S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

EVELYN PROUDFOOT, Plaintiff-Appellee,	FOR PUBLICATION January 10, 2003 9:10 a.m.
v STATE FARM MUTUAL INSURANCE COMPANY, Defendant-Appellant.	No. 232282 Washtenaw Circuit Court LC No. 97-004357-NF Updated Copy March 14, 2003

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

COOPER, P.J.

Defendant appeals as of right from the trial court's imposition of prejudgment interest, MCL 600.6013; no-fault penalty interest, MCL 500.3142; and attorney fees, MCL 500.3148. We affirm in part, reverse in part, and remand.

I. Factual Background

In November 1995, plaintiff, a resident of England, was involved in an accident during a visit to Michigan. Plaintiff sustained serious injuries when she was struck by an automobile while crossing a street. As a result of these injuries, plaintiff was subsequently required to undergo the amputation of her right leg above the knee. Plaintiff was fitted for a prosthetic leg but encountered complications, mandating the use of a wheelchair. Defendant, plaintiff's insurer, compensated her for the majority of expenses arising out of the accident. However, a dispute arose over her request for home modifications.

On December 2, 1997, plaintiff's husband submitted a letter to defendant, with an occupational therapist's report, detailing the need for modifications to plaintiff's home. In the letter, he noted that he had contacted a local architect to prepare a proposal and an estimate for

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

the necessary modifications. Plaintiff paid the architect $815[1] for the proposal. The architect's proposal, bill, and estimate were forwarded to defendant in March 1999. According to plaintiff 's architect, it would cost approximately $250,000, including the value added tax of 17.5 percent, to make the necessary modifications.

A few months after receiving plaintiff 's proposal, defendant sent its own occupational therapist to assess plaintiff 's situation. On the basis of its therapist's findings, defendant claimed that the necessary modifications could be accomplished for substantially less money. Defendant denied plaintiff 's reimbursement request for the architect's bill and failed to provide *any* money toward the home modifications she requested. Defendant conceded the necessity of home modifications but maintained that plaintiff 's requests were unreasonable. At the time of trial, plaintiff 's home remained unmodified.

The jury determined that plaintiff incurred allowable expenses as a result of the accident in the amount of $815 for the architect's bill. According to the jury, defendant received reasonable proof of this expense on March 2, 1999. The jury further found that modifications to plaintiff 's home were reasonably necessary and that the amount of the allowable expense was $220,500, plus the value added tax. The jury stated that reasonable proof was supplied to defendant for the home modifications on December 2, 1997. On January 5, 2001, the trial court entered a judgment against defendant pursuant to the jury's verdict. The trial court awarded plaintiff $815 for the architect's bill and $259,087.50 for the home modifications.[2] In addition, the trial court awarded plaintiff attorney fees and costs and assessed no-fault penalty interest from April 1, 1999, for the architectural services and the future home modifications. The trial court further assessed judgment interest against defendant on the architect's bill, the no-fault interest on the architect's bill, the future home modifications, the no-fault attorney fees and costs, and the no-fault interest on the home modifications. The judgment interest began to accrue November 27, 1997.

II. A Historical Examination of Michigan's No-Fault Act

To resolve the issues presented in this case, we must first discuss the history and purpose of the no-fault act. It has been held that "[t]he overall goal of the no-fault insurance system is to provide accident victims with assured, adequate, and prompt reparations at the lowest cost to both the individuals and the no-fault system." *Williams v AAA Michigan*, 250 Mich App 249, 257; 646 NW2d 476 (2002).

Our Supreme Court upheld the constitutionality of the no-fault act in *Shavers v Attorney Gen*, 402 Mich 554, 621-622; 267 NW2d 72 (1978), noting the Legislature's rationale for abolishing tort remedies for personal injuries arising out of motor vehicle accidents. Specifically, the Supreme Court cited the Legislature's view that a change was necessary in part to reduce the

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[1] The figures used in this opinion have been converted from English pound sterling to American dollars, using the conversion rate stipulated by the parties at trial.

[2] The amount for the home modifications includes the 17.5 percent value added tax.

heavy burden placed on the court system. The Supreme Court further noted that one of the operational deficiencies that the Legislature endeavored to change with the no-fault act was the fact that the former tort system "discriminated, in terms of recovery, against the uneducated and those persons on a low income scale." *Id*. at 622. The Supreme Court determined that the no-fault act's requirement of prompt payment would ease delays in the court system by decreasing the number of motor vehicle personal injury tort suits. *Id.* at 622-623. Additionally, the Supreme Court suggested that timely payments under the no-fault act would help to protect the disadvantaged or lower income individuals by relieving some of the pressures on them "to settle serious claims prematurely and for less than an equitable amount." *Id*. at 623.

The avowed overall goals and purpose of the no-fault act are defeated if no-fault insurers are allowed to unreasonably deny benefits, thereby requiring their insureds to seek recourse in the legal system. See *Lakeland Neurocare Ctrs v State Farm Mut Automobile Ins Co*, 250 Mich App 35, 42-43; 645 NW2d 59 (2002). To encourage no-fault insurers to promptly pay an injured party, the Legislature enacted penalty provisions allowing for the payment of attorney fees on unreasonably denied claims and interest on overdue payments. *Univ of Mich Regents v State Farm Mut Ins Co*, 250 Mich App 719, 739; 650 NW2d 129 (2002).

III. Standard of Review

The interpretation and application of statutes are questions of law that are reviewed de novo on appeal. *Lincoln v Gen Motors Corp*, 461 Mich 483, 489-490; 607 NW2d 73 (2000). The primary goal when construing a statute is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). When determining the Legislature's intent, this Court must first look to the statute's specific language. *Gauntlett v Auto-Owners Ins Co*, 242 Mich App 172, 177; 617 NW2d 735 (2000). Judicial construction is unnecessary if the meaning of the language is clear. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). However, judicial construction is appropriate when reasonable minds can differ regarding the statute's meaning. *Gauntlett, supra* at 177. Terms contained in the no-fault act are read "'in the light of its legislative history and in the context of the no-fault act as a whole.'" *Id*. at 179, quoting *Gobler v Auto-Owners Ins Co*, 428 Mich 51, 61; 404 NW2d 199 (1987). Further, courts should not abandon common sense when construing a statute. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). Given the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries. *Spencer v Citizens Ins Co*, 239 Mich App 291, 300-301; 608 NW2d 113 (2000).

IV. Declaratory Judgment versus Money Judgment

Defendant initially characterizes the judgment entered by the trial court as a money judgment, rather than a declaratory judgment for plaintiff 's future home modifications, and by implication indicates that a trial court may not establish an escrow account to enforce its judgment. However, defendant fails to explain or offer any authority for its position that a trial court is without the authority to establish such an account. See *Chapdelaine v Sochocki*, 247 Mich App 167, 174; 635 NW2d 339 (2001). A declaratory judgment is unique in that it is neither completely legal nor equitable in nature. See *Coffee-Rich, Inc v Dep't of Agriculture*, 1

Mich App 225; 135 NW2d 594 (1965); see also 9 Michigan Pleading & Practice, Declaratory Judgments, § 69.03, p 797.

In Michigan, courts of record have the authority to declare the rights of an interested party seeking a declaratory judgment. MCR 2.605(A)(1). "Declaratory judgments have the force and effect of, and are reviewable as, final judgments." MCR 2.605(E). Damages may also be granted after the entry of a declaratory judgment. *Durant v Michigan*, 456 Mich 175, 208-209; 566 NW2d 272 (1997); see, generally, 20 Michigan Law & Practice (2d ed), Judgment, § 86, p 93. However, such supplemental relief requires reasonable notice and a hearing. MCR 2.605(F). Conversely, a money judgment simply requires the immediate payment of a sum of money as opposed to directing an act to be completed. *In re Forfeiture of $176,598*, 465 Mich 382, 386; 633 NW2d 367 (2001).

In this case, the trial court entered the following judgment with regard to plaintiff 's future home modifications:

> IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff recover future home modifications as awarded by the jury in the amount of $220,500.00 plus value added tax of 17.5% for a total future home modification award in the amount of $259,087.50 is awarded, [sic] such amount to be overseen by the Court as the expenses are incurred under the no-fault law.

In *Manley v DAIIE*, 425 Mich 140; 388 NW2d 216 (1986), the Supreme Court ruled that a trial court may enter a declaratory judgment for a specific amount of money when future damages are involved. However, it is important to note that the future damages awarded in *Manley*, involved reimbursement for future nursing care. Such an award was truly a declaration of future rights because the hourly rate for nurses aides and the amount of nursing care necessary fluctuates and is an ongoing expense.

In the instant case, the term "declaratory," as used on the verdict form, is really a misnomer. Unlike *Manley*, this case involves a sufficiently definitive one-time expense that a jury deemed reasonable and necessary. Furthermore, it is important to note that declaratory relief is not considered exclusive and that additional monetary relief may be appropriate where the parties had notice and a hearing. See *Durant, supra* at 208-209. A jury trial was held in this case to determine what constituted a reasonable amount for home modifications. Both defendant and plaintiff had an opportunity to argue the viability of plaintiff 's plan during the trial and defendant has not contested the jury's verdict. See *id*. at 209-210. As pointed out in *Durant, supra* at 211, "[t]o deny monetary relief here might provide incentive for protracted litigation in the future" given defendant's refusal to provide plaintiff any home modifications since her initial request in 1997. Thus, we find that the trial court appropriately ordered defendant to pay the total amount of home modification benefits to the trial court for distribution.

V. No-Fault Attorney Fees

Defendant next argues that the trial court clearly erred in awarding plaintiff attorney fees under MCL 500.3148(1). Specifically, defendant claims that there was a bona fide factual

dispute regarding the architectural plans and that the personal protection insurance benefits for the home modifications were not overdue under the no-fault act. We disagree.

An insurer is responsible under Michigan's no-fault act for all personal protection insurance benefits arising out of "allowable expenses." MCL 500.3107(1)(a). Allowable expenses consist of "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). In *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 50; 457 NW2d 637 (1990), our Supreme Court instructed that an item is an "allowable expense" under the no-fault act if: (1) the charge is reasonable; (2) the expense is reasonably necessary; and (3) the expense is incurred.

If litigation results from an insurer's unreasonable refusal to pay benefits for an allowable expense, attorney fees are awardable. Specifically, MCL 500.3148(1) provides:

> An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer *unreasonably refused* to pay the claim or unreasonably delayed in making proper payment.

Personal protection insurance benefits are considered overdue if "not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(2); see also *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 629; 550 NW2d 580 (1996) (holding that the term "overdue" must be similarly construed for purposes of determining the applicability of no-fault attorney fees and no-fault interest).

Absent clear error, this Court will not reverse a trial court's finding regarding an unreasonable refusal or delay in paying benefits. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). Clear error exists when a reviewing court is left with the definite and firm conviction on the entire record that a mistake was made. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000). However, "[i]f the insurer's refusal or delay in payment is the product of a legitimate question of statutory construction, constitutional law, or a bona fide factual uncertainty, the refusal or delay will not be found unreasonable under MCL 500.3148(1) . . . ." *Beach, supra* at 629. In such a situation, the insurer must overcome a rebuttable presumption of unreasonableness and justify its delay or refusal of benefits. *Id.*

A. Architectural Services

Defendant questions whether the "proposed architectural drawings" amounted to an allowable expense because they lacked approval and provided no necessary service or accommodation to plaintiff.

The record indicates that plaintiff hired an architect to determine the feasibility and cost of the home modifications that were recommended and deemed necessary by her occupational therapist. It is uncontested that plaintiff paid the architect for these services. Because the

architect's plans and estimate sought to implement home modifications that were deemed by a jury to be reasonably necessary for plaintiff 's care, we find that the architectural services were an allowable expense chargeable to defendant. See MCL 500.3107(1)(a).

To the extent defendant further claims that it legitimately refused payment of the architect's bill because of a bone fide factual dispute, we disagree. Plaintiff notified defendant of her need for home modifications in December 1997, and informed defendant that she was obtaining the services of an architect for that purpose. Defendant received the architect's proposal and bill in March 1999, and it was not until several months later that defendant attempted to verify or assess plaintiff 's needs. Defendant never questioned plaintiff 's intention to hire an architect. Indeed, defendant notes in its appellate brief that the plans created by plaintiff 's architect could be utilized in forming a compromise plan. It is apparent that defendant's dispute lies with the extent of the modifications recommended and not with plaintiff 's consultation with an architect. Thus, we find no clear error in the trial court's award of attorney fees.[3]

B. Home Modifications

In addition, we find that plaintiff is also entitled to attorney fees as a result of defendant's failure, despite reasonable proof of need, to make necessary modifications to plaintiff 's home. Defendant does not contest the reasonableness of its refusal to modify plaintiff 's home. Rather, defendant argues that personal protection insurance benefits were not due in this case until plaintiff became liable for the home modifications. In fact, defendant agreed that some home modifications were necessary and the record shows that plaintiff was without full access to her home. In spite of this, defendant never presented a plan definitively expressing the modifications it would approve or proffered any money for home modifications to plaintiff during the three years before trial. The jury found that reasonable proof of the need for these modifications was supplied to defendant on December 2, 1997, with a viable proposal and cost estimate on March 2, 1999. Consequently, there is proof to support the trial court's determination that defendant's delay was unreasonable and that the home modifications were overdue.

1. *Manley* and Future Expenses

Our Supreme Court has found that attorney fees are permissible in no-fault cases involving declaratory judgments for future expenses. *Manley, supra* at 160. The trial court in that case entered a declaratory judgment for future nursing services and awarded the plaintiff attorney fees under the no-fault act. *Id*. at 147. The Supreme Court in *Manley* upheld the award of attorney fees because the insurer unreasonably refused to pay for nursing services and the insured's attorney was forced to litigate the claim to establish the insurer's *obligation* to pay. *Id*.

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[3] We note that the parties stipulated at trial that $69,300 is a reasonable amount for attorney fees in this case. While defendant claims that the full amount of attorney fees cannot be assessed on its failure to timely reimburse plaintiff solely for the architect's bill of $815, it fails to cite any authority to support this position. See *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995).

at 160. In holding that declaratory judgments providing for necessary and allowable future expenses were permissible, the Supreme Court stated that it would be "neither a workable nor a sound rule of law" to permit an insurer to relitigate previously decided issues when an insured seeks payment for expenses incurred after the date of trial. *Id*. at 157.

Similarly, in the case at bar, plaintiff was forced to seek legal action to establish defendant's *obligation* to pay for necessary home modifications. Defendant failed to provide *any* assistance to plaintiff. Absent independent financial means, plaintiff was unable to commence or obligate herself for these modifications. The record reveals a lack of any realistic finalized plan that defendant was prepared to implement at the time of trial. Consequently, the trial court properly decided that plaintiff was also entitled to attorney fees because defendant's delay in proffering a finalized alternative plan or payment was unreasonable.

2. The Purpose of Michigan's No-Fault Act

It is important to remember that the no-fault act was created in part to ease the burden on the court system and provide a manner in which all parties would have a fair opportunity to litigate legitimate no-fault claims. See *Shavers, supra* at 622-623; *Williams, supra* at 257. Defendant essentially asks this Court to accept the premise that an insured must be able to pay for or have the economic ability to obligate oneself for all benefits before they become due. However, this argument would result in economic disparity wherein only the wealthy or those with a healthy credit line would be able to pursue a dispute with their insurance company over benefits. Such a construction would condone the very injustices that the Legislature enacted the no-fault act to prevent.

In terms of home modifications, defendant's position would preempt insureds from receiving potentially costly accommodations unless they could afford the modifications themselves or find someone willing to complete the job without any assurance of payment. Indeed, in the instant case the home modifications that the jury found to be reasonably necessary totaled nearly a quarter million dollars. To require plaintiff to pay for these modifications before defendant could become liable would be inequitable given the remedial nature of the no-fault act. See *Spencer, supra* at 300-301. For example, *Williams, supra*, involved extensive home modifications that ultimately led to the no-fault insurer's decision to provide its insured with a new home to accommodate his needs. There was no indication in *Williams* that the insurer would require its insured to purchase the home before it would provide benefits. *Id*. It would be illogical to deny plaintiff's request for attorney fees when defendant's refusal to pay for reasonable modifications served to prevent plaintiff from receiving the reasonable and necessary accommodations for her disability.

The jury determined that defendant received reasonable proof of the need for modifications. At the time of trial, defendant had not paid for any of plaintiff's home modifications despite its acknowledgement that some modifications were in fact necessary. Even if defendant disagreed with respect to the extent of the modifications, it had a duty to pay for those costs it did not dispute. See *Butt v DAIIE*, 129 Mich App 211, 220-221; 341 NW2d 474 (1983). Thus, defendant's complete refusal to pay for any modifications since December 1997 was unreasonable and ultimately forced plaintiff into litigation.

To find that defendant was not liable for attorney fees, when it was necessary for plaintiff to litigate in order to obtain the necessary home modification benefits, would defeat the purpose of the no-fault act. Access to the court system would be limited to those who had the financial wherewithal to prepay or obligate themselves for modifications or those who could afford to retain the services of an attorney. We award attorney fees in no-fault cases so that insurers promptly pay injured parties for reasonable claims. *Univ of Mich Regents, supra* at 739. On the basis of the record presented, we find no clear error in the trial court's determination that the home modifications were overdue and that attorney fees were awardable for defendant's inaction.

VI. No-Fault Interest

Defendant contends that it was similarly exempt from paying no-fault interest on the home modifications. Essentially, defendant argues that any benefits it owes plaintiff for home modifications are not "overdue" under the no-fault act because they have yet to be incurred.

Again, we disagree with defendant's contention that an insured has to become personally indebted in order to receive benefits under the no-fault system. The same principles that we discussed in determining defendant's liability for attorney fees based on the home modification award applies to no-fault interest. "Unlike prejudgment interest, which is intended to compensate a party for the delay in receiving its damages, no-fault interest is intended to penalize an insurer that is dilatory in paying a claim." *Attard, supra* at 319. Thus, for the same reasons discussed in awarding plaintiff attorney fees for defendant's failure to timely provide reasonable home modifications, we determine that the trial court's decision to award plaintiff no-fault interest on this ground was also proper.

VII. Judgment Interest

We agree, however, with defendant that plaintiff is not entitled to judgment interest on the future home modifications. Under MCL 600.6013(1):

> Interest is allowed on a money judgment recovered in a civil action, as provided in this section. However, for complaints filed on or after October 1, 1986, interest is not allowed on *future damages* from the date of filing the complaint to the date of entry of the judgment. As used in this subsection, "future damages" means that term as defined in section 6301. [Emphasis added.]

According to MCL 600.6301, future damages are those damages that arise from a personal injury that the jury determines will accrue after the damage findings are made.

We note that defendant does not contest the trial court's award of judgment interest on the architect's fee and we find that this award was proper. We further find that the trial court properly granted judgment interest on the no-fault interest awarded to plaintiff for the architectural services. Moreover, the trial court's award of judgment interest on the attorney fees was also appropriate.

In summary, we find the trial court's award to be equitable and consistent with the no-fault act's goal of promoting judicial economy and equal access to the courts. To deny plaintiff the relief granted in this opinion would merely reward defendant for its failure to timely provide plaintiff her rightful benefits for several years.

We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

Jansen, J., concurred.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen