

IN THE SUPREME COURT OF THE STATE OF NEVADA

THELMA ELIZABETH PARSONS,
A/K/A ELIZABETH T. PARSONS,
Appellant,
vs.
CHICAGO INSURANCE COMPANY
AND EMERALD FINANCE COMPANY,
Respondents.

No. 33282

FILED

AUG 19 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order granting summary judgment. Appellant Thelma Elizabeth Parsons purchased an automobile insurance policy from Chicago Insurance Company (Chicago) with a loan financed through Emerald Finance Company (Emerald). Under the insurance premium finance agreement (the finance agreement) between Parsons and Emerald, Parsons granted Emerald a power of attorney to cancel the insurance policy should Parsons default on her payments.

Parsons failed to make her first payment and when she finally made the payment, the bank dishonored her check. Emerald sent Parsons two notices of intent to cancel her policy. On August 22, 1995, at 5:16 a.m., Parsons was involved in a car accident. On August 23, 1995, Emerald directed Chicago to cancel Parsons' policy, effective August 22, 1995, at 12:01 a.m., and informed Parsons of the cancellation. Consequently, Chicago denied coverage for the car accident.

Parsons sued Chicago, Emerald, and Roberts, Insurance Agency, Inc.,¹ for, among other things, declaratory relief, breach of contract, breach of fiduciary duty, and insurance bad faith. Ultimately, Chicago and Emerald filed motions for summary judgment, which the district court granted, thereby dismissing Parsons' action with prejudice. The district court found that NRS 686A.460² was the only statute applicable to Parsons' action. The district court also found that the notices Emerald sent Parsons satisfied the notice requirements of NRS 686A.460 and the finance agreement.

Summary judgment is warranted when the record, viewed in a light most favorable to the non-moving party, indicates that no triable issues of material fact exist and that the moving party is entitled to judgment as a matter of law.³ Parsons argues that Emerald did not notify her that she had ten days to cure her default in violation of NRS 686A.460(2). Parsons also contends that Chicago failed to give her notice before it cancelled her insurance policy in violation of NRS 485.3092.⁴

¹Roberts was originally a defendant in the lawsuit. Parsons and Roberts settled and Parsons' lawsuit against Roberts was dismissed by stipulation of the parties and order of the district court.

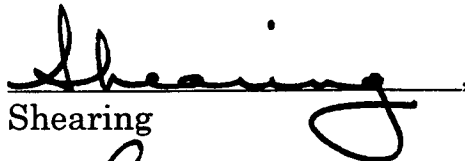
²NRS 686A.460 requires a finance company to provide an insured a notice of intent to cancel an insured's insurance policy.

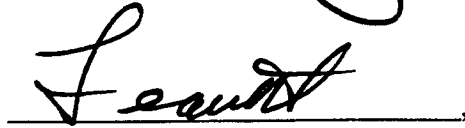
³NRCP 56(c); Auckenthaler v. Grundmeyer, 110 Nev. 682, 684, 877 P.2d 1039, 1040 (1994).

⁴NRS 485.3092 provides: "When an insurance carrier has issued a motor vehicle liability policy, the insurance so issued must not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance has been mailed first class or delivered to the insured."

Here, Parsons was involved in a car accident on August 22, 1995, at 5:16 a.m., but Emerald did not mail Parsons a notice of cancellation or direct Chicago to cancel her policy until August 23, 1995. Even though notice of intent to cancel had been sent to Parsons, her insurance policy had not been cancelled at the time of her car accident. The district court erred by granting Emerald's and Chicago's motions for summary judgment. Accordingly, we

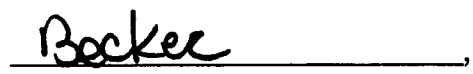
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Shearing

 _____, J.
Leavitt

Becker, J., dissenting.

I dissent.

 _____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Kossack Law Offices
Guild Russell Gallagher & Fuller
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk