

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER ALBRECHT,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 22, 2010

No. 289042

Kent Circuit Court

LC No. 08-00076-NI

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

In this insurance case, plaintiff Jennifer Albrecht appeals as of right from the trial court's grant of defendant's motion for summary disposition based on MCR 2.116(C)(7). We reverse and remand.

I. FACTS

This case stems from an incident where plaintiff was attempting to load pigs into a trailer that was connected to a 2005 Dodge pickup truck. At some point during this process, the trailer's loading ramp fell on plaintiff and broke her back and arm. Plaintiff and her husband, Justin, have homeowners, automobile no-fault and hospitalization insurance through defendant State Farm Mutual Automobile Insurance Company (State Farm). Assurant Health, whose policies were sold and serviced through captive State Farm agents, provided the hospitalization insurance. Kimberly Hughes was State Farm's agent (Gregg Dep, 3-4). Gregg Hughes, Kimberly's husband, was Kimberly's office manager and employee, but was also a licensed State Farm agent.

Plaintiff's husband telephoned Gregg Hughes and told him about the accident. Gregg Hughes then sent plaintiff a claim form, but only for the hospitalization insurance. After submitting the claim to State Farm/Assurant, plaintiff collected the maximum benefit allowed under the policy, which was \$1,000. On January 3, 2008, more than 13 months after her injury, plaintiff filed her complaint against defendant alleging that she should also have been covered under her automobile no-fault insurance policy. Defendant filed a motion for summary disposition, arguing that the case should be dismissed pursuant to MCR 2.116(C)(7) because the

action was time barred under MCL 500.3145(1). The trial court granted defendant's motion for summary disposition.

II. STANDARD OF REVIEW

This Court reviews a trial court's grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999), reh den 461 Mich 1205 (1999). In so doing, this Court examines the whole of the record in order to determine whether defendant was entitled to summary disposition. *Id.* "A motion for summary disposition under this subrule does not test the merits of a claim but rather certain defenses which may make a trial on the merits unnecessary." *DMI Design and Mfg, Inc v Adac Plastics, Inc*, 165 Mich App 205, 208; 418 NW2d 386 (1987). "When a motion is premised on subrule (C)(7) the court must consider not only the pleadings, but also any affidavits, depositions, admissions, or documentary evidence that has been filed or submitted by the parties." *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998).

Furthermore, this Court considers de novo the applicability of equitable doctrines. *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004). Absent disputed questions of fact, whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo. *Hudick v Hastings Mut Ins Co*, 247 Mich App 602, 605-606; 637 NW2d 521 (2001).

III. ANALYSIS

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(7). We agree.

First, plaintiff argues that State Farm's policy provides a notice requirement that is "less onerous than the one in the statute." State Farm's insurance policy provides that written notice of a claim need only be given "as soon as reasonably possible." Plaintiff contends that it is inequitable to apply the one-year statutory limitations period as a bar to suit. Plaintiff's argument fails to recognize that, in addition to this notice provision, the policy plainly provides that, "[t]here is no right of action against [State Farm] ... unless the action is begun within one year from (1) the date of the accident; or (2) the date on which the most recent expense or loss has been incurred, if we have either received written notice of the *bodily injury* within one year from the date of the accident or have made a payment under this coverage for the *bodily injury*." Because this provision clearly tracks the period of limitations set forth in MCL 500.3145(1), we find plaintiff's challenge to the equities of applying the statutory limitations period to be unpersuasive.

Next, plaintiff contends that defendant's agent, Gregg Hughes, breached his duties to plaintiff, and, as a result, defendant should be estopped from asserting the statute of limitations. As this Court noted in *Henry Ford Health System v Titan Ins Co*, 275 Mich App 643, 647 n 1; 741 NW2d 393 (2007), courts should be reluctant to apply equitable estoppel "absent intentional or negligent conduct designed to induce a plaintiff [to refrain] from bringing a timely action." See, *Devillers v Auto Club Assn*, 473 Mich 562, 590 n 64; 702 NW2d 539 (2005), quoting *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). Also, in *Lothian v Detroit*, 414 Mich 160, 177-178; 324 NW2d 9 (1982), this Court stated:

Generally, to justify the application of estoppel, one must establish that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon this conduct, and knowledge of the actual facts on the part of the representing or concealing party. See, 28 Am Jur 2d, Estoppel and Waiver, § 35, p 640. [*Id.* at 177.]

According to plaintiff, her husband called agent Gregg Hughes to report the accident. Justin testified that he told Gregg that “my wife had been backing up my pickup truck and my trailer into the barn to load up the hogs. She had parked the pickup truck, walked around it, and was trying to open the door and slipped and fell . . . the trailer door had fallen on her.” Gregg stated that he was only told that a trailer door fell on Jennifer, but that he was never told that the trailer was attached to a motor vehicle insured by State Farm. He stated that he assumed that the trailer was either detached from the vehicle, or attached to a different vehicle that was not insured by State Farm. As a result, he only submitted the claim as a health insurance claim, and never submitted the claim as a no-fault auto insurance claim. He told plaintiff that he phoned Assurant, and that they would be sending her the claims forms.

We find that there is an issue of fact regarding Gregg’s negligence in this matter. While he certainly never intentionally misled plaintiff and her husband, the matter of whether his actions served to negligently misinform plaintiff requires more factual development. Although overruled on the issue of judicial tolling of the one-year-back statute in *Devillers*, 473 Mich 562, we find instructive the language in *Johnson v State Farm Mut Auto Ins Co*, 183 Mich App 752, 762; 455 NW2d 420 (1990):

We do not believe it necessary for an insured to specifically inform the insurer of those portions of specific insurance policies under which the insured demands the payment of benefits. Rather, what can reasonably be expected of insureds is that they inform their insurance agent of the occurrence of an insured loss and specifically inform the insurer of the nature of the losses suffered, such as death, bodily injury, hospitalization, property damage to the vehicle, etc. An insured ought then be able to reasonably rely on the agent to advise the insured of the benefits to which the insured might be entitled and to provide the insured with the appropriate claim forms to be filed. [*Id.* at 763-764.]

Therefore, the trial court erred in granting defendant’s motion for summary disposition. Plaintiff’s noncompliance with the one-year statute of limitations may have been affected by defendant’s negligence, and if it were, then defendant should indeed be estopped from asserting the statute of limitations. Further factual development of this issue is necessary.

Given our conclusion that the trial court erroneously granted summary disposition, we decline to address plaintiff’s remaining issues.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ David H. Sawyer

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O'CONNELL, (*dissenting*).

I respectfully dissent.

Plaintiff was loading pigs into a trailer that was connected to a 2005 Dodge pickup truck. The loading ramp fell on plaintiff, breaking both her back and her arm. Plaintiff is insured by defendant. Plaintiff, through her husband, contacted defendant and reported the accident. Defendant, through its agent, sent plaintiff a claim form. Plaintiff filled out the claim form and returned it, as she was instructed. Defendant now, in essence, claims that it did not receive notice of this incident. I respectfully disagree. Plaintiff complied with her agent's instructions, the terms of her insurance policy and, most of all, common sense.

I would reverse the decision of the trial court.

/s/ Peter D. O'Connell