

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KATHLEEN M. BAILEY,	:	APPEAL NO. C-120690
Plaintiff-Appellant,	:	TRIAL NO. A-1102520
vs.	:	<i>JUDGMENT ENTRY.</i>
FARMERS' NEW WORLD LIFE	:	
INSURANCE COMPANY,	:	
and	:	
MICHAEL E. HARVEY,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Kathleen M. Bailey contests the trial court's entry of dismissal in favor of her former insurance agent, defendant-appellee Michael E. Harvey, and its entry of summary judgment in favor of defendant-appellee Farmers' New World Life Insurance Company ("Farmers' "). Bailey had brought negligence and breach-of-contract claims against Harvey and Farmers' after she discovered that her 2004 life insurance policy with Farmers' had terminated in early 2005.

Bailey's first assignment of error, in which she asserts that the trial court erred in dismissing her negligence claim against Harvey, is overruled on the authority of *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d

672, ¶ 27 (“A cause of action for professional negligence accrues when the act is committed.”). While statute-of-limitations issues generally involve mixed questions of law and fact, and are not usually resolved by Civ.R. 12(B) motion, where the complaint shows conclusively on its face that the action is time-barred, a motion to dismiss based upon the bar of the statute of limitations may be granted. *See Cramer v. Archdiocese of Cincinnati*, 158 Ohio App.3d 110, 2004-Ohio-3891, 814 N.E.2d 97, ¶ 8 (1st Dist.). From the face of Bailey’s complaint, it was clear that Harvey’s last alleged negligent act was committed in December 2004. The complaint was filed in March 2011, well outside the applicable four-year statute-of-limitations period for professional-negligence claims. *See R.C. 2305.09(D)*; *see also Flagstar* at ¶ 8.

In her second assignment of error, Bailey argues that the trial court erred in granting Farmers’ summary judgment on her negligence and breach-of-contract claims. Summary judgment is proper pursuant to Civ.R. 56(C) when (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. When, as here, the party moving for summary judgment discharges its initial burden to identify the absence of genuine issues of material fact on an essential elements of the nonmoving party’s claims, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth specific facts, by the means listed in Civ.R. 56(C) and 56(E), showing that triable issues of fact exist. *See Civ.R. 56*; *see also Drescher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

Construing the facts most strongly in Bailey's favor, as we are required to do, it is undisputed that the insurance policy terminated in early 2005. Since this claim was made in March 2011, there is no genuine issue of material fact as to whether Bailey's negligence claim against Farmers', was brought outside the four-year statute of limitations. *See* Civ.R. 56; *see also* R.C. 2305.09(D); *Flagstar* at ¶ 8.

Next, it is undisputed that the 2004 Farmers' insurance policy contained a self-executing termination clause. The language provided that the policy was to terminate automatically upon nonpayment of a premium and the expiration of the grace period, without any further action on the part of Farmers'. There is no genuine issue of material fact remaining as to whether Bailey failed to make premium payments after December 2004.

Since the clear and unambiguous language of the termination clause leaves no doubt as to the consequences of nonpayment of the monthly premium, Farmers' was under no obligation to provide Bailey with notice of the termination of the policy for nonpayment of premiums. *See* *Murphy v. N. Am. Equitable Life Assur. Co.*, 12th Dist. No. CA87-04-055, 1987 Ohio App. LEXIS 9434 (Oct. 30, 1987); *see also* *LoCoco v. Med. Sav. Ins. Co.*, 530 F.3d 442, 450 (6th Cir.2008). Therefore, Farmers' was entitled to judgment as a matter of law on Bailey's breach-of-contract claim. The second assignment of error is overruled.

Therefore, the trial court's judgments granting Harvey's motion to dismiss and Farmers' motion for summary judgment, are affirmed.

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A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on May 31, 2013

per order of the court _____.
Presiding Judge