STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Plaintiff,

v

File No. 05-24642-CK
HON. PHILIP E. RODGERS, JR.

JOHN JOHNSON, Conservator of the Estate of Angela May Roush,

Defendant.
/

Michael J. Swogger (P42905)
Attorney for Plaintiff

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Attorneys for Defendant

DECISION AND ORDER
DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION
AND
GRANTING SUMMARY DISPOSITION FOR THE PLAINTIFF

Plaintiff Frankenmuth Mutual Insurance Company ("Frankenmuth") filed this action seeking a declaratory ruling and judgment that the no-fault automobile insurance policy it issued to Angela May Roush ("Roush") on or about October 15, 2004 be rescinded and declared void *ab initio*. Frankenmuth argues that it is entitled to rescission and to have the policy declared void *ab initio* because Roush misrepresented her marital status and whether there were others of driving age in her household when she applied for the insurance.

In lieu of an answer, the Defendant filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(8) and (10). The Defendant does not deny that Roush misrepresented her marital status. In fact, it is undisputed that, at the time that she applied for the insurance coverage in question, she was married to Allyn Roush who was incarcerated in the Michigan Department of Corrections. The Defendant argues that he is entitled to summary disposition

because Roush's husband was not a member of her household when Roush applied for the insurance. The Defendant relies upon the common, ordinary meaning of the word "household" and the undisputed fact that Roush's husband was incarcerated when she applied for the insurance. Further, the Defendant argues that her marital status is not "material" because "it would not result in a denial of insurance or an increased premium." Therefore, failure to disclose her true marital status was not a material misrepresentation that would justify rescission of the insurance contract.

In response to the motion, Frankenmuth claims that there is a disputed issue of fact regarding whether Allyn Roush was a member of Angela Roush's household at the time she applied for insurance coverage.

The Court heard the arguments of counsel on August 1, 2005 and took this matter under advisement. The Court now issues this written decision and order and, for the reasons stated herein, denies the Defendant's motion and grants summary disposition for the Plaintiff. MCR 2.116(I)(2).

STANDARDS OF REVIEW
MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief can be granted, is tested by the pleadings alone. Only the legal basis of the complaint is examined. The factual allegations of the complaint are accepted as true, along with any inferences which may fairly be drawn therefrom. Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Mills v White Castle System, Inc,* 167 Mich App 202, 205; 421 NW2d 631 (1988). However, the mere statement of the pleader's conclusions, unsupported by allegations of fact upon which they may be based, will not suffice to state a cause of action. *NuVision v Dunscombe,* 163 Mich App 674, 681; 415 NW2d 234 (1988), lv den 430 Mich 875 (1988). See also, *Roberts v Pinkins,* 171 Mich App 648, 651; 430 NW2d 808 (1988).

MCR 2.116(C)(10)

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999) as follows:

> This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):
>
> > In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
> >
> > In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J. Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

I.

PERTINENT UNDISPUTED FACTS

On or about October 15, 2004, Roush filled out a personal automobile application for a no-fault insurance policy from Frankenmuth. On pages 2 and 3 of the application, under the section entitled "Driver Information," it states: "All household members of driving age must be listed." In that section, Roush listed only herself. On page 3, under the "General Information" heading, when specifically asked if any household member of driving age is not legally licensed in the United States, she answered "no." Roush also represented under "Marital Status" that she was "single."

Frankenmuth's underwriting guidelines provide that "all members of driving age of an applicant's household must qualify as an eligible person for coverage to be written to the applicant."

At the time that Roush completed the application, she was married to Allyn Roush. He was not an eligible driver because his license was suspended and he was incarcerated in the Michigan Department of Corrections.

Upon discovering that Roush was married to a person who was not an eligible driver, Frankenmuth notified Roush that it was rescinding the insurance policy pursuant to a provision on the application that states: "Misrepresentation may void coverages." Frankenmuth refunded the premiums that had been paid.

II.

ISSUE

The issue presented is whether Roush's misrepresentations regarding her marital status justify rescission of the insurance contract.

III.

ANALYSIS

The construction and interpretation of insurance contracts is a question of law. *Henderson v State Farm Fire Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance policy must be enforced in accordance with its terms, which are given their "commonly used

meaning" if not defined in the policy. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 112, 114; 595 NW2d 832 (1999). Therefore, whether Allyn Roush was a member of Angela Roush's household is a question of law.

The Defendant argues that he is entitled to summary disposition because Roush's husband was not a member of her "household" when she applied for the insurance. The Defendant relies upon the New Webster's Dictionary meaning of the word "household" – "the family, servants, etc. living in one house" and the undisputed fact that Roush's husband was in prison when she applied for the insurance. In other words, the Defendants says she did not misrepresent anything when she applied for insurance because her husband was not living at home at the time.

In *Thomas v Vigilant Ins Co*, 156 Mich App 280, 282-283; 401 NW2d 351 (1986), the Court of Appeals had to determine whether a homeowner's policy that extended coverage to the named insureds and to "residents of the named insureds' household" covered the insureds' adult son. The Court stated the following regarding the definition of the term "household":

> Insurance contracts are to be interpreted according to the commonly understood meaning of the words of the contract. *Parrish v The Paul Revere Life Ins Co*, 103 Mich App 95, 97; 302 NW2d 332 (1981). The terms of the policy must be construed in accordance with the ordinary and popular sense of the language used so as to avoid strained interpretations. *Mich Mutual Ins Co v Sunstrum*, 111 Mich App 98, 102; 315 NW2d 154 (1981), lv den 414 Mich 890 (1982). Black's Law Dictionary (rev 4th ed), p 873, defines 'household' as: 'a family living together ... [t]hose who dwell under the same roof and compose a family.' Webster's Third New International Dictionary (1971) defines 'household' as: '[t]hose who dwell under the same roof and compose a family; a domestic establishment; specifically, a social unit comprised of those living together in the same dwelling place.' The American Heritage Dictionary of the English Language (1976) defines 'household' as: '[a] domestic establishment including the members of a family and others living under the same roof.' The commonly understood meaning of the word 'household' is a family unit living under the same roof.

Thus, "household" refers to a distinct type of living arrangement in the sense of social unit. See, *Meridian Mut Ins Co v Hunt*, 168 Mich App 672; 425 NW2d 111 (1988).

The *Thomas* Court held that although the insured parents owned a home on Cobb Street in which they lived and a home on Porter Street in which their son lived, they only had one "household" on Cobb Street. Their son and his family had a separate and distinct household on Porter Street because he paid his own utilities, purchased his own groceries, and paid rent to his parents in the form of keeping the house in good repair. The Court concluded that the son was not a resident of the insureds' household since the insureds' household was at a different address under a separate roof.

At first blush, the *Thomas* case would seem to lend support to the Defendant's argument in this case. However, the facts in this case are unique because Allyn Roush did not have a separate household; rather he was housed in prison. This Court does not accept that a prisoner can establish a "household" in prison.

In fact, a prisoner cannot establish a new domicile in the county or state of his imprisonment because the relocation is involuntary. "The fact that the inmate ordinarily does not have an intention to remain in the institution argues against the establishment of residency at the institution." See, for example, *Leader v Leader*, 73 Mich App 276; 251 NW2d 288 (1977); *Grable v Detroit*, 48 Mich App 368; 210 NW2d 379 (1973). In *Fowler v Fowler* 191 Mich App 318, 319; 477 NW2d 112 (1991, the Court said:

> When used in statutes conferring jurisdiction, residence is interpreted to mean legal residence or domicile. *Curry v Jackson Circuit Court*, 151 Mich App 754, 758; 391 NW2d 476 (1986). The issue of legal residency is principally one of intent, and it is presumed that a prisoner cannot establish a new domicile in the county or state of his imprisonment because the relocation was involuntary. However, the presumption can be overcome if the inmate is able to demonstrate relevant factors that would corroborate a stated intention to reside in the county following release from prison. *Id* at 759, 391 NW2d 476.

Likewise, with respect to residency for voting purposes, the Legislature has expressly provided that a prison inmate does not lose his civilian residence because of incarceration. MCL 168.11(2); MSA 6.1011(2) provides in part that.

> 'An elector shall not be deemed to have gained or lost a residence * * * while confined in a jail or prison.' Even an absence of many years does not destroy residency, at least for voting purposes. *Harbaugh v Cicott*, 33 Mich 241 (1876). Finally, 1 Restatement Conflict of Laws, 2d, § 17(c), p. 66 provides:

> Under the rules of this Section, it is impossible for a person to acquire a domicile in the jail in which he is incarcerated. To enter jail, one must first be legally committed and thereby lose all power of choice over the place of one's abode.

The rationale for these rulings is that some free exercise of will is required to acquire domicile and free choice is impossible when one is confined against his will. Thus, even though Allyn Roush was incarcerated, his legal residence was with his wife where he would return when he was released from prison. He was and is for all practical purposes a member of their household. Roush's failure to disclose that Allyn Roush was a member of her household of driving age was a misrepresentation.

Focusing exclusively on whether Allyn Roush was a member of Angela Roush's "household," ignores other misrepresentations that she made regarding her marital status. When she completed the application, Roush was asked to disclose not only all members of driving age of her household, but she was also asked her marital status. She indicated that she was not married.

Even if Roush believed that she did not have to include her husband as a member of her household because he was incarcerated, she certainly knew that she was married and should have answered that question in the affirmative. Not having done so, the insurance agent was not aware of her marital status and had no reason to question whether her husband was an eligible driver. Equity will not reward her for her dishonesty.

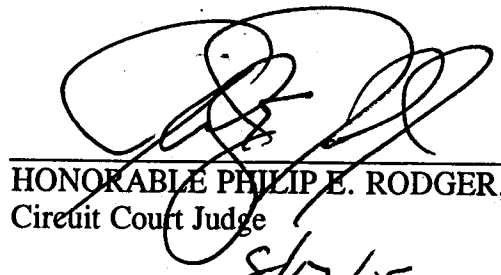
CONCLUSION

Angela Roush misrepresented her marital status. She concealed the fact that she had a husband. By doing so, she did not give the insurance agent an opportunity to question whether her husband was an eligible driver. The only logical explanation is that she knew that she would not qualify for insurance if her husband was not eligible and she wanted to qualify. These misrepresentations were material and provide good cause for rescinding the automobile insurance contract.

The Defendant's Motion for Summary Disposition is denied and summary disposition is granted in favor of the Plaintiff. MCR 2.116(I)(2).

IT IS SO ORDERED.

This decision and order resolves the last pending claim and closes the case.



HONORABLE PHILIP E. RODGER, JR.
Circuit Court Judge

Dated: 8/17/05

2004 WL 2072058 (Mich.App.)
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
ALLSTATE INSURANCE COMPANY, Plaintiff-Appellee,
v.
Gloria ARRINGTON, Individually and as Administrator of the Estate of Matthew Arrington, deceased, Defendant-Appellant,
and
Claudia WILLIAMS and Belinda Williams, Defendants.
Gloria ARRINGTON, Individually and as Administrator of the Estate of Matthew Arrington, deceased, Plaintiff-Appellant,
v.
ALLSTATE INSURANCE COMPANY, Individually and as Subrogee of Claudia Williams and Belinda Williams, Defendant-Appellee.
No. 247691, 247692.
Sept. 16, 2004.

Before: CAVANAGH, P.J., and SMOLENSKI and OWENS, JJ.

[UNPUBLISHED]

PER CURIAM.
***1** Gloria Arrington, individually and as administrator of the estate of Mathew Arrington, deceased, appeals as of right the lower court's granting of Allstate Insurance Company's motions for summary disposition and declaratory judgment and denying her motions for summary disposition in these consolidated cases. We affirm.
This case stems from an earlier wrongful death suit brought by Arrington against Claudia Williams, Belinda Williams, and the primary insured under the insurance policy in question, William Loftis. Loftis was not only Claudia and Belinda Williams's landlord, he was also related to them. The trial court granted summary disposition in that case to Loftis, but entered a default judgment against Claudia and Belinda Williams in the amount of $10,000,000. In the case at bar, Arrington argues that Claudia and Belinda Williams were insured parties under the insurance policy and seeks payment of the default judgment from Allstate.
Initially, Arrington argues that the trial court erred in determining that Claudia and Belinda Williams were not insured parties under the policy. We disagree. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Glancy v. City of Roseville,* 457 Mich. 580, 583; 577 NW2d 897 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. After the trial court reviews evidence in a light most favorable to the nonmoving party, it may grant summary disposition if no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *De Sanchez v. State,* 467 Mich. 231, 235; 651 NW2d 59 (2002). [FN1] Contract interpretation presents a question of law subject to de novo review. *Sands Appliance Servs v. Wilson,* 463 Mich. 231, 238; 615 NW2d 241 (2000). Whether contract language is ambiguous is a question of law subject to de novo review. *Henderson v. State Farm Fire & Cas Co,* 460 Mich. 348, 353; 596 NW2d 190 (1999).

> FN1. The trial court did not state the subsection on which it granted summary disposition, and the parties failed to state the subsection. But when the parties submit documentary evidence and the court relies on it, this Court treats the case as if the court granted summary disposition pursuant to MCR 2.116(C)(10). *Kefgen v. Davidson,* 241 Mich.App 611, 616; 617 NW2d 351 (2000).

This Court's primary goal in interpreting a contract is to enforce the parties' intent. *Old Kent Bank v.*

Sobczak, 243 Mich.App 57, 63; 620 NW2d 663 (2000). We do this by reading the agreement as a whole and applying the plain language of the contract itself. *Id.* If a phrase is unambiguous and no reasonable person would apply it differently to the undisputed material facts, then summary disposition is proper. *Henderson, supra* at 353. But if reasonable minds could disagree regarding its application to the facts and the conclusions drawn from these facts, then a question exists for the fact finder. *Id.* A court should not create ambiguity in an insurance contract when its terms are clear. *Id.* at 354. "While we construe the contract in favor of the insured if an ambiguity is found, this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well recognized, should be given some alien construction merely for the purpose of benefitting an insured." *Id.* (internal citation omitted).

***2** In this case, the parties' dispute centers on the meaning of the word "household" as used in the definition of "Insured Person" included in the comprehensive personal liability policy. This states, in part: " 'Insured Person'--means you and, if a resident of your household, any relative and any dependent person in your care." (emphasis in original.) The term "household" is not defined in the policy. Allstate claims that the term is unambiguous and means the place where Loftis actually resides or lives, which is undisputedly in Illinois and not the insured premises in Detroit. Arrington argues that the term is ambiguous and this Court should interpret it to mean the insured premises. Insurance policy terms should be given their plain and ordinary meaning. *Bianchi v Automobile Club of Michigan,* 437 Mich. 65, 71 n 1; 467 NW2d 17 (1991). We construe the terms in the popular sense of the language as used and understood by ordinary people. *Id.* This Court has stated: "The commonly understood meaning of the word 'household' is a family unit living under the same roof." *Thomas v. Vigilant Ins Co,* 156 Mich.App 280, 283; 401 NW2d 351 (1986). The term implicates a domestic establishment. *Id.* It is undisputed that while Claudia and Belinda Williams were related to Loftis, they never lived under the same roof and never established a domestic relationship. Loftis lived separately in Illinois. Under the popular understanding of the word, the relationship between Claudia and Belinda Williams and Loftis does not equate with a household. *Thomas, supra* at 283. This Court rejected an argument similar to Arrington's in *Meridian Mut Ins Co v. Hunt,* 168 Mich.App 672; 425 NW2d 111 (1988). In that case, the defendants argued that "household" should have been defined according to that policy's definition of "residence premises," which described the insured structure. *Id.* at 679. In rejecting that argument, we stated that "resident premises" referred to a type of physical structure, while household referred to a distinct type of living arrangement or social unit. *Id.* at 680-681. Arrington attempts the same argument in this case. She tries to argue that the term "household" is equivalent to the term "Insured Premises," which is defined separately in the policy. The definition of "Insured Premises" lists several types of potentially covered property and refers to the premises described on the declaration page--which only lists the house in Detroit--but it does not mention the term household. As in *Meridian Mut Ins Co,* plaintiff attempts to create an ambiguity by equating household with a physical structure. *Id.* at 679-681.

But the concept of household is more than the insured physical structure. It implicates a social living arrangement. *Id.; Thomas, supra* at 283. As previously discussed, no living arrangement existed. Loftis lived separate from Belinda and Claudia Williams in another state. The relationship between Loftis and Claudia and Belinda Williams did not equate with the plain meaning of household. *Thomas, supra* at 282-283. Given that household is unambiguous and no reasonable person could differ with respect to its application to the undisputed facts, the trial court properly granted summary disposition to Allstate. *Henderson, supra* at 353 . [FN2]

FN2. Arrington points to *Workman v Detroit Automobile Inter-Ins Exch,* 404 Mich. 477; 274 NW2d 373 (1979) to argue that the term "household" has no fixed or accepted meaning. The Supreme Court in that case did not address the meaning of household, but instead, addressed the meaning of "resident" and "domiciled." *Id.* at 495-497. Therefore, that case is inapposite here. But we note that even if the test in *Workman* is applied, Claudia and Belinda Williams would not be residents of, or domiciled, in Loftis' household.

***3** Next, Arrington argues that Allstate is estopped from arguing that Claudia and Belinda Williams

are not covered under the insurance policy. We disagree. In limited circumstances, estoppel may hold an insurance company liable for coverage different from what is expressly stated in the policy agreement. *Mate v. Wolverine Mut Ins Co,* 233 Mich.App 14, 22; 592 NW2d 379 (1998). The necessary elements are: 1) a party, by representation, admissions, or silence, intentionally or negligently induces another party to believe certain facts exist; 2) the other party rightfully relies and acts on this belief; and, 3) the relying party will be prejudiced if the former party denies the existence of these facts. *Id.,* quoting *Lichon v. American Universal Ins Co,* 435 Mich. 408, 415; 459 NW2d 288 (1990). Arrington fails to meet these requirements.

Arrington offers no evidence of any action or silence by Allstate that would induce Loftis to believe the policy covered Belinda and Claudia Williams. She offers no evidence that Loftis believed the policy covered Claudia and Belinda Williams. Nor does she offer any evidence that Loftis relied on a misrepresentation of any kind. Arrington further fails to demonstrate that Allstate, by not extending coverage to Claudia and Belinda Williams, will injure Loftis. And in fact, Loftis will not be injured. No matter the outcome of this case, Loftis will remain in the same position. Even if Allstate had made a misrepresentation regarding coverage to Loftis, Allstate still would not be estopped because Loftis would not be injured. *Mate, supra* at 22.

Arrington tries to argue that the judgment against Claudia and Belinda Williams satisfies the prejudice requirement. But existing case law states that the injury has to be to the relying party. *Id* . Claudia and Belinda Williams were not in contract with Allstate. Arrington implies that an injury to third parties to a contract is sufficient to satisfy the prejudice requirement for estoppel without citing any authority. This Court will not search for authority to make a party's argument or to sustain a position. *Mudge v. Macomb County,* 458 Mich. 87, 105; 580 NW2d 845 (1998). " 'The appellant ... must first adequately prime the pump; only then does the appellate well begin to flow." ' *Id.,* quoting *Mitcham v. Detroit,* 355 Mich. 182, 203; 94 NW2d 388 (1959). Therefore, Arrington failed to articulate the necessary grounds for estoppel. The trial court correctly granted Allstate summary disposition.

Finally, Arrington argues that Allstate should be held liable for pre- and post-judgment interest. Given our conclusion that the trial court correctly granted summary disposition in favor of Allstate, we decline to address this issue.

Affirmed.

Mich.App.,2004.

Allstate Ins. Co. v. Arrington

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