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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2251-15T1

NATIONWIDE LIFE INSURANCE
COMPANY,

Plaintiff-Respondent,

v.

MICHELE JOY THOMPSON,

Defendant-Appellant,

and

JEANNE MARIE STURM, Individually
and as Trustee,

Defendant.

Argued October 18, 2017 – Decided April 23, 2018

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Docket No.
L-3156-13.

Robert J. Ferb argued the cause for appellant.

Rodman E. Honecker argued the cause for
respondent (Windels Marx Lane & Mittendorf,
LLP, attorneys; Rodman E. Honecker and William
C. Cagney, on the brief).

PER CURIAM

This case involves a life insurance policy issued by plaintiff Nationwide Insurance Co. to Harold Sturm. The policy lapsed before Sturm's death. Although Sturm took steps to reinstate the policy, he had not paid the reinstatement premium and Nationwide had not reinstated the policy before he died. The policy terms required that a lapsed policy be reinstated before the insured's death.

On cross-motions for summary judgment, the trial court ruled for Nationwide. We must decide whether, as defendant Michele Joy Thompson asserts on her appeal, Nationwide is equitably estopped from denying coverage, or whether we should compel payment of the policy proceeds to fulfill the parties' reasonable expectations. Because the unambiguous policy terms required reinstatement before Sturm's death, and Thompson did not demonstrate on the summary judgment motion record a triable issue as to her other theories that Nationwide should pay her the policy's proceeds, we affirm the order granting Nationwide summary judgment.

Nationwide filed this action in August 2013, seeking a declaration Sturm's life insurance policy had lapsed and no benefits were payable. The parties engaged in discovery and then filed cross-motions for summary judgment. The trial court granted summary judgment to Nationwide, denied summary judgment to

Thompson, and issued a memorializing order from which Thompson has appealed.

The summary judgment motion record discloses the following undisputed facts. The policy at issue is a flexible premium adjustable variable life insurance policy issued to Sturm, the named insured, by Nationwide in October 1998. The policy's face amount is \$250,000.¹ Its terms permitted premiums to be paid from the policy's cash value. Its terms also permitted the insured to withdraw the policy's "Net Cash Surrender Value" and to borrow against the policy "while it ha[d] a loan value."

In December 2012, the insured, Sturm, twice telephoned Nationwide customer service and asked for information about taking a loan against the policy. During the first call, the Nationwide representative said he could withdraw approximately \$3500 from a current value of \$4202, which would leave a balance of \$702. During the second call, a Nationwide representative informed Sturm he could withdraw a maximum amount equal to 90% of the policy's value. The same day he made the second call, Sturm completed a "POLICY OWNER REQUEST FOR SERVICE" form in which he check marked boxes for a "Policy Loan in accordance with the policy provisions" in the "Maximum Amount," requests consistent with those he had

¹ Plaintiff issued another life insurance policy to Harold Sturm in October 1998. That policy is not at issue on this appeal.

made during his telephone conversations with the Nationwide customer service representatives.

Sturm requested Nationwide post the funds to an account he specified in the application. Two days later, Nationwide transferred \$4129.46 to the specified account. The amount deposited in Sturm's account was more than Nationwide's customer service representatives said he could withdraw. The deposited amount represented approximately 97% of the value from which the funds were drawn, rather than the 90% maximum mentioned by the second Nationwide customer service representative with whom Sturm spoke. Consequently, the cash value left in the policy, \$121.75, would cover one \$110 monthly premium. The policy remained in effect through January 2013.

On December 28, 2012, Nationwide wrote to Sturm and informed him his policy was about to lapse. The letter explained the policy's value was insufficient to cover the monthly charges and a sixty-one-day grace period had begun. The letter stated, "if we don't receive your payment of \$300.87, your policy will lapse without value, and you will be notified." The letter provided Sturm with Nationwide's customer service center's contact information and advised he could contact the center if he had any questions. Defendant telephoned Nationwide on January 17, 2013,

inquired about the other policy on Sturm's life, and paid a premium on that policy.

On January 28, 2013, Nationwide again wrote Sturm and informed him, "[y]ou're flexible premium variable life insurance policy is about to lapse." According to the letter, the policy "began a [sixty-one]-day grace period on December 28, 2012." The letter informed Sturm that he was required to make a \$300.87 payment or the policy would lapse without value. The letter included Nationwide's customer service center's telephone number.

On February 28, 2013, Nationwide wrote Sturm and informed him the policy had lapsed. The letter also informed Sturm he could apply for reinstatement of the policy. Four days after receiving the February 28 letter, Sturm applied to reinstate the policy. The policy's terms concerning reinstatement provided:

REINSTATEMENT. If this Policy has lapsed without value, you may reinstate it while the Insured is alive if you:

1. apply for reinstatement within three years after the end of the Grace Period;
2. provide evidence of the insured's insurability satisfactory to us; and
3. make a premium payment of an amount sufficient to keep the Policy in force for at least three months after the date of reinstatement.

The Effective Date of the reinstated Policy will be the Policy Processing Day which

coincides with or next follows the date we approve the reinstatement application. Surrender charges may apply upon reinstatement.

Nationwide required Sturm to undergo a physical examination, which he did. Nationwide also required Sturm to sign an amendment to the policy acknowledging "the Waiver of Premium Rider attached to this policy at issue will be removed upon policy reinstatement." Sturm signed the amendment on April 30, 2013.

On May 3, 2013, Nationwide's underwriter advised Sturm the policy was approved for reinstatement but did not advise Sturm of the premium payment due. Sturm died two days later, on May 5, 2013. Nationwide learned of his death the next day, May 6, 2013. Nonetheless, in a letter addressed to Sturm and written the same day, Nationwide informed Sturm reinstatement of the policy was approved. The letter stated: "To move forward with reinstating this policy, we need a payment of \$377.87. Please remit the payment, by June 8, 2013, using the self-addressed envelope included with this letter." The letter further stated, "[o]nce sufficient payment is received in our office, the policy will be reinstated."

The parties dispute most of the remaining facts concerning Nationwide's decision to deny Thompson's claim. In opposition to Nationwide's summary judgment motion and in support of her cross-

motion, Thompson averred she contacted Nationwide on May 17 or 18, 2013, once again advised a Nationwide representative of Sturm's death, and asked whether she could send in the premium payment to reinstate the policy. According to Thompson, the Nationwide representative told her she could send the premium. May 18, 2013 was a Saturday.

Nationwide denies this telephone conversation took place. The transcript of a Friday, May 17, 2013 telephone conversation between Thompson and a Nationwide representative quotes Thompson as saying her husband's life insurance policy was just reinstated and she got a letter in the mail saying that payment was due, but he just passed away, so she was unsure what to do. During the conversation, Thompson asked if there was a chance the policy was not going to "pay out." The Nationwide representative responded, "[t]hat's why I want to put it to that issue resolution team to see if since, he had passed and yet no first payment had not come in for it yet to see what that would [entail] for you. [Because] . . . honestly, this is the first time I've actually seen this kind of situation occur."

The Nationwide representative said the matter would be a high priority and someone would telephone Thompson on Monday morning. She asked if she should call on Monday and the representative responded that someone would call her.

Thompson mailed a cashier's check to Nationwide the next day, May 18, 2013. Nationwide received and cashed the check on May 20, 2013. According to James Shockey, Nationwide's Manager of Capture Operations, East, Nationwide's "Mail Intake/Batch Building Team," which handles approximately 1802 checks daily, deposited the check without any way of knowing or ascertaining whether the policy was active. On July 11, 2013, Nationwide wrote to Thompson and informed her it was denying her claim for payment of the policy proceeds. Nationwide refunded the premium, though Thompson apparently did not cash the check.

In mid-November 2014, Nationwide filed its reply to Thompson's opposition as well as its opposition to Thompson's cross-motion. On January 20, 2015, three days before the return date of the cross-motions, Thompson submitted a "Supplemental Expert Report prepared by Patrick Flanagan." In his report dated five days earlier, Flanagan asserted the actions taken by Nationwide following Sturm's death, among other things, were not specifically excluded by the policy and concerned circumstances not specifically addressed in the contract of insurance. Flanagan asserted "the almost simultaneous death of . . . Sturm and the issuance of the policy [made] interpretation of the contract language necessary." Flanagan suggested the issue that should be addressed was "the 'binding authority' of Nationwide Supervisors

in agreeing or not agreeing to accept a premium to bind a policy after being fully informed of all relevant circumstances."

Flanagan opined:

Though the contract was binding in its language (as are more standard Life Insurance contracts), it does not specifically preclude the insurance company or its representatives from acting outside the terms of the contract on a case by case basis where deemed appropriate by those parties, and did not preclude Ms. Thompson from reasonably concluding that those representatives were acting within their authority in providing information or instructions to her.

Flanagan further noted:

As per the recordings and per Ms. Thompson's own records, Ms. Thompson received a telephone call from Nationwide after receipt of her payment (speaking with Sheila Fraser Mosely and Amanda Gladfelter of Nationwide on two separate occasions), both of whom acknowledged receipt of the payment. This directly refutes Mr. Honecker's contention that Nationwide "had no way of ascertaining whether the policy was active." *Nationwide discussed the payment and the policy specifically with Ms. Thompson immediately after receipt of the payment*, wherein Ms. Thompson was informed that she was not listed as the Beneficiary. Ms. Thompson was asked if she still wished to pay the premium based upon this information, and she indicated that she did wish to pay the premium anyway. *Nationwide had full knowledge of the payment they were applying and would have been able to determine during these conversations if the policy could have a payment applied to it.*

During these conversations as well, (with Mosley and Gladfelter), Ms. Thompson was led

to believe that the payment she submitted was being held only until they (Nationwide) informed Ms. Thompson that she was not the beneficiary, and no reference was made in these conversations to any other issues surrounding the policy.

. . . .

Since Nationwide's representatives specifically discussed the premium payment with Ms. Thompson and agreed to accept the payment, *this would constitute a Waiver and would satisfy the third requirement of placing the policy in force as the representative agreed verbally to accept the premium (an implied Waiver) and did not indicate any requirements in the policy not allowing the premium to be processed.*

. . . .

The series of events which precipitated and surrounded the payment of the premium by Ms. Thompson and the subsequent follow up by Nationwide negates any "mailroom volume" arguments that may be made. This payment was personally handled by at least 2 people and was applied to a policy that is now alleged to not have existed at the time the premium was paid.

Nationwide is complicit in the lapse of the second policy by not informing Ms. Thompson of the pending lapse when they had an opportunity to do so (as she called in to make premium payments), substantiated by using both the "privacy issue" and the "system issue" to explain why that was not done; both of which are unfounded and contradictory.

Mr. Sturm's policy was approved prior to his death, and the first two of the three requirements in placing the policy in force were met. That argument that a Waiver did not

exist might be valid if the premium was only processed through the automated systems. The intervention of Nationwide's representatives and the acknowledgment of, discussion of, and application of the premium to the policy (i.e. the payment was handled manually), would constitute Nationwide's representatives using their Bonding Authority to provide a Waiver.

As such, all three requirements necessary to place this policy in force and to make it payable were met.

On appeal, Thompson argues:

STANDARD OF REVIEW

POINT I
EQUITABLE ESTOPPEL

POINT II
INTERPRETATION OF POLICY

First, she argues Nationwide is equitably estopped from denying it reinstated the policy. Second, she argues the policy should be interpreted to fulfill the insured's reasonable expectations. She asserts that in this instance the reasonable expectation of the insured was that the policy would be reinstated.

Appellate courts "review[] an order granting summary judgment in accordance with the same standard as the motion judge." Bhaqat v. Bhaqat, 217 N.J. 22, 38 (2014) (citations omitted). We "review the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment

as a matter of law." Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)); accord R. 4:46-2(c). A trial court's determination that a party is entitled to summary judgment as a matter of law is not entitled to any "special deference," and is subject to de novo review. Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 415 (2016) (citation omitted).

We review a trial court's denial of a motion for reconsideration under an abuse of discretion standard. Davis v. Devereux Found., 414 N.J. Super. 1, 17 (App. Div. 2010) (citing Marinelli v. Mitts & Merrill, 303 N.J. Super. 61, 77 (App. Div. 1997)), aff'd in part and rev'd in part on other grounds, 209 N.J. 269, 277 (2012).

Preliminarily, we note appellant's counsel has failed to present proper legal arguments in support of either of the two point headings. In both instances, the arguments consist mostly of a conclusory statement followed by "cut and paste" excerpts from legal research databases. In some instances these data dumps are double spaced and in other instances they are single spaced. The headnote designations and the asterisked page numbers referring to various reporters have not even been removed. The "argument" sections of the brief contain virtually no legal

analysis discussing application of the cut and pasted material to the facts.

Parties to an appeal are required to make a proper legal argument, "[s]upporting [it] with appropriate record reference[s]" and "provid[ing] the law." State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977); see also Sackman v. N.J. Mfrs. Ins. Co., 445 N.J. Super. 278, 297-98 (App. Div. 2016). Counsel are required to "present [a] reasonably competent analysis of the law as it relate[s] to the facts of th[e] case." Sackman, 445 N.J. Super. at 298-99. An argument based on conclusory statements is insufficient to warrant appellate review. Nextel of N.Y. v. Borough of Englewood Cliffs Bd. of Adjustment, 361 N.J. Super. 22, 45 (App. Div. 2003).

We nonetheless consider – and reject – Thompson's arguments. First, "[t]o establish equitable estoppel, parties must prove that an opposing party 'engaged in conduct, either intentionally or under circumstances that induced reliance, and that [they] acted or changed their position to their detriment.'" Hirsch v. Amper Fin. Serv., LLC, 215 N.J. 174, 189 (2013) (alteration in original) (quoting Knorr v. Smeal, 178 N.J. 169, 178 (2003)). The doctrine "applies when 'conduct, either express or implied, . . . reasonably misleads another to his prejudice so that a repudiation of such conduct would be unjust in the eyes of the law.'" D'Agostino v.

Maldonado, 216 N.J. 168, 200 (2013) (quoting McDade v. Siazon, 208 N.J. 463, 480 (2011) (citation omitted)).

In the context of insurance policies:

where an insurer or its agent misrepresents, even though innocently, the coverage of an insurance contract, or the exclusions therefrom, to an insured before or at the inception of the contract, and the insured reasonably relies thereupon to his ultimate detriment, the insurer is estopped to deny coverage after a loss on a risk or from a peril actually not covered by the terms of the policy.

[Harr v. Allstate Ins. Co., 54 N.J. 287, 306-07 (1969).]

Here, Nationwide's policy is clear as to the three conditions an insured is required to meet to reinstate a lapsed policy. Sturm did not meet the third condition, namely, making a premium payment, while alive, in an amount sufficient to keep the policy in force for at least three months after reinstatement. Nothing in the summary judgment record suggests that Nationwide somehow misled Sturm, inadvertently or deliberately, to not making a timely premium payment during his lifetime.

Thompson further argues:

The plaintiff's conduct subsequent to Mr. Sturm's passing away, having full knowledge of the fact that he had passed away, proceeded to send a request for payment, had specific discussions with Michele Thompson Sturm directing her to make payment in a very specific way different from the normal payment

of premiums, questioned her about paying the premium and then in fact accepting payment, all of which [is] more than sufficient support for granting the defendant's summary judgment motion under the theory of equitable estoppel.

Nothing in the summary judgment record suggests Thompson relied to her detriment upon any statement made by Nationwide representatives. The transcript of the last recorded telephone conversation between her and a Nationwide representative demonstrates the representative never told Thompson the policy would be reinstated. If anything, fairly interpreted, the content of the conversation suggests the policy would not be reinstated because Sturm had died before paying the reinstatement premium.

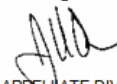
To be sure, Thompson recalls a telephone conversation with a representative in which the representative said the policy would be reinstated. But she testified at her deposition the conversation could have taken place on either May 17 or 18, 2013, and there was only one conversation. The recording of that conversation demonstrates her interpretation or memory of what was said is inaccurate. The evidence to the contrary is so one-sided that no fact finder could credit her interpretation.

We have considered Thompson's remaining arguments and found them to be without sufficient merit to warrant further discussion.

R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION