STATE OF MICHIGAN

COURT OF APPEALS

MARIE MARQUIS,

Plaintiff-Appellant,

v

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 23, 1999

No. 204169
St. Clair Circuit Court
LC No. 96-001621 AV

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order affirming a district court's order reducing plaintiff's $16,575 jury award to reflect the district court's $10,000 jurisdictional limit. Plaintiff also challenges the circuit court's order denying her motion for statutory interest, and its order regarding payment of attorney fees and an attorney lien on any future amounts awarded. We affirm the reduction of the district court award and the circuit court's decision regarding the attorney fees and lien. However, we remand for further findings on the amount of penalty interest and no-fault attorney fees owed, if any, and for a recalculation of statutory interest.

I

Plaintiff first argues that once she submitted reasonable proof of efforts to mitigate damages and the amount of work loss sustained, defendant insurer's failure to pay overdue personal protection insurance (PIP) benefits resulted in an automatic assessment of twelve percent interest rate under MCL 500.3142; MSA 24.13142 even if the refusal to pay was reasonable or made in good faith. We review this question of law de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

The twelve percent interest provision, intended to penalize the recalcitrant insurer, *Sharpe v DAIIE*, 126 Mich App 144, 148-149; 337 NW2d 12 (1983), is triggered when PIP benefits become overdue, that is, when they remain unpaid thirty days after the no-fault insurer receives "reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2); MSA 24.13142(2). The

interest is assessed despite the insurer's good faith in not promptly paying the benefits. *Davis v Citizens Ins Co*, 195 Mich App 323, 328; 489 NW2d 214 (1992).

In the present case, the Supreme Court previously held that plaintiff was entitled to differential benefits during the time she worked at Boddy Construction, but held that a determination of benefits beyond that point would have to await a decision concerning plaintiff's obligation to mitigate damages. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 655; 513 NW2d 799 (1994). Accordingly, it is without question that plaintiff was entitled to penalty interest on any overdue payments from the period that she was employed at Boddy Construction. However, in light of our Supreme Court's decision in *Marquis, supra*, we find that plaintiff did not provide the "reasonable proof" necessary to support the remainder of her claim until sometime during the trial in November 1995.[1] See *McMillan v Auto Club Ins Ass'n*, 195 Mich App 463, 467-468; 491 NW2d 593 (1992).

The record before us is unclear regarding whether defendant met its deadline of paying PIP benefits pursuant to MCL 500.3142; MSA 24.13142. Consequently, this issue must be addressed on remand.

II

Plaintiff next argues that the district court had jurisdiction to enter a judgment over $10,000 and thus erred in reducing the jury's award. We review questions of subject matter jurisdiction de novo. *Bruwer v Oaks*, 218 Mich App 392, 395; 554 NW2d 345 (1996).

At all times relevant to the present case, MCL 600.8301; MSA 27A.8301(1) provided that the district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed $10,000.[2] In addition, specific jurisdictional statutes enable the district court to hear claims and grant awards in cases where the amount in controversy exceeds this general monetary limit. *Bruwer*, *supra* at 395-396. Commentators have noted that "the jurisdiction of the district court was carved out of the original jurisdiction of the circuit court and the jurisdictional line of demarcation between the district court and the circuit court is primarily the amount in controversy." 14 Michigan Pleading & Practice (2d ed), § 124.03, p 424. Historically, our Courts have held firm to these lines of demarcation. See, e.g., *Zimmer v Schindehette*, 272 Mich 407; 262 NW 379 (1935) (judgment rendered by justice of the peace held void where it was in an amount in excess of the justice's jurisdiction); *Krawczyk v DAIIE*, 117 Mich App 155; 323 NW2d 633 (1982), modified on other grounds, 418 Mich 231 (1983) (judgment awarded in district court of over $10,000 not invalid, provided that amounts in excess of that amount can be attributed to costs, attorney fees and interest, or that the case represents an exception, specified by statute, that would permit the court to render judgment over the jurisdictional amount).

Plaintiff complains that the district court's decision to reduce her award is unduly harsh. However, this situation is mitigated by MCR 4.002(B), which permits a transfer of an action to the circuit court where a party realizes, after filing a claim, that the relief requested may be beyond the jurisdiction of the district court. In the present case, plaintiff could have moved to transfer the action to

the circuit court when it became possible that her award could exceed the district court's $10,000 jurisdictional limit. Having failed to do so, and there being no statute that would allow the district court to hear this claim regardless of the jurisdictional amount, the district court properly reduced the award.

III

Plaintiff next argues that it was error to deny her actual and reasonable attorney fees under MCL 500.3148(1); MSA 24.13148(1), which provides for the award of attorney fees if the insurer unreasonably refused to pay the claim or unreasonably delayed in making the proper payments. The inquiry is not whether coverage is ultimately determined to exist, but whether the insurer's initial refusal to pay was reasonable. *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 635; 552 NW2d 671 (1996). In addition, attorney fees are payable only when PIP benefits are overdue. *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 630; 550 NW2d 580 (1996).

In the present case, there was no factual uncertainty regarding differential benefits owed to plaintiff for the time she was employed at Boddy Construction following the *Marquis* decision, which was quite clear in stating what was due plaintiff and what yet needed to be determined by the trial court. Accordingly, we do not find defendant's failure to pay benefits owed to plaintiff while employed at Boddy Construction to have been a decision made in good faith, and defendant should be charged for attorney fees incurred by plaintiff in pursuing this portion of her PIP benefits claim.

We reach a different result with respect to fees incurred by plaintiff in pursuing benefits owed to her after she left Boddy. Plaintiff's entitlement to these benefits was not settled until after the jury verdict was rendered. Unless defendant refused or failed to pay these benefits as discussed above, defendant is not liable for the attorney fees associated with securing them. We thus remand this case for a determination of fees associated with the recovery of differential benefits and for a determination of whether defendant unreasonably delayed in paying any benefits awarded plaintiff in the jury trial, in which case an award of additional attorney fees would be appropriate.

IV

Plaintiff next argues that the normal statutory interest on the judgment was not properly calculated and that the circuit court erred in determining that plaintiff failed to provide any authority in support of her calculation. We review de novo an award of prejudgment interest pursuant to MCL 600.6013; MSA 27A.6013. *Beach*, *supra* at 623-624.

Imposition of statutory interest in a civil action is mandatory under MCL 600.6013; MSA 27A.6013. *Phinney v Perlmutter*, 222 Mich App 513, 540; 564 NW2d 532 (1997). An insurance policy or contract is a "written instrument," and therefore the judgment in this case was subject to a twelve percent interest rate pursuant to § 600.6013(5). *Yaldo v North Pointe Ins Co*, 457 Mich 341, 350; 578 NW2d 274 (1998). This statutes provides:

> For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, *interest shall be calculated from the date of filing the complaint*

> *to the date of satisfaction of the judgment at the rate of 12% per year compounded annually,* unless the instrument has a higher rate of interest. In that case interest shall be calculated at the rate specified in the instrument if the rate was legal at the time the instrument was executed. The rate shall not exceed 13 % per year compounded annually after the date judgment is entered. [emphasis added.]

We remand this case to the trial court for correction of the prejudgment interest awarded on the $10,000 judgment in accordance with § 600.6013(5).

V

Plaintiff raises two arguments challenging the circuit court's determination of attorney fees and lien rights of plaintiff's former attorney, neither of which has merit.

A

Plaintiff first argues that the circuit court lacked jurisdiction to determine these matters. We review de novo a challenge to a court's subject matter jurisdiction. *Bruwer, supra* at 395.

"[T]he Michigan Constitution vests the circuit court with broad original jurisdiction over all matters, so long as jurisdiction in particular is not expressly prohibited by law." *Hendrickson v Moghissi*, 158 Mich App 290, 295; 404 NW2d 728 (1987). Here, the attorney's motion for withdrawal was properly before the circuit court. Because the circuit court had the jurisdiction to hear this motion, it also had, by extension, the power to determine the amount and order the payment of attorney fees. See *Horvath v Vasvary*, 246 Mich 231, 233-234; 224 NW 365 (1929).

B

Plaintiff also argues that the circuit court improperly determined that her former attorney was entitled to a one-third contingency fee and also improperly allowed a lien on future awards. Again, we disagree.

Our review of the record reveals that there was not a clear agreement between plaintiff and the attorney regarding fees. The circuit court thus erred in determining that the parties had a contingency fee arrangement. However, this does not preclude the attorney from recovering a reasonable fee based on the amount of time he devoted to the matter over the course of several years, the importance of this effort to plaintiff in bringing her case to the present point, and the money expended in so doing. See *Baker, supra* at 469; *Horvath, supra* at 234. The fee awarded by the circuit court was certainly reasonable in view of these factors.

Similarly, we find no abuse of discretion in the circuit court's imposition of an attorney lien on future recoveries by plaintiff. *Ambrose v Detroit Edison Co*, 65 Mich App 484, 488-491; 237 NW2d 520 (1973). It would be unjust to deny the attorney future compensation for services performed in bringing the case to its present position, and the record does not indicate that his motion for withdrawal and fees in any way prejudiced plaintiff as she brings her case to this Court. *Polen v*

Reynolds, 222 Mich App 20, 24-27; 564 NW2d 467 (1997); see *Rippey v Wilson*, 280 Mich 233, 245; 273 NW 552 (1937).

Affirmed, but the final judgment is vacated, and this matter is remanded for a determination of the attorney fees and statutory and penalty interest due plaintiff, and other proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Michael R. Smolenski

[1] We do not mean to suggest that an insurer may always withhold PIP benefits, and avoid paying penalty interest, merely by alleging that a claimant had failed to mitigate damages. Indeed, such a holding would open a significant loophole to the statutory provision encouraging the prompt payment of claims. To the contrary, we base our decision on the unique facts presented here, including the decision of the Supreme Court in *Marquis, supra*.

[2] 1996 PA 388, § 1, effective January 1, 1998, amended §600.8301 to increase the amount to $25,000.