STATE OF MICHIGAN

COURT OF APPEALS

LORETTA VAN ZUTPHEN, LAWRENCE VAN ZUTPHEN, JANET SEIB and LAWRENCE SEIB,

Plaintiffs-Appellees,

v

MICHIGAN MUTUAL INS CO,

Defendant-Appellant.

September 29, 1993

No. 137088
L.C. No. 88-827956 CZ

Before: Doctoroff, C.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant appeals by right from the circuit court's denial of defendant's motion for summary disposition. We affirm.

On August 22, 1987, plaintiffs Loretta Van Zutphen and Janet Seib were injured in an automobile collision with a vehicle driven by Daniel Czyzniewski. Prior to the date of the accident, Czyzniewski and his wife had a policy, A-061-4040 (policy A), insuring the vehicle in question with defendant Michigan Mutual Insurance Company. After learning that Czyzniewski had a prior conviction for driving while impaired, defendant attempted to cancel the policy on August 8, 1987.

Czyzniewski purchased replacement insurance, A-062-1658, effective August 8, 1987 (policy B). The replacement certificate of insurance and the actual policy, which were not mailed to Czyzniewski until after the accident in this case, provided coverage for Czyzniewski's wife but listed Czyzniewski as a named excluded driver. After reviewing the parties' briefs and exhibits, the trial court concluded that defendant never effectively cancelled policy A, and that the exclusion was ineffective under policy B. The trial court denied defendant's motion for summary disposition and found that defendant had a duty to defend and indemnify Czyzniewski.

On appeal, defendant argues that the trial court erred in ruling that policy A was not effectively cancelled because defendant failed to notify Czyzniewski of his right to appeal as provided by MCL 500.3224(3); MSA 24.13224(3). We agree. Termination of an insurance policy within the first 55 days is not subject to appeal. MCL 500.3224(1); MSA 24.13224(3). In any case, notice in this case was effective pursuant to MCL 500.3020; MSA 24.13020. See American States Ins v Auto Club, 193 Mich App 248, 251-252; 484 NW2d 1 (1992), lv den 440 Mich 863 (1992).

However, because the trial court correctly determined that defendant never effectively excluded Czyzniewski from coverage under policy B, denial of defendant's motion for summary disposition was proper in this case.

The exclusion of a named driver "shall not be valid" unless a statutory warning is "on the face of the policy or the declaration page or certificate of policy and on the certificate of insurance". MCL 500.3009(2); MSA 24.13009(2), emphasis added. This Court has found MCL 500.3009(2); MSA 24.13009(2), to be clear and unambiguous. Allstate Ins v DAIIE, 142 Mich App 436, 442; 369 NW2d 908 (1985); DAIIE v Felder, 94 Mich App 40, 43, 44; 287 NW2d 364 (1979). The Legislature requires that a specific, strongly worded notice is required in carefully designated places, in order to warn the insured and the vehicle owner of their potential liability. Id at 44; Allstate Ins v DAIIE, 73 Mich App 112, 115-116; 251 NW2d 266 (1976).

In this case, there is some dispute over whether Czyzniewski was provided a temporary certificate of insurance, with the required warning, prior to the automobile accident. It is undisputed, however, that two documents containing the warning, as required by the statute, were not issued until after the accident occurred. The requirements detailed in the statute "must be met before a named individual will be deemed excluded". Felder, 94 Mich App at 42, emphasis added. Thus, the post-collision exclusion in this case was invalid and the trial court properly denied defendant's motion for summary disposition on this issue.

Finally, the trial court did not abuse its discretion in failing to grant an evidentiary hearing on whether defendant issued a temporary certificate of insurance bearing the required warning prior to the collision. Even assuming arguendo that the certificate was issued, the exclusion was still invalid because there was no policy, declaration page or certificate of policy bearing the warning at the time of the collision. The dispute concerning the certificate of insurance was immaterial and the trial court's refusal to conduct an evidentiary hearing was not an abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Roman S. Gribbs