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Insurance carrier not required to prove reliance if the policy language does not require it to do so

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SECRET WARDLE NOTES

When an insurance carrier moves to rescind or void a policy based on a material misrepresentation, the carrier is typically required to prove that it relied on the misrepresentation. For example, if a claimant were to make a false statement regarding employment history to substantiate a wage loss claim, but wage loss benefits were never paid, a court may have held that the carrier could not rely on that particular misrepresentation.

However, when the carrier is relying on its policy language alone, the language controls. If there is not a requirement in the policy that the carrier rely on the misrepresentation, the carrier is not required to prove reliance. In *Ward*, all coverage was barred by the policy language, which required the carrier to prove that the claimant made a false statement but not that it had relied on such.

* * * *

In *Naketta Ward v State Farm Mutual Automobile Insurance Company*, an unpublished opinion per curiam of the Court of Appeals issued on September 15, 2016 (Docket No. 327018), the plaintiff alleged that she was owed medical expenses, attendant care, replacement services, and lost wages. As a result of two separate motions for summary disposition, her claims for attendant care and wage loss were dismissed.

Subsequently, the defendant filed a separate motion for summary disposition arguing that the plaintiff made false representations about her replacement services claim because the alleged services provider testified that the claimed services, specifically cleaning, were never provided. The defendant also argued that she had misrepresented her claim for lost wages because she was fired for misconduct contradicting her testimony that she left work because of an accident-related injury. The trial court granted the defendant's motion and dismissed the plaintiff's entire PIP claim.

On appeal, the plaintiff argued that the trial court erred when it granted summary disposition to the defendant. More specifically, she argued that (1) the defendant should not have been granted summary

disposition because it did not prove that it relied on any of her misrepresentations and (2) that the trial court improperly made a credibility determination when it credited the deposition testimony of the alleged services provider and discredited plaintiff's testimony.

First, the Court of Appeals ruled that the defendant did not have to demonstrate that it relied on the plaintiff's false statement. The defendant would have been required to do so if it was seeking to void or rescind the policy or if it were relying on traditional defenses to a contract. Instead, the defendant was simply relying on the policy's plain terms which provided that:

There is no coverage under this policy if you or any other person insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

Based on the policy language, the defendant was not required to show that it relied on the false statements. In making this ruling, the Court referred to *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420 (2014). In *Bahri*, as in this case, the defendant relied on the policy language which did not require it to prove that it had relied on the claimant's false statements. The Court of Appeals noted that while common law fraud requires a showing of detrimental reliance, when the policy does not require it, reliance need not be proven.

The Court of Appeals conceded that the policy language in this case was not as complex as that in *Bahri* because it did not include the legal term "fraudulent." However, the Court ruled that, even when "fraud" is a requirement pursuant to the policy, no reliance is required. In this case, the contract did not require a showing of "fraud," but only required a showing that plaintiff had made a false statement with the intent to conceal a material fact related to a claim.

The Court also rejected the plaintiff's second argument that the trial court had made an improper credibility determination. Apparently, the plaintiff had testified that her friend had assisted with cleaning at her home for approximately a four-month period but the services provider testified that she had never cleaned her home and only took her shopping and drove her to appointments. Even though a court is not permitted to assess a witness' credibility, it was clear that reasonable minds would find the blatant inconsistency fatal to the plaintiff's claim.

Additionally, even if the Court ignored the services provider's testimony, the plaintiff had testified that she was forced to leave her work because of the accident. Documentary evidence contradicted this testimony in showing that she had been warned multiple times to adhere to company policy and was ultimately terminated for reasons not involving the accident.

Pursuant to the policy language, with either of the plaintiff's false statements, "there is no coverage under the policy." The Court clarified that all coverage is forfeited pursuant to the policy language when a false statement is made, so her false statements regarding replacement services and/or wage loss would void all coverage under the policy, even medical benefits.

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