indeed cancelled. See National Ben Franklin Insurance Co v West, 136 Mich App 436, 441-442, 443, 447-449; 355 NW2d 922 (1984) (where coverage on one car was transferred to a second car, coverage was cancelled as to the first car).

Under the no-fault act, an insurer who cancels a policy must give notice to all insureds. Lease Car of America, Inc v Rahn, 419 Mich 48, 54; 347 NW2d 444 (1984); Du Brul v American Manufacturers Mutual Insurance Co, 60 Mich App 299, 300-301; 230 NW2d 404 (1975); see also MCL 500.3020(1)(b); MSA 24.13020(1)(b); but see Auto Club Insurance Association v Hawkins (After Remand), 435 Mich 328, 337; 458 NW2d 628 (1990) (notice to the person in whose name the policy was issued is sufficient as to all other insureds living in the same household). On the other hand, where the insured cancels the policy, no notice is required by the statute. MCL 500.3020(1)(a); MSA 24.13020(1)(a). Under that provision, no notice was required in this case because coverage was cancelled by an insured.

We are aware of dicta in this Court's decision in Ben Franklin, supra, which implies that, when there are multiple insureds and the cancellation is effected at the request of only one of them, notice should be given to the others. 136 Mich App at 447-448 (but all the insureds had actual knowledge of the cancellation). We agree that requiring that notice be given in such situations would advance the statute's policy objective of "giving each insured an opportunity to have a period of time after cancellation by someone else to revive the policy or secure other insurance." Id at 448; see also Lease Car, supra, at 48. "However, we are struck by the fact that both the policy and the statute require written notice only if the insurer cancels the policy." Ben Franklin, supra, at 48 (emphasis original).

The statutory language involved is clear and unambiguous and therefore requires no construction. We must enforce the statute as written.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Harold Hood

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WHITE, J. (concurring)

I concur that under the facts of this case, viewed in the light most favorable to plaintiff, and drawing all inferences favorable to plaintiff, the insurance company was not obliged to notify Blossom that the vehicle he drove had been deleted from New Tech's insurance policy.

/s/ Helene N. White