



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARIO DE LOS SANTOS,	:	NO.: 437, 2024
	:	
Appellant,	:	
	:	
v.	:	Court Below:
	:	Superior Court of Delaware
ALLSTATE PROPERTY AND	:	
CASUALTY INSURANCE	:	
COMPANY AND STATE FARM	:	
MUTUAL AUTOMOBILE	:	
INSURANCE COMPANY,	:	
	:	
Appellees.	:	

CORRECTED ANSWERING BRIEF BY APPELLEE

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY

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I. NATURE AND STAGE OF PROCEEDINGS

This is a bodily injury claim arising from an October 7, 2021, motor vehicle accident involving Appellant and allegedly uninsured motorist.

Appellant (Plaintiff below) made claims against Appellees State Farm Mutual Automobile Insurance Company (State Farm) and Allstate Property and Casualty Insurance Company (Allstate) alleging Appellant had uninsured motorist coverage with one or both insurance companies.

Answers were filed and the allegations were denied with each insurance company denying there was an active policy on the date of loss.

After discovery, Summary Judgment Motions were filed by each insurance company. The Superior Court granted each motion finding that Appellant did not have a valid policy with either insurance company on the date of loss.

The Superior Court held the State Farm policy was cancelled prior to the date of loss, and the premium for the Allstate policy was never paid and the policy was properly cancelled.

The only issue raised in the Superior Court was a claim for uninsured motorist benefits for bodily injury.

Appellant filed a timely appeal and timely filed his opening brief on December 3, 2024. This is Appellee Allstate's Answering Brief.

II. SUMMARY OF ARGUMENT

1. **The Superior Court erred in granting summary judgment for Defendant State Farm by determining that 18 *Del. C.* § 3915 did not preclude the cancellation of De Los Santos' policy until the premium was refunded.**

Response: This argument is directly solely at State Farm and not Allstate and therefore, Allstate takes no position on this issue. To the extent a response is required, it is denied.

2. **The Superior Court erred in granting summary judgment for Defendant Allstate because there exists a genuine issue of material fact in dispute as to the cause of the failure for De Los Santos' Allstate premium to be paid on September 29, 2021.**

Response: Denied.

There is no question of fact that the premium was not paid.

The Superior Court properly found no evidence that Allstate was the cause of Appellants nonpayment of the premium.

Appellant did not argue below that the unknown reason for the lack of premium payment was a material question of fact preventing summary judgment from being granted. Appendix A212, para. 20.

III. STATEMENT OF FACTS

Appellant alleges he was involved in an October 7, 2021, motor vehicle accident with an alleged uninsured driver. Other than the date of the collision, no other facts of the loss are relevant.

Prior to October 2021, Appellant had insured his vehicle with State Farm. Appendix at A51 page 46.

Appellant's State Farm policy was set to renew for six months on September 27, 2021. Appendix at A74.

Appellant testified he decided to switch coverage to Allstate. Appendix at A50 Page 45.

On September 28, 2001, after the State Farm policy had renewed, Appellant completed an application for insurance to be effective October 5, 2021, and was assigned Policy Number 808391459. Appendix at A79.

On that same date, Appellant authorized an electronic payment for the premium, with payment scheduled to be deducted as early as October 1, 2021. Appendix at A85.

On October 5, 2021, a letter was sent to Appellant advising him that the premium was returned unpaid. Appendix at A87.

On October 8, 2021, there being no payment from Appellant , the policy issued under policy number 808391459 was voided for non-payment. Appendix at A76

Appellant had no active Allstate policy on October 7, 2021, as the policy issued on October 5, 2021, under Policy Number 808391459, was voided for non-payment of premium, and a new policy was not effective until October 18, 2021, long after the October 7, 2021, motor vehicle accident. Appendix at A76.

Appellant subsequently completed a new application for insurance on October 11, 2021, with an effective date of October 18, 2021, paid the premium and was issued a new policy under new Policy Number # 808407196. *See*, 2nd Allstate policy Appendix at A89.

Appellant does not dispute that he never stopped payments to State Farm and believed he was still insured with State Farm at the time of the accident. Appendix at A52, page 50.

During his deposition, Appellant was able to make several points clear. First, he wanted to change from State Farm to Allstate, but it was not completed. Appendix at A53, page 57.

Second, he could not pay for the Allstate insurance as he had paid for the State Farm Insurance and was not trying to have two policies the same month. Appendix at A53 page 54-55.

Third, payment paid for the Allstate insurance for which he had applied for on September 28, 2021, was not completed, but he does not know why. Appendix at A53, page 55-56; A58, page 77; and A62 page 90.

Fourth, Appellant stated he thought that State Farm would provide coverage through October, and he would change to Allstate at the end of the month. Appendix at A5,5 page 65 and A56, page 69.

Appellant was clear in his testimony that the premium for the original Allstate policy applied for on September 28, 2021, was never paid.

Allstate agrees with Appellant that the premiums for the first policy were never paid. Therefore, there was no active Allstate policy on October 7, 2021.

The application states that unless the premium is paid in cash, the policy is conditional, and if payment is not honored on presentation, the policy is void from its inception. Appendix at A82.

Therefore, there is no question of fact that the premiums for the first policy were not paid, and Appellant had no coverage with Allstate at the time of the October 7, 2021, motor vehicle accident.

IV. ARGUMENT

A. Appellants Argument That the Superior Court Erred in Granting Summary Judgment for Defendant State Farm by Determining That 18 Del. C. §3915 Did Not Preclude the Cancellation Of De Los Santos' Policy Until The Premium Was Refunded.

This argument is directed solely at co-appellee State Farm and not Appellee Allstate.

Whether the State Farm policy was in effect on the date of loss is a separate issue and analysis from whether there is a question of fact concerning the lack of coverage with Allstate.

Each coverage analysis is separate and not dependent on the resolution of the other policy, and therefore Allstate takes no position on the Appellant's arguments concerning the applicability of the State Farm policy.

**B. The Superior Court Properly Granted Summary Judgment for Allstate
As there is No Question of Material Fact**

1. Question Presented

The Superior Court erred in granting summary judgment for Defendant Allstate because there exists a genuine issue of material fact in dispute as to the cause of the De Los Santos' Allstate premium to be paid on September 29, 2021.

2. Scope of Review

The review of a granting of summary judgment is reviewed by the Supreme Court of Delaware *de novo*.

2. Merits of Argument

(a) There is no Material Question of Fact to Preclude Summary Judgment

The Trial Court's granting of summary judgment in favor of Allstate was proper as there is no question of material fact precluding summary judgment.

The trial court stated in the ruling granting summary judgment, "Plaintiff's assertion that it was somehow Allstate's fault for failure to charge the correct account is unsupported by any evidence." *See* Exhibit "A" to Appellants Opening Brief.

When summary judgment motions were filed, discovery was closed and no facts as to the cause of the nonpayment of the premium was part of the record.

It was the Appellant's sole responsibility to ensure his vehicle was properly insured and that any premiums were paid.

As outlined in the Statement of Facts, Appellant admitted he could not pay for the Allstate insurance as he had paid for the State Farm insurance; was not trying to have two policies the same month; and his attempted payment for the first Allstate policy was not completed, but he does not know why.

Finally, Appellant testified that his intention was to have State Farm provide coverage for October and he would change to Allstate at the end of the month. None of this testimony by Appellant even hints at his failure to pay for the coverage being the fault of Allstate.

Despite the complete lack of any evidence in the records, in Appellant's Answer to the Summary Judgment Motions, Appellant makes a gratuitous statement that "Allstate used the wrong information to attempt to electronically withdraw his premium payment. . . ." Appendix A212 para. 20. This was the entirety of the Appellant's response to Allstate's Summary Judgment Motion in the lower court. Appellant never actually argues that there is a question of material fact, although the trial court's decision stating any argument that the failure was on Allstate's part was "unsupported by any evidence" does confirm there is no question of fact on that issue.

Notably, even this random statement in opposition to the summary judgment motions stops short of actually blaming Allstate for the payment issue and leaves open the option that Appellant provided wrong information, something that cannot be ruled out given Appellants stated lack of knowledge as to why the payment was not made.

On appeal, Appellant only restates facts and cites no statutes, case law, or policy language to support an argument that an unpaid premium for a new policy somehow imposes free coverage for this loss.

Appellant is the only possible witness who could testify as to why the premium payment was not made and he was unable to give a specific reason. The lack of an unknowable answer does not create a question of fact to justify a jury trial to decide an issue for which there are no competing facts to assess.

In *Williams v. UPS of Am., Inc.*, 2017 Del. Super. LEXIS 608 (Super. Ct. Nov. 9, 2017), the Superior Court granted summary judgment when there was no admissible evidence available for Plaintiff to make a prima facie case as to the identity of an alleged tortfeasor, despite there being a “question of fact”, noting, “The Court will not consider inadmissible hearsay when deciding a Motion for Summary Judgment, and “[t]he non-movant cannot create a genuine issue of fact with bare assertions or conclusory allegations, but must produce specific evidence that would sustain a verdict in its favor.” *Id* at *3.

In the case at bar, Appellant has a similar issue in that he cannot claim a question of fact to defeat summary judgment when he has no actual fact for a jury to consider in deciding a triable issue. The only evidence in the record as to why the premium was not paid is from the Appellant who stated he does not know why, and that is insufficient to defeat summary judgment.

The only material fact is not in dispute, that being there was no Allstate policy in effect at the time of the loss, and therefore no policy against which a uninsured motorist claim can be made.

Therefore, the only relevant fact as to whether Appellant had a policy with Allstate on October 7, 2021, is that Appellant and Allstate both agree the premium was never paid, and that an Allstate policy was not in effect until October 18, 2021, well after the date of loss. As this fact is not in dispute, there is no dispute that Appellant was not insured by Allstate on October 7, 2021. The trial court properly reviewed the record and determined there was no evidence to support an allegation that Allstate played any role in preventing the original premium payment, nonpayment of premium is ground for voiding or cancelling the policy, and summary judgment was properly granted.

(b) Payment Of Premium Is a Prerequisite for Coverage

Appellant's did not address in the trial court, or on appeal, Allstate's arguments that the voiding of coverage was permissible.

Briefly, there are no Delaware Statutes that require insurance coverage when the premium was not paid, and the application itself makes the policy void at inception for nonpayment. Appendix at A82.

To the contrary, in the context of a policy renewal (and not new policy as we have at bar) 18 *Del. C.* §3903(d) addresses a premium non-payment in an existing policy or a policy renewal and specifically states that there is no coverage during that "gap" in coverage until the premium is actually received.

In 18 *Del. C.* §3904 (a) (1), nonpayment of premium is the first listed basis to permit the cancellation of a policy.

In 18 *Del. C.* §3905(d), cancellation or non-renewal for the nonpayment of premium exempts the insurer from providing notice of the assigned risk plan.

In 18 *Del. C.* §3906, cancellation or non-renewal for the nonpayment of premium exempts the insurer from providing notice of the right to appeal cancellation to the insurance commissioner.

These sections make it clear that a prerequisite for coverage is the actual payment of the premium.

CONCLUSION

As to the Appeal against Allstate, the trial court was correct in granting summary judgment as there was no policy with Allstate in effect at the time of the loss under which any claim could be made.

The trial court correctly held that the failure to pay a premium is grounds for Allstate to cancel the policy and is supported by statute.

To the extent the reason why the failure to make a premium payment is relevant in this matter, the trial court properly held any claim that Allstate was at fault for Appellants failure to pay the premium was “unsupported by any evidence” and continues to be so.

Therefore, Appellee Allstate Property and Casualty Insurance Company asks to affirm the trial court’s decision granting summary judgment in favor of Allstate.

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