

STATE OF MICHIGAN  
COURT OF APPEALS

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RICHARD L. LETTS and JOYCE E. LETTS,  
husband and wife,

Plaintiffs-Appellees,

August 18, 1993

v

No. 143930  
LC No. 91000175 NZ

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant.

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

PER CURIAM.

Defendant appeals as of right from an order of the Clare Circuit Court granting summary disposition to plaintiffs under MCR 2.116(C)(10). On appeal, defendant argues that the trial court erred in declaring that the insurance policy it issued to a tortfeasor's mother provides additional coverage to persons injured by the tortfeasor. It asserts, also, that the motion for summary disposition was inappropriately granted due to procedural errors. We reverse.

I

Leon Dysinger was driving his car when it collided with plaintiffs' car. At the time of the accident, he lived with his mother, Thelma Dysinger. Plaintiffs claimed injuries beyond Mr. Dysinger's insurance policy limits. They sought additional coverage under a separate insurance policy defendant had issued to Mrs. Dysinger.

Plaintiffs filed for declaratory relief, contending that the insurance policy issued by defendant provided coverage for their injuries. They later filed a motion for summary disposition. Defendant answered the complaint and requested a judgment of no cause of action, alleging that the vehicle it insured was not the vehicle involved in the accident. Defendant failed to appear at the hearing on plaintiffs' motion for summary disposition.

After plaintiffs' argument, being advised that defendant had received proper notice of the hearing, the trial court granted summary disposition to plaintiffs. It indicated that Mr. Dysinger's vehicle was a non-owned car as defined under his mother's insurance policy. Therefore, her policy provided liability coverage to plaintiffs. Defendant moved to set aside the order or for reconsideration, alleging it had not received notice of the hearing. Defendant withdrew the motion after filing this appeal.

II

Defendant argues that the trial court erred in ruling that it was bound to provide insurance coverage to plaintiffs. Initially, we conclude that defendant did not waive this issue by failing to set forth facts showing a genuine issue for trial. MCR 2.116(G)(4). As admitted in plaintiffs' motion for summary disposition, the only question before the trial court was a question of law. On appeal, we review the trial court's grant of summary disposition de novo. Borman v State Farm Fire & Casualty Co, 198 Mich App 675; 499 NW2d 419 (1993), lv pending.

The trial court erred in determining that Thelma Dysinger's insurance policy covered the injuries caused by her son. We conclude that, as a matter of law, Mrs. Dysinger's insurance policy does not provide the insurance coverage sought in this case.

Based on our disposition of this issue, defendant's remaining issues have been rendered moot.

Reversed.

/s/ Marilyn Kelly  
/s/ Barbara B. MacKenzie  
/s/ Janet T. Neff