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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
Bruce E. RUBEN, M.D., P.C., Plaintiff-Appellee,
v.
AUTO CLUB GROUP INSURANCE COMPANY, Defendant-Appellant.
No. 250895.

Feb. 15, 2005.

Gerard V. Mantese, Mantese and Associates, P.C., Troy, MI for plaintiff-appellee.

James G. Gross, Gross, Nemeth & Silverman, Detroit, MI for defendant-appellant.

Before: MURRAY, P.J., and METER and OWENS, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Defendant appeals as of right the jury verdict finding plaintiff's medical charges reasonable and customary and awarding those charges. We affirm.

Defendant first argues that the trial court erred in failing to grant it a directed verdict on plaintiff's claim based on no-fault insurance coverage. Defendant bases its argument on the fact that the court found that the injured party's injury did not arise out of the use of a motor vehicle as a motor vehicle. This Court reviews a trial court's denial of a directed verdict motion de novo. *Sniecinski v. Blue Cross & Blue Shield of Michigan*, 469 Mich. 124, 131, 666 N.W.2d 186 (2003). In evaluating a motion for directed verdict, this Court views the evidence in the light most favorable to the nonmoving party. *Lewis v. LeGrow*, 258 Mich.App. 175, 192, 670 N.W.2d 675 (2003). Any conflicting evidence is resolved in the nonmoving party's favor. *Id.* A directed verdict is only appropriate when no factual question exists on which reasonable jurors could differ. *Id.* at 192-193, 670 N.W.2d 675.

The trial court found that plaintiff's action survived based on equitable estoppel. Equitable estoppel is not a separate cause of action. Instead, it is a legal theory that precludes defendant from asserting or denying the existence of a particular fact. *Conagra, Inc. v. Farmers State Bank*, 237 Mich.App. 109, 140-141, 602 N.W.2d 390 (1999). Plaintiff presented sufficient evidence that defendant represented and admitted that coverage existed. Defendant's answer to plaintiff's complaint admitted coverage. Defendant's internal claim diaries, admitted as trial exhibits, stated that coverage existed. Plaintiff's representative specifically informed Bruce Ruben and the injured party that coverage existed. And, defendant actually paid some of the bills for plaintiff's treatment. Ruben specifically testified that he relied on these representations before starting treatment.

Viewing this evidence in the light most favorable to plaintiff, a reasonable juror could find that defendant, by its representations, admissions, or silence, intentionally or negligently induced plaintiff to believe coverage existed and that plaintiff justifiably relied and acted upon that belief. *Conagra, supra* at 141, 602 N.W.2d 390. Plaintiff would be prejudiced if defendant could now change its position and deny coverage. Therefore, plaintiff adequately presented evidence to support the theory of equitable estoppel. *Id* . This precludes defendant from arguing that coverage did not exist. *Id.* Therefore, the trial court correctly denied defendant's motion for a directed verdict. *Lewis, supra* at 192-193, 670 N.W.2d 675.

Defendant argues that estoppel should not apply because this is an insurance case. Generally, the application of waiver and estoppel are limited in such cases. *Kirschner v. Process Design Assoc., Inc.*, 459 Mich. 587, 593-594, 592 N.W.2d 707 (1999). The doctrines will not ordinarily apply to broaden coverage of an insurance policy to risks not assumed or specifically excluded from the policy. *Id.* But this rule of law applies to situations where the insured is attempting to *extend* coverage. The idea behind the rule is that a party to the insurance contract should not get a benefit for which it did not contract. *Id.* at 594, 592 N.W.2d 707. The situation in this case is different. Here, it is not a party to the contract wishing to extend coverage beyond his original agreement. Instead, it is an intended third-party beneficiary relying on a contracting party's statements

regarding coverage. This is a distinct situation to which the general purpose of the rule for avoiding estoppel does not apply. Defendant cites no authority to support extending the rule to this situation. This Court will not search for authority to support a party's argument. *Mudge v. Macomb Co.*, 458 Mich. 87, 105, 580 N.W.2d 845 (1998).

***2** Defendant next argues that the trial court erred in denying its motion for JNOV on plaintiff's promissory estoppel claim. This Court reviews a trial court's denial of a JNOV motion de novo. *Sniecinski, supra* at 131, 666 N.W.2d 186. When reviewing a motion for JNOV, this Court views the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Central Cartage Co. v. Fewless*, 232 Mich.App. 517, 524, 591 N.W.2d 422 (1998). If reasonable jurors could honestly reach difference conclusions, the verdict must stand. *Id.*

The elements of promissory estoppel are:

> (1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. [*Ardt v. Titan Ins. Co.*, 233 Mich.App. 685, 692, 593 N.W.2d 215 (1999), quoting *Mt Carmel Mercy Hosp. v. Allstate Ins. Co.*, 194 Mich.App. 580, 589, 487 N.W.2d 849 (1992).]

Defendant challenges the second element. It argues that the action in reliance on the promise must be something that plaintiff would not have otherwise done. Defendant argues that no evidence existed that plaintiff would not have treated the injured party at all had defendant denied coverage.

Despite defendant's contention, sufficient evidence existed for reasonable jurors to differ on this issue. Plaintiff must merely offer evidence that it reasonably took "action of a definite and substantial character" based on defendant's promise. *Ardt, supra* at 692, 593 N.W.2d 215. Ruben specifically testified that he relied on defendant's promises of coverage before treating the injured party. A reasonable inference from his testimony is that plaintiff would not have treated the injured party without defendant's coverage. This Court must affirm a verdict if reasonable inferences from the evidence supports it. *Central Cartage Co, supra* at 524, 591 N.W.2d 422. Therefore, the trial court properly denied JNOV.

Defendant also argues that the trial court erred in denying its JNOV motion on plaintiff's contract claim. Defendant challenges the legal consideration element in this case. To constitute consideration, a bargained for exchange must exist. *GMC v. Dep't of Treasury*, 466 Mich. 231, 238, 644 N.W.2d 734 (2002). Either a benefit to one side or a detriment to the other side must exist. *Id.* at 238-239, 644 N.W.2d 734. Courts generally do not inquire into the sufficiency of consideration. *Id.* Whether valid consideration exists is a question of fact for the jury. *Haji v. Prevention Ins. Agency, Inc.*, 196 Mich.App. 84, 87-88, 492 N.W.2d 460 (1992).

Defendant's argument is that no consideration existed because plaintiff did not prove that it would not have treated the injured party but for defendant's promises. Essentially, this argument boils down to defendant arguing that no contract existed because plaintiff could have entered into the same contract with someone else, likely another insurance company, had defendant not promised to pay. However, the possibility to contract with someone else does not destroy consideration in the existing contract. Such a rule would destroy nearly every contract in existence. Defendant promised to pay for reasonable medical services. Based on this promise, plaintiff suffered a detriment in treating the injured party. Therefore, consideration existed. *GMC, supra* at 238-239, 644 N.W.2d 734.

***3** Finally, defendant argues that it is entitled to a new trial because the lower court instructed the jury on the no-fault cause of action. Defendant specifically stated, through counsel, that it was satisfied with the instructions. Because defendant acquiesced to the jury instructions as given, it is not entitled to any relief on this issue. *Chastain v. GMC*, 254 Mich.App. 576, 591, 657 N.W.2d 804 (2002). Defendant waived this issue. Further, instruction on the no-fault cause of action was appropriate due to the equitable estoppel issue previously discussed.

Affirmed.

2005 WL 356279 (Mich.App.)

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