

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In re Estate of JIMMIE R. DUNCAN, a Protected Person.

---

PHILIP R. FABRIZIO, Conservator of the Estate  
of JIMMIE R. DUNCAN, a Protected Person,

UNPUBLISHED  
November 15, 2002

Plaintiff-Appellee,

v

No. 230631  
Oakland Circuit Court  
LC No. 99-007262-AV

AAA MICHIGAN,

Defendant-Appellant.

---

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

PER CURIAM.

Defendant appeals a circuit court order affirming the district court's judgment and order granting plaintiff's motion for summary disposition and awarding plaintiff \$24,391.75 on his claim for reimbursement of fiduciary fees and expenses related to the guardianship of plaintiff's ward, Mr. Jimmie Duncan. After this Court denied defendant's application for leave to appeal, our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *Duncan Estate v AAA*, 463 Mich 900; 618 NW2d 770 (2000). We affirm.

Mr. Duncan suffered serious brain and other injuries as a result of a pick-up truck accident in October 1989, necessitating the appointment of a guardian. On February 14, 1990, the probate court approved fiduciary fees totaling \$24,391.75, which were paid from estate assets. Plaintiff subsequently commenced this action against defendant, Mr. Duncan's no-fault insurer, alleging that it was liable for the fiduciary fees associated with the guardianship. Plaintiff filed a motion for summary disposition as to both liability and damages. Following a hearing, the district court granted plaintiff's motion. The district court found that, pursuant to *Heinz v Auto Club Ins Ass'n*, 214 Mich App 195; 543 NW2d 4 (1995), defendant was liable for fiduciary fees. Additionally, the court found that, pursuant to collateral estoppel, the probate court's orders established the amount of those damages.

Defendant appealed to the Oakland Circuit Court which, following a hearing on October 13, 1999, affirmed the district court's decision. However, while not disturbing the district court's finding as to liability, the court found that *res judicata* rather than collateral estoppel bound defendant as to damages.

The grant or denial of a motion for summary disposition is reviewed *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Id.* The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.*

Under the no-fault act, MCL 500.3101 *et seq.*, an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle . . ." MCL 500.3105(1); *Specht v Citizens Ins Co of America*, 234 Mich App 292, 295; 593 NW2d 670 (1999). There are three requirements that must be satisfied in order for a no-fault insurer to be responsible for personal protection benefits: (1) the expense must have been incurred; (2) the expense must have been for a product, service, or accommodation reasonably necessary for the injured person's care, recovery, or rehabilitation; and (3) the amount of the expense must have been reasonable. MCL 500.3107(1)(a); *Nassar v Auto Club Ins Ass'n*, 435 Mich 33, 49-50; 457 NW2d 637 (1990).

In *Heinz, supra*, the plaintiff's decedent was injured in an automobile accident and required the services of a guardian for two years prior to his death. The defendant, the same defendant as in the instant case, refused to pay the fees and expenses associated with the insured's guardianship. The defendant argued that the plain meaning of MCL 500.3107(1)(a) provided only for medical care. That statute 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 reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation.* (Emphasis added.)

This Court rejected the defendant's claim that the fees associated with the guardianship were not subject to reimbursement as a no-fault benefit. Noting that § 3107(1)(c) provides for the payment of replacement services that an injured person would have performed for himself, this Court concluded that the no-fault act was not limited strictly to the payment of medical expenses, and that guardianship fees and expenses were allowable expenses under § 3107. *Heinz, supra* at 197-198.

*Heinz* is directly on point with regard to the issue of liability and is binding under MCR 7.215(I). Further, we decline defendant's invitation to hold that *Heinz* was wrongly decided.

Apart from the issue of liability for the fiduciary fees associated with Mr. Duncan's guardianship, however, defendant also argues that it is not bound to pay the amount of the fiduciary fees determined by the probate court because it never had an opportunity to litigate the reasonableness of those fees in the probate court. At the trial court level, defendant sought to challenge the amount of the fiduciary fees determined by the probate court on the basis that it was never provided with any documentation identifying what the fees were for. It further argued that it was not bound by the probate court's determination under either collateral estoppel or res judicata because it was not a party to the probate court proceedings.

We conclude that whatever validity defendant's argument may have had in the lower courts is now a moot point because, in its appeal brief, defendant has effectively conceded that there is no genuine issue of material fact regarding the *amount* of fiduciary fees determined by the probate court. Specifically, defendant states, in pertinent part:

Defendant does not, and need not, contest the Probate Court's determination that the services for which payment was sought were authorized by the **Probate Code** and in the best interests of the **Estate**. [Defendant's appeal brief, p 13; emphasis in original.]

Because *Heinz* holds that, where a person is so seriously injured in an automobile accident that a guardian or conservator is required, "the services performed by the guardian and conservator are reasonably necessary to provide for the person's care[.]" *Heinz, supra* at 198, and because defendant does not contest the probate court's determination that the fiduciary fees awarded in this case were both authorized and in the best interests of the estate, we conclude that summary disposition for plaintiff was proper. Although defendant further states on appeal that it is "the implications to be drawn from the Probate court's 'determination' as it relates to a **no-fault insurer's** obligations under the **No-Fault Act** that are properly at issue in this case" that is what was decided in *Heinz*. As previously indicated, *Heinz* is controlling under MCR 7.215(I).

Affirmed.

/s/ Michael J. Talbot  
/s/ Janet T. Neff  
/s/ E. Thomas Fitzgerald