

STATE OF MICHIGAN
COURT OF APPEALS

SUSANNA INHULSEN,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

March 30, 2004

No. 243398

Lenawee Circuit Court

LC No. 01-000493-CK

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition on the ground that the limitations period had expired. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

This case arises from a car accident that injured plaintiff on February 18, 1995. After the accident, plaintiff sought recovery for her injuries from defendant based on an insurance policy held by plaintiff's husband's business. On November 20, 1996, defendant denied the claim because plaintiff's injuries had been sustained while in a vehicle not insured by the policy. After the denial, plaintiff continued to communicate with defendant to no end. On September 8, 2000, defendant sent a fourth and final denial of the claim.

On August 22, 2001, plaintiff sued defendant, seeking personal injury benefits and a declaration that she was entitled to no-fault benefits. Defendant moved for summary disposition arguing that plaintiff was not an occupant of a vehicle insured under the policy and that the claim was barred by the statute of limitations. Plaintiff responded that, despite the initial 1996 denial, the continued communication between the parties extended the statute of limitations until the September 8, 2000 "effective" denial sent less than one year before plaintiff sued and, therefore, within the statutory period. The circuit court granted defendant's motion finding the statutory period to have lapsed. This appeal resulted.

II. STANDARD OF REVIEW

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is

barred by the statute of limitations is a question of law that is reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

III. ANALYSIS

MCL 500.3145(1) provides in part:

An action for recovery of personal protection insurance benefits . . . for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury . . . has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within one year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

Apparently there is no dispute that plaintiff gave defendant timely notice of the accident and injury. The one-year limitation period “prevents recovery for ‘loss incurred more than 1 year before the date on which the action was commenced.’” *Bridges v Allstate Ins Co*, 158 Mich App 276, 279; 404 NW2d 240 (1987). Because it may take time for an insurer to investigate a claim and determine whether coverage is available, “the one-year back rule of § 3145 is tolled from the date of a specific claim for benefits to the date of a formal denial of liability.” *Lewis v DAIIE*, 426 Mich 93, 101; 393 NW2d 167 (1986).

Plaintiff made a claim for benefits in 1995 or 1996. Defendant investigated the claim and formally denied it in November 1996 when it advised plaintiff's counsel “that there is no coverage applicable for this claim.” There is no indication that plaintiff submitted any additional claims for expenses incurred after that date; she simply disputed defendant's initial decision to deny her original claim. Because the loss was incurred in 1995, the claim for benefits was denied in 1996, and plaintiff filed suit more than one year later, the trial court did not err in granting defendant's motion.

Plaintiff contends that even though defendant denied liability in November 1996, the “numerous further contacts between Citizens and” her attorney “clearly extended the statute of limitations until” defendant denied the claim again in 2000, less than a year before she filed suit. Plaintiff has failed to provide any authority in support of this contention and thus the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Plaintiff also argues that defendant is estopped from asserting a statute of limitations defense because it continued to negotiate with her attorney regarding coverage. Plaintiff did not raise this issue below and thus it has not been preserved for appeal. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette