

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CFM INSURANCE, INC.,
APPELLANT**

vs.

**CHARLES RICK HUDSON and LYNETTE HUDSON,
RESPONDENTS**

DOCKET NUMBER WD76882

DATE: JUNE 3, 2014

Appeal from:

The Circuit Court of Benton County, Missouri
The Honorable John C. Porter, Judge

Appellate Judges:

Division One: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Anthony Rex Gabbert, J.

Attorneys:

Paul P. Hasty, Jr. for Appellant

Thomas H. Hearne, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CFM INSURANCE, INC., APPELLANT

v.

CHARLES RICK HUDSON AND LYNETTE HUDSON, REpondENTS

WD76882

Benton County, Missouri,

Before Division One Judges: Joseph M. Ellis, P.J., Karen King Mitchell, J. and Anthony Rex Gabbert, J.

In 2012, CFM Insurance Inc. (“Appellant”) filed a petition for rescission against Charles and Lynette Hudson (“Respondents”) alleging that Respondents made misrepresentations in their April 2010 application for homeowner’s insurance. In particular, Appellant alleged that Respondents misrepresented that no one in the household had ever: (1) been convicted of a felony, (2) filed for bankruptcy, and (3) conducted business other than farming on the premises. Respondents denied the allegations in Appellant’s petition and counter-claimed for amounts due under the policy for a fire that occurred on the insured property in 2011.

Respondents subsequently filed a motion for partial summary judgment on the issue of whether Respondent Charles Hudson had ever been convicted of a felony. Respondents contended that Hudson had never been convicted of a felony because, although he pleaded guilty to the felony of criminal nonsupport in 1996, he received a suspended imposition of sentence, which does not constitute a felony conviction under Missouri law. The trial court agreed and granted Respondents’ motion for partial summary judgment.

Appellant later filed a motion for summary judgment alleging it was entitled to judgment as a matter of law on the issue of rescission. In opposing Appellant’s motion, Respondents argued that there was a factual dispute regarding whether Appellant issued a new policy to them in November 2010 that was not based upon the representations made in the April 2010 insurance application. Respondents’ argument arose out of the fact that Appellant cancelled Respondents’ April 2010 homeowner’s policy (“the April 2010 Policy”) in October 2010 due to Respondents’ non-payment of premiums. The policy was subsequently reinstated in November 2010 (“the November 2010 Policy”). After additional responses were filed, Respondents requested that that trial court “find as an undisputed fact that the policy issued November 15, 2010 was a new policy not conditioned on representations contained in the [April 2010] application.”

The trial court ultimately denied Appellant’s motion for summary judgment. In doing so, however, the trial court indicated that it would address Respondents’ request for a

finding of undisputed fact regarding whether the November 2010 Policy constituted a new policy. After discussing the parties' arguments, the trial court found that Appellant "failed to demonstrate that the parties intended the November policy to be a continuation of the April policy." Thus, the trial court deemed and declared the November 2010 Policy a new contract.

After the trial court's finding of undisputed fact, Respondents filed a motion for judgment on the pleadings. Respondents alleged that the November 2010 Policy could not be rescinded based upon alleged misrepresentations made in the April 2010 application due to the trial court's finding that the November 2010 Policy constituted a new contract. The trial court granted Respondents' motion for judgment on the pleadings after concluding that Appellant had no claim for rescission as a matter of law. In reaching its conclusion, the trial court relied upon its previous finding, explaining that "it is undisputed fact that . . . the November 2010, policy is a new contract of insurance, not a continuation of the preceding policy."

Appellant now appeals from the trial court's grant of partial summary judgment and its grant of judgment on the pleadings.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Division One holds:

1. The trial court did not err in granting partial summary judgment in favor of Respondents because, under Missouri law, the term conviction, standing alone, does not include a suspended imposition of sentence when adverse collateral consequences would attach. Here, adverse collateral consequences would attach if the term "convicted" included Hudson's suspended imposition of sentence in that Appellant would not have issued Respondents a homeowner's policy. Under such circumstances, the term "convicted," standing alone in an insurance application, cannot be deemed to include a suspended imposition of sentence.
2. The trial court erred in making a finding of undisputed fact in the context of denying Appellant's motion for summary judgment because nothing in Rule 74.04 permits such a finding. While summary judgment may be entered on any issue pursuant to Rule 74.04(c)(6), a summary judgment motion does not constitute a proper forum for seeking solely declarations of undisputed fact; rather, summary judgment procedure is reserved for cases in which the movant can establish that there are no genuine issues of material fact *and* that the movant is entitled to judgment as a matter of law. Accordingly, the trial court erred by making a factual determination in the context of denying Appellant's summary judgment motion.
3. Respondents were not entitled to summary judgment on the issue of whether the November 2010 Policy constituted a new contract because Respondents never filed a motion or cross-motion for summary judgment on the issue, and a trial court has no authority to grant summary judgment in favor of a non-moving party.

4. The trial court erred in granting judgment on the pleadings because its grant of judgment on the pleadings was premised upon its improper finding of undisputed fact following the denial of Appellant's summary judgment motion. Accordingly, because we found the trial court's finding was procedurally improper, we must also reverse the trial court's grant of judgment on the pleadings premised on that same erroneous finding.

Opinion by Joseph M. Ellis, Judge

Date: June 3, 2014

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