STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA, a Michigan corporation,

Plaintiff,

v

MICHAEL CRENSHAW,

Defendant and Third-Party Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Third-Party Defendant-Appellant.

---/

NO. 85153

Before: M.H. Wahls, P. J., M.J. Kelly and C.W. Simon, JJ

M. J. Kelly, J.

Third-party defendant Allstate Insurance Company appeals by leave granted from an order reversing an order of summary disposition in its favor. The question is whether Allstate effectively cancelled third-party plaintiff Michael Crenshaw's no-fault insurance prior to an accident that occurred on August 29, 1982. The answer turns upon whether Allstate's cancellation of Crenshaw's policy is governed by the mailing and notice provisions of §3020 or §3224 of the insurance code. MCL 500.3020; MSA 24.13020 and MCL 500.3224; MSA 24.13224.

The following facts are not in dispute. Crenshaw applied to Allstate for no-fault insurance on his automobile and was issued a binder on July 27, 1982, providing coverage for bodily injury, personal disability liability, uninsured motorist coverage, personal injury protection, collision and comprehensive. A few days later, in the course of investigating Crenshaw's application, Allstate discovered that Crenshaw's driver's license might have been suspended. On August 4, 1982, Allstate sent a notice of cancellation to Crenshaw by certified

---

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

mail, return receipt requested, informing him that the policy would be cancelled as of August 25, 1982.

The notice of cancellation was returned to Allstate undelivered on August 30, 1982. On August 29, 1982, Crenshaw loaned his automobile to Carol Jean Bland, who was injured in an accident which arose out of her use of that vehicle. Allstate mailed a notice of cancellation to Crenshaw again on September 3, 1982, also by certified mail, which Crenshaw received on September 19, 1982.

Bland submitted a claim to the no-fault assigned claims fund and recovered lost wages, hospitalization and medical expenses from plaintiff Citizens Insurance Company of America. Citizens filed a complaint in district court against Crenshaw to recover payments made to Bland. Crenshaw responded with this third-party complaint against Allstate, claiming that he was insured on August 29, 1982, the day of the accident. Crenshaw and Allstate filed cross-motions for summary judgment pursuant to GCR 1963, 117.2(3), now MCR 2.116(C)(10). The district court granted Allstate's motion, denied Crenshaw's motion and Crenshaw appealed to the circuit court.

By order entered April 30, 1985, the Wayne County Circuit Court reversed and remanded this case to the district court for entry of an order of summary disposition in favor of Crenshaw. In a written opinion, the circuit court reasoned that §3224 governed Allstate's cancellation of Crenshaw's policy since it was enacted later than §3020 and it specifically addressed the cancellation of automobile liability insurance rather than the cancellation of casualty insurance in general. The court then construed §3224 as requiring actual receipt of notice of cancellation in order to effectuate cancellation. Since it is undisputed that Crenshaw did not receive the required notice as of August 29, 1982, the court concluded that his policy was still in effect. Finally, the circuit court concluded that the same

result would be reached even if §3020 applied, because actual notice was also required under that provision.

We affirm the decision of the circuit court on the ground that the applicable cancellation statute is §3020. To effectuate cancellation of insurance under §3020, the insured must receive actual notice of cancellation at least 10 days prior to the effective date. Phillips v DAIIE, 69 Mich App 512; 245 NW2d 114 (1976); Citizens Ins Co of America v Lemaster, 99 Mich App 325, 328; 298 NW2d 19 (1980), lv den 411 Mich 970 (1981). As noted by the trial court, it is not disputed that Crenshaw received actual notice of cancellation on September 19, 1982; his policy was therefore still in effect on the date of Bland's accident.

Our reasons for applying §3020 rather than §3224 are set forth in Celina Mutual Ins Co v Falls, 72 Mich App 130; 249 NW2d 323 (1976), lv den 399 Mich 849 (1977). Section 3224 was enacted prior to the effective date of the no-fault act, when liability insurance was all that was required as a condition to operating a motor vehicle in Michigan. With the passage of the no-fault act, motor vehicle owners must now maintain insurance coverage much broader than that provided under the old automobile liability policies. Section 3224 governed cancellation of the narrower liability policies formerly required and does not apply to the comprehensive casualty policies issued under the no-fault statute. 72 Mich App 134-135. Section 3020, on the other hand, applies to all policies of casualty insurance, "including all classes of motor vehicle coverage". Cases involving cancellation of no-fault policies have generally been decided on the basis of §3020. See Lease Car of America, Inc v Rahn, 419 Mich 48; 347 NW2d 444 (1984); National Ben Franklin Ins Co of Michigan v West, 136 Mich App 436; 355 NW2d 922 (1984); Grable v Farmers Ins Exchange, 129 Mich App 370; 341 NW2d 147 (1983), lv den 419 Mich 851 (1984).

Allstate argues that §3224 applies in the instant case because cancellation was attempted within 55 days after issuance of the binder. Apparently, Allstate believes that §3020 would apply if it had attempted to cancel Crenshaw's policy beyond the first 55 days of coverage. We find no statutory or decisional authority to support Allstate's proposed application of the two notice statutes according to the length of time an insurance policy has been in effect. Section 3224(1) does provide that an insured may not appeal the decision of an insurer to cancel a liability policy that has been in effect for less than 55 days but we have held that even within the context of §3224, the notice and mailing requirements are the same whether the decision to cancel is appealable (policy in effect less than 55 days) or nonappealable (policy in effect 55 days or longer). See Dorsey v Michigan Mutual Liability Co, 72 Mich App 607, 610-611; 250 NW2d 143 (1976) lv den 400 Mich 825 (1977). Moreover, the no-fault policy issued in Celina Mutual, supra, had also been in effect for less than 55 days when the insurer attempted cancellation.

Allstate also argues on appeal that Crenshaw's fraudulent representations rendered the binder issued on July 27, 1982 void ab initio. However, Allstate failed to present this argument to the district court. The question is not properly preserved for appeal.

We affirm the decision of the circuit court reversing the district court's order of summary judgment in favor of Allstate.

Affirmed.

/s/ Myron H. Wahls
/s/ Michael J. Kelly
/s/ Charles W. Simon