

STATE OF MICHIGAN
COURT OF APPEALS

RITA CRANMORE,

Plaintiff-Appellee,

v

TRANSAMERICA INSURANCE COMPANY,

Defendant-Appellant.

December 2, 1993

No. 147186
LC No. 90 384359 CK

Before: Reilly, P.J., and Sawyer and P.J. Clulo,* JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order denying its motion for attorney fees pursuant to MCL 500.3148(2); MSA 24.13148(2).¹ We affirm.

In a complaint filed in February 1990, plaintiff claimed to have been injured in an automobile accident. She alleged that defendant, her no-fault insurer, failed to pay related medical bills, lost wages and replacement services. In June 1990, approximately seven months prior to trial, plaintiff withdrew her claim for replacement services. The matter went to trial on the remaining issues and a jury returned a verdict of no cause of action.

Defendant subsequently brought a motion for costs and attorney fees pursuant to MCR 2.625; MCL 500.3148(2); MSA 24.13148(2) and MCL 600.2591; MSA 27A.2591. Defendant alleged that plaintiff's claim for replacement services was fraudulent. According to documentation submitted at trial, plaintiff's husband claimed to have performed replacement services for plaintiff for a period after her accident. However, during the same period, plaintiff herself was claiming to have performed and sought reimbursement for replacement services to her son who had been injured in an earlier automobile accident.² At trial plaintiff claimed that she signed the replacement services forms, but that they were filled in by someone in her attorney's office. She asserted that she provided some services and her husband provided other services for her son. She also stated that because someone in the household was performing the services, she believed that it did not make a difference whether she or her husband was named on the forms.

The court granted a portion of defendant's motion for costs, but denied the motion for attorney fees. The court noted that it did not condone any knowing misrepresentation of the kind alleged in this case. However, the court found that the conduct of plaintiff did not rise to the level of a fraudulent claim.

Pursuant to MCL 500.3148(2); MSA 24.13148(2):

An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense of a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. . . . [Emphasis added.]

Fraud has been defined as:

An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

*Circuit Court judge, sitting on the Court of Appeals by assignment.

Black's Law Dictionary, 5th Ed.; Johnston v United Airlines, 23 Mich App 279, 285; 178 NW2d 536 (1970).

A claim is said to be "fraudulent" if it was falsely made, or caused to be made with the intent to deceive. Black's Law Dictionary, 5th Ed.

Based upon the language of the statute, the decision to award attorney fees under § 3148(2) appears to be within the trial court's discretion.³ Although we agree with the trial court that intentional misrepresentations are not to be condoned, we cannot say that the trial court abused its discretion in denying defendant's motion for attorney fees.

The demand for payment for replacement services was withdrawn prior to trial.⁴ Moreover, the trial court apparently accepted plaintiff's explanations that she did not believe it made a difference whether she or her husband was listed as the person providing services for her son and concluded that plaintiff did not intend to deceive defendant. In this matter, we defer to the trial court's unique opportunity to judge the credibility of the witnesses before it. See McCalla v Ellis, 180 Mich App 372, 382; 446 NW2d 904 (1989).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ Paul J. Clulo

¹ Defendant's motion also sought attorney fees for a frivolous action pursuant to MCL 600. 2591; MSA 27A.2591 . However, defendant does not appeal the denial of its motion on this ground.

² Although plaintiff had withdrawn her claim for replacement services prior to trial, evidence of the conflicting claims was presented at trial apparently as evidence relevant to plaintiff's credibility.

³ Compare § 3148(1) which provides:

An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment. MCL 500.3148(1); MSA 24.13148(1). [Emphasis added.]

⁴ Plaintiff withdrew her claim for replacement services several months before trial. Thus, even if plaintiff's claim had been found to be fraudulent, defendant would not have been entitled to attorney fees for that period because it was not defending the claim for replacement services after June 1990.