STATE OF MICHIGAN

COURT OF APPEALS

DAWN MARIE MILLER,

Plaintiff-Appellant,

and

DEPARTMENT OF COMMUNITY HEALTH,

Intervening Plaintiff,

v

PROGRESSIVE CORPORATION, PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE CLASSIC INSURANCE COMPANY and PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendants,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
July 20, 2006

No. 259504
Washtenaw Circuit Court
LC No. 02-000284-NF

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition in favor of defendant Citizens Insurance Company of America (Citizens) and dismissed plaintiff's claims for first-party personal injury protection (PIP) benefits and underinsurance benefits on the ground that she was not a named insured in her parents' no-fault insurance policy with Citizens. We affirm.

This appeal concerns whether Citizens is liable to plaintiff for PIP benefits or underinsurance benefits under a policy issued to plaintiff's parents naming the parents alone as named insureds, when plaintiff did not live with her parents, and their covered vehicles were not

involved in the accident. After plaintiff became a driver, she was added to her parents' policy as an "occasional driver" of a Corsica that her father drove as the principal driver. Plaintiff was not listed as a "named insured" under the policy, only her parents were. Plaintiff moved out of her parents' house in July 1999 and surrendered her Michigan driver's license in August of 2000 to obtain a Maryland driver's license. Indeed, plaintiff conceded below for purposes of the summary disposition motion that "she was a Maryland resident and not a resident of her parents' household at the time of the accident." On March 8, 2001, plaintiff was injured when a pickup truck owned and driven by her fiancé flipped over in Michigan on the way to her parents' home for a visit. It is undisputed that plaintiff's parents did not own or obtain insurance for the truck and that Citizens did not insure the truck. The truck was insured by defendant Progressive Classic Insurance for only $2,500 in PIP benefits.

A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo. *Wilcoxon v Minnesota Mining & Mfg Co,* 235 Mich App 347, 357; 597 NW2d 250 (1999). In reviewing a decision under MCR 2.116(C)(10),[1] this Court considers all documentary evidence in the light most favorable to the non-moving party, affording all reasonable inferences to the nonmovant, to determine whether there is any genuine issue of material fact that would entitle the non-moving party to judgment as a matter of law. *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 488; 618 NW2d 1 (2000); *Wilcoxon, supra* at 357-358. Failure of the non-moving party to rebut evidence submitted by the moving party that no genuine issue of material fact exists requires the trial court to grant the motion for summary disposition. *Nastal v Henderson & Assoc Investigations, Inc,* 471 Mich 712, 725-726; 691 NW2d 1 (2005). "[Q]uestions involving the proper interpretation of a contract or the legal effect of a contractual clause are also reviewed de novo." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

Plaintiff argues that she is entitled to PIP benefits under either the terms of her parents' no-fault policy as a "named insured" or under MCL 500.3114(1) because she was "the person named in the policy."[2] We disagree. This Court has repeatedly held that the phrase "the person named in the policy" under MCL 500.3114(1) is synonymous with the term "named insured." *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264; 548 NW2d 698 (1996), citing *Transamerica Ins Corp of America v Hastings Mut Ins Co,* 185 Mich App 249, 255; 460 NW2d 291 (1990); *Dairyland Ins Co v Auto-Owners Ins Co,* 123 Mich App 675, 686; 333 NW2d 322 (1983). "Additionally, merely listing a person as a designated driver on a no-fault policy does not make the person a 'named insured.'" *Cvengros, supra* at 264*,* citing *Harwood v Auto-*

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[1] Although Citizens brought their motion under MCR 2.116(C)(8) and (C)(10), both parties cited and relied on documentary evidence to support their positions. Further, the trial court cited from the policy itself in reaching its decision. Thus, it is clear that the trial court actually granted the motion under MCR 2.116(C)(10) because it considered the parties' documentary evidence.

[2] MCL 500.3114(1) states in pertinent part, "[A] personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to *the person named in the policy*, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. . . ." (Emphasis added.)

Owners Ins Co, 211 Mich App 249, 253; 535 NW2d 207 (1995); *Transamerica, supra* at 254. The *Cvengros* Court reasoned that if any listed driver could qualify as "a person named in the policy" under MCL 500.3114(1), then the insurer would be subject to near limitless liability. *Cvengros, supra.* See also *Transamerica, supra* at 254-255 (denying PIP benefits to a non-resident relative of a named defendant based on a potential and hypothetical expansion of liability).[3]

Plaintiff also argues that she was "the person named on the policy" under MCL 500.3114(1) because she was listed as an occasional driver, and the policy provided that "[t]he declarations, endorsements and application are hereby incorporated and made a part of this policy." However, the document adding plaintiff as an occasional driver could not have been part of the policy for determining whether she was "the person named on the policy" because that document provided in bold print that "Your Policy is Based On The Following, Which Is Not Part Of The Policy."

Plaintiff next argues that, because the policy did not define the term "named insured," *Cvengros* is inapplicable. Plaintiff's argument is without merit because the declarations expressly listed her parents as named insureds and did not list her as a named insured. The policy further provided that only a "'named insured' shown in the Declarations" or a family member living with a "named insured" would be entitled to PIP benefits.[4] Thus, even without an express definition solely defining the term "named insured," it was clear from the declarations and the policy that plaintiff was not a named insured under the terms of the policy. Further, she was not entitled to PIP benefits unless she actually lived with a named insured, and it is undisputed that she did not.

Plaintiff next argues that under *Briley v Detroit Auto Inter-Insurance Exchange,* 140 Mich App 692, 697; 365 NW2d 216 (1985), a listed principal driver was determined to be "the person named on the policy" even though another entity was listed as the named insured. However, *Briley* considered MCL 500.3109a and did not consider MCL 500.3114(1). The *Briley* Court refused to apply *Dairyland* because it was "not persuaded by the dicta [from *Dairyland*] given the different statutory language and policies involved." *Briley, supra* at 697.

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[3] MCL 500.3114(1) provides that any relative living with "the person named in the policy" is entitled to PIP benefits. The policy similarly provides that any relative of a "named insured" living with a named insured is entitled to first-party PIP coverage. Although plaintiff counters that she is not seeking to expand liability to others under such a theory, plaintiff's argument ignores the fact that we have already refused to deem a designated driver as a "named insured" because doing so could hypothetically expand the PIP coverage to relatives in a designated driver's second home, and we did so when the designated driver only sought *personal* PIP benefits. *Transamerica, supra* at 251, 254-255. Thus, plaintiff's argument has already been rejected by this Court.

[4] The policy defined "you" as "the 'named insured' shown in the Declarations." "Insured" includes "[y]ou or any 'family member' injured in an 'auto accident.'" The policy also provided that only an "insured" would be entitled to PIP benefits for an accident not involving a covered vehicle.

We find plaintiff's argument unpersuasive because the recent ruling from *Cvengros* is more on point with this case, particularly since *Cvengros* was decided after *Briley* and considered the precise statute at issue, MCL 500.3114(1).[5]

Plaintiff also argues that she was a named insured because Citizens did not decide who would be a named insured but rather left that determination up to its agents. Plaintiff has cited no authority to support her argument that a person is a named insured or "the person named in the policy" under MCL 500.3114 because the person arguably could have been designated as such, so we need not address this argument.[6] Moreover, that plaintiff might have qualified as either a "named insured" or "the person named in the policy" if things had been done differently does not affect her status as a mere listed driver. Plaintiff does not argue that the agent misrepresented the coverage, ignored requests to add her as a named insured, or that she or her parents asked anyone if she would be covered if she moved out of the parents' home.[7]

Finally, plaintiff argues that Citizens should be equitably estopped from denying PIP coverage, citing *Morales v Auto-Owners Ins Co*, 458 Mich 288, 296-297; 582 NW2d 776 (1998), which provides:

> [F]or equitable estoppel to apply, plaintiff must establish (1) that the defendant's acts or representations induced plaintiff to believe that the policy was in effect at the time of the accident, (2) that the plaintiff justifiably relied on this belief, and

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[5] Plaintiff also argues that *Cvengros, supra* at 264, is dicta to the extent that it held that "named insured" was synonymous with "the person named in the policy" and that listing a person as a driver does not make the driver a named insured. However, because those rules were necessary to the holding in *Cvengros*, they were not dicta. *Briley* could not have established prospectively that any similar holding in future cases (e.g., *Cvengros*) would also be dicta. Plaintiff also asserts that *Cvengros, supra* at 264, was impliedly modified by *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146-147; 644 NW2d 715 (2002). However, *State Farm* considered entirely different statutory language in a different statute (MCL 500.3123) and thus is inapplicable to whether plaintiff was "the person named in the policy" under MCL 500.3114(1). Because *Cvengros* addressed MCL 500.3114(1), which is at issue in this case and has not been overruled, it is binding. MCR 7.215(J)(1).

[6] *McCartney v Attorney General*, 231 Mich App 722, 725; 587 NW2d 824 (1998) (holding that this Court need not consider a position or argument when the appellant fails to provide any authority to support it).

[7] Although plaintiff claims she could have been listed as a "named insured" without any change in premium, plaintiff merely speculates that because the agent would list who was a named insured and the higher premium did not consider plaintiff's residency, listing her as a named insured would not have cost any more. Assuming this allegation is even material, speculation cannot defeat Citizens' motion for summary disposition. *Detroit v General Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998). Moreover, this allegation is not supported by any citation to the record tending to show that including plaintiff as a named insured would not have affected the premium. We need not search the record to find support for plaintiff's allegations. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

(3) that plaintiff was prejudiced as a result of his belief that the policy was still in effect. [Citations omitted.]

"Equitable estoppel arises only when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist . . . ." *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 22; 592 NW2d 379 (1998) (citations omitted). Because Citizens had no duty to advise plaintiff of the adequacy of coverage, plaintiff has failed to show that Citizens intentionally or through culpable negligence induced her to believe she was covered.[8] Plaintiff never rebutted Citizens' affidavit evidence that it had no knowledge that she had moved out of her parents' home before the accident and that it never checked her licensing records in 2001. Plaintiff has also provided no authority to support her argument that Citizens had a duty to investigate whether she was still living in her parents' home.

Notably, plaintiff does not claim that the language of the policy justified her or her parents' beliefs that she was covered. Instead, plaintiff argues that because Citizens accepted their higher premiums after she had moved out, they believed she was covered. However, the policy terms expressly provided that a relative of a named-insured would have PIP coverage if such relative lived with a named insured. We decline to hold that an insurer may not enforce a contractual provision in a policy without first reminding the insured that the provision applies, particularly when the insured's incorrect interpretation was not induced by the insurer.

Plaintiff also argues that Citizens should be equitably estopped from denying underinsurance benefits to her. "[T]he rights and limitations of [underinsurance] coverage are purely contractual and are construed without reference to the no-fault act." *Rory, supra* at 466. Plaintiff's parents' contract provided underinsurance benefits for the named insured or the relative of a named insured who lived in the household of the named insured. Accordingly, the trial court did not err in dismissing plaintiff's claims for underinsurance benefits for the reasons previously stated.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray

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[8] See *Mate, supra* at 23 ("Generally, an insurance agent does not have an affirmative duty to advise a client regarding the adequacy of a policy's coverage. Instead, the insured is obligated to read the policy and raise questions concerning coverage within a reasonable time after issuance." [Citations omitted.]).