

No. 1-15-2189

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADONIS WILLIAMS, a minor,)	Appeal from the
his Next Friend Channon Kelly)	Circuit Court of
and CHANNON KELLY,)	Cook County.
)	
Plaintiffs-Appellants,)	
)	No. 13 CH 7419
v.)	
)	
GLOBE LIFE AND ACCIDENT)	
INSURANCE COMPANY,)	The Honorable
)	Kathleen Pantle
Defendant-Appellee.)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted summary judgment in favor of defendant insurance company because of the absence of any genuine issue of material fact with regard to whether the Insured made material misrepresentations on his application for life insurance. Affirmed.

¶ 2 This appeal arises from the trial court's order granting summary judgment to plaintiff Globe Life and Accident Insurance Company (Globe Life), regarding the enforceability of a life insurance policy belonging to the deceased Henry Williams, Jr. ("decedent") for the benefit of plaintiff Channon Kelly and their son Adonis Williams. On appeal, plaintiff contends that the

trial court erroneously granted Globe Life's motion for summary judgment because there are genuine issues of material fact regarding whether the answers on Williams' life insurance application about his marital status, address and drug abuse history were material misrepresentations. Plaintiff also contends that the trial court erred by granting Globe Life's motion to strike paragraph 13 of plaintiff's affidavit on hearsay grounds, as well as Exhibit F, a transcribed telephone call, on foundation grounds. We affirm.

¶ 3

BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On May 16, 2011, decedent completed a Globe Life insurance policy application, naming plaintiff and their son Adonis as beneficiaries. Although decedent signed the application, plaintiff allegedly completed most of the questions. She listed herself as decedent's fiancé and her own address in Maywood, Illinois under the address prompt. In addition, she alleged that Williams had not abused drugs in the three years prior to filing the application. Globe Life then issued Williams a life insurance policy for \$50,000. On June 12, 2012, Williams died from gunshot wounds, during the policy's two-year contestable period.

¶ 5 Thereafter, Globe Life noticed inconsistencies with decedent's insurance application when plaintiff filed a claim and listed herself as his "girlfriend" instead of his "fiancé" on her claimant statement. In addition, decedent's death certificate indicated that his address was in Kaukauna, Wisconsin, not with plaintiff in Illinois. Further, Globe Life learned that he had been married to another woman, Corethea Bryant, at the time he signed the insurance application. Thus, Globe Life informed plaintiff that it would not pay her the life insurance proceeds. Plaintiff then filed a complaint for declaratory judgment, seeking a declaration that Globe Life wrongfully withheld payment.

¶ 6 During discovery, plaintiff's deposition, numerous affidavits and additional documentation revealed the following. Bryant married decedent in 2010 and they were never separated or divorced. Plaintiff testified that she knew decedent had been married to Bryant when he proposed marriage to her and conditioned the proposal on him divorcing Bryant. There was no engagement party or wedding date, and plaintiff referred to herself as decedent's "girlfriend "from 1999 to 2012, "the entire period of time" they were together. Addie Williams, decedent's mother, attested that she knew plaintiff, but never heard her son refer to her as his fiancé.

¶ 7 Both Addie and Bryant also attested that decedent lived with Bryant in Kaukauna, Wisconsin during his marriage and at the time the insurance application was filed. Further, decedent's available identification cards did not list plaintiff's address and the majority of his medical records listed his Wisconsin address. And although plaintiff testified that decedent lived with her from 1999 to 2002, Dezshun Staples, decedent's son, resided with plaintiff during this period and attested that decedent did not reside there.

¶ 8 Furthermore, Bryant witnessed decedent abuse the illegal drugs marijuana, marijuana laced with PCP, ecstasy, and "leaf" on numerous occasions from 1999 until his death. Plaintiff testified that she never saw decedent abuse drugs, but knew he was convicted of possession of a controlled substance in November, 2009. Crystal Cal, decedent's cousin, also attested that she never saw Williams abuse drugs, but she had not seen him since she moved out of state nearly 10 years prior to him submitting the insurance application. The medical examiner's toxicology report also showed that decedent was free from benzoylecgonine, ethanol, and opiates at the time of his death, but not when he signed the insurance application.

¶ 9 Additionally, Nick Danner, Globe Life's Director of Business and Underwriting, attested that if Globe Life had been aware that the address for decedent as provided on the policy application was false, it would have completed additional underwriting regarding the application. In addition, Globe Life would not have issued the policy if it had known plaintiff was decedent's girlfriend and not his fiancé, especially considering that he was married to Bryant at the time the application was filed. It was company protocol to not issue policies to beneficiaries listed as girlfriends because of the law in several states regarding public policy concerns. Further, if Globe Life had been aware of decedent's history of abusing illegal drugs it would not have issued the policy.

¶ 10 Subsequently, Globe Life filed a motion for summary judgment, contending that Williams made three misrepresentations in the insurance application allowing Globe Life to void the policy under section 154 of the Illinois Insurance Code (Code) (215 ILCS 5/154 (West 2014)). Specifically, Globe Life alleged that Williams falsely labeled plaintiff as his fiancé instead of his girlfriend. Globe Life also alleged that Williams failed to disclose his history of illegal drug abuse and falsely identified his address on his insurance application. In response, plaintiff alleged that there were no material misrepresentations in decedent's application. Specifically, Williams had no history of drug abuse and the fiancé misrepresentation was not material because he could select any beneficiary of his choice. Further, listing plaintiff's address on the insurance application was not a misrepresentation because he had lived there previously. And even if it was a misrepresentation, it was not material because Globe Life failed to provide any official policies proving it would have taken action if it had known the address was incorrect.

¶ 11 The trial court granted Globe Life's motion for summary judgment on the grounds that the undisputed and relevant facts demonstrated decedent made a material misrepresentation

when he failed to disclose his drug abuse history, his Wisconsin address, and listed plaintiff as his fiancé when they were not engaged to be married. Plaintiff then filed this timely appeal.

¶ 12

ANALYSIS

¶ 13 Plaintiff contends that the trial court erred in granting Globe Life's motion for summary judgment because there are genuine issues of material fact regarding whether the answers on decedent's life insurance application about his marital status, address and drug abuse history were material misrepresentations. Summary judgment is proper where the pleadings, admissions, depositions and affidavits demonstrate there is no genuine issue as to any material fact so that the movant is entitled to judgment as a matter of law. *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201 (2008); 735 ILCS 5/2-1005 (West 2014). In determining whether a genuine issue of material fact exists, the court must consider such items strictly against the movant and liberally in favor of its opponent. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment decisions are reviewed *de novo*. *Warren v. Burriss*, 325 Ill. App. 3d 599, 603 (2001).

¶ 14 Section 154 of the Illinois Insurance Code (Code), in pertinent part, provides:

"No misrepresentation or false warranty made by the insured or in his behalf in the negotiation for a policy of insurance, or breach of a condition of such policy shall defeat or avoid the policy or prevent its attaching unless such misrepresentation, false warranty or condition shall have been stated in the policy or endorsement or rider attached thereto, or in the written application therefor. No such misrepresentation or false warranty shall defeat or avoid the policy unless it shall have been *made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company.*" 215 ILCS 5/154 (West 2014). (emphasis added)

¶ 15 Thus, section 154 sets forth a two-prong test for determining if the policy may be rescinded. *Illinois State Bar Ass'n Mutual Insurance Co. v. Law Office of Tuzzolino & Terpinas*, 2015 IL 117096, ¶ 17. First, the applicant's statement to the insurer must be false, and second, the statement "either must have been made with an actual intent to deceive or must 'materially

affect the acceptance of the risk or hazard assumed by the insurer." *Id.*; quoting *Golden Rule Insurance Co. v. Schwartz*, 203 Ill. 2d 456, 464 (2003). When determining if a misrepresentation is material, courts analyze whether a reasonably careful person would think the misrepresentation significantly increased the risk insured against and if the insurer would have rejected the application. *Cohen v. Washington National Insurance Co.*, 175 Ill. App. 3d 517, 520-21 (1988). The insurer has the burden of proving that a misrepresentation is material. *Roberts v. National Liberty Group of Companies*, 159 Ill. App. 3d 706, 708 (1987). Material misrepresentations made accidentally or in good faith can still void the policy. *Cohen*, 175 Ill. App. 3d at 520-21.

¶ 16 Plaintiff contends that listing her as decedent's fiancé in the insurance application was not a material misrepresentation because Williams had the right to name whoever he wanted as a beneficiary to his life insurance policy. See *Bajwa v. Metropolitan Life Insurance Co.*, 333 Ill. App. 3d 558, 568 (2002) ("there is no provision in Illinois law which states that insurance companies have a duty to refrain from issuing life insurance policies to the person whose life is being insured, who may then designate a beneficiary without an insurable interest"). While this may be true, it did not excuse Williams from making a material misrepresentation on his insurance application that if known would have resulted in Globe Life's denial of the policy. See *Cohen*, 175 Ill. App. 3d at 520-21 (where if the insurance company had known of the Insured's visits to the psychologist, no health insurance policy would have been issued to her).

¶ 17 Based on the record before us there is no question that plaintiff was decedent's girlfriend and not his fiancé when the application was filed. Plaintiff testified as such and listed herself as his girlfriend when she filed her claimant statement. In addition, Bryant attested that Williams was married to her at the time the insurance application was filed and at the time of his death.

Further, Danner, Globe Life's Director of Business and Underwriting, attested that for public policy reasons Globe Life did not accept applications naming girlfriends as beneficiaries and would not have issued the policy if it had known plaintiff was decedent's girlfriend, especially since he was still married to Bryant. Thus, even if the misrepresentation was made in good faith it is enough to void the policy because it was material to the risk assumed by the insurance company. See *Golden Rule Insurance Co. v. Schwartz*, 323 Ill. App. 3d 86, 93 (2001); *Ratcliffe v. International Surplus Lines Insurance Co.*, 194 Ill. App. 3d 18, 25 (1990), ("[i]t is unnecessary for the insurer to prove that a misrepresentation was made with the intent to deceive if it was material to the risk assumed"). Accordingly, decedent made a material misrepresentation by listing plaintiff as his fiancé and the policy is *void ab initio*.

¶ 18 Although we need not consider whether Williams made any further material misrepresentations, we note that the record suggests he intentionally listed plaintiff's Illinois address on his application when he in fact resided with his wife Bryant in Wisconsin. The record also demonstrates that decedent misrepresented his drug abuse history prior to filing the insurance application. Bryant attested that she witnessed Williams use marijuana and several other illegal drugs from 1999 until his death. Moreover, plaintiff testified that decedent was convicted of possession of a controlled substance in 2009, within the "three year period" at issue. See *Brandt v. Time Insurance Co.*, 302 Ill. App. 3d 159, 164 (1998) (insurance companies have a right to rely on answers in an insurance application and the Insured has a duty to provide accurate information). Thus, there were numerous material misrepresentations on decedent's insurance application which entitle Globe Life to rescind the policy.

¶ 19 Plaintiff finally contends that the trial court erred by granting Globe Life's motion to strike paragraph 13 of plaintiff's affidavit on hearsay grounds, as well as plaintiff's Exhibit F, a

transcribed telephone conversation between Williams and a Globe Life representative, on foundation grounds. Evidentiary rulings are reviewed for an abuse of the trial court's discretion and we will only reverse if the trial court's ruling was arbitrary, fanciful or unreasonable.

Timothy Whelan Law Associates, Ltd. v. Kruppe, 409 Ill. App. 3d 359, 365 (2011).

¶ 20 Here, plaintiff has forfeited these contentions on appeal because her brief fails to develop cohesive legal arguments and cite to relevant legal authority in strict violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013); *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 ("[f]ailure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue"); *Nielsen v. United Services Automobile Ass'n*, 244 Ill. App. 3d 658, 664 (1993) (rejecting the insureds' argument because they did not cite to any authority). Notwithstanding forfeiture, the trial court's striking of Williams's alleged explanation contained in plaintiff's affidavit as to why he wanted to use plaintiff's address on the insurance application was immaterial as to whether the address was a misrepresentation, nor was whether decedent confirmed this address in an uncorroborated conversation with a Globe Life representative. Therefore, we need not consider these matters further and the policy is *void ab initio*.

¶ 34 CONCLUSION

¶ 21 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.