

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHN KATINSKY,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION and  
STATE FARM MUTUAL INSURANCE  
COMPANY,

Defendants-Appellees.

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August 16, 1993  
9:00 a.m.

No. 134492

Before: Marilyn Kelly, P.J., and Shepherd and Connor, JJ.

CONNOR, J.

Plaintiff appeals as of right the trial court's summary dismissal of his claim against defendant Auto Club. We reverse.

At 3 a.m. on Saturday, May 6, 1989, plaintiff was injured when the motorcycle he was driving collided with an automobile stopped in the roadway. Plaintiff and a pedestrian hit by the car as it fled the scene were taken to the hospital. The police found the car involved and impounded it. The car was registered to Sean McBride.

McBride had applied for no-fault insurance on the car with the Michigan Automobile Insurance Placement Facility through an Allstate Insurance agent on April 25, 1989. The placement facility assigned McBride's application to Auto Club. On May 3, 1989, Auto Club deposited McBride's check. On May 17, the check was returned to Auto Club dishonored due to insufficient funds in McBride's checking account.

On May 19, 1989, Auto Club issued a "Policy Billing Notice" and a "Family Automobile Policy New Declaration Certificate." The declaration certificate showed a policy providing no-fault and other insurance coverages in effect from April 25, 1989 through October 25, 1989, and listed Sean McBride as a named insured for the car. The billing notice reflected no money having been received from McBride. It warned that the policy would be cancelled unless McBride paid half the premium by June 5, 1989.

On May 24, 1989, Auto Club sent another notice to McBride. This notice stated that the policy had been cancelled due to nonpayment of premium, and that coverage terminated at 12:01 a.m. on April 25, 1989. Apparently, McBride never submitted anything more to Auto Club.

Plaintiff filed this action against Auto Club<sup>1</sup> for a declaration that he was entitled to no-fault insurance benefits. Auto Club denied it was McBride's insurer, claiming that it had rescinded the policy it had issued on the car because of the dishonored check. The trial court dismissed the claim against Auto Club on a motion for summary disposition brought pursuant to MCR 2.116(C)(10).

At issue on appeal is whether an insurance company can avoid paying no-fault insurance benefits to a third party when the purchaser of the policy paid the insurance premium with a check that is dishonored. We hold that it cannot.

The May 19 bill and declaration certificate are evidence that Auto Club accepted McBride's April 25 offer to enter into an insurance contract and communicated that acceptance to McBride. See Hagerl v Auto Club Group Ins Co, 157 Mich App 684, 688; 403 NW2d 197 (1987). Thus, a reasonable factfinder could