

**STATE OF MICHIGAN  
COURT OF APPEALS**

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MICHIGAN MILLERS MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellee,

v

BEVERLY JEAN MAY and  
SCOTT ALLAN MAY,

Defendants-Appellants.

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UNPUBLISHED  
May 24, 1996

No. 175968  
LC No. 93-074308

Before: Michael J. Kelly, P.J., and Bandstra and S.B. Miller, \* JJ.

PER CURIAM.

Defendants appeal as of right a declaratory judgment rendered in favor of plaintiff. We affirm.

Defendants do not argue on appeal that there was no material misrepresentation of fact or that plaintiff, therefore, was not entitled to rescind the insurance policy. Instead, defendants argue that Scott May was an innocent third party who cannot be held responsible for the material misrepresentation and against whom the rescission of the contract cannot be applied. We disagree.

We find the cases relied upon by defendants to be inapposite or distinguishable. The court determined that an insurance policy could not be rescinded in *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 9-10; 369 NW2d 243 (1985), not because of any innocent third party argument, but, instead, because the insurance company knew the insured had misrepresented a material fact in seeking coverage but issued a policy nonetheless. The injured person in *Ohio Farmers Ins Co v Michigan Mutual Ins Co*, 179 Mich App 355, 357; 445 NW2d 228 (1989), was the friend of a person who was driving the vehicle after borrowing it from the son of the insured. In *Katinsky v Auto Club Ins Ass'n*, 201 Mich App 167; 505 NW2d 895 (1993), the injured party was hurt while driving a motorcycle that became involved in an accident with the vehicle that had been insured as a result of a false representation by its owner. In *Ohio Farmers and Katinsky*, therefore, persons who had no connection with the persons who had made material misrepresentations to obtain insurance and who did not benefit from the insurance provided as a result of the material misrepresentations were considered innocent third parties. See also *Farmers Ins Exchange v Anderson*, 206 Mich App 214; 520 NW2d 686 (1994).

In the present case, the trial court, sitting as trier of fact, determined that Scott May was not an innocent third party because his mother, acting with Scott's at least tacit approval, misrepresented that she would be the principal driver of the vehicle, and thus was able to obtain

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

the insurance necessary to allow Scott to have a vehicle to drive. We do not find, based upon our review of the record in this case, that the factual findings underlying this decision were clearly erroneous, *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994), nor do we conclude that the trial court erred as a matter of law in determining that, as a result of those findings, Scott May was not an innocent third party entitled to the protections afforded by Michigan law.

Defendants also argue that the trial court wrongly concluded that Scott May was an "owner" under the no-fault act and thus not entitled to insurance benefits. However, we need not reach that issue because our decision that Scott May was correctly considered not to be an innocent third party is sufficient to affirm the trial court's decision.

We affirm.

/s/ Michael J. Kelly  
/s/ Richard A. Bandstra  
/s/ Stephen B. Miller