STATE OF MICHIGAN

COURT OF APPEALS

JAMES WILLIAMS, JR. and MILDRED WILLIAMS,

Plaintiffs-Appellants,

and

TRANSAMERICA INSURANCE COMPANY,

Intervening Plaintiff,

v

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
August 29, 1995

No. 175263
LC No. 92-016094

Before: Taylor, P.J., and McDonald and J. G. Collins,* JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting defendant's motion for summary disposition and dismissing plaintiffs' case. We affirm in part, reverse in part, and remand.

On March 2, 1991, defendant issued an automobile insurance policy to plaintiffs, Alfred Williams, Jr., and his wife Mildred Williams. The policy term was March 22, 1991, through September 21, 1991. On August 19, 1991, defendant mailed an offer to renew the policy which was expiring. Plaintiffs failed to renew their policy by September 21, 1991. On September 26, 1991, defendant mailed a confirmation of non-renewal and offered to reissue nun pro tunc plaintiffs' policy to September 22, 1991, if the premium payment was received by defendant on or before October 14, 1991. Plaintiff, Mildred Williams, claims to have mailed the renewal premium to defendant on October 11, 1991. According to defendant, plaintiffs' check did not arrive at defendant's office until October 17, 1991. On October 22, 1991, defendant issued a check refunding the premium.

On October 26, 1991, plaintiff, James Williams, Jr., was involved in an automobile accident. Plaintiffs reported the accident to defendant on October 28, 1991, and on November 1, 1991, defendant mailed a letter to plaintiffs denying their claim. Plaintiff claims that he received the refund check on or about October 30th, but in any event, after the accident.

On appeal, plaintiffs contend that the trial court erred in its determination that plaintiffs' mailing of their renewal premium did not effectuate renewal of their policy. We disagree.

In Venne v Michigan Mutual Ins Co, 168 Mich App 513, 515-515; 425 NW2d 109, modified 431 Mich 861; 428 NW2d 684 (1988), this Court held that mere mailing of a premium was insufficient to reinstate coverage where the defendant insurance company explicitly made reinstatement conditional upon actual receipt by the defendant. Because the insurer stated that payment must be received by them, the postal authorities could not be considered the agents of the insurer. Id. at 516. In this case, plaintiffs' attempt to distinguish Venne by arguing that defendant did not explicitly state "received in our

*Recorder's Court Judge, sitting on the Court of Appeals by assignment.

office" is not persuasive. The Venne Court did not hold that the phrase "in our office" was essential to the outcome of the case. Instead, the Court emphasized only that the defendant made payment conditional upon receipt. Thus, plaintiffs' mailing of the check on October 11th did not effectuate a renewal of their policy with defendant because defendant made renewal conditional upon its receipt of the payment.

Plaintiffs also argue that the trial court erred in holding that their insurance policy did not require defendant to issue a notice of cancellation prior to terminating the policy. Again, we disagree.

In McCormic v Auto Club, 202 Mich App 233, 236; 507 NW2d 741 (1993), this Court held that if an insurance policy expired on its own, the insurance company need not give notice of cancellation. In this case, the policy by its own terms expired on September 21, 1991. The policy required defendant to issue a notice of cancellation only where the policy is in effect at the time of cancellation. Because plaintiff failed to renew the policy by September 21, 1991, the policy was no longer in effect and no notice of cancellation was required. The fact that plaintiffs tendered a late renewal premium is irrelevant. Thus, defendant did not breach the contract by failing to issue a notice of cancellation.

Plaintiffs next argue that the trial court erred in dismissing their estoppel claim against defendant because the trial court failed to properly consider plaintiffs' estoppel argument. Defendant asserts that the trial court fully considered the estoppel claim when it ruled that plaintiffs' mailing of the renewal payment did not effectuate renewal of the payment. We agree with plaintiffs and conclude that the trial court failed to give plaintiffs' estoppel claim appropriate consideration.

Equitable estoppel arises where: (1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts. Penny v ABA Pharmaceutical Co (On Rem), 203 Mich App 178, 183; 511 NW2d 896 (1993). In both their complaint and on appeal, plaintiffs assert that they justifiably relied on defendant's lack of action during the days following the mailing of the premium, and that defendant's lack of action led plaintiffs to reasonably believe that their insurance had been renewed. Although an insurance company is not bound to provide coverage if there is a prompt refund of the premium payment, Auto Club Ins Co v Dennie, 188 Mich App 634; 470 NW2d 409 (1991), in this case, the trial court did not make a determination regarding whether the lapse in time constituted an unjustifiable delay in returning plaintiffs' renewal payment. What period of time constitutes an unjustifiable delay is not a question for this Court to resolve on appeal. See Auto Club Ins, supra. Therefore, we reverse and remand for consideration of the estoppel issue only.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Jeffrey G. Collins