[Cite as *Am. Internatl. Recovery v. Allstate Ins. Co.*, 2009-Ohio-6508.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

AMERICAN INTERNATIONAL RECOVERY,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009-P-0008**
- vs -	:	
ALLSTATE INSURANCE COMPANY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2007 CV 0674.

Judgment: Reversed and remanded.

Walter H. Krohngold and *Leah J. Stevenson,* Mazanec, Raskin, Ryder & Keller Co., L.P.A., 100 Franklin's Row, 34305 Solon Road, Solon, OH 44139 (For Plaintiff-Appellant).

Mel L. Lute, Jr., Baker, Dublikar, Beck, Wiley & Mathews, 400 South Main Street, North Canton, OH 44720 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, American International Recovery, appeals the Judgment Entry of the Portage County Court of Common Pleas, in which the trial court granted a Motion for Directed Verdict in favor of defendant-appellee, Allstate Insurance Company. For the following reasons, we reverse the decision of the trial court.

{¶2} American International Recovery (AIR) is a division of American International Group (AIG), which owns various insurance companies which issue policies of property and casualty insurance to individuals and businesses. AIG issued an insurance policy to Leann Chewning, which covered the operation of her own automobile, as well as the operation of other automobiles.

{¶3} On November 10, 2006, Chewning, while driving a motor vehicle belonging to Gerald Formoso, was involved in an accident, with property damage totaling $21,677.50. AIR, which is responsible for litigation subrogation claims of AIG, instituted this action against defendant-appellee, Allstate Insurance Company, the insurer of Formoso's vehicle involved in the accident, for negligence.

{¶4} A jury trial was held on December 3, 2008. At trial, Chewning stated that she previously worked with Formoso; however, she did not know him very well from work. She further testified that she remembered "at least four" people driving Formoso's Dodge Charger on the night of the accident. Chewning said that Formoso gave a fellow co-worker, Jessica, the keys to the car and then "he whispered something to her." Moreover, she testified that she believed she was permitted to drive the car. After Jessica drove a short distance, she stopped the car and Chewning switched places to the driver's seat. Chewning proceeded to drive the car on what she described as a "really twisty" road. She drove off the road "went through a ditch and hit a fence and then some trees" injuring her hand and back. She further testified that she "felt really bad" and that the accident was "her fault."

{¶5} Deposition testimony, entered into the record as an exhibit, revealed that Formoso called his insurance agency a few days prior to the accident, and asked to suspend his insurance on the Dodge Charger for the next weekend; however, coverage

was suspended immediately. Formoso stated that he was never told coverage would be suspended immediately. He also stated that he "thought [he] was fully covered [on the night of the accident] or otherwise [he] would never have taken the car." He further stated that he received a letter after the accident indicating that his policy was suspended on the date he called and not the next weekend, as he claims that he specifically requested.

{¶6} The cancellation policy, also entered into evidence, contained a clause enabling an insured person to "cancel this policy by notifying [the insurer] of the future date you wish to stop coverage."

{¶7} At the conclusion of testimony, Allstate made a Motion for Directed Verdict based upon AIR's failure to present evidence establishing the duty of care owed by an insurance agent to an insured, against which the jury could evaluate AIR's negligence claim. Allstate argued that since AIR failed to present expert testimony establishing the duty of care owed by the insurance agent to its insured, there was no circumstance under which AIR could have prevailed.

{¶8} The trial court held that "[w]ithout affirmative evidence establishing the duty of an agent to its insured, a lay jury would be left to speculate about the appropriate standard of care or duty element necessary to establish the negligence claim." Consequently, the trial court granted Allstate's Motion for Directed Verdict and dismissed the case with prejudice.

{¶9} AIR timely appeals and raises the following assignment of error:

{¶10} "Whether expert testimony is necessary to establish that an insurance company is liable when it cancels an insured's car insurance on the wrong date."

{¶11} AIR argues that the trial court erred in granting a directed verdict.

{¶12} "Pursuant to Civ.R. 50(A)(4), '[w]hen a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.'" *Jacobs v. Budak*, 11th Dist. No. 2007-T-0033, 2008-Ohio-2756, at ¶41, citing *Bliss v. Chandler*, 11th Dist. No. 2006-G-2742, 2007-Ohio-6161, at ¶46.

{¶13} "[B]ecause a motion for a directed verdict presents a question of law, an appellate court must conduct a *de novo* review of the trial court's judgment." *Cook v. Blank*, 11th Dist. No. 2007-T-0041, 2008-Ohio-5015, at ¶78 (citations omitted).

{¶14} AIR alleges that "reasonable minds could clearly find in favor of [AIR] without the need for expert testimony." Moreover, "the foreseeable significance of failing to notify the insured that cancellation is effective immediately, and not at a later date as he specifically requested, is obvious and clear and does not require expert testimony."

{¶15} AIR cites to case law which states that expert testimony is not always required to establish a duty of care in negligence cases. See *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 130 ("there is an exception to that rule in cases where the nature of the case is such that the lack of skill or care of the physician and surgeon is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it, and in such case expert testimony is not necessary"); *Eastham v. Nationwide Mut. Ins. Co.* (1990), 66 Ohio App.3d 843, 847-848 ("[w]hen it is a matter of common knowledge that a certain act may produce injury,

expert testimony is not required"); *Riley v. Clark*, 4th Dist. No. 98CA2629, 1999 Ohio App. LEXIS 5436, at *21 ("expert testimony, or testimony at all, for that matter, is not always required to establish a standard of care") (citation omitted).

{¶16} Allstate argues that "it was essential to the success of [AIR's] claim to establish that the insurance agent, Don Kramer, had materially violated a duty of care owed to the insured" and expert testimony was necessary to establish the duties owed. Allstate cites to several cases from our sister districts finding expert testimony necessary to establish the standard of care of an insurance agent. See *Lawson v. Ohio Cas. Ins. Co.*, 8th Dist. No. 65336, 1994 Ohio App. LEXIS 2367, at *8, *MBE Collection, Inc. v. Westfield Cos.*, 8th Dist. No. 79585, 2002-Ohio-1789, at ¶16; *Associated Visual Communications v. Erie Ins. Group*, 5th Dist. No. 2006 CA 00092, 2007-Ohio-708, at ¶65.

{¶17} AIR maintains that the cases cited by Allstate "are markedly differently than the case at bar." AIR asserts that the issues in those cases "are of an extremely complex nature and involve expertise on industry standards and policy interpretation. No such complicated issues are present in the instant case." Further, AIR argues that the cases cited "involved issues of policy interpretation" which "would appropriately require expert testimony," however, the instant case is different because "[t]he only question is whether [Formoso] should have been told by the Allstate agent that he no longer had coverage as of the day after he spoke with the agent." Moreover, AIR contends that while "nature and adequacy of insurance coverage may well require expert testimony," "whether an insured should be advised that he does not have insurance coverage as of a particular day when he specifically requested coverage to

be terminated 6 days later is not such a complicated matter that required expert testimony." We agree.

{¶18} In the instant case, the duty of the insurance agent was "so apparent as to be within the comprehension of laymen and require[d] only common knowledge and experience to understand and judge it, and in such case expert testimony [wa]s not necessary." *Bruni,* 46 Ohio St.2d at 130. It is a matter of common knowledge that when insurance is cancelled, it is critical to timely notify the insured of the effective date of that cancellation, especially if that cancellation occurs immediately. See *LeForge v. Nationwide Mut. Fire Ins. Co*. (1992), 82 Ohio App.3d 692, 700-701 ("[w]hen it is a matter of common knowledge that a certain act may produce injury, expert testimony is not required"). The issues regarding duty of care owed in the instant case are not of a complex nature involving industry standards or policy interpretation. A jury is able to determine if the insurance agent violated a duty of care owed to Formoso without expert testimony.

{¶19} AIR's sole assignment of error is with merit.

{¶20} For the foregoing reasons, the Judgment Entry of the Portage County Court of Common Pleas, granting Allstate's Motion for Directed Verdict, is reversed and remanded for further proceedings on AIR's contract and negligence claims, consistent with this Opinion. Costs to be taxed against appellee.

CYNTHIA WESTCOTT RICE, J., concurs,

TIMOTHY P. CANNON, J., concurs with Concurring Opinion.

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TIMOTHY P. CANNON, J., concurring.

{¶21} I concur with the opinion of the majority.

{¶22} Appellant, in its reply brief, raised the issue of the trial court's failure to rule on its breach of contract claim. Appellee, at oral argument, claimed that somehow appellant has waived or abandoned this claim. I write separately to clarify that in my opinion, on remand, all of appellant's claims remain viable and pending.