STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JUNE ANN BERGER.

PATRICIA GORMELY PRINCE, Conservator of the ESTATE of JUNE ANN BERGER,

Petitioner-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent-Appellant.

UNPUBLISHED
March 17, 2000

No. 212683
Washtenaw Circuit Court
Probate and Family Division
LC No. 95-107773-CV

Before: Neff, P.J., and Murphy and J. B. Sullivan[*], JJ.

PER CURIAM.

Respondent-appellant State Farm Mutual Insurance Company (State Farm) appeals as of right from the decision of the Washtenaw Circuit Court, Probate and Family Division, ordering State Farm to assume responsibility for the attorney fees incurred by petitioner-appellee Estate of June Ann Berger in a custody action filed in Washtenaw Circuit Court by the alleged biological father of Berger's child. We reverse.

The facts in this case are not in dispute. In 1977, as a result of an auto accident, then-sixteen year-old June Ann Berger suffered a closed head injury, which caused long-term physical and mental problems. At the time of the accident, Berger was insured by her parents' no-fault auto insurance policy issued by State Farm. The record does not indicate further details of the next approximately fifteen years, except that a spendthrift trust, supervised by the Oakland Circuit Court, had been established and was operated for Berger's benefit. The record does indicate, however, that on March

[*] Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

16, 1992, Berger gave birth to a child allegedly fathered by forty-nine year-old James Horton, Jr., who was living with Berger at the time, attending college and doing volunteer work.

In April 1995, attorney Patricia Gormely Prince was appointed successor trustee of the spendthrift trust. Prince was asked to distribute some of the trust funds for Berger's child, but could not do so because the trust allowed Prince to distribute funds only for Berger's support, not for the support of the child. During the fall of 1995, Prince discovered that, while she was paying Berger's rent, Blue Cross, utilities and the like, Berger also was receiving $550 monthly in social security disability benefits, which, unlike the trust funds, could be used to support Berger's child. Because Prince could not coordinate the use of those social security funds for the support of either Berger or Berger's child from her position as trustee, Prince petitioned the Washtenaw Probate Court to appoint a conservator. Following a hearing, the court found that a conservator was needed and, on October 24, 1995, appointed Prince to that position.

Meanwhile, in June 1995, shortly after Prince had been appointed successor trustee of the spendthrift trust supervised by the Oakland Circuit Court, Horton, the alleged biological father of Berger's child, who had by this time been asked by Berger to vacate the residence, filed a petition in Washtenaw Circuit Court seeking custody of the then-three year-old child. He claimed that Berger was physically and mentally unable to care for the child due to the injuries she suffered in the 1977 auto accident. Prince, as Berger's conservator, hired counsel to represent Berger in the custody matter and incurred legal fees in the defense of that action, which ultimately was successful.

On January 22, 1998, Prince petitioned the Washtenaw Probate Court, renamed the circuit court, probate and family division, for an order requiring State Farm to reimburse Berger for past and future legal fees related to her defense of the child custody dispute. Prince argued that these legal fees were related to Berger's "care, recovery or rehabilitation" because the child custody dispute arose only as a result of Berger's mental and physical injuries sustained in the auto accident. Therefore, Prince argued, State Farm was required to reimburse Berger for those legal fees under the Michigan No-Fault Insurance Act, MCL 500.3107(1)(a); MSA 24.13107(1)(a). State Farm argued that legal fees incurred defending a child custody matter are not reasonably necessary charges incurred for an injured person's "care, recovery or rehabilitation" and are therefore non-recoverable from the insurer under the statute. The court, which by this time had had the case since 1995, disagreed with State Farm and, on June 1, 1998, ordered State Farm to pay Berger's legal defense fees.

Interpretation of the Michigan no-fault insurance act is a question of law subject to de novo review on appeal. *Putkamer v Transamerica Ins Corp,* 454 Mich 626, 631; 563 NW2d 683 (1997). Because the act is remedial in nature, it must be liberally construed in favor of the persons intended to benefit from it. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 28; 528 NW2d 681 (1995). The act provides in pertinent part:

> (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

> (a) Allowable expenses consisting of all reasonable charges incurred for the reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation. [MCL 500.3107(1)(a); MSA 24.13107(1)(a).]

Three factors must be met for an item to be considered an "allowable expense" under this statute: (1) the charge must be reasonable; (2) the expense must be reasonably necessary; and (3) the expense must be incurred. *McKelvie v Auto Club Ins Ass'n*, 203 Mich App 331, 335; 512 NW2d 74 (1994). In this case, only the second factor, whether the expense was reasonably necessary, is at issue. The burden of proof regarding whether a particular expense is reasonably necessary lies with the plaintiff. *Owens v Auto Club Ins Ass'n*, 444 Mich 314, 323-324; 506 NW2d 850 (1993); *Hoffmann v Auto Club Ins Ass'n*, 211 Mich App 55, 94; 535 NW2d 529 (1995).

In *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195; 543 NW2d 4 (1995), relied on by both the trial court and Prince on appeal, this Court considered whether guardian or conservator fees are "allowable expenses" under MCL 500.3107(1)(a); MSA 24.13107(1)(a). In that case, the insurer provided no-fault benefits to a motorist who was incapacitated by injuries suffered in an auto accident. *Id.* at 196. Due to the motorist's incapacitation, the plaintiff was appointed as his guardian and conservator. *Id.* The insurer argued that the "plain meaning" of § 3107 is to provide only medical care. However, this Court found that the cases cited by the insurer, while indicating that § 3107 provided for medical care, did not address whether § 3107 had broader applicability. *Id.* at 197. Ultimately, this Court found that "the no-fault act is not limited strictly to the payment of medical expenses," and held that services performed by a guardian and conservator were allowable expenses under § 3107. *Id.* at 197-198. The Michigan Supreme Court denied leave to appeal, not joining with Justice Boyle who would have directed that the opinion be deemed without precedential force or effect because "the Court of Appeals opinion is binding and will be broadly read to cover all expenses of a personal representative including attorney fees." *Heinz, supra*, 453 Mich 913 (1996).

This Court, in previous cases, has had repeated occasion to interpret the phrase "reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation." See, e.g., *Manley v DAIIE*, 425 Mich 140, 151-153; 388 NW2d 216 (1986) (coverage provided for in-home care undertaken by family members); *Davis v Citizens Ins Co*, 195 Mich App 323, 326-328; 489 NW2d 214 (1992) (coverage provided for a modified van required for transportation, though covered mileage expenses limited to those miles incurred for medical treatment); *Sharp v Preferred Risk Mutual Ins Co*, 142 Mich App 499, 511-512; 370 NW2d 619 (1985) (coverage provided for the costs related to home renovation in order that the injured person could receive in-home care). These representative decisions, in accord with the conclusion in *Heinz*, indicate that when interpreting this standard this Court has contemplated more than mere medical services and in fact has allowed a broad range of services. These decisions, however, are distinguishable from the case at hand.

In each of the above cases, the services and accommodations found by this Court to constitute allowable expenses directly concerned the care of an injured person and related to that person's ability to cope with day-to-day life. In contrast, the service for which coverage is requested in the instant case relates more closely to the care of a third person, Berger's minor child. The *Heinz* decision also fails to

support plaintiff's position. Unlike the specific expenses catalogued in the other cases, the opinion in *Heinz* does not state what activities were undertaken by the plaintiff in the exercise of her duties as guardian and conservator. Generally, the vast majority of duties associated with such a position relate to management of the ward's daily affairs, including the handling of legal affairs. However, the Legislature surely did not intend that in establishing coverage for "services . . . for an injured person's care, recovery or rehabilitation," § 3107 of the no-fault act would impose liability on the insurer for the cost of defending any and all legal actions arising after an accident. We conclude that *Heinz* should be interpreted narrowly. Because we find that the legal representation at issue in this case does not relate directly to Berger's care, we hold that it is not an allowable expense under MCL 500.3107(1)(a); MSA 24.13107(1)(a).

Plaintiff argues that because the custody action arose *only as a result of her injuries*, these particular legal expenses are related to Berger's "care, recovery or rehabilitation" and should be covered. The result of this reasoning, however, is that the allegations pleaded in a complaint initiating legal action against an injured person will be the determining factor in an analysis of the propriety of coverage. We find this proposition unacceptable as it presents a scenario ripe for abuse. For example, if a husband elected to initiate divorce proceedings against his spouse years after her involvement in a debilitating automobile accident, and, lacking compassion, included a reference to her resulting injuries as a reason for the breakdown of the marriage, this standard would mandate coverage of the injured wife's related legal expenses by the no-fault insurance carrier. This type of expense is surely not anticipated by insurance carriers, the expense of a custody proceeding no more so.

While *Heinz* suggests that the legal expenses related to a guardian's every day control of her ward's affairs may be appropriate, we find the defense of this custody proceeding, initiated eighteen years after the accident which resulted in Berger's injuries, too attenuated to be considered a service related to her care, recovery or rehabilitation. Because the conservator fees also at issue in this case were incurred by Prince in her attempt to secure State Farm's payment of the legal defense fees, we further hold that these particular costs are not covered under the "allowable expense" provision in the statute.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Jospeh B. Sullivan