

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT TRICKER,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 23, 2002

No. 229632

Genesee Circuit Court

LC No. 99-066493-NF

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this declaratory judgment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action seeking a declaratory judgment ordering defendant to provide benefits to plaintiff for medical services allegedly required as a result of a 1995 automobile accident. Defendant moved for summary disposition, asserting that there is no actual case or controversy existing between the parties. Defendant provided evidence that all medical expenses incurred since August 24, 1999, have been paid. The trial court granted defendant's motion. Plaintiff appeals.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim) and MCR 2.116(C)(10) (no genuine issue of material fact). Because the trial court considered evidence outside the pleadings in deciding the motion, it appears that it decided the motion according to MCR 2.116(C)(10). See MCR 2.116(G)(5).

A decision on a motion for summary disposition is reviewed de novo. *Singerman v Municipal Serv Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997). A motion brought pursuant to MCR 2.116(C)(10) (no genuine issue of material fact) tests the factual support for a claim. To rule on the motion, the trial court must consider the pleadings, affidavits, depositions and all other documentary evidence submitted by the parties. MCR 2.116(G)(5); *Singerman, supra*. The court must view the evidence and all reasonable inferences drawn from the evidence in favor of the nonmoving party, giving the nonmoving party the benefit of any reasonable doubt. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The

reviewing court must “determine whether any genuine issue of material fact exists in order to prevent entering a judgment for the moving party as a matter of law.” *Id.*

A court may issue a declaratory judgment in a case of actual controversy within its jurisdiction. MCR 2.605(A)(1). The case must “involve a genuine, live controversy between interested persons asserting adverse claims” *Allstate Ins Co v Hayes*, 442 Mich 56, 66; 499 NW2d 743 (1993). “An actual controversy exists when ‘a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights.’” *Genesis Center, PLC v Comm’r of Financial & Ins Servs*, 246 Mich App 531, 544; 633 NW2d 834 (2001). If there is no actual controversy, the court does not have subject matter jurisdiction to enter a declaratory judgment. *Id.* An actual controversy does not exist where the injury sought to be prevented is hypothetical. *Shavers v Attorney General*, 402 Mich 554, 589; 267 NW2d 72 (1978).

Plaintiff’s claim for benefits is a claim under the no-fault act, MCL 500.3103 *et seq.* Under MCL 500.3107, plaintiff is entitled to benefits for “[a]llowable expenses consisting of all reasonable charges *incurred* for reasonably necessary products, service and accommodations for an injured person’s care, recovery or rehabilitation.” Because the evidence demonstrates that all incurred expenses have been paid and plaintiff has not presented evidence to show that defendant has refused to pay for the treatment sought by plaintiff, there is no actual controversy in this case. Thus, the trial court properly concluded that the declaratory judgment action should be dismissed on defendant’s motion for summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh